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# THE GENERAL STATUTES OF NORTH CAROLINA

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1985 CUMULATIVE SUPPLEMENT

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

*Under the Direction of*

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

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## Volume 3B

1981 Replacement

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

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**Place With Corresponding Volume of Main Set.  
This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.**

THE MICHIE COMPANY  
*Law Publishers*  
CHARLOTTESVILLE, VIRGINIA  
1985



# Tables

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1985

THE GENERAL STATUTES OF  
NORTH CAROLINA

1885 CUMMULATIVE SUPPLEMENT

Printed under the supervision of the Department of  
Education of the State of North Carolina

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100 North Salisbury Street  
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Place With Corresponding Volume of Main Set  
This Supplement's Previous Supplement Which  
May Be Obtained for Reference Purposes

THE MICHIE COMPANY  
100 North Salisbury Street  
Raleigh, N. C. 27601

## Preface

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

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

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

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

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

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

# Scope of Volume

## Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1985 Regular Session affecting Chapters 117 to 136 of the General Statutes.

## Annotations:

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

- North Carolina Reports through Volume 313, p. 337.
- North Carolina Court of Appeals Reports through Volume 73, p. 335.
- South Eastern Reporter 2nd Series through Volume 329, p. 896.
- Federal Reporter 2nd Series through Volume 761, p. 712.
- Federal Supplement through Volume 607, p. 1490.
- Federal Rules Decisions through Volume 105, p. 250.
- Bankruptcy Reports through Volume 48, p. 873.
- Supreme Court Reporter through Volume 105, p. 2370.
- North Carolina Law Review through Volume 63, p. 809.
- Wake Forest Law Review through Volume 20, p. 540.
- Campbell Law Review through Volume 7, p. 298.
- Duke Law Journal through 1983, p. 1142.
- North Carolina Central Law Journal through Volume 14, p. 680.
- Opinions of the Attorney General.



# The General Statutes of North Carolina

## 1985 Cumulative Supplement

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### VOLUME 3B

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#### Chapter 117. Electrification.

##### Article 1.

##### Rural Electrification Authority.

Sec.  
117-2. Powers.

##### Article 2.

##### Electric Membership Corporations.

Sec.  
117-13. Board of directors; compensation; president and secretary.

#### ARTICLE 1.

##### *Rural Electrification Authority.*

#### § 117-2. Powers.

The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

- (7) To have the power of eminent domain for the purpose of condemning rights-of-way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law. For the purposes of exercising the powers of eminent domain the North Carolina Rural Electrification Authority shall be deemed a private condemnor and shall follow the procedures of Chapter 40A for a private condemnor.

(1935, c. 288, s. 2; 1981, c. 919, s. 12.)

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

**Effect of Amendments.** — The 1981 amendment, effective January 1, 1982, added the second sentence of subdivision (7).

## ARTICLE 2.

*Electric Membership Corporations.***§ 117-13. Board of directors; compensation; president and secretary.**

Each corporation formed under this Article shall have a board of directors, in which management of the affairs of the corporation is vested. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote, but if the bylaws so provide the directors may be elected on a staggered-term basis: Provided, that the total number of directors on a board shall be so divided that not less than one third of them, or as nearly thereto as their division for that purpose will permit, shall be elected annually, and no term shall be longer than for three years; and provided further that, except as may be necessary in inaugurating such a plan, all directors shall be elected for terms of equal duration. The directors shall be entitled to receive for their services only such compensation as is provided in the bylaws. The board shall elect annually from its own number a president and a secretary. The directors must be members of the corporation, except that for those corporations whose principal purpose is to furnish bulk electric wholesale power supplies and whose membership consists of other electric membership corporations, the directors may be members, directors, officers or managers of the member corporations, and shall be elected by the member corporation's board of directors. (1935, c. 291, s. 8; 1959, c. 387, s. 1; 1969, c. 760; 1975, c. 314; 1979, c. 285, s. 2; 1981, c. 478.)

**Effect of Amendments. —**

The 1981 amendment rewrote the first sentence, which formerly read: "Each corporation formed hereunder shall have a board of direc-

tors and the powers of a corporation shall be vested in and exercised by a majority of the directors in office."

## Chapter 118.

### Firemen's Relief Fund.

#### Article 1.

##### Fund Derived from Fire Insurance Companies.

Sec.

- 118-6. Trustees appointed; organization.  
 118-7. Disbursement of funds by trustees.  
 118-8. Trustees to keep account and file certified reports.  
 118-11. No discrimination on account of race.

#### Article 2.

##### State Appropriation.

- 118-12. Application of fund.  
 118-17. Treasurer to pay fund to Volunteer Firemen's Association.

#### Article 3.

##### North Carolina Firemen's Pension Fund.

- 118-18 to 118-32. [Recodified.]

#### Article 4.

##### North Carolina Firemen's and Rescue Squad Workers' Pension Fund.

- 118-33. Fund established; administration by board of trustees; rules and regulations.  
 118-34. Creation and membership of board of trustees; compensation.  
 118-35. Powers and duties of the board.  
 118-36. Director.  
 118-37. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures.

Sec.

- 118-38. "Eligible firemen" defined; determination and certification of volunteers meeting qualifications.  
 118-39. "Eligible rescue squad worker" defined; determination and certification of eligibility.  
 118-40. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of members.  
 118-41. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members.  
 118-42. Monthly pensions upon retirement.  
 118-43. Payments in lump sums.  
 118-44. Pro rata reduction of benefits when fund insufficient to pay in full.  
 118-45. Provisions subject to future legislative change.  
 118-46. Determination of creditable service; information furnished by applicants for membership.  
 118-47. Length of service not affected by serving in more than one department or squad; transfer from one department or squad to another.  
 118-48. Effect of member being six months delinquent in making monthly payments.  
 118-49. Exemptions of pensions from attachment; rights nonassignable.

### ARTICLE 1.

#### *Fund Derived from Fire Insurance Companies.*

#### § 118-1. Fire insurance companies to report premiums collected.

**Local Supplemental Firemen's Retirement Fund.** — City of Asheboro: 1985, c. 186; city of Asheville: 1979, 2nd Sess., c. 1315, amending 1979, c. 208; city of Belhaven: 1981, c. 294; city of Burlington: 1979, 2nd Sess., c. 1144; city of Durham: 1983, c. 463; city of Gastonia: 1983 (Reg. Sess., 1984), c. 1016; city of Greensboro: 1983, c. 466; city of Henderson: 1981, c. 111; city of Hendersonville: 1981, c. 341; city of Hickory: 1985, c. 139; city of Laurinburg: 1979, 2nd Sess., c. 1315; city of Mayodan: 1985, c. 255; city of Monroe: 1981, c.

532; city of New Bern: 1983, c. 551; city of Newton: 1981, c. 298; 1983, c. 503; city of Reidsville: 1979, c. 94; 1981 (Reg. Sess., 1982), c. 1235; city of Rocky Mount: 1983, c. 498; city of Shelby: 1985, c. 209; city of Williamston: 1985, c. 188; city of Wilmington: 1983, cc. 504, 505, 906; town of Canton: 1979, 2nd Sess., c. 1105; town of Cary: 1985, c. 159; town of Edenton: 1981, cc. 286, 996; town of Farmville: 1981, c. 533; town of Forest City: 1979, 2nd Sess., c. 1276; town of Lillington: 1981, c. 285; town of Tarboro: 1985, c. 157; town of Valdese:

1983, c. 501; town of Waynesville: 1981, c. 288; town of Wilkesboro: 1985, c. 131; village of Kannapolis: 1983, c. 497.

By virtue of Session Laws 1981, c. 906, the

city of Lexington should be stricken from the bound volume. By virtue of Session Laws 1981, c. 209, the town of Forest City should be stricken from the bound volume.

### § 118-5. Insurance Commissioner to pay fund to treasurer.

**Local Modification.** — City of Hickory: 1985, c. 209; town of Cary: 1985, c. 159; town of 1985, c. 139; city of New Bern: 1983, c. 551; Tarboro: 1985, c. 157.  
city of Raleigh: 1985, c. 35, s. 3; city of Shelby:

### § 118-6. Trustees appointed; organization.

For each county, town or city complying with and deriving benefits from the provisions of this Article, there shall be appointed a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be elected by the members of the local fire department or departments who are qualified as beneficiaries of such fund, two of whom shall be elected by the mayor and board of aldermen or other local governing body, and one of whom shall be named by the Commissioner of Insurance. Their selection and term of office shall be as follows:

- (1) The members of the fire department shall hold an election each January to elect their representatives to above board. In January 1950, the firemen shall elect one member to serve for two years and one member to serve for one year, then each year in January thereafter, they shall elect only one member and his term of office shall be for two years.
- (2) The mayor and board of aldermen or other local governing body shall appoint, in January 1950, two representatives to above board, one to hold office for two years and one to hold office for one year, and each year in January thereafter they shall appoint only one representative and his term of office shall be for two years.
- (3) The Commissioner of Insurance shall appoint one representative to serve as trustee and he shall serve at the pleasure of the Commissioner.

All of the above trustees shall hold office for their elected or appointed time, or until their successors are elected or appointed, and shall serve without pay for their services. They shall immediately after election and appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond in a sum equal to the amount of moneys in his hands, to be approved by the Commissioner of Insurance, for the faithful and proper discharge of the duties of his office. If the chief or chiefs of the local fire departments are not named on the board of trustees as above provided, then they shall serve as ex officio members without privilege of voting on matters before the board. (1907, c. 831, s. 6; C.S., s. 6068; 1925, c. 41; 1945, c. 74, s. 1; 1947, c. 720; 1949, c. 1054; 1973, c. 1365; 1985, c. 666, s. 64.)

**Local Modification.** — City of Hickory: 1985, c. 139; city of Mayodan: 1985, c. 255; city of New Bern: 1983, c. 551; city of Shelby: 1985, c. 209; city of Williamston: 1985, c. 188; city of Wilmington: 1983, c. 505; town of Tarboro: 1985, c. 157; town of Valdese: 1983, c. 501; town of Wilkesboro: 1985, c. 131.

**Effect of Amendments.** — The 1985 amendment, effective July 10, 1985, rewrote the first sentence of the first paragraph and rewrote the last sentence of the last paragraph.

## § 118-7. Disbursement of funds by trustees.

The board of trustees shall have entire control of the funds derived from the provisions of this Article, and shall disburse the funds only for the following purposes:

- (3) Repealed by Session Laws 1985, c. 666, s. 61, effective July 10, 1985.
- (5) To provide for benefits of supplemental retirement, additional workers compensation, and other insurance and pension protection for firemen otherwise qualifying for benefits from the Firemen's Relief Fund as set forth in Article 2 of this Chapter.
- (6) To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firemen's Relief Fund as set forth in Article 2 of this chapter.

Notwithstanding any other provisions of law, no expenditures shall be made pursuant to subsections (5) and (6) of this section unless the State Firemen's Association has certified that such expenditures will not render the Fund actuarially unsound for the purposes of providing the benefits set forth in subsections (1), (2), and (4) of this section. If, for any reason, funds made available for subsections (5) and (6) of this section shall be insufficient to pay in full any benefits, the benefits pursuant to subsections (5) and (6) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claim shall accrue with respect to any amount by which a benefit under subsections (5) and (6) shall have been reduced. (1907, c. 831, s. 6; 1919, c. 180; C.S., s. 6069; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; 1945, c. 74, s. 2; 1985, c. 666, s. 61.)

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

**Local Modification.** — City of Asheboro: 1985, c. 186; city of Hickory: 1981, c. 407; 1985, c. 139; city of Mayodan: 1985, c. 255; city of New Bern: 1983, c. 551; city of Radford: 1983, c. 496; city of Shelby: 1985, c. 209; city of Williamston: 1985, c. 188; city of Wilmington: 1983, c. 505; town of Cary: 1985, c. 159; town of Kernersville: 1979, 2nd Sess., c. 1106; town of

Tarboro: 1985, c. 157; town of Valdese: 1983, c. 501; town of Wilkesboro: 1985, c. 131.

**Effect of Amendments.** — The 1985 amendment, effective July 10, 1985, deleted subdivision (3), which read "To safeguard any fireman who has honorably served for a period of five years in the fire service of his city or town from ever becoming an inmate of any almshouse," added subdivisions (5) and (6), and added the last paragraph.

## § 118-8. Trustees to keep account and file certified reports.

(a) Each local board of trustees shall keep a correct account of all moneys received and disbursed by them. On a form prescribed by the North Carolina State Firemen's Association, each local board shall certify by October 31 of each year the following to the Association: the balance of the local fund, proof of sufficient bonding, a full accounting of the previous year's expenditures, and a full accounting of membership qualifications. Such certification shall be made concurrently with the local unit's statement of Fire Readiness.

(b) In turn, the State Firemen's Association shall certify to the Department of Insurance by January 1 of each year on a form prescribed by the Department, the local units which have complied with the requirements of subsection (a) of this section.

(c) In the event that any board of trustees in any of the towns and cities benefited by this Article shall neglect or fail to perform their duties, or shall willfully misappropriate the funds entrusted in their care by obligating or disbursing such funds for any purpose other than those set forth in G.S. 118-7, then the Insurance Commissioner shall withhold any and all further pay-

ments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the State Firemen's Association, and adjusted to the satisfaction of the Insurance Commissioner.

(d) In the event that any local relief fund provided for in this Article becomes impaired, then the Firemen's Relief Fund may in the discretion of its board of trustees assist the local unit administering the fund in providing for relief to injured firemen and their dependents or survivors; provided, however, that any funds so provided to such impaired units shall be repaid in full at the statutory rate of interest from future local unit receipts if the impairment resulted from violations of this Article. (1907, c. 831, s. 7; C.S., s. 6070; 1925, c. 41; 1985, c. 666, s. 63.)

**Effect of Amendments.** — The 1985 amendment, effective July 10, 1985, rewrote this section.

### § 118-11. No discrimination on account of race.

The local boards of trustees of the Firemen's Relief Fund shall make no discrimination based upon race in the payment of benefits. (1907, c. 831, s. 10; C.S., s. 6073; 1985, c. 666, s. 62.)

**Effect of Amendments.** — The 1985 amendment, effective July 10, 1985, rewrote this section.

## ARTICLE 2.

### *State Appropriation.*

### § 118-12. Application of fund.

The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the "Firemen's Relief Fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of said Association, and such provisions and determinations made pursuant to said constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said Association to enforce any claim or recover any benefit under this Article or under the constitution and bylaws of said Association; but if any officer or committee of said Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. Notwithstanding the above provisions, the Executive Board of the North Carolina State Firemen's Association is hereby authorized to grant educational scholarships to the children of mem-

bers; and to subsidize premium payments of members over 65 years of age to the Firemen's Fraternal Insurance Fund of the North Carolina State Firemen's Association. (1891, c. 468, s. 3; Rev., s. 4393; C. S., s. 6058; 1925, c. 41; 1981 (Reg. Sess., 1982), c. 1215.)

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment added the last sentence.

### § 118-17. Treasurer to pay fund to Volunteer Firemen's Association.

The treasurer of the North Carolina State Firemen's Association shall pay to the treasurer of the North Carolina State Volunteer Firemen's Association one sixth of the funds arising from the five percent (5%) paid him by the Insurance Commissioner each year to be used by said North Carolina State Volunteer Firemen's Association for the purposes set forth in G.S. 118-7.

Local units of the North Carolina State Volunteer Firemen's Association shall maintain records and report to the North Carolina State Firemen's Association in the same manner and to the same extent as provided for in G.S. 118-8, and shall be subject to the sanctions as set forth therein. (1925, c. 41; 1985, c. 666, s. 65.)

**Effect of Amendments.** — The 1985 amendment, effective July 10, 1985, substituted "for the purposes set forth in G.S. 118-7" for "for general purposes" at the end of the first paragraph and added the second paragraph.

## ARTICLE 3.

### *North Carolina Firemen's Pension Fund.*

§§ 118-18 to 118-32: Recodified as §§ 118-33 to 118-49.

**Editor's Note.** — This Article was rewritten by Session Laws 1981, c. 1029, s. 1, effective January 1, 1982, and has been recodified as Article 4 of this Chapter, §§ 118-33 through 118-49. See the Editor's note under § 118-33.

## ARTICLE 4.

### *North Carolina Firemen's and Rescue Squad Workers' Pension Fund.*

### § 118-33. Fund established; administration by board of trustees; rules and regulations.

For the purpose of furthering the general welfare and police powers and obligations of the State with respect to the protection of all its citizens from the consequences of loss or damage by fire and of injury by serious accident or illness, of increasing the protection of life and property against loss or damage by fire, of improving fire fighting and life saving techniques, of increasing the potential of fire departments, rescue squads, organizations and groups, of fostering increased and more widely spread training of personnel of these organizations and groups, and of providing incentive and inducement to participate in fire prevention, fire fighting and rescue squad activities and for the

establishment of new, improved or extended fire departments, rescue squads, organizations and groups to the end that ultimately all areas of the State and all of its citizens will receive the benefits of fire protection and rescue squads' activity and a resulting reduction of loss or damage to life and property by fire hazard or injury by serious accident or illness, and in recognition of the public service rendered to the State of North Carolina and its citizens by "eligible firemen and rescue squad workers," as defined by this Article, there is created in this State a fund to be known, and designated as "The North Carolina Firemen's and Rescue Squad Workers' Pension Fund" to be administered as provided in this Article.

The North Carolina Firemen's and Rescue Squad Workers' Pension Fund is established to provide pension allowances and other benefits for eligible firemen and rescue squad workers in the State who elect to become members of the fund. The board of trustees created by this Article shall have authority to administer the fund and shall make necessary rules and regulations to carry out the provisions of this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1981, c. 1029, s. 1.)

**Editor's Note.** — This Article is Article 3 of this Chapter as rewritten by Session Laws 1981, c. 1029, s. 1, effective January 1, 1982, and recodified. No attempt has been made to point out the changes made by the revision, but, where appropriate, the historical citations to the former sections have been added to corresponding sections in the recodified article.

Session Laws 1981, c. 1029, s. 2, provides: "The Fund established by Session Laws 1961 Chapter 980, G.S. 118-18 et seq., 'the Firemen's Pension Fund' is made a part of the Fund established by this act as the 'Firemen's and Rescue Squad Workers' Pension Fund.'"

### § 118-34. Creation and membership of board of trustees; compensation.

There is created a board to be known as the "Board of Trustees of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund", hereinafter known as "the board".

The board shall consist of seven members:

- (1) The State Auditor, who shall act as chairman.
- (2) The State Insurance Commissioner.
- (3) The State Treasurer.
- (4) Four members to be appointed by the Governor; one a paid fireman, one a volunteer fireman, one volunteer rescue squad worker, and one representing the public at large, for terms of four years each. These members may succeed themselves.

The members presently serving on the "Board of Trustees of the Firemen's Pension Fund" shall continue to serve until the expiration of their terms. No member of the board shall receive any salary, compensation or expenses other than that provided in G.S. 138-6 for each day's attendance at duly and regularly called and held meetings of the board of trustees. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1973, c. 875; 1981, c. 1029, s. 1.)

### § 118-35. Powers and duties of the board.

The board shall request appropriations out of the general fund for administrative expenses and to provide for the financing of this pension fund, employ necessary clerical assistance, determine all applications for pensions, provide for the payment of pensions, make all necessary rules and regulations not inconsistent with law for the government of this fund, prescribe rules and

regulations of eligibility of persons to receive pensions, expend funds in accordance with the provisions of this Article, and generally exercise all other powers necessary for the administration of the fund created by this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

### § 118-36. Director.

There is created an office to be known as Director of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund. He shall be named by the board and shall serve at its pleasure. The director shall be subject to the provisions of the State Personnel Act. The director shall promptly transmit to the State Treasurer all moneys collected by him, which moneys shall be deposited by the State Treasurer into the fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 359; 1981, c. 1029, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 113.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984,

deleted "shall be bonded in such amount as may be determined by the board, and he" following "director" at the beginning of the last sentence.

### § 118-37. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures.

The State Treasurer shall be the custodian of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The appropriations made by the General Assembly out of the general fund to provide money for administrative expenses shall be handled in the same manner as any other general fund appropriation. One-fourth of the appropriation made out of the general fund to provide for the financing of the pension fund shall be transferred quarterly to a special fund to be known as the North Carolina Firemen's and Rescue Squad Workers' Pension Fund. There shall be set up in the State Treasurer's office a special fund to be known as the North Carolina Firemen's and Rescue Squad Workers' Pension Fund, and all contributions made by the members of this pension fund shall be deposited in the special fund. All expenditures for refunds, investments or benefits shall be in the same manner as expenditures of other special funds. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 30; 1979, c. 467, s. 10; 1981, c. 1029, s. 1.)

### § 118-38. "Eligible firemen" defined; determination and certification of volunteers meeting qualifications.

"Eligible firemen" shall mean all firemen of the State of North Carolina or any political subdivision thereof, including those performing such functions in the protection of life and property through fire fighting within a county or city governmental unit and so certified to the Commissioner of Insurance by the governing body thereof, and who belong to a bona fide fire department which, as determined by the Commissioner, is classified as not less than class "9" or class "A" and "AA" departments in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to Articles 12B or 13C of General Statutes Chapter 58 or by

such other reasonable methods as the Commissioner may determine, and which operates fire apparatus and equipment of the value of five thousand dollars (\$5,000) or more, and said fire department holds drills and meetings not less than four hours monthly and said firemen attend at least 36 hours of all drills and meetings in each calendar year. "Eligible firemen" shall also mean those persons meeting the other qualifications of this section, not exceeding 25 volunteer firemen plus one additional volunteer fireman per 100 population in the area served by their respective departments. Each department shall annually determine and report the names of those firemen meeting the eligibility qualifications to its respective governing body, which upon determination of the validity and accuracy of the qualification shall promptly certify the list to the board. For the purposes of the preceding sentence, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241.)

**Effect of Amendments.** — The 1983 amendment, effective June 2, 1983, substituted "Articles 12B or 13C of General Statutes Chapter 58" for "G.S. 58-131.1" near the middle of the first sentence.

The 1985 amendment, effective May 23, 1985, added the last sentence.

### **§ 118-39. "Eligible rescue squad worker" defined; determination and certification of eligibility.**

"Eligible rescue squad worker" means any member of a rescue squad who is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and who has attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad worker eligible for membership in the North Carolina Association of Rescue Squads, Inc., must file a roster certified by the secretary of the association of those rescue squad workers meeting the association requirements with the State Auditor by January 1 of each calendar year.

"Eligible rescue squad worker" does not mean "eligible fireman" as defined by G.S. 118-38, nor may an "eligible rescue squad worker" qualify also as an "eligible fireman" in order to receive double benefits available under this Article. (1981, c. 1029, s. 1.)

### **§ 118-40. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of members.**

Those firemen who are eligible pursuant to G.S. 118-38 may make application for membership to the board. Each fireman upon becoming a member of the fund shall pay the director of the fund the sum of five dollars (\$5.00) per month. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

**§ 118-41. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members.**

Those rescue squad workers eligible pursuant to G.S. 118-39 may make application to the board for membership. All persons who subsequently become rescue squad workers may make application for membership. Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of five dollars (\$5.00) per month. A rescue squad worker who, on the date of the establishment of the fund, has service as a rescue squad worker certified by the Department of State Auditor, may make a lump sum payment of five dollars (\$5.00) per month for each month of service as an eligible rescue squad worker as defined by G.S. 118-39, on or before December 31, 1983, for as many as 240 months together with interest at an annual rate of six percent (6%).

The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement. (1981, c. 1029, s. 1; 1983, c. 500, s. 1.)

**Effect of Amendments.** — The 1983 amendment, effective June 13, 1983, substituted "December 31, 1983" for "July 1, 1983" and "240 months" for "180 months" in the fourth sentence of the first paragraph.

**§ 118-42. Monthly pensions upon retirement.**

Any member who has served 20 years as an "eligible fireman" or "eligible rescue squad worker" in the State of North Carolina, as provided in G.S. 118-38 and G.S. 118-39, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of seventy-five dollars (\$75.00) per month. Any retired fireman receiving a pension of fifty dollars (\$50.00) per month shall, effective July 1, 1981, receive a pension of seventy-five dollars (\$75.00) per month.

Members shall pay five dollars (\$5.00) per month as required by G.S. 118-40 and G.S. 118-41 for a period of no longer than 20 years. No "eligible rescue squad member" shall receive a pension prior to July 1, 1983. No person shall be entitled to a pension hereunder until his official duties as a fireman or rescue squad worker shall have been terminated and he shall have retired as such according to standards or rules fixed by the board of trustees.

Any member who is totally and permanently disabled while in the discharge of his official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of his official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of seventy-five dollars (\$75.00) per month beginning the first month after his fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of his application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of five dollars (\$5.00) as required by G.S. 118-40 and G.S. 118-41.

Any member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may

be permitted to continue making a monthly contribution of five dollars (\$5.00) to the fund until he has paid into the fund the sum of one thousand two hundred dollars (\$1,200). The member shall upon attaining the age of fifty-five years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of his application annually thereafter.

Any member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, and because of such annexation is unable to perform as a fireman of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of five dollars (\$5.00) to the fund until he has paid into the fund the sum of one thousand two hundred dollars (\$1,200). The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980; 1971, c. 336; 1977, c. 926, s. 1; 1981, c. 1029, s. 1; 1983, c. 500, s. 2; c. 636, s. 24.)

**Editor's Note.** — Session Laws 1983, c. 636, ss. 37.1 and 38, as amended by Session Laws 1983, c. 768, s. 25, provide:

"Sec. 37.1. The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections.

"Sec. 38. This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all

annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

The references in the next-to-last paragraph of this section to Article 4 of Chapter 160A were apparently intended to refer to Article 4A of that chapter.

**Effect of Amendments.** — The first 1983 amendment, effective June 13, 1983, substituted "July 1, 1983" for "July 1, 1986" at the end of the second sentence of the second paragraph.

The second 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, inserted the next-to-last paragraph.

## § 118-43. Payments in lump sums.

The board shall direct payment in lump sums from the fund in the following cases:

- (1) To any fireman or rescue squad worker upon the attaining of the age of 55 years, who, for any reason, is not qualified to receive the

monthly retirement pension and who was enrolled as a member of the fund, an amount equal to the amount paid into the fund by him. This provision shall not be construed to preclude any active fireman or rescue squad worker from completing the requisite number of years of active service after attaining the age of 55 years necessary to entitle him to the pension.

- (2) If any fireman or rescue squad worker dies before attaining the age at which a pension is payable to him under the provisions of this Article, there shall be paid to his widow, or if there be no widow, to the person responsible for his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board or to his estate, if it is administered and there are no heirs, an amount equal to the amount paid into the fund by the said fireman or rescue squad worker.
- (3) If any fireman or rescue squad worker dies after beginning to receive the pension payable to him by this Article, and before receiving an amount equal to the amount paid into the fund by him, there shall be paid to his widow, or if there be no widow, then to the person responsible for his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board or to his estate, if it is administered and there are no heirs, an amount equal to the difference between the amount paid into the fund by the said fireman or rescue squad worker and the amount received by him as a pensioner.
- (4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys the individual contributed to the fund, provided, if all or any part of the moneys contributed to the fund with respect to the member shall have been paid by any person, firm or corporation other than the member and notification of such action shall have been made to the board at the time of said contribution and each of them, then, upon proper application, by the other person, firm or corporation, the moneys contributed to the fund shall be paid to the other person, firm or corporation originally making the contribution, upon the withdrawal of the member. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1977, c. 926, s. 2; 1981, c. 1029, s. 1.)

#### **§ 118-44. Pro rata reduction of benefits when fund insufficient to pay in full.**

If, for any reason, the fund created and made available for any purpose covered by this Article shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

#### **§ 118-45. Provisions subject to future legislative change.**

These pensions shall be subject to future legislative change or revision, and no member of the fund, or any person, is deemed to have acquired any vested right to a pension or other payment provided by this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

**§ 118-46. Determination of creditable service; information furnished by applicants for membership.**

The board shall determine by appropriate rules and regulations the number of years' credit for service of firemen and rescue squad workers. Firemen and rescue squad workers who are now serving as such shall furnish the board with information upon applying for membership as to previous service. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

**§ 118-47. Length of service not affected by serving in more than one department or squad; transfer from one department or squad to another.**

A fireman's or rescue squad worker's length of service shall not be affected by the fact that he may have served with more than one department or squad, and upon transfer from one department or squad to another, notice of the fact shall be given to the board. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1.)

**§ 118-48. Effect of member being six months delinquent in making monthly payments.**

Any member who becomes six months delinquent in making monthly payments required by G.S. 118-40 and G.S. 118-41 of this Article by the tenth of the month with respect to which the payment shall be due shall forfeit his membership in the fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1977, c. 926, s. 3; 1981, c. 1029, s. 1.)

**§ 118-49. Exemptions of pensions from attachment; rights nonassignable.**

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not subject to attachment, garnishments or judgments against the fireman or rescue squad worker entitled to them, nor are any rights in the fund or the pensions or benefits assignable nor are the pensions subject to any State or municipal tax. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1969, c. 486; 1981, c. 1029, s. 1; 1985, c. 402.)

**Effect of Amendments.** — The 1985 amendment, effective June 17, 1985, inserted "Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20," at the beginning of this section.

**Chapter 119.**

**Gasoline and Oil Inspection and Regulation**

**Article 3.**

**Gasoline and Oil Inspection.**

- Sec.
- 119-16.1. "Kerosene" defined.
- 119-16.3. Certain kerosene sales prohibited.
- 119-18. Inspection fee; allotments for administration expenses.

**Article 4.**

**Liquefied Petroleum Gases.**

- 119-48 to 119-53. [Recodified.]

**Article 5.**

**Liquefied Petroleum Gases.**

- Sec.
- 119-54. Purpose; definitions.
- 119-55. Power of Board of Agriculture to set minimum standards; regulation by political subdivisions.
- 119-56. Registration of dealers; liability insurance or bond required.
- 119-57. Administration of Article; rules and regulations given force and effect of law.
- 119-58. Unlawful acts.
- 119-59. Penalty; injunction of violations.
- 119-60. Liquefied petroleum gas accidents; liability limitations.

**ARTICLE 3.**

*Gasoline and Oil Inspection.*

**§ 119-16.1. "Kerosene" defined.**

The term "kerosene" wherever used in this Article, except to the extent otherwise provided in G.S. 119-16 shall include all petroleum oil free from water, glue and suspended matter and meeting the specifications and standards adopted by the Gasoline and Oil Inspection Board. (1955, c. 1313, s. 7; 1979, c. 222, s. 1; 1985, c. 490.)

**Effect of Amendments. —**

The 1985 amendment, effective June 27, 1985, substituted "and meeting the specifications and standards adopted by the Gasoline and Oil Inspection Board" for "and having flash point not below 115° F., a sulphur content not exceeding two-tenths percent (0.20%), and

a distillation 'end point' not higher than 572° F. as determined by currently approved A.S.T.M. procedures," and deleted the former second sentence, which read "The presence or absence of coloring matter shall in no way be determinative of whether a substance is kerosene within the meaning of this section."

**§ 119-16.3. Certain kerosene sales prohibited.**

It shall be a misdemeanor for any distributor to sell kerosene dispensed from a pump located on the same island where there are pumps dispensing gasoline or gasohol. An island is a group of two or more dispensing pumps within 15 feet of each other. This section shall apply only to pumps installed after October 1, 1985. (1985, c. 314.)

**Editor's Note. —** Session Laws 1985, c. 314, s. 2 makes this section effective Oct. 1, 1985.

## § 119-18. Inspection fee; allotments for administration expenses.

For the purpose of defraying the expenses of enforcing the provisions of this Article there shall be paid to the Secretary of Revenue a charge of one fourth of one cent ( $\frac{1}{4}$  of 1¢) per gallon upon all kerosene and motor fuel. The inspection tax shall be due and payable at the same time that the per gallon excise tax is due and payable under the provisions of G.S. 105-434 to 105-436, and payment shall be made concurrently with payment of said per gallon excise tax, unless the Secretary of Revenue shall by rule and regulation prescribe other methods for the collection of such tax. There shall, from time to time, be allotted by the Budget Bureau, from the inspection fees collected under authority of the inspection laws of this State, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene and motor fuel. Distributors of kerosene licensed under G.S. 119-16.2 shall file reports as required by the Secretary of Revenue, by not later than the twentieth of each month, and remit to the Secretary of Revenue one quarter of a cent ( $\frac{1}{4}$  of 1¢) inspection fee per gallon on all kerosene received during the preceding month. (1917, c. 166, s. 4; C.S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1985, c. 602, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective Aug. 1, 1985, substituted "and motor fuel" for "gasoline, and other products of petroleum used as motor fuel" at the end of the first sentence of the first paragraph and for "gasoline and other products of petro-

leum used as motor fuel" at the end of the first sentence of the second paragraph and substituted "per gallon excise tax" for "gasoline road tax" in two places in the second sentence of the first paragraph.

## ARTICLE 4.

### *Liquefied Petroleum Gases.*

§§ 119-48 to 119-53: Recodified as §§ 119-54 to 119-59.

**Editor's Note.** — This Article was rewritten July 1, 1981, and has been recodified as Article by Session Laws 1981, c. 486, s. 1, effective 5 of this Chapter.

## ARTICLE 5.

### *Liquefied Petroleum Gases.*

## § 119-54. Purpose; definitions.

It is the purpose of this Article to provide for the adoption and promulgation of a code of safety, and such rules and regulations setting forth minimum general standards of safety for the design, construction, location, installation, and operation of the equipment used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gases and to provide for the administration and enforcement of the code and such rules and regulations thereby adopted. Words used in this Article shall be defined as follows:

(1) "Board" means the North Carolina Board of Agriculture.

- (2) "Commissioner" means the Commissioner of Agriculture or his designated agent.
- (3) "Dealer" means any person, firm, or corporation who is engaged in or desires to engage in:
- a. The business of selling or otherwise dealing in liquefied petroleum gases which require handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or
  - b. The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances which use liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or his employer's use of liquefied petroleum gas and not as a business shall not be deemed to be a "dealer" for the purposes of this Article.
- (4) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butanes or isobutane), butylenes. (1955, c. 487; 1959, c. 796, s. 1; 1961, c. 1072; 1981, c. 486, s. 1.)

**Editor's Note.** — This Article is Article 4 of this Chapter as rewritten by Session Laws 1981, c. 486, s. 1, effective July 1, 1981, and recodified. Where appropriate, the historical ci-

tations to the sections in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

### **§ 119-55. Power of Board of Agriculture to set minimum standards; regulation by political subdivisions.**

The Board shall have the power and authority to set minimum standards and promulgate rules and regulations for the design, construction, location, installation, and operation of equipment and facilities used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gas.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas which conforms with the regulations adopted by the Board, and the inspection service rendered by such municipality or political subdivision shall conform to the requirements of the inspection service rendered by the Board in the enforcement of this Article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671; 1967, c. 1231; 1969, c. 1133; 1975, c. 610, s. 1; 1977, c. 410; 1981, c. 486, s. 1.)

### **§ 119-56. Registration of dealers; liability insurance or bond required.**

A person shall not hold himself out as a dealer without first having registered as herein provided. A dealer shall annually on or before January 1 of each year register with the Commissioner on a form to be furnished by the Commissioner. Such form shall give the name and address of the dealer, the place or places of and type or types of business [of] such dealer, and such other pertinent information as the Commissioner may deem necessary.

A dealer shall obtain and maintain comprehensive general liability insurance including product liability of one hundred thousand dollars (\$100,000) combined single limits and, when applicable, comprehensive automobile liability insurance of one hundred thousand dollars (\$100,000) combined single limits. Verification of said insurance coverage shall be made in a manner

satisfactory to the Commissioner. In lieu of insurance, the dealer may file and maintain a bond in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling of such containers. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1.)

**Editor's Note.** — Session Laws 1981, c. 486, s. 2, provides: "The insurance coverage provisions of G.S. 119-50 [119-56] as rewritten herein [recodified as this section, 119-56] shall become effective on all policies written after July 1, 1981, and in no event shall any policy in force after July 1, 1982, fail to meet the said insurance coverage provisions."

### § 119-57. Administration of Article; rules and regulations given force and effect of law.

It shall be the duty of the Commissioner to administer all the provisions of this Article and all the rules and regulations made and promulgated under this Article; to investigate for violations of this Article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this Article or of such rules and regulations adopted pursuant to the provisions thereof. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1.)

### § 119-58. Unlawful acts.

(a) It shall be an unlawful act for any person to:

- (1) Sell any gas burning appliance designed or built for domestic use which has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Commissioner of Agriculture;
- (2) Install any unvented space heating appliance in a mobile home as defined in G.S. 143-145(7);
- (3) Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;
- (4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, said tank or container may be filled by weight if the tank or container is weighed before and after filling;
- (5) Disconnect an appliance from a gas supply line without capping or plugging said line before leaving the premises;
- (6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets;
- (7) Violate any provisions of this Article or any rules and regulations promulgated thereunder.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, label or other marking that includes the name of the person supplying liquefied petroleum gas to said system, and it shall be unlawful for any person, other than said supplier or the owner of the system, to disconnect, interrupt or fill said system with liquefied petroleum gas without the consent of said supplier. Provided, if another registered supplier is requested by the consumer to connect his service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the

former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave said equipment in a condition consistent with this Article and the rules and regulations promulgated thereunder. (1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072; 1981, c. 486, s. 1.)

### **§ 119-59. Penalty; injunction of violations.**

A dealer violating any of the provisions of this Article, or any of the rules and regulations made and promulgated in accordance with the provisions of this Article, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment.

In addition the Commissioner or his agent may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article or any of the rules or regulations made and promulgated thereunder. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1.)

### **§ 119-60. Liquefied petroleum gas accidents; liability limitations.**

Any person who provides assistance upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission or storage of liquefied petroleum gas, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance unless such acts or omissions amount to willful or wanton negligence or intentional wrongdoing. Nothing in this section shall be deemed or construed to relieve any person from liability for civil damages (a) where the accident or emergency referred to above involved his own facilities or equipment or (b) resulting from any act of commission or omission on his part in the course of providing care or assistance in the normal and ordinary course of conducting his own business or profession, nor shall this section be construed to relieve from liability for civil damages any other tortfeasor not referred to herein. When the assistance takes the form of rendering first aid or emergency health care treatment, questions of liability shall be governed by G.S. 90-21.14. (1981, c. 660.)

**Editor's Note.** — Session Laws 1981, c. 660, s. 2, makes this section effective October 1, 1981.

## Chapter 120. General Assembly.

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120-3. (Effective upon the convening of the 1987 Regular Session) Pay of members and officers of the General Assembly.  
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120-3.1. (Effective upon the convening of the 1987 Regular Session) Subsistence and travel allowances for members of the General Assembly.  
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#### Review of Administrative Rules.

- 120-30.24 to 120-30.40. [Repealed.]

### Article 7.

#### Legislative Services Commission.

- 120-32. Commission duties.  
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- 120-74. Appointment of members; terms of office.  
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120-144. Hearings by Legislative Committee on New Licensing Plans; final action by Committee.

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**ARTICLE 1.***Apportionment of Members; Compensation and Allowances.***§ 120-1. Senators.**

(a) For the purpose of nominating and electing members of the Senate in 1984 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts as follows:

District 1 elects one Senator and consists of Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell and Washington Counties; the Pantego Township of Beaufort County; the following areas in Bertie County: Merry Hill, and Whites Townships, and in Windsor Township the Town of Askewville and Enumeration Districts 196 and 197; and in Gates County: Holly Grove, Hunters Hill and Mintonville Townships.

District 2 elects one Senator and consists of Hertford and Northampton Counties; the following areas in Bertie County: Colerain, Indian Woods, Mitchells, Roxobel, Snake Bite and Woodville Townships, and in Windsor Township: The Town of Windsor and Enumeration Districts 198A, and 199; in Edgecombe County: 3 (Upper Conetoe) and 4 (Deep Creek) Townships; in Gates County: Gatesville, Hall, Haslett and Reynoldson Townships; in Halifax County: Conoconnara, Enfield, Halifax, Littleton, Palmyra, Roseneath, Scotland Neck, and Weldon Townships; in Martin County: Goose Nest and Hamilton Townships; in Vance County: Middleburg-Nutbush, Townsville and Williamsboro Townships; and in Warren County: Fork, Hawtree, Nutbush, River, Roanoke, Sandy Creek, Shocco, Sixpound, Smith Creek and Warrenton Townships.

District 3 elects one Senator and consists of Carteret, Craven and Pamlico Counties.

District 4 elects one Senator and consists of Onslow County.

District 5 elects one Senator and consists of Duplin, Jones and Lenoir Counties and Columbia and Union Townships in Pender County.

District 6 elects one Senator and consists of in Edgecombe County: 1 (Tarboro), 2 (Lower Conetoe), 5 (Lower Fishing Creek), 8 (Sparta), 9 (Otter Creek), 10 (Lower Town Creek), 11 (Walnut Creek), 12 (Rocky Mount), 13 (Cokey), and 14 (Upper Town Creek) Townships; in Martin County: the Robersonville Township; in Pitt County: Arthur, Belvoir, Bethel, Falkland, Farmville and Fountain Townships; and in Wilson County: Gardner, Wilson and Toisnot Townships.

District 7 elects one Senator and consists of New Hanover County and the following townships of Pender County: Burgaw, Canetuck, Caswell, Grady, Holly, Long Creek, Rocky Point and Topsail.

District 8 elects one Senator and consists of Greene and Wayne Counties.

District 9 elects one Senator and consists of in Beaufort County: Bath, Chocowinity, Long Acre, Richland and Washington Townships; in Martin

County: Beargrass, Cross Roads, Griffins, Jamesville, Poplar Point, Williams and Williamston Townships; and in Pitt County: Ayden, Carolina, Chicod, Greenville, Grifton, Grimesland, Pactolus, Swift Creek and Winterville Townships.

District 10 elects one Senator and consists of Nash County; in Edgecombe County: 6 (Upper Fishing Creek) and 7 (Swift Creek); in Halifax County: Brinkleyville, Butterwood, Faucett and Roanoke Rapids Townships; in Warren County: Fishing Creek and Judkins Townships; and in Wilson County: Black Creek, Cross Roads, Old Fields, Saratoga, Springhill, Stantonsburg, and Taylor Townships.

District 11 elects one Senator and consists of Franklin and Vance Counties; and in Wake County: Bartons Creek, Little River, Marks Creek, New Light and Wake Forest Townships and St. Matthews Precincts 1, 2, 3 and 4.

District 12 elects two Senators and consists of the following townships of Cumberland County: Black River, Carvers Creek, Cedar Creek, Cross Creek, Eastover, Gray's Creek, Manchester, Pearces Mill, Rockfish and Seventy-First.

District 13 elects two Senators and consists of Durham, Granville and Person Counties and the following townships of Orange County: Cedar Grove, Eno and Little River.

District 14 elects three Senators and consists of Harnett and Lee Counties and the following areas in Wake County: Buckhorn, Cary, Cedar Fork, Holly Springs, House Creek, Leesville, Meredith, Middle Creek, Neuse River, Panther Branch, Raleigh, St. Mary's, Swift Creek and White Oak Townships and those portions of St. Matthews Township not included in District 11.

District 15 elects one Senator and consists of Johnston and Sampson Counties.

District 16 elects two Senators and consists of Chatham, Moore and Randolph Counties and the following townships of Orange County: Bingham, Chapel Hill, Cheeks and Hillsborough.

District 17 elects two Senators and consists of Anson, Montgomery, Richmond, Scotland, Stanly and Union Counties.

District 18 elects one Senator and consists of Bladen, Brunswick and Columbus Counties and the Beaver Dam Township of Cumberland County.

District 19 elects one Senator and consists of the following townships of Forsyth County: Belews Creek and Kernersville; and consists of the following townships and precincts of Guilford County: Bruce Township, Center Grove Township, Clay Township, Fentress Township, Friendship Precinct I, Greene Township, Madison Township, Monroe Township, Greensboro Precincts 10, 20, 21, 27, 28, 32, 34, and 35, and Oak Ridge Township, Rock Creek Township, and Washington Township.

District 20 elects two Senators and consists of the following townships of Forsyth County: Abbotts Creek, Bethania, Broadbay, Clemmons ville, Lewisville, Middle Fork, Old Richmond, Old Town, Salem Chapel, South Fork, Vienna and Winston Townships.

District 21 elects one Senator and consists of Alamance and Caswell Counties.

District 22 elects one Senator and consists of Cabarrus County and the following precincts of Mecklenburg County: Charlotte Precincts 62 and 64, Clear Creek Precinct, Matthews Precinct, Mint Hill Precincts 1 and 2, Morning Star Precinct, and Providence Precinct.

District 23 elects two Senators and consists of Davidson, Davie and Rowan Counties.

District 24 elects two Senators and consists of Alleghany, Ashe, Rockingham, Stokes, Surry and Watauga Counties.

District 25 elects three Senators and consists of Cleveland, Gaston, Lincoln and Rutherford Counties.

District 26 elects two Senators and consists of Alexander, Catawba, Iredell and Yadkin Counties.

District 27 elects two Senators and consists of Avery, Burke, Caldwell, Mitchell and Wilkes Counties.

District 28 elects two Senators and consists of Buncombe, McDowell, Madison and Yancey Counties.

District 29 elects two Senators and consists of Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Polk, Swain and Transylvania Counties.

District 30 elects one Senator and consists of Hoke and Robeson Counties.

District 31 elects one Senator and consists of the following townships and precincts of Guilford County: Jefferson Township, Greensboro Precincts 3, 4, 5, 6, 7, 8, 9, 11, 19, 25, 29, and 30, High Point Precincts 3, 5, 6, 7, 11, 12, and 19, Jamestown Precincts 1, 2, and 3, Sumner Township, and Block 921 of Census Tract 166 in High Point Township.

District 32 elects one Senator and consists of the following townships and precincts in Guilford County: Deep River Township, Friendship Precinct II, Greensboro Precincts 1, 2, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 26, 31, 33 and 36, and High Point Precincts 1, 2, 4, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, and 21, but it does not include Block 921 of Census Tract 166 in High Point Township.

District 33 elects one Senator and consists of the following precincts of Mecklenburg County: Charlotte Precincts 2, 11, 12, 13, 14, 15, 16, 22, 25, 27, 29, 31, 39, 41, 42, 44, 46, 52, 54, 55, 56, 60, 77, 78, and 82, and Long Creek Precinct 2.

District 34 elects one Senator and consists of the following precincts of Mecklenburg County: Charlotte Precincts 3, 4, 5, 23, 24, 26, 28, 30, 33, 40, 43, 45, 53, 61, 79, 80, 81, 83, 84, and 89, and Berryhill Precinct, Cornelius Precinct, Crab Orchard Precincts 1 and 2, Davidson Precinct, Huntersville Precinct, Lemly Precinct, Long Creek Precinct 1, Mallard Creek Precincts 1 and 2, Oakdell Precinct, Paw Creek Precincts 1 and 2, and Steel Creek Precincts 1 and 2.

District 35 elects one Senator and consists of the following precincts of Mecklenburg County: Charlotte Precincts 1, 6, 7, 8, 9, 10, 17, 18, 19, 20, 21, 32, 34, 35, 36, 37, 38, 47, 48, 49, 50, 51, 57, 58, 59, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 85, 86, and 88, and Pineville Precinct.

(b) The names and boundaries of townships, towns and enumeration districts specified in this section are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. census.

(c) For Guilford County, precinct boundaries are shown on the maps on file with the State Board of Elections on January 1, 1982, in accordance with G.S. 163-128(b).

For Mecklenburg County, precinct boundaries are as shown on the current maps in use on January 31, 1984, by the Mecklenburg County Board of Elections under G.S. 163-128(b).

If any changes in precinct boundaries are made, the areas on the maps shall still remain in the same Senate District.

The Wake County precinct boundaries are as shown on the current map in use by the Wake County Board of Elections on January 31, 1984, in accordance with G.S. 163-128(b). If changes in precinct boundaries are made, the areas on the map shall still remain in the same Senate District. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C.S., s. 6087; 1921, c. 161; 1941, c. 225; 1963, Ex. Sess., c. 1; 1966, Ex. Sess., c. 1, s. 1; 1971, c. 1177; 1981, c. 821; 1982, Ex. Sess., c. 5; 1982, 2nd Ex. Sess., c. 2; 1984, Ex. Sess., c. 4, ss. 1-3; c. 5, ss. 1-4.)

**Editor's Note.** — Session Laws 1984, Ex. Sess., c. 4, s. 3.1, as amended by Session Laws 1985, c. 565, s. 1 provides: "In the event that the U.S. Supreme Court reverses the opinion of the U.S. District Court which held the composition of Senate District 22 to violate the Voting Rights Act, then Sections 1 through 3 of this act are repealed and the prior law as to Senate District 22 is revived as to any future election, provided that if such reversal occurs after December 31, 1985, but before January 1, 1988, prior law is revived as to any elections beginning with the 1988 election."

Session Laws 1984, Ex. Sess., c. 5, s. 4.1, as amended by Session Laws 1985, c. 565, s. 1 provides: "In the event that the U.S. Supreme Court reverses the opinion of the U.S. District Court which held the composition of Senate District 2 to violate the Voting Rights Act, then Sections 1 through 4 of this act are repealed and the prior law as to Senate Districts 1, 2, 6, 9, 10, 11 and 14 is revived as to any future election, provided that if such reversal occurs after December 31, 1985, but before January 1, 1988, prior law is revived only as to any elections beginning with the 1988 election."

**Effect of Amendments.** — The 1981 amendment, in this section as it read prior to the 1982, Ex. Sess., amendment, substituted "1982" for "1972" in the introductory paragraph, deleted Martin and Pitt Counties from District 6 and reduced the district from two to one Senator, created a new District 7 and renumbered Districts 7 through 15 as Districts 8 through 16, deleted Caswell, Rockingham, and Stokes Counties and added Watauga County to

District 16 (former 15) and reduced its Senators from two to one, added a new District 17 and renumbered Districts 16 through 18 as Districts 18 through 20, added Caswell County to District 20 (former 18), renumbered District 20 as District 21 and District 19 as District 22, renumbered Districts 21 through 27 as Districts 23 through 29, and deleted Watauga County from District 26 (former 24).

The 1982, Ex. Sess., amendment rewrote this section to the extent that a detailed comparison is not possible.

The 1982, 2nd Ex. Sess., amendment, in subsection (a), rewrote the paragraphs relating to Districts 1 and 2, inserted Pamlico County in the paragraph relating to District 3, rewrote the paragraph relating to Districts 6 and 9, transferred Mannings township from District 10 to District 11, and in the paragraph relating to District 11 deleted references to the townships of Fishing Creek, Fork, Judkins, Nutbush, Sandy Creek, Shocco, Smith Creek, and Warrenton in Warren County.

The 1984, Ex. Sess., amendment by c. 4, effective March 8, 1984, in subsection (a) substituted "1984" for "1982" in the introductory language, rewrote the paragraph relating to District 22, and inserted the paragraphs relating to Districts 33, 34 and 35, and in subsection (c) added the second and third paragraphs.

The 1984, Ex. Sess., amendment by c. 5, effective March 8, 1984, in subsection (a) substituted "1984" for "1982" in the introductory paragraph and rewrote the paragraphs relating to Districts 1, 2, 6, 9, 10, 11 and 14, rewrote subsection (b), and added the last paragraph of subsection (c).

## § 120-2. House apportionment specified.

(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in 1984 and periodically thereafter, the State of North Carolina shall be divided into the following districts:

District 1 shall elect two Representatives and shall consist of Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans, and Tyrrell Counties; Holly Grove Township of Gates County; and Lees Mills, Plymouth, and Skinnersville Townships of Washington County.

District 2 shall elect one Representative and shall consist of Beaufort and Hyde Counties; and Scuppernon Township of Washington County.

District 3 shall elect three Representatives and shall consist of Craven, Lenoir, and Pamlico Counties.

District 4 shall elect three Representatives and shall consist of Carteret and Onslow Counties.

District 5 shall elect one Representative and shall consist of Northampton County; Indian Woods, Roxobel, Snake Bite, and Woodville Townships of Bertie County; Gatesville, Hall, Haslett, Hunters Mill, Mintonville, and Reynoldson Townships of Gates County; and Harrellsville, Maneys Neck, Murfreesboro, St. Johns, and Winton Townships of Hertford County.

District 6 shall elect one Representative and shall consist of Colerain, Merry Hill, Mitchells, Whites, and Windsor Townships of Bertie County;

Ahoskie Township of Hertford County; Beargrass, Cross Roads, Giffins, Jamesville, Poplar Point, Williams, and Williamston Townships of Martin County; and Bethel and Carolina Townships of Pitt County.

District 7 shall elect one Representative and shall consist of Brinkleyville, Butterwood, Conoconnara, Enfield, Faucett, Halifax, Palmyra, Roseneath, Scotland Neck, and Weldon Townships of Halifax County; Goose Nest, Hamilton, and Robersonville Townships of Martin County; and Fishing Creek, Fork, Sandy Creek, Shocco, and Warrenton Townships of Warren County.

District 8 shall elect three Representatives and shall consist of the remainders of Edgecombe, Nash, and Wilson Counties that are not included in District 70.

District 9 shall elect two Representatives and shall consist of Greene County; and Arthur, Ayden, Belvoir, Chicod, Falkland, Farmville, Fountain, Greenville, Grifton, Grimesland, Pactolus, Swift Creek, and Winterville Townships of Pitt County.

District 10 shall elect one Representative and shall consist of Duplin and Jones Counties.

District 11 shall elect two Representatives and shall consist of Wayne County.

District 12 shall elect two Representatives and shall consist of Bladen and Sampson Counties; and Burgaw, Caswell, Columbia, Holly, Canetuck, Grady, Long Creek, Rocky Point, and Union Townships of Pender County.

District 13 shall elect two Representatives and shall consist of Federal Point, Harnett, Masonboro, and Wilmington Townships of New Hanover County.

District 14 shall elect one Representative and shall consist of Brunswick County; Cape Fear Township of New Hanover County; and Topsail Township of Pender County.

District 15 shall elect one Representative and shall consist of Columbus County.

District 16 shall elect three Representatives and shall consist of Hoke and Robeson Counties; and Spring Hill, Stewartsville, and Wiliamsons Townships of Scotland County.

District 17 shall elect two Representatives and shall consist of Block 901 and Enumeration District 534 of Census Tract 34 in Manchester Township, Block 901 and Enumeration District 535 of Census Tract 34 in Seventy-First Township, Block 901 of Census Tract 34 in Carver's Creek Township, Cross Creek Precincts 1, 3, 5, 9, 13, 16, 17, and 19, Spring Lake Precinct, Morganton Road 1 Precinct, Beaver Lake Precinct, Westarea Precinct, and that part of Census Tract 33.02 in Precinct Seventy-First 1. Any part of Cross Creek Township which may be entirely surrounded by Morganton Road 1 Precinct shall also be in the District. Block 304 of Census Tract 26 of Cross Creek Township is not in the District.

District 18 shall elect three Representatives and shall consist of the remainder of Cumberland County not included in District 17.

District 19 shall elect two Representatives and shall consist of Harnett and Lee Counties.

District 20 shall elect two Representatives and shall consist of Franklin and Johnston Counties.

District 21 shall elect one Representative and shall consist of the following precincts of Wake County: Raleigh 14, 19, 20, 22, 25, 26, 28, 34, 35, 38, 40, and St. Matthews 3.

District 22 shall elect three Representatives and shall consist of Caswell, Granville, Person, and Vance Counties; Littleton and Roanoke Rapids Townships of Halifax County; and Hawtree, Judkins, Nutbush, River, Roanoke, Sixpound, and Smith Creek Townships of Warren County.

District 23 shall elect one Representative and shall consist of Durham County Precincts 6, 10, 11, 12, 13, 14, 15, 18, 34, 36, 40, 41, 42, and 47. It also includes all of Durham County Precinct 19 not included in District 68.

It also includes from Precinct 9 only the following: Block 303 of Census Tract 13.02, Blocks 411 and 412 of Census Tract 20.03, and the part of Block 113 of Census Tract 20.02 excluding the area bounded by Bexley Avenue, Monticello Avenue, Stuart Drive and Hope Valley Rd.

It also includes from Precinct 39 only the following: Blocks 202, 216, 217, 415, 416, 417, 418 and 419 of Census Tract 20.02.

District 24 shall elect two Representatives and shall consist of Orange County; and Baldwin, Cape Fear, Center, Hadley, Haw River, Hickory Mountain, Matthews, New Hope, Oakland, and Williams Townships of Chatham County.

District 25 shall elect four Representatives and shall consist of Alamance and Rockingham Counties; and Beaver Island and Snow Creek Townships of Stokes County.

District 26 shall elect one Representative and shall consist of Providence Township of Randolph County and Greensboro Precincts 5, 6, 7, 8, 19, 29, and 30, and Fentress Township of Guilford County.

District 27 shall elect three Representatives and shall consist of South Center Grove Precinct, Jamestown Precinct 2, North Madison Precinct, South Monroe Precinct, North Sumner Precinct, and Greensboro Precincts 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36 of Guilford County.

District 28 shall elect two Representatives and shall consist of Deep River Township, Friendship Township, High Point Township, Jamestown Precincts 1 and 3, and South Sumner Precinct of Guilford County.

District 29 shall elect one Representative and shall consist of Belews Creek and Salem Chapel Townships of Forsyth County and North Center Grove Precinct, South Madison Precinct, North Monroe Precinct and Bruce, Clay, Greene, Jefferson, Oak Ridge, Rock Creek and Washington Townships of Guilford County.

District 30 shall elect one Representative and shall consist of Albright, Bear Creek, and Gulf Townships of Chatham County; and Asheboro, Coleridge, Columbia, Franklinville, Liberty, and Randleman Townships of Randolph County.

District 31 shall elect one Representative and shall consist of Moore County.

District 32 shall elect one Representative and shall consist of Richmond County; and Laurel Hill Township of Scotland County.

District 33 shall elect one Representative and shall consist of Anson and Montgomery Counties.

District 34 shall elect four Representatives and shall consist of Cabarrus, Stanly, and Union Counties.

District 35 shall elect two Representatives and shall consist of Rowan County.

District 36 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 6, 34, 62, 63, 83, 84, and 85, Clear Creek Precinct, Crab Orchard Precinct 1, Matthews Precinct, Mint Hill Precincts 1 and 2, and Morning Star Precinct.

District 37 shall elect three Representatives and shall consist of Davidson and Davie Counties; and Eagle Mills and Union Grove Townships of Iredell County.

District 38 shall elect one Representative and shall consist of Back Creek, Brower, Cedar Grove, Concord, Grant, Level Cross, New Hope, New Market, Pleasant Grove, Richland, Tabernacle, Trinity, and Union Townships of Randolph County.

District 39 shall elect three Representatives and shall consist of the remainder of Forsyth County not included in Districts 29, 66, or 67.

District 40 shall elect three Representatives and shall consist of Alleghany, Ashe, and Surry Counties; Big Creek, Danbury, Meadows, Peters Creek, Quaker Gap, Sauratown, and Yadkin Townships of Stokes County; and Bald Mountain, Blowing Rock, Blue Ridge, Boone, Brushy Fork, Cove Creek, Elk, Meat Camp, New River, North Fork, Stony Fork, and Watauga Townships of Watauga County.

District 41 shall elect two Representatives and shall consist of Wilkes and Yadkin Counties; and Gwaltneys, Sharpes, and Sugar Loaf Townships of Alexander County.

District 42 shall elect one Representative and shall consist of Bethany, Chambersburg, Concord, Cool Spring, New Hope, Olin, Sharpesburg, Statesville, and Turnersburg Townships of Iredell County.

District 43 shall elect one Representative and shall consist of Millers Township of Alexander County; Caldwell, Catawba, and Mountain Creek Townships of Catawba County; and Barringer, Coddle Creek, Davidson, Fallstown, and Shiloh Townships of Iredell County.

District 44 shall elect four Representatives and shall consist of Gaston and Lincoln Counties.

District 45 shall elect two Representatives and shall consist of Lower Fork and Upper Fork Townships of Burke County; and Bandy's, Clines, Hickory, Jacobs Fork, and Newton Townships of Catawba County.

District 46 shall elect three Representatives and shall consist of Avery, Caldwell, and Mitchell Counties; Ellendale, Little River, Taylorsville, and Wittenberg Townships of Alexander County; Drexel, Icard, Jonas Ridge, Lower Creek, Smoky Creek, and Upper Creek Townships of Burke County; and Beaverdam, Laurel Creek, and Shawneehaw Townships of Watauga County.

District 47 shall elect one Representative and shall consist of Linville, Lovelady, Morganton, Quaker Meadow, and Silver Creek Townships of Burke County.

District 48 shall elect three Representatives and shall consist of Cleveland, Polk, and Rutherford Counties.

District 49 shall elect one Representative and shall consist of McDowell and Yancey Counties.

District 50 shall elect one Representative and shall consist of Blue Ridge, Clear Creek, Edneyville, Green River, Hendersonville, and Mills River Townships of Henderson County.

District 51 shall elect four Representatives and shall consist of Buncombe and Transylvania Counties; and Crab Creek and Hoopers Creek Townships of Henderson County.

District 52 shall elect two Representatives and shall consist of Haywood, Jackson, Madison, and Swain Counties; and Stecoah and Yellow Creek Townships of Graham County.

District 53 shall elect one Representative and shall consist of Cherokee, Clay, and Macon Counties; and Cheoah Township of Graham County.

District 54 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 5, 28, 29, 43, 44, and 60, Cornelius Precinct, Crab Orchard Precinct 2, Davidson Precinct, Huntersville Precinct, Lemly Precinct, and Mallard Creek Precincts 1 and 2.

District 55 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 8, 9, 10, 19, 32, 48, 50, 57, 58, 59, 74, 75, 76, and 77, Pineville Precinct, and Steel Creek Precinct 2.

District 56 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 20, 21, 37, 38, 49, 51,

52, 78, 79, and 80, Berryhill Precinct, Long Creek Precinct 1, Oakdell Precinct, Paw Creek Precincts 1 and 2, and Steel Creek Precinct 1.

District 57 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 35, 36, 47, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 86, and 88, and Providence Precinct.

District 58 shall elect one Representative and shall consist of Charlotte Precincts 1, 2, 3, 4, 7, 13, 14, 15, 17, 18, 33, 45, 46, and 61 of Mecklenburg County.

District 59 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 11, 16, 22, 23, 27, 31, 39, 41, 53, 81, and 89, and Long Creek Precinct 2, and from Precinct 42 it shall include only Blocks 104 and 105 of Census Tract 53.02.

District 60 shall elect one Representative and shall consist of Charlotte Precincts 12, 24, 25, 26, 30, 40, 54, 55, 56, and 82 of Mecklenburg County, and shall include all of Precinct 42 in Mecklenburg County except for Blocks 104 and 105 of Census Tract 53.02.

District 61 shall elect one Representative and shall consist of Barton's Creek Township and New Light Township of Wake County and the following precincts of Wake County: Raleigh 3, 4, 5, 10, 11, 12, 13, 15, 17, 18, 30, 33, 36, 37, 39, House Creek 4, and Leesville.

District 62 shall elect one Representative and shall consist of Buckhorn Township, Holly Springs Township, Middle Creek Township, Panther Branch Township, and White Oak Township of Wake County and the following precincts of Wake County: Cary 1, 4, and 7, St. Mary's 1 and 2, and St. Matthews 2 and 4, except that in St. Mary's 2, it does not include Blocks 112, 951 and 952 (outside Garner city limits) of Census Tract 528.05 of St. Mary's Township.

District 63 shall elect one Representative and shall consist of Cedar Fork Township of Wake County and the following precincts of Wake County: Cary 2, 3, and 5, House Creek 1, 2, and 3, Meredith and Raleigh 16, 29, 31, 32, and 41.

District 64 shall elect one Representative and shall consist of the following precincts of Wake County: Cary 6, Raleigh 1, 2, 6, 7, 8, 9, 21, 23, 24, 27, St. Mary's 3, 4, 5, and 6, and Swift Creek 1 and 2. It also includes from St. Mary's 2 Blocks 112, 951, and 952 (outside Garner city limits) of Census Tract 528.05 of St. Mary's Township.

District 65 shall elect one Representative and shall consist of Little River Township, Mark's Creek Township and Wake Forest Township of Wake County and the following precincts of Wake County: Raleigh 42, 43, 44, and 45, Neuse, and St. Matthews 1.

District 66 shall elect one Representative and shall consist of the following precincts of Forsyth County: 30-1, 40-1, 40-2, 40-3, 40-4, 40-5, 40-6, 50-1, 50-2, 50-3, 50-4, 50-5, 6-3, 8-2, and 8-3 but does not include that part of Block 314, Census Tract 33.03 of Winston Township which is not contiguous with the primary corporate limits of the City of Winston-Salem.

District 67 shall elect one Representative and shall consist of the following precincts of Forsyth County: 20-1, 20-2, 20-3, 20-4, 20-5, 20-6, 30-2, 30-3, 30-5, 30-6, 90-2, 90-3, 90-5, and 10-3.

District 68 shall elect one Representative and shall consist of Durham County Precincts 1, 2, 3, 7, 8, 17, 20, 21, 22, 23, 24, 29, and 46.

It also includes all of Precinct 9 not included in District 23. It also includes all of Precinct 4 not included in District 69.

It also includes from Precinct 19 only the following: Blocks 115, 116, 118, 119, 120, 124, 201, 202, 203, 214, 307, 308, 316 and 317 of Census Tract 2.

District 69 shall elect one Representative and shall consist of Durham County Precincts 5, 25, 26, 28, 30, 31, 32, 33, 35, 37, 38, 43, 44, and 45. It also

includes from Precinct 4 only the following: Block 316 of Census Tract 4.02 and Blocks 120, 123, 124, 125, 126, 127, 311 and 317 of Census Tract 4.01.

It also includes all of Precinct 39 not included in District 23.

District 70 shall elect one Representative and shall consist of the following:

- (1) In Edgecombe County: Enumeration District 1154 of Census Tract 207 in Township 6 (Upper Fishing Creek); Census Tract 205 in Township 7 (Swift Creek); Enumeration Districts 1155, 1156, 1160, 1161, and 1162 of Census Tract 206 in Township 7 (Swift Creek); Census Blocks 101 through 106 and 121 through 128 in Census Tract 201 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Blocks 112 through 139, Census Blocks 202 and 205 through 226, Census Block Group 3, and Census Block Group 4 of Census Tract 202 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Block Group 1, Census Blocks 201 through 210 and 216 through 228, Census Blocks 301 through 318, 334, and 335, and Census Block Group 4 of Census Tract 204 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Tracts 202, 203, 204, and 214 in Township 12 (Rocky Mount); Enumeration Districts 1191 and 1193 of Census Tract 213 in Township 12 (Rocky Mount); and Enumeration Districts 1223 and 1224 of Census Tract 202 and Enumeration Districts 1226A and 1226B of Census Tract 214 in Township 14 (Upper Town Creek).
- (2) In Nash County: Census Tract 107 in North Whitakers Township; Census Block Groups 1, 2, and 3 and Census Blocks 403, 429, and 430 of Census Tract 102 in the City of Rocky Mount in Rocky Mount Township; and Census Tracts 106 and 107 in South Whitakers Township.
- (3) In Wilson County: Enumeration District 743 of Census Tract 7 in Gardner Township; Enumeration Districts 700, 701, 702, 703A, and 703B of Census Tract 13 in Toisnot Township; Census Tract 2, Enumeration District 736A and Census Blocks 422, 423, and 424 of Census Tract 4, and Census Tracts 7, 8.01, and 8.02 in Wilson Township.

(b) The names and boundaries of townships specified in this section are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. Census.

(c) For Guilford and Cumberland Counties, precinct boundaries are as shown on the maps on file with the State Board of Elections on January 1, 1982, in accordance with G.S. 163-128(b).

For Mecklenburg, Wake, Durham, and Forsyth Counties, precinct boundaries and streets are as shown on the current maps in use by the appropriate county board of elections of January 31, 1984, in accordance with G.S. 163-128(b).

If any changes in precinct boundaries are made, the areas on the map shall still remain in the same House District. (Code, s. 2845; Rev., c. 4399; 1911, c. 151; C.S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1; 1971, c. 483; 1981, c. 800; c. 1130, s. 1; 1982, Ex. Sess., c. 4; 1982, 2nd Ex. Sess., c. 1; 1984, Ex. Sess., c. 1, ss. 1, 2; c. 6, ss. 1-6; c. 7.)

**Editor's Note.** — Session Laws 1982, 2nd Ex. Sess., c. 3, makes special provisions for the primary elections in 1982 only. Session Laws 1981, c. 1130, s. 3, and Session Laws 1982, Ex. Sess., c. 3, also made special provisions for the 1982 primaries, but were repealed in their entirety by Session Laws 1982, 2nd Ex. Sess., c. 3, s. 20.

Session Laws 1984, Ex. Sess., c. 1, s. 2.1, as amended by Session Laws, 1985, c. 565, s. 1, provides: "In the event that the U.S. Supreme Court reverses the opinion of the U.S. District Court which held the composition of House District 8 to violate the Voting Rights Act, then Sections 1 and 2 of this Act are repealed and the prior law as to House District 8 is re-

vived as to any prior election, provided that if such reversal occurs after December 31, 1985, but before January 1, 1988, prior law is revived as to any elections beginning with the 1988 election.”

Session Laws 1984, Ex. Sess., c. 6, s. 6.1, as amended by Session Laws 1985, c. 565, s. 1, provides: “In the event that the U.S. Supreme Court reverses any or all of the opinion of the U.S. District Court which held the composition of House Districts 21, 23, 36 and 39 to violate the Voting Rights Act, then to the extent that such reversal holds any of those districts to have been valid any part of this act which reapportioned such district is repealed and the prior law revived as to any future election, provided that if such reversal occurs after December 31, 1985, but before January 1, 1988, prior law is revived as to any elections beginning with the 1988 election.”

**Effect of Amendments.** — The 1981 amendment, in the introductory paragraph, substituted “1982” for “1972” and substituted “44” for “45.” The 1981 amendment also added Martin County to District 5, deleted Martin County from District 6 and reduced that district’s Representatives from two to one, in District 10 substituted Robeson County with two Representatives for Duplin County with one Representative, added Duplin County to District 11 and increased that district’s Representatives from one to two, in District 21 deleted Robeson County and reduced the Representatives from three to one, increased the number of Representatives in District 36 from eight to nine, combined former Districts 42 and 43 into District 42 with five Representatives, redesignated former Districts 44 and 45 as present

Districts 43 and 44, and made minor punctuation changes.

The 1981 amendment rewrote this section to the extent that a detailed comparison is not possible.

The 1982 Ex. Sess. amendment again rewrote this section to the extent that a detailed comparison is not possible.

The 1982, 2nd Ex. Sess. amendment rewrote the paragraph relating to District 17 and substituted “three” for “four” preceding “Representatives” in the paragraph relating to District 18.

The 1984, Ex. Sess., amendment by c. 1, effective March 8, 1984, rewrote the paragraph relating to District 8 and inserted the paragraph relating to District 70.

The 1984, Ex. Sess., amendment by c. 6, effective March 8, 1984, in subsection (a) substituted “1984” for “1982” in the introductory paragraph, substituted the present paragraphs relating to Districts 36 and 54 through 60 for the former paragraph relating to District 36, substituted the present paragraphs relating to Districts 21 and 61 through 65 for the former paragraph relating to District 21, substituted the present paragraphs relating to Districts 39, 66 and 67 for the former paragraph relating to District 39, and substituted the present paragraphs relating to Districts 23, 68 and 69 for the former paragraph relating to District 23, and in subsection (c) inserted the second paragraph.

Session Laws 1984, Ex. Sess., c. 7, makes Session Laws 1984, Ex. Sess., c. 6, effective upon ratification. The act was ratified March 8, 1984.

## **§ 120-2.1. Severability of Senate and House apportionment acts.**

If any provision of any act of the General Assembly that apportions Senate or House districts is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions that can be given effect without the invalid provision; and to this end the provisions of any said act are severable. (1981, c. 771, s. 1.)

## **§ 120-3. (Effective until the convening of the 1987 Regular Session) Pay of members and officers of the General Assembly.**

(a) The Speaker of the House shall be paid an annual salary of twenty-five thousand forty-four dollars (\$25,044) payable monthly and an expense allowance of seven hundred seventy dollars (\$770.00) per month. The President Pro Tempore of the Senate shall be paid an annual salary of fifteen thousand dollars (\$15,000) payable monthly and an expense allowance of five hundred dollars (\$500.00) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of twelve thousand five hundred four dollars (\$12,504)

payable monthly and an expense allowance of two hundred seventy-nine dollars (\$279.00) per month. The minority leader in the House, and the majority and minority leader in the Senate shall each be paid an annual salary of ten thousand five hundred dollars (\$10,500) payable monthly, and an expense allowance of two hundred seventy-nine dollars (\$279.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary and expense allowances only to the extent of and in the percentage equal to those received by employees of the State as general across-the-board pay increases, effective upon convening of the next regular session of the General Assembly after enactment of such percentage increase. Accordingly, upon convening of the 1985 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of eight thousand four hundred dollars (\$8,400) payable monthly, and an expense allowance of two hundred nine dollars (\$209.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209.)

**Section Set Out Twice.** — The section above is effective until the convening of the 1987 Regular Session of the General Assembly. For this section as amended effective upon the convening of the 1987 Regular Session, see the following section, also numbered § 120-3.

**Editor's Note.** — Session Laws 1983, c. 761, s. 259, and Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, are severability clauses.

**Effect of Amendments.** — The 1983 amendment, effective February 5, 1985, rewrote this section.

The 1983 amendment by c. 761, effective upon the convening of the 1985 Regular Session of the General Assembly, rewrote this section.

The 1983 (Reg. Sess., 1984) amendment by c. 1034, also effective upon the convening of the

1985 Regular Session, rewrote subsection (a), which as amended by Session Laws 1983, ch. 761, had allotted the Speaker of the House an annual salary of \$20,000 and an expense allowance of \$700.00 per month and had allotted the President Pro Tempore of the Senate, the Speaker Pro Tempore of the House, the minority leader in the House, and the majority and minority leader in the Senate an annual salary of \$9,540 and an expense allowance of \$253 per month, and substituted "eight thousand four hundred dollars (\$8,400)" for "seven thousand six hundred thirty-two dollars (\$7,632)" and "two hundred nine dollars (\$209.00)" for "one hundred ninety dollars (\$190.00)" in subsection (b) as amended by Session Laws 1983, c. 761.

### § 120-3. (Effective upon the convening of the 1987 Regular Session) Pay of members and officers of the General Assembly.

(a) The Speaker of the House shall be paid an annual salary of twenty-seven thousand five hundred fifty-two dollars (\$27,552) payable monthly and an expense allowance of eight hundred forty-seven dollars (\$847.00) per month. The President Pro Tempore of the Senate shall be paid an annual salary of sixteen thousand five hundred dollars (\$16,500) payable monthly and an expense allowance of five hundred fifty dollars (\$550.00) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of thirteen thousand seven hundred fifty-two dollars (\$13,752) payable monthly and an expense allowance of three hundred seven dollars (\$307.00) per month. The minority leader in the House, and the majority and minority leader in the

Senate shall each be paid an annual salary of eleven thousand five hundred fifty-six dollars (\$11,556) payable monthly, and an expense allowance of three hundred seven dollars (\$307.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary and expense allowances only to the extent of and in the percentage equal to the average increases received by employees of the State, effective upon convening of the next regular session of the General Assembly after enactment of this percentage increase. Accordingly, upon convening of the 1987 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of nine thousand two hundred forty dollars (\$9,240) payable monthly, and an expense allowance of two hundred thirty dollars (\$230.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208.)

**Section Set Out Twice.** — The section above is effective upon the convening of the 1987 Regular Session of the General Assembly. For this section as in effect until the convening of the 1987 Regular Session, see the preceding section, also numbered § 120-3.

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

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

**Effect of Amendments.** — The 1985 amendment by c. 479, s. 208, effective upon the convening of the 1987 Regular Session of the General Assembly, increased the salary of the Speaker of the House from \$25,044 to \$27,552 and his expense allowance from \$770.00 to \$847.00, increased the salary of the President Pro Tempore of the Senate from \$15,000 to \$16,500 and his expense allowance from

\$500.00 to \$550.00, increased the salary of the Speaker Pro Tempore of the House from \$12,504 to \$13,752 and his expense allowance from \$279.00 to \$307.00, and increased the salaries of the minority leader in the House and the majority and minority leaders in the Senate from \$10,500 to \$11,556 and their expense allowances from \$279.00 to \$307.00, all in subsection (a), and in subsection (b) substituted "in the percentage equal to the average increases received by employees of the State" for "in the percentage equal to those received by employees of the State as general across-the-board pay increases," and substituted "this percentage increase" for "such percentage increase" in the first sentence and in the second sentence substituted "1987" for "1985" and increased the salaries for every other member of the General Assembly from \$8,400 to \$9,240 and their expense allowances from \$209.00 to \$230.00.

### § 120-3.1. (Effective until the convening of the 1987 Regular Session) Subsistence and travel allowances for members of the General Assembly.

(a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

- (1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile allowed to State employees for official travel.

- (2) A travel allowance at the rate allowed by statute for State employees whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.
- (3) A subsistence allowance for meals and lodging of sixty dollars (\$60.00) a day for each day of the period during which the General Assembly is in session and, except as otherwise provided in this subdivision, when traveling as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission, when the General Assembly is not in session.

A member who is authorized to travel, whether in or out of session, to a high rate geographical area in a state in the continental United States, other than Alaska or North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance for meals of twenty dollars (\$20.00) a day and a subsistence allowance for lodging of actual lodging expenses, when evidenced by a receipt satisfactory to the Legislative Administrative Officer, not to exceed that allowed a federal employee when traveling to that area. A high rate geographical area is an area designated as such by the federal General Services Administrator under the Travel Expense Amendments Act of 1975 and published at 48 Federal Register 55262, December 9, 1983.

A member who is authorized to travel, whether in or out of session, to Alaska, Hawaii, Puerto Rico, or United States territories and possessions may elect to receive, in lieu of the amount provided in the first paragraph of this subdivision, a subsistence allowance for meals of twenty dollars (\$20.00) a day and a subsistence allowance for lodging of actual lodging expenses, when evidenced by a receipt satisfactory to the Legislative Administrative Officer, not to exceed the maximum prescribed by the Secretary of Defense in Civilian Personnel Per Diem Bulletin 120, dated October 3, 1983, and published as corrected at 48 Federal Register 49333, October 25, 1983.

- (4) A member may be reimbursed for registration fees as permitted by the Legislative Services Commission.

(b) Payment of travel and subsistence allowances shall be made to members of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed by the Legislative Services Commission. Claims for travel and subsistence payments shall be paid at such times as may be prescribed by the Legislative Services Commission.

(c) When the General Assembly by joint action of the two houses adjourns to a day certain, which day is more than three days after the date of adjournment, the period between the date of adjournment and the date of reconvening shall for the purposes of this section be deemed to be a period when the General Assembly is not in session, and no member shall be entitled to subsistence and travel allowance during that period, except under circumstances which would entitle him to subsistence and travel allowance when the General Assembly is not in session. (1957, c. 8; 1959, c. 939; 1961, c. 889; 1965, c. 86, s. 1; 1969, c. 1257, s. 1; 1971, c. 1200, ss. 1-4; 1973, c. 1482, s. 2; 1977, 2nd Sess., c. 1249, ss. 3, 4; 1979, 2nd Sess., c. 1137, s. 30; 1983, c. 761, ss. 25, 26; 1983 (Reg. Sess., 1984), c. 1034, ss. 184, 186.)

**Section Set Out Twice.** — The section above is effective until the convening of the 1987 Regular Session of the General Assembly. For this section as in effect upon the convening of 1987 Regular Session, see the following section, also numbered § 120-3.1.

**Editor's Note.** — Session Laws 1983, c. 761, s. 259, is a severability clause.

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

**Effect of Amendments.** — Session Laws 1983, c. 761, s. 26, July 15, 1983, added the last sentence to subdivision (a)(2).

Session Laws 1983, c. 761, s. 25, effective Feb. 5, 1985, substituted "sixty dollars (\$60.00)" for "forty-four dollars (\$44.00)" in subdivision (a)(3), and substituted "sixty dollars (\$60.00)" for "fifty dollars (\$50.00)" in subdivision (a)(4).

The 1983 amendment by c. 761, s. 26, effective July 15, 1983, added a last sentence to subdivision (a)(2) as it read prior to the amendment by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 184.

The 1983 amendment by c. 761, s. 25, effective Feb. 5, 1985, substituted "sixty dollars (\$60.00)" for "forty-four dollars (\$44.00)" in subdivision (a)(3) as it read prior to the amendment by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 184 and substituted "sixty dollars (\$60.00)" for "fifty dollars (\$50.00)" in subdivision (a)(4) as it read prior to the amendment by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 184.

The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 184, effective July 1, 1984, rewrote subdivisions (a)(2), (a)(3) and (a)(4).

The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 186, effective upon the convening of the 1985 Regular Session of the General Assembly, substituted "sixty dollars (\$60.00)" for "fifty dollars (\$50.00)" and "twenty dollars (\$20.00)" for "sixteen dollars and fifty cents (\$16.50)" in subdivision (a)(3) as amended by c. 1034, s. 184.

The section is set out above as amended by Session Laws 1983 (Reg. Sess., 1984), c. 1034, ss. 184 and 186.

### § 120-3.1. (Effective upon the convening of the 1987 Regular Session) Subsistence and travel allowances for members of the General Assembly.

(a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

- (1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile allowed to State employees for official travel.
- (2) A travel allowance at the rate allowed by statute for State employees whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.
- (3) A subsistence allowance for meals and lodging of sixty-five dollars (\$65.00) a day for each day of the period during which the General Assembly is in session and, except as otherwise provided in this subdivision, when traveling as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission, when the General Assembly is not in session.

A member who is authorized to travel, whether in or out of session, to a high rate geographical area in a state in the continental United States, other than Alaska or North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance for meals of twenty dollars (\$20.00) a day and a subsistence allowance for lodging of actual lodging expenses, when evidenced by a receipt satisfactory to the Legislative Administrative Officer, not to exceed that allowed a federal employee when traveling to that area. A high rate geographical area is an area designated as such by the federal General Services Administrator under the Travel

Expense Amendments Act of 1975 and published at 48 Federal Register 55262, December 9, 1983.

A member who is authorized to travel, whether in or out of session, to Alaska, Hawaii, Puerto Rico, or United States territories and possessions may elect to receive, in lieu of the amount provided in the first paragraph of this subdivision, a subsistence allowance for meals of twenty dollars (\$20.00) a day and a subsistence allowance for lodging of actual lodging expenses, when evidenced by a receipt satisfactory to the Legislative Administrative Officer, not to exceed the maximum prescribed by the Secretary of Defense in Civilian Personnel Per Diem Bulletin 120, dated October 3, 1983, and published as corrected at 48 Federal Register 49333, October 25, 1983.

(4) A member may be reimbursed for registration fees as permitted by the Legislative Services Commission.

(b) Payment of travel and subsistence allowances shall be made to members of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed by the Legislative Services Commission. Claims for travel and subsistence payments shall be paid at such times as may be prescribed by the Legislative Services Commission.

(c) When the General Assembly by joint action of the two houses adjourns to a day certain, which day is more than three days after the date of adjournment, the period between the date of adjournment and the date of reconvening shall for the purposes of this section be deemed to be a period when the General Assembly is not in session, and no member shall be entitled to subsistence and travel allowance during that period, except under circumstances which would entitle him to subsistence and travel allowance when the General Assembly is not in session. (1957, c. 8; 1959, c. 939; 1961, c. 889; 1965, c. 86, s. 1; 1969, c. 1257, s. 1; 1971, c. 1200, ss. 1-4; 1973, c. 1482, s. 2; 1977, 2nd Sess., c. 1249, ss. 3, 4; 1979, 2nd Sess., c. 1137, s. 30; 1983, c. 761, ss. 25, 26; 1983 (Reg. Sess., 1984), c. 1034, ss. 184, 186; 1985, c. 479, s. 206.)

**Section Set Out Twice.** — The section above is effective upon the convening of the 1987 Regular Session of the General Assembly. For this section as in effect until the 1987 Regular Session, see the preceding section, also numbered § 120-3.1.

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

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

**Effect of Amendments.** — The 1985 amendment by c. 479, s. 206, effective upon the convening of the 1987 Regular Session of the General Assembly, substituted "sixty-five dollars (\$65.00)" for "sixty dollars (\$60.00)" in the first paragraph of subdivision (a)(3).

§§ 120-4.3 to 120-4.7: Reserved for future codification purposes.

## ARTICLE 1A.

*Legislative Retirement System.***§ 120-4.8. Definitions.**

The following words and phrases as used in this Article, unless the context clearly requires otherwise, have the following meanings:

- (1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest as provided in G.S. 135-7(b).
- (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables as adopted by the Board of Trustees, and regular interest.
- (3) "Annuity" means payment for life derived from the "Accumulated contribution" of a member. All "annuities" are payable in equal monthly installments.
- (4) "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of the mortality tables as adopted by the Board of Trustees, and regular interest.
- (5) "Compensation" means salary paid as a legislator for service in the North Carolina General Assembly, exclusive of travel, per diem and expense allowances.
- (6) "Filing," when used in reference to an application for retirement, means the receipt of an acceptable application on a form provided by the Retirement System.
- (7) "Highest annual salary" means the twelve consecutive months of compensation paid to a legislator which yields the highest total amount.
- (8) "Medical Board" means the board of physicians provided for in G.S. 135-6, which shall determine disability as provided in this Article.
- (9) "Member in service" means a member in service on or after June 15, 1983.
- (10) "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of the mortality tables adopted by the Board of Trustees, and regular interest.
- (11) "Pensions" means payments for life derived from money provided by the State of North Carolina. All pensions are payable in equal monthly installments.
- (12) "Present member of the General Assembly" means a person who is a member of the General Assembly on or after June 15, 1983.
- (13) "Regular interest" means interest compounded annually at the rate determined by the Board of Trustees in accordance with G.S. 135-7(b) and G.S. 120-4.10.
- (14) "Retirement" means the withdrawal from active service with a retirement allowance granted under the provisions of this Article. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.
- (15) "Year" as used in this Article shall mean the regular fiscal year beginning July 1, and ending June 30 in the following calendar year unless otherwise defined by rule of the Board of Trustees. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 198.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon the convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 239 provided that notwithstanding the provisions of s. 238 of the act, members of the 1983 General Assembly were to make an affirmative election in writing within 60 days after the ratification date of the act (July 15, 1983) to become a

member of the legislative retirement system. Session Laws 1985, c. 400, s. 4 repealed s. 239 of Session Laws 1983, c. 761, effective December 31, 1984.

Session Laws 1983, c. 761, s. 259, is a severability clause.

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "June 15, 1983" for "July 15, 1983" in subdivisions (9) and (12).

### § 120-4.9. Retirement system established.

A Retirement System is established and placed under the Board of Trustees of the Teachers' and State Employees' Retirement System for administrative purposes.

The Retirement System shall have all the power and privileges of a corporation and shall be known as the "Legislative Retirement System of North Carolina." By this name all of its business shall be transacted, all of its funds invested and all of its cash and securities and other property held. All direction and policies concerning the Legislative Retirement System shall be vested in the Legislative Services Commission. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon the convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through

120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

### § 120-4.10. Administration of retirement system.

The Board of Trustees of the Teachers' and State Employees' Retirement System shall be the trustee of the Retirement System, under the direction of the Legislative Services Commission. The provisions of this Article shall be administered by the Board of Trustees, under the direction of the Legislative Services Commission. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General As-

sembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

### § 120-4.11. Membership.

The following members of the General Assembly and former members of the General Assembly are eligible for membership in the Retirement System, provided they are not contributing to nor are qualified to contribute to the North Carolina Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Retirement System or the Consolidated Judicial Retirement System of North Carolina:

- (1) Members of the General Assembly who serve on and after June 15, 1983; and
- (2) Former members of the General Assembly who served prior to June 15, 1983; and

- a. Who elect to transfer current and future entitlements, or contributions, from the Legislative Retirement Fund established by Chapter 1269 of the 1969 Session Laws; or
- b. Who have eight or more years of service as a member of the General Assembly. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 188, 189; 1985, c. 400, ss. 1, 7.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "actively contributing members" for "active members" and "Law-Enforcement Officers' Retirement System" for "Law-En-

forcement Officers' Benefit and Retirement Fund" in subdivisions (1) and (2) and added subdivision (3) of this section as it stood prior to the 1985 amendments.

The 1985 amendment by c. 400, s. 1, effective July 1, 1984, rewrote this section.

The 1985 amendment by c. 400, s. 7, effective Jan. 1, 1985, substituted "for the Consolidated Judicial Retirement System of North Carolina" for "the Uniform Judicial Retirement System, the Uniform Solicitorial Retirement System, or the Uniform Clerks of Superior Court Retirement System" at the end of the introductory paragraph of this section as rewritten by c. 400, s. 1.

## § 120-4.12. Creditable service.

(a) Creditable service at retirement consists of the membership service rendered by the member of the Retirement System and any prior service purchased or granted by this Article.

(b) Membership Service means the number of years served as a member of the General Assembly as of the establishment of the Retirement System and thereafter. One year of membership service is equal to 12 months for which a legislator received compensation.

(c) Prior service means:

- (1) The number of years a present member of the General Assembly served in the General Assembly prior to becoming a member of the Retirement System;
- (2) The number of years served by former members of the General Assembly who were vested in the Legislative Retirement Fund. One year of prior service is equal to 12 months for which a legislator received compensation.

(d) Any member of the Retirement System who has eight or more years of creditable service as a member of the General Assembly may purchase prior service credit for service in the armed forces of the United States at the same rates and conditions as set forth in G.S. 120-4.14 and G.S. 120-4.16; provided that credit is allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submits satisfactory evidence of the service claimed and that service credit be allowed only for the period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 187, 190.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "becoming a member" for "the establishment" in subdivision (c)(1) and added subsection (d).

### § 120-4.13. Transfer of membership and benefits.

The Board of Trustees shall set up procedures to transfer membership from the Legislative Retirement Fund to the Retirement System and to recompute benefits paid to retirees of the Legislative Retirement Fund who elect to transfer to the Retirement System. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General As-

sembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

### § 120-4.14. Purchase of prior service.

Purchase of prior service rendered by a member of the General Assembly before becoming a member of the Retirement System that is not service that may be transferred pursuant to G.S. 120-4.12 shall be at the rate of one month of service for each month for which a legislator received compensation, computed as follows:

- (1) For final legislative terms beginning with the 1975 General Assembly, seven percent (7%) of the highest legislative compensation at the time of purchase plus an administrative fee to be paid in lump sum.
- (2) For final legislative terms beginning prior to the 1975 General Assembly, five percent (5%) of the highest legislative compensation at the time of purchase plus an administrative fee to be paid in lump sum. (1983, c. 761, s. 238; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 191; 1985, c. 400, s. 2.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

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

**Effect of Amendments.** — The 1983

amendment, effective July 22, 1983, rewrote subdivisions (1) and (2).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "becoming a member of the Retirement System" for "the convening of the 1985 Regular Session of the General Assembly" in the introductory paragraph.

The 1985 amendment, effective July 1, 1984, inserted "final legislative" following "For" at the beginning of subdivisions (1) and (2).

### § 120-4.15. Repayment of contributions.

Repayment of contributions withdrawn from the Legislative Retirement Fund and System shall be at the rate of seven percent (7%) of the highest monthly compensation received as a legislator at the time of purchase for each month of creditable service restored plus an administrative fee to be paid in lump sum. (1983, c. 761, s. 238; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 192.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

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

**Effect of Amendments.** — The 1983 amendment, effective July 22, 1983, rewrote this section.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, inserted "and System."

## § 120-4.16. Repayments and purchases.

All repayments and purchases of service credit, allowed under this Article, shall be made within two years after the member first becomes eligible for membership in the System. All such repayments and purchases not made within two years after the member becomes eligible for membership in the System shall equal the full actuarial cost of the additional service credit as defined in G.S. 135-4(m). (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General As-

sembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

## § 120-4.17. Assets of retirement system.

(a) All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of two funds, either the Annuity Savings Fund or the Pension Accumulation Fund.

(b) The Annuity Savings Fund is the fund to which all members' contributions, and regular interest allowances provided for as in G.S. 135-7(b), shall be credited. From this fund shall be paid the accumulated contributions of a member.

(c) Upon the retirement of a member, his accumulated contributions shall be transferred from the Annuity Savings Fund to the Pension Accumulation Fund. In the event that a retired former member should subsequently again become a member of the Retirement System as provided for in G.S. 120-4.11, any excess of his accumulated contributions at his date of retirement over the sum of the retirement allowance payments received by him since his date of retirement shall be transferred from the Pension Accumulation Fund to the Annuity Savings Fund and shall be credited to his individual account in the Annuity Savings Fund.

(d) The Pension Accumulation Fund is the fund in which accumulated contributions by the State and amounts transferred from the Annuity Savings Fund in accordance with subsection (c) of this section and to which all income from the invested assets of the Retirement System are credited. From this fund is paid retirement allowances and any other benefits provided for under this Article except payments of accumulated contributions as provided in G.S. 120-4.14.

(e) The regular interest allowance on the members' accumulated contributions provided for as in G.S. 135-7(b) shall be transferred each year from the Pension Accumulation Fund to the Annuity Savings Fund. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General As-

sembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

**§ 120-4.18. Management of funds.**

The Board of Trustees shall manage the fund established by G.S. 120-4.17 pursuant to G.S. 135-7. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General As-

sembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

Session Laws 1983, c. 761, s. 259, is a severability clause.

**§ 120-4.19. (For effective date see editor's note) Contributions by the members.**

Effective upon convening of the 1985 Regular Session of the General Assembly, each member shall contribute by payroll deduction for each pay period for which he receives compensation seven percent (7%) of his compensation for the period. (1983, c. 761, s. 238.)

**Section Set Out Twice.** — The section above is effective until the amendment to this section by Session Laws 1985, c. 400, s. 8 becomes effective. For this section as amended by c. 400, s. 8, see the following section and Editor's note thereto, also numbered § 120-4.19.

120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through

Session Laws 1983, c. 761, s. 259, is a severability clause.

**§ 120-4.19. (For effective date see editor's note) Contributions by the members.**

Effective upon convening of the 1985 Regular Session of the General Assembly, each member shall contribute by payroll deduction for each pay period for which he receives compensation seven percent (7%) of his compensation for the period.

Anything within this Article to the contrary notwithstanding, the State, pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the members under this section with respect to the services of such members rendered after the effective date of this paragraph. The members' contributions picked up by the State shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the Annuity Savings Fund and accumulated within the Fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions. Member contributions picked up by the State shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State. This deduction, however, shall not reduce a member's compensation as defined in G.S. 120-4.8(1). Picked-up contributions shall be transmitted to the Retire-

ment System monthly for the preceding month by means of a warrant drawn by the State payable to the Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. (1983, c. 761, s. 238; 1985, c. 400, s. 8.)

**Section Set Out Twice.** — The section above is effective upon the effective date of the amendment by Session Laws 1985, c. 400, s. 8. As to the effective date of the amendment, see the Editor's note below. For this section as in effect until c. 400, s. 8 becomes effective, see the preceding section, also numbered § 120-4.19.

**Editor's Note.** —

Session Laws 1985, c. 400, s. 8 makes the amendment to this section effective upon the

first day of the calendar month following 60 days after receipt of a favorable determination or ruling from the United States Department of Treasury's Internal Revenue Service that the Legislative Retirement System is a trust qualified under Section 401(a) of the Internal Revenue Code of 1954, as amended.

**Effect of Amendments.** —

The 1985 amendment added the second paragraph. For the effective date of this amendment see the Editor's note above.

## § 120-4.20. Contributions by the State.

(a) Effective upon convening of the 1985 Regular Session of the General Assembly, the State shall contribute annually an amount equal to the sum of the "normal contribution" and the "accrued liability contribution."

(b) The normal contribution for any period shall be determined as a percentage, equal to the normal contribution rate, of the total compensation of the members for the period. The normal contribution rate shall be determined as the percentage represented by the ratio of (i) the annual normal cost to provide the benefits of the Retirement System, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, in excess of the part thereof provided by the members' contributions, to (ii) the total annual compensation of the members of the Retirement System.

(c) The accrued liability contribution for any period shall be determined as a percentage, equal to the accrued liability contribution rate, of the total compensation of the members for the period. The accrued liability contribution rate shall be determined as the percentage represented by the ratio of (i) the level annual contribution necessary to amortize the unfunded accrued liability over a period of 15 years, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, to (ii) the total annual compensation of the members of the Retirement System.

(d) The unfunded accrued liability as of any date shall be determined, in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, as the excess of (i) the then present value of the benefits to be provided under the Retirement System in the future over (ii) the sum of the assets of the Retirement System then currently on hand in the Annuity Savings Fund and the Pension Accumulation Fund, plus the then present value of the stipulated contributions to be made in the future by the members, plus the then present value of the normal contributions expected to be made in the future by the State.

(e) The normal contribution rate and the accrued liability contribution rate shall be determined after each annual valuation of the Retirement System and shall remain in effect until a new valuation is made.

(f) The annual contributions by the State for any year shall be at least sufficient, when combined with the amount held in the Pension Accumulation Fund at the start of the year, to provide the retirement allowances and other benefits payable out of the fund during the current year. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18

are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

## § 120-4.21. Service retirement benefits.

(a) Eligibility; Application. — Any member in service may retire with full benefits who has reached 65 years of age with eight years of creditable service. Any member in service may retire with reduced benefits who has reached the age of 60 years with eight years of creditable service. The member shall make written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than 30 nor more than 90 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) Computation. — Upon retirement from service in accordance with subsection (a) of this section, a member shall receive a service retirement allowance computed as follows:

- (1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of eight years of creditable service, four percent (4%) of his "highest annual salary," multiplied by the number of years of creditable service.
- (2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of eight years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ( $\frac{1}{4}$  of 1%) for each month his retirement date precedes his 65th birthday.

(c) Limitations. — In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary" nor shall he receive any service retirement allowance whatever while employed in a position that makes him a contributing member of any of the following retirement systems: The Teachers' and State Employees' Retirement System, the North Carolina Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Retirement System, the Uniform Judicial Retirement System of North Carolina, the Uniform Solicitorial Retirement System of North Carolina or the Uniform Clerks of Court Retirement System of North Carolina. If he should become a member of any of these systems, payment of his service retirement allowance shall be suspended until he withdraws from membership in that system. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 193, 194, 196.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon the convening of the 1985 Regular Session of the General Assembly, while §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment deleted "or who has completed 25 years of creditable service regardless of age" at the end of the first sentence

of subsection (a), deleted "or upon 25 years of creditable service regardless of age" following "upon completion of eight years of creditable service" in subdivision (b)(1), and inserted "contributing" preceding "member of any of the following" and substituted "Law-Enforcement Officers' Retirement System" for "Law-Enforcement Officers' Benefit and Retirement Fund" in subsection (c). Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257 makes the act effective July 1, 1984, except where otherwise provided. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

## § 120-4.22. Disability retirement benefits.

(a) Eligibility; Application. — Upon application by or on behalf of the member, any member in service who has completed at least eight years of creditable service and who has not reached his 60th birthday may, after medical certification, be retired on a disability retirement allowance by the Board of Trustees on the first day of the particular calendar month designated by the applicant. The designated date shall be no less than 30 nor more than 90 days from the filing of the application.

(b) Medical Certification. — After a medical examination of the member, the medical board shall certify to the Board of Trustees that the member is mentally or physically incapacitated for further performance of duty as a member of the General Assembly, that the incapacity was incurred at the time of active employment and has been continuous thereafter, that the incapacity is likely to be permanent and whether the member should be retired.

(c) Computation. — Upon retirement for disability pursuant to subsection (a) of this section, a member shall receive a disability retirement allowance equal to a service retirement allowance calculated on the basis of the member's "highest annual salary" and the creditable service he would have had by the age of 60 had he continued in service.

(d) Limitations. — In no event shall any member receive a disability retirement allowance greater than seventy-five percent (75%) of his "highest annual salary" nor shall he receive any disability retirement allowance whatever while employed in a position that makes him a contributing member of any of the following retirement systems: The Teachers' and State Employees' Retirement System, the North Carolina Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Retirement System, the Uniform Judicial Retirement System of North Carolina, the Uniform Solicitorial Retirement System of North Carolina or the Uniform Clerks of Court Retirement System of North Carolina. If he should become a member of any of these systems payment of his disability retirement allowance shall be suspended until he withdraws from membership in that system. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 195, 196.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon the convening of the 1985 Regular Session of the General Assembly, while §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment deleted "but less than

25 years" following "eight years of creditable service" in the first sentence of subsection (a) and in subsection (d) inserted "contributing" preceding "member of any of the following" and substituted "Law-Enforcement Officers' Retirement System" for "Law-Enforcement Officers' Benefit and Retirement Fund." Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257 makes the act effective July 1, 1984, except where otherwise provided. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

## § 120-4.23. Reexamination for disability retirement allowance.

Any disability retiree who has not reached age 65 shall be reexamined pursuant to G.S. 135-5(e). After he reaches age 65, no further examinations are required. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18

are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

### § 120-4.24. Return to membership of former member.

If a retired former member of the Retirement System or of the Legislative Retirement Fund returns to service as a member of the General Assembly, his retirement allowance shall cease and he shall be restored as a member of the Retirement System. The computation of the amount of benefits to which he may subsequently become entitled under this Article shall be computed as follows:

The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service, reduced by the actuarial equivalent of the retirement benefits he previously received. (1983, c. 761, s. 238.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18

are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

### § 120-4.25. Return of accumulated contributions.

If a member ceases to be a member of the General Assembly except by death or retirement, he shall, upon submission of an application, be paid not earlier than 60 days following the date of termination of service, the sum of his contributions if he has less than eight years of creditable service, or the sum of his accumulated contributions if he has eight or more years of creditable service, provided he has not in the meantime returned to service. Upon payment of this sum his membership in the System ceases. If he becomes a member afterwards, no credit shall be allowed for any service previously rendered except as provided in G.S. 120-4.14 and the payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member, there shall be paid to the person or persons he nominated by written designation duly acknowledged and filed with the Board of Trustees, if the person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of G.S. 120-4.28. There shall be deducted from any amount otherwise payable any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by any other reason. Even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a member of the General Assembly, any amount due the agency or subdivision by reason of any outstanding overpayment of salary or any other reason shall be paid to the agency or subdivision by the Retirement System upon demand. After the agency or subdivision has notified the executive director of any amount due. The Retirement System has no liability for amounts deducted and transmitted to the agency or subdivision nor for any failure by the Retirement System for any reason to make the deductions. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 197.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon the convening of the 1985 Regular Session of the General Assembly, while §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment rewrote the first sentence, which read "If a member ceases to be a

member of the General Assembly except by death or retirement, he shall, upon submission of an application, be paid, not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System, the sum of his contributions, if he has not in the meantime returned to service." Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257 makes the act effective July 1, 1984, except where otherwise provided. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

## § 120-4.26. Benefit payment options.

Any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of the retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. No election may be made after the first payment becomes due, or the first retirement check cashed, nor may an election be revoked or a nomination changed. The election of Option 2 or Option 3 or the nomination of the person thereunder shall be revoked if the person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. The election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, any member having elected Options 2 or 3 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent to the retirement allowance in effect immediately prior to the effective date of the new option.

**Option 1.** — If a member dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one-one hundred twentieth (1/120) for each month for which he has received a retirement allowance payment, shall be paid to his legal representative or to the person he nominates by written designation acknowledged and filed with the Board of Trustees;

**Option 2.** — Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. If the person selected is other than his spouse, the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

**Option 3.** — Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. (1983, c. 761, s. 238; 1985, c. 649, s. 9.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening

of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983).

The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective July 8, 1985, added the last sentence of the first paragraph.

### § 120-4.27. Death benefit.

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a maximum of fifteen thousand dollars (\$15,000). For purposes of this death benefit "in service" means currently serving as a member of the North Carolina General Assembly.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended. (1983, c. 761, s. 238; 1985, c. 400, s. 9.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective Feb. 5, 1985, added the second paragraph.

### § 120-4.28. Survivor's alternate benefit.

The designated beneficiary of a member who dies in service before retirement but after age 60 and after completing eight years of creditable service is entitled to Option 2 prescribed by G.S. 120-4.26. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 199; 1985, c. 400, s. 3.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon the convening of the 1985 Regular Session of the General Assembly, while §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1983 (Reg.

Sess., 1984) amendment substituted "G.S. 120-4.26" for "G.S. 120-4.25" at the end of the section. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257 makes the act effective July 1, 1984, except where otherwise provided. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

The 1985 amendment, effective July 1, 1984, inserted "in service" preceding "before retirement."

**§ 120-4.29. Exemption from taxes, garnishment, attachment.**

Except for the applications of the provisions of G. S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, annuity, or retirement allowance, to the return of contributions, or to the receipt of the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, shall be unassignable except as this Article specifically provides. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a state-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary. (1983, c. 761, s. 238; 1985, c. 402; c. 649, s. 5.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 240, provides that §§ 120-4.19 through 120-4.29 shall become effective upon convening of the 1985 Regular Session of the General Assembly, but that §§ 120-4.8 through 120-4.18 are effective upon ratification (July 15, 1983). The 1985 Regular Session convened on Feb. 5, 1985.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — Session Laws 1985, c. 402, s. 1, effective June 17, 1985, inserted "Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20," at the beginning of this section.

Session Laws 1985, c. 649, s. 5, effective July 8, 1985, added the last sentence.

**ARTICLE 2.**

*Duty and Privilege of Members.*

**§ 120-9. Freedom of speech; protection from arrest.**

**Legal Periodicals.** — For article analyzing the evolution of first amendment speech rights

in North Carolina, see 4 Campbell L. Rev. 243 (1982).

**ARTICLE 3A.**

*Sessions; Electronic Voting.*

**§ 120-11.1. Time of meeting.**

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 949 provides that the 1985 Regular Session of the Senate and House of Representatives shall be held beginning on the first

Tuesday in February of 1985 at 12:00 o'clock noon, and that § 120-11.1 shall not apply to the 1985 Regular Session.

ARTICLE 5.

*Investigating Committees.*

**§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees.**

OPINIONS OF ATTORNEY GENERAL

**Committee Membership Not Required, etc.** — The correct citation to the opinion of the Attorney General cited under this catchline in the replacement volume is 48 N.C.A.G. 84.

ARTICLE 5A.

*Committee Activity.*

**§ 120-19.4. Failure to respond to subpoena or refusal to testify punishable as contempt.**

(b) If by a majority vote the committee deems that any person is in contempt under the provisions of subsection (a) the committee shall file a complaint signed by the chairman in the General Court of Justice, superior court division, requesting that the court issue an order directing that the person appear within a reasonable time and show good cause why he should not be held in contempt of the committee or its processes. If the person does not establish good cause the court shall punish the person in accordance with the provisions of G.S. 5A-12 or G.S. 5A-21, whichever is applicable. (1973, c. 543; 1977, c. 344, s. 2; 1985, c. 790, s. 5.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out. **Effect of Amendments.** — The 1985 amendment, effective July 18, 1985, substituted "G.S. 5A-12 or G.S. 5A-21, whichever is applicable" for "G.S. 5-4" at the end of subsection (b).

ARTICLE 6A.1.

*Submission of Acts.*

**§ 120-30.9A. Purpose.**

The purpose of this Article is to ensure compliance with Section 5 of the Voting Rights Act of 1965 by designating certain officials who shall submit to the Attorney General of the United States any statute enacted by the General Assembly or action taken by any local government which affects any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, in any jurisdiction covered by Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 579, s. 2 provides: "This act is effective upon ratification, except that any act which is covered by Article 6B of Chapter 120 of the General Statutes and which was enacted by the 1985 Session of the General Assembly prior to the date of ratification of this act shall be submitted within 30 days of ratification of this act." The act was ratified July 3, 1985.

**§ 120-30.9B. Statewide statutes; State Board of Elections.**

The Executive Secretary-Director of the State Board of Elections shall submit to the Attorney General of the United States within 30 days of ratification all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes, which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1.)

**§ 120-30.9C. The judicial system; Administrative Office of the Courts.**

The Administrative Officer of the Courts shall submit to the Attorney General of the United States within 30 days of ratification all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 7A of the General Statutes of North Carolina which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1.)

**§ 120-30.9D. Constitutional amendments; Secretary of State.**

The Secretary of State shall submit to the Attorney General of the United States within 30 days of ratification all acts of the General Assembly that amend the North Carolina Constitution and which constitute a "change affecting voting" under Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1.)

**§ 120-30.9E. Counties; County Attorney.**

The County Attorney of any county covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days of ratification or adoption any local acts of the General Assembly, actions of the county board of commissioners, or the county board of elections or any other county agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that county. (1985, c. 579, s. 1.)

**§ 120-30.9F. Municipalities; municipal attorney.**

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days of ratification any local acts of the General Assembly, actions of the municipal governing body or municipal board of elections or any other municipal agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that municipality. (1985, c. 579, s. 1.)

**§ 120-30.9G. School Administrative Units; Boards of Education Attorney.**

The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days of ratification any local

acts of the General Assembly, or actions of the local boards of education which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved. (1985, c. 579, s. 1.)

## ARTICLE 6B.

### *Legislative Research Commission.*

#### § 120-30.11. Time of appointments; terms of office.

Appointments to the Legislative Research Commission shall be made not earlier than the close of each regular session of the General Assembly held in the odd-numbered year nor later than 15 days subsequent to the close. The term of office shall begin on the day of appointment, and shall end on December 15 of the next even-numbered year. Except for the work of the Administrative Rules Review Committee, no moneys appropriated to the Legislative Research Commission may be expended for meetings of the Commission, its committees or subcommittees held after December 15 of the next even-numbered year and before the appointment of the next Legislative Research Commission. (1965, c. 1045, s. 2; 1975, c. 692, s. 2; 1977, c. 915, s. 4; 1981, c. 688, s. 19; 1983, c. 63, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 178.)

##### **Editor's Note.** —

Session Laws 1981, c. 688, s. 18, effective July 1, 1981, amended Session Laws 1977, c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, so as to delete the provision for expiration of the amendment on June 30, 1981.

Session Laws 1981, c. 688, s. 21, and Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, are severability clauses.

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, in the sec-

ond sentence, deleted "or at the time of appointment of the subsequent Commission, whichever shall be later" from the end of the sentence.

The 1983 amendment, effective March 11, 1983, rewrote this section.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "December 15," for "the fourth Friday in November" in the second and third sentences.

#### § 120-30.14. Meetings.

The first meeting of the Legislative Research Commission shall be held at the call of the President Pro Tempore of the Senate in the State Legislative Building or in another building designated by the Legislative Services Commission. Thereafter the Commission shall meet at the call of the chairmen. Every member of the preceding General Assembly has the right to attend all sessions of the Commission, and to present his views at the meeting on any subject under consideration. (1965, c. 1045, s. 5; 1981, c. 772, s. 1.)

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, added "or in another building designated by the Legisla-

tive Services Commission" at the end of the first sentence.

### § 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8; 1977, c. 915, s. 3; 1981, c. 688, s. 2; 1983, c. 905, s. 7; 1985, c. 790, s. 7.)

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

**Editor's Note.** —

Session Laws 1981, c. 688, s. 18, effective July 1, 1981, amended Session Laws 1977, c. 915, s. 10 as amended by Session Laws 1979, c. 1030, s. 2, so as to delete the provision for expiration of the amendment on June 30, 1981.

**Effect of Amendments.** — The 1981 amendment, effective October 1, 1981, deleted subdivisions (5) and (6), which read: "(5) To review the rules of all administrative agencies pursuant to Article 6C of this Chapter to deter-

mine whether or not the agencies acted within their statutory authority in promulgating the rules.

"(6) To meet during the regular session of the General Assembly only for the purposes of reviewing rules pursuant to G.S. 120-30.30 or holding public hearings pursuant to G.S. 120-30.35."

Session Laws 1981, c. 688, s. 21 contains a severability clause.

The 1983 amendment, effective July 21, 1983, added subdivisions (7) and (8).

The 1985 amendment, effective July 18, 1985, added subdivision (9).

### § 120-30.18. Facilities; compensation of members; payments from appropriations.

The facilities of the State Legislative Building, and any other State office building used by the General Assembly, shall be available to the Commission for its work. Members of the General Assembly serving on the Legislative Research Commission or its study committees shall be reimbursed for travel and subsistence expenses at the rates set out in G.S. 120-3.1. Advisory subcommittee members shall be reimbursed and compensated at the rates set out in G.S. 138-5 (public members) and G.S. 138-6 (State officials or employees).

All expenses of the Commission shall be paid from funds appropriated for the Commission. (1965, c. 1045, s. 9; 1975, c. 692, s. 3; 1981, c. 772, s. 2.)

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, inserted “ and any other State office building used by the General Assembly,” in the first sentence.

## ARTICLE 6C.

### *Review of Administrative Rules.*

**§§ 120-30.24 to 120-30.28:** Repealed by Session Laws 1983, c. 927, s. 2, effective August 1, 1983.

**Editor’s Note.** — Session Laws 1981, c. 688, s. 18, effective July 1, 1981, amended Session Laws 1977, c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, so as to delete the provision for expiration of this Article on June 30, 1981.

Repealed §§ 120-30.24, 120-30.25, 120-30.26, 120-30.27 and 120-30.28 were amended

by Session Laws 1981, c. 688, ss. 1 and 3-6. Repealed §§ 120-30.25 and 120-30.28 were also amended by Session Laws 1981 (Reg. Sess. 1982), c. 1233, ss. 1 and 2. In addition, repealed § 120-30.24 was also amended by Session Laws 1983, c. 641, s. 7, and repealed § 120-30.28 was also amended by Session Laws 1983, c. 768, s. 12.

**§ 120-30.29:** Repealed by Session Laws 1981, c. 688, s. 8, effective October 1, 1981.

**Editor’s Note.** — Session Laws 1981, c. 688, s. 21, contains a severability clause.

**§ 120-30.29A:** Repealed by Session Laws 1983, c. 927, s. 2, effective August 1, 1983.

**Editor’s Note.** — Repealed § 120-30.29A was enacted by Session Laws 1981, c. 688, s. 7, and amended by Session Laws 1981 (Reg. Sess. 1982), c. 1233, s. 3.

**§§ 120-30.30, 120-30.31:** Repealed by Session Laws 1981, c. 688, s. 8, effective October 1, 1981.

**Editor’s Note.** — Session Laws 1981, c. 688, s. 21, contains a severability clause.

**§ 120-30.32:** Repealed by Session Laws 1983, c. 927, s. 2, effective August 1, 1983.

**§ 120-30.33:** Repealed by Session Laws 1981, c. 688, s. 8, effective October 1, 1981.

**Editor’s Note.** — Session Laws 1981, c. 688, s. 21, contains a severability clause.

§§ 120-30.34 to 120-30.40: Repealed by Session Laws 1983, c. 927, s. 2, effective August 1, 1983.

**Editor's Note.** — Repealed § 120-30.34 was amended by Session Laws 1981, c. 1127, s. 55, and Session Laws 1981 (Reg. Sess. 1982), c. 1232, s. 2. Repealed § 120-30.35 was amended by Session Laws 1981, c. 688, ss. 9 and 10 and

Session Laws 1981 (Reg. Sess. 1982), c. 1233, s. 4. Repealed § 120-30.36 was enacted by Session Laws 1981, c. 688, s. 11, and amended by Session Laws 1981 (Reg. Sess. 1982), c. 1233, s. 5.

## ARTICLE 7.

### *Legislative Services Commission.*

#### § 120-32. Commission duties.

The Legislative Services Commission is hereby authorized to:

- (10) To select the locations for buildings occupied by the General Assembly, and to name any building occupied by the General Assembly.
- (11) To specify the uses within the General Assembly budget of funds appropriated to the General Assembly which remain available for expenditure after the end of the biennial fiscal period, and to revert funds under G.S. 143-18.
- (12) (For effective date see note) Provide insurance to provide excess indemnity for any occurrence which results in a claim against any member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act by a member, nor for any act committed by a member or former member prior to the inception of insurance.
- (13) Provide insurance to provide excess indemnity for any occurrence that results in a claim against any employee, officer, or committee, subcommittee, or commission member in the legislative branch other than a member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act, nor for any act committed prior to the inception of insurance. (1969, c. 1184, s. 2; 1971, c. 685, s. 2; c. 1200, s. 8; 1977, c. 802, s. 50.60; 1981 (Reg. Sess., 1982), c. 1191, s. 67; 1983 (Reg. Sess., 1984), c. 1034, s. 182; 1985, c. 479, s. 176(a), (b).)

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

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 180, provides:

"(a) Notwithstanding G.S. 143-18, funds appropriated to the General Assembly by Chapter 859, 1127, and 1282 of the 1981 Session Laws shall not revert to the General Fund but shall remain available to the General Assembly until expended or until reverted under G.S. 120-32(10).

"(b) The funds covered by this section may be encumbered for such purpose as may be approved by the Director of the Budget.

"(c) This section is effective June 30, 1983." Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

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

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

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment (the Separation of Powers Act of 1982) added subdivision (10).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added subdivision (11).

The 1985 amendment by c. 479, s. 176 (a), effective with respect to insurance commencing on or after convening of the 1987 Regular Ses-

sion of the General Assembly, added subdivision (12).

The 1985 amendment by c. 479, s. 176 (b), effective June 27, 1985, added subdivision (13).

## § 120-32.01. Information to be supplied.

(a) Every State department, State agency, or State institution shall furnish the Legislative Administrative Office and the Research, Fiscal Research, and Bill Drafting Divisions any information or records requested by them. Except when accessibility is prohibited by a federal statute, federal regulation or State statute, every State department, State agency, or State institution shall give the Fiscal Research Division access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the State Personnel Management Information System by the Legislative Administrative Office and by the Research and Bill Drafting Divisions shall only be through the Fiscal Research Division. (1983 (Reg. Sess., 1984), c. 1034, s. 177.)

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

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

## § 120-32.1. Use and maintenance of buildings and grounds.

(a) The Legislative Services Commission shall determine policy governing the use of the State Legislative Building and the State office building located at the northeast corner of Lane and Salisbury streets. The Commission shall allocate space within those buildings and the grounds encompassed by Jones, Wilmington, Lane and Salisbury streets; be responsible for the maintenance, security, control and care of those buildings; and promulgate rules and regulations governing the use of those buildings and their facilities. The Commission may delegate the actual work of maintenance of those buildings to the Department of Administration, which shall provide such maintenance services as may be delegated, subject to the direction of the Commission.

(b) The rules and regulations promulgated by the Legislative Services Commission under the authority of this section shall be posted in a conspicuous place in the State Legislative Building, and in the State office building located at the northeast corner of Lane and Salisbury streets, and a copy of the rules and regulations and all amendments thereto, certified by the chairman of the Legislative Services Commission, shall be filed in the office of the Secretary of State and in the office of the Clerk of the Superior Court of Wake County. When so posted and filed, these rules and regulations shall constitute notice to all persons of the existence and text of the rules and regulations. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who knowingly violates any of the rules or regulations promulgated, posted and filed under the authority of this section is guilty of a misdemeanor, and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court, or by both such fine and imprisonment. Any person, firm, corporation, partnership or association who combines, confederates, conspires, aids, abets, solicits, urges, instigates, counsels, advises, encourages or procures another or others to knowingly violate any of the rules

and regulations promulgated, posted and filed under the authority of this section is guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court, or by both such fine and imprisonment.

(1973, c. 99, s. 1; 1975, c. 145, s. 3; 1981, c. 772, ss. 3, 4.)

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

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, rewrote subsection (a) so as to include the State office

building and made other changes. In the first sentence of subsection (b), the amendment inserted "and in the State office building located at the northeast corner of Lane and Salisbury streets."

**§ 120-32.2. State Legislative Building special police.**

All members of the State Legislative Building security force employed by the Legislative Services Office are special policemen, and within the State Legislative Building and upon its grounds they shall have all the powers of policemen of incorporated towns.

As used in this section, "grounds" means the area between the outer walls of the State Legislative Building and the near curblineline of those sections of Jones, Wilmington, Lane and Salisbury streets which border the land on which the State Legislative Building is situated. When the General Assembly is in regular or extra session, the term "grounds" also includes the surface to the far curblineline of those sections of Jones, Wilmington, Lane and Salisbury streets which border the land on which the State Legislative Building is situated and any state-owned parking lot which is leased to the General Assembly while the General Assembly is in session.

The jurisdiction of the State Legislative Building security force shall also include the State office building located at the northeast corner of Lane and Salisbury streets and the area between the outer walls of that building and the near curblineline of those sections of Lane and Salisbury streets that border the land on which the building is located. (1975, c. 145, s. 1; 1981, c. 772, s. 5.)

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, added the third paragraph.

**§ 120-32.3. Oath of State Legislative Building special police.**

Before exercising the duties of a special policeman, each State Legislative Building security officer shall take an oath before some officer empowered to administer oaths, and the oaths shall be filed with the Clerk of Superior Court of Wake County. The oath of office shall be as follows:

"State of North Carolina, Wake County.

"I, . . . . ., do solemnly swear (or affirm) that I will well and truly execute the duties of special policeman in the State Legislative Building and other buildings and grounds subject to the jurisdiction of the Legislative Services Commission, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all rules and regulations of the Legislative Services Commission concerning use of those buildings and grounds. So help me, God.

“Sworn and subscribed to before me, this the . . . . . day of . . . . ., A.D. . . . .”  
 (1975, c. 145, s. 2; 1981, c. 772, s. 6.)

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, in the oath of office, substituted “other buildings and grounds subject to the jurisdiction of the Legis-

lative Services Commission,” for “upon its grounds” and substituted “those buildings and grounds” for “the State Legislative Building and its grounds.”

**§ 120-32.5. Leave for temporary employees.**

Temporary part-time or full-time employees of the General Assembly who have four years of aggregate employment with the General Assembly (temporary or permanent) shall receive the same holidays, vacation leave, and sick leave as permanent part-time or full-time employees of the General Assembly respectively, or as may be determined by the Legislative Services Commission. (1983, c. 923, s. 217.)

**Editor’s Note.** — Session Laws 1983, c. 923, s. 217, provides in part: “This provision shall become effective with respect to employment

on or after January 1, 1983, except that service prior to that date shall be credited toward the four years of aggregate employment required.”

**§ 120-34. Printing of session laws.**

(a) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers shall be omitted.

(1969, c. 1184, s. 4; 1971, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 179.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective Jan. 1, 1984, rewrote subsection (a).

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

**ARTICLE 7A.**

*Fiscal Research Division.*

**§ 120-36.4:** Repealed by Session Laws 1983 (Regular Session 1984), c. 1034, s. 176, effective July 1, 1984.

**Cross References.** —As to the furnishing of information by State departments, agencies, or institutions, see now § 120-32.01.

### § 120-36.5. Office space and equipment.

The Fiscal Research Division shall be provided with suitable office space and equipment. (1971, c. 659, s. 1; 1981; c. 772, s. 7; c. 859, s. 13.3.)

**Effect of Amendments.** — The first 1981 amendment, effective July 1, 1981, rewrote this section to read as follows:

“The Fiscal Research Division shall be provided with suitable office space and equipment in the State Legislative Building or in another building designated by the Legislative Services Commission.”

The second 1981 amendment, effective July 1, 1981, deleted “in the State Legislative Building” from the end of the section as it stood before the first 1981 amendment. The second amendment is given effect in the section as set out above.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

### § 120-36.6. Legislative Fiscal Research staff participation.

Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State. The Legislative Administrative Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the Board of Awards and Council of State, unless the Board or Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Board, Commission or Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Board, Commission, or Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Board, Commission, or Council. (1971, c. 659, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 177.1.)

**Editor’s Note.** — This section was formerly § 143-34.4. It was transferred to its present position by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 177.1(d).

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

**Effect of Amendments.** — The 1983 (Reg.

Sess., 1984) amendment, effective July 1, 1984, inserted the present second sentence, inserted “and the Director of Fiscal Research” following “Legislative Services Officer” in two places in the last sentence, and substituted “Board, Commission, or Council” for “Commission” in three places in the last two sentences.

## ARTICLE 8.

### *Elected Officers.*

### § 120-37. Elected officers; salaries; staff.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of one hundred sixty dollars (\$160.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-

arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be paid an annual salary of thirty-five thousand six hundred fifty-two dollars (\$35,652), payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189.)

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

**Editor's Note.** — Session Laws 1983, c. 761, s. 259, is a severability clause.

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

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

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

**Effect of Amendments.** — The 1981 amendment increased the annual salary of principal clerks from \$24,492 to \$25,716.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

The 1983 amendment, effective July 1, 1983, substituted "twenty-seven thousand twelve dollars (\$27,012) for "twenty-five thousand seven hundred sixteen dollars (\$25,716)" in the second sentence of subsection (c).

The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 208, effective July 1, 1984, substituted "thirty-two thousand five hundred twenty dollars (\$32,520)" for "twenty-seven thousand twelve dollars (\$27,012)" in the first sentence of subsection (c).

The 1983 (Reg. Sess., 1984) amendment by c. 1116, s. 110, effective July 1, 1984, substituted "one hundred fifty dollars (\$150.00)" for "one hundred twenty-six dollars (\$126.00)" in the first sentence of subsection (b).

The 1985 amendment by c. 479, s. 205, as amended by c. 757, s. 189, effective July 1, 1985, substituted "thirty-five thousand six hundred fifty-two dollars (\$35,652)" for "thirty-two thousand five hundred twenty dollars (\$32,520)" in the second sentence of subsection (c).

The 1985 amendment by c. 479, s. 207, effective July 1, 1985, substituted "one hundred sixty dollars (\$160.00)" for "one hundred fifty dollars (\$150.00)" in the first sentence of subsection (b).

## ARTICLE 9A.

### *Lobbying.*

#### § 120-47.2. Registration procedure.

(a) In each General Assembly session and for each employer, or retainer, every person employed or retained as a legislative agent in this State shall, before engaging in any activities as a legislative agent, register with the Secretary of State. If a corporation or partnership is employed or retained as a legislative counsel, and more than one partner, employee or officer of the corporation or partnership, shall act as a legislative agent on behalf of the client, then the additional individuals shall be separately listed on the registration under subsection (b), and a fee in the same amount as imposed by G.S. 120-47.3 shall be due for each such individual in excess of one.

(1933, c. 11, s. 2; 1973, c. 1451; 1975, c. 820, s. 1; 1983, c. 713, s. 51.)

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

**Editor's Note.** — Session Laws 1983, c. 713, s. 109, provides that Part II of the act, consisting of ss. 22 through 51, shall become effective Aug. 1, 1983, except that ss. 50 and 51, amending §§ 120-47.3 and 120-47.2, respectively, "do not apply during the entire 1983 Session to any

person registered under Article 9A of Chapter 120 of the General Statutes for the 1983 Session who registered before ratification of this act." The act was ratified July 8, 1983.

**Effect of Amendments.** — The 1983 amendment added the second sentence of subsection (a). For the effective date of this amendment, see the Editor's note, above.

### § 120-47.3. Registration fee.

Every person, corporation or association which employs any person to act as legislative agent as defined by law to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the State, or to act in any manner as a legislative agent in connection with any such legislation, shall pay to the Secretary of State a fee of seventy-five dollars (\$75.00) which fee shall be due and payable by either the employer or the employee at the time of registration.

A separate registration, together with a separate registration fee of seventy-five dollars (\$75.00), shall be required for each person, corporation or association for which a person acts as legislative agent. Fees so collected shall be deposited in the general fund of the State. (1975, c. 852, s. 1; 1983, c. 713, s. 50.)

**Editor's Note.** — Session Laws 1983, c. 713, s. 109, provides that Part II of the act, consisting of ss. 22 through 51, shall become effective Aug. 1, 1983, except that ss. 50 and 51, amending §§ 120-47.3 and 120-47.2, respectively, "do not apply during the entire 1983 Session to any person registered under Article 9A of Chapter

120 of the General Statutes for the 1983 Session who registered before ratification of this act." The act was ratified July 8, 1983.

**Effect of Amendments.** — The 1983 amendment substituted "seventy-five dollars (\$75.00)" for "fifty dollars (\$50.00)" in the first and second paragraphs.

### § 120-47.6. Statements of legislative agent's lobbying expenses required.

**Legal Periodicals.** — For a note on the public's access to public records, see 60 N.C.L. Rev. 853 (1982).

### § 120-47.8. Persons exempted from provisions of Article.

#### CASE NOTES

**Applied** in North Carolina *ex rel. Horne v. Chafin*, 62 N.C. App. 95, 302 S.E.2d 281 (1983).

ARTICLE 12.

*Commission on Children with Special Needs.*

**§ 120-58. Creation; appointment of members.**

There is created a Commission on Children with Special Needs to consist of three Senators and one physician licensed to practice in the State of North Carolina, and who is actively involved in the private practice of pediatrics, appointed by the President of the Senate, three Representatives and one public member appointed by the Speaker of the House, and three parents of children with special needs and one public member appointed by the Governor. (1973, c. 1422; 1983, c. 863.)

**Effect of Amendments.** — The 1983 amendment, effective July 20, 1983, inserted "and one physician licensed to practice in the State of North Carolina, and who is actively involved in the private practice of pediatrics," deleted "(or pro tempore)" following "President" and inserted "and one public member" in two places.

**§ 120-61. Members to serve without compensation; subsistence and travel expenses.**

Members of the Commission shall serve without compensation but they shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally pursuant to G.S. 138-5. The Commission shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. (1973, c. 1422; 1981 (Reg. Sess., 1982), c. 1282, s. 28.)

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, added the second sentence. Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 81, contains a severability clause.

ARTICLE 12A.

*Joint Legislative Utility Review Committee.*

**§ 120-70.1. Committee established.**

There is hereby established a permanent committee of the General Assembly to be known as the Joint Legislative Utility Review Committee, hereinafter called the Joint Committee, which shall exercise the powers and fulfill the duties described in this Article. (1985, c. 499, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 499, s. 5 makes this Article effective upon ratification. The act was ratified June 28, 1985. Section 2 of Session Laws 1985, c. 499 provides that any unexpended funds budgeted to the Utility Review Committee may be expended by the Joint Legislative Utility Review Committee.

## § 120-70.2. Appointment of members and organization.

The Joint Committee shall consist of six sitting members of the General Assembly. Three shall be appointed by the President of the Senate from the membership of the Senate and three shall be appointed by the Speaker of the House of Representatives from the membership of the House. Members will serve at the pleasure of their appointing officer and any vacancies occurring on the Joint Committee shall be filled by the presiding officer of the appropriate house. The initial membership of the Joint Committee shall consist of the membership of the Utility Review Committee on June 28, 1985. A Senate cochairman and a House cochairman shall be elected by the Joint Committee from among its members. A quorum shall consist of four members. (1985, c. 499, s. 1.)

## § 120-70.3. Powers and duties.

The Joint Committee shall have the following powers and duties:

- (1) To evaluate the actions of the North Carolina Utilities Commission, including the review of its interim and final orders, to the end that the members of the General Assembly may better judge whether these actions serve the best interest of the citizens of North Carolina, individual and corporate.
- (2) To analyze the operations of the several utility companies doing business in North Carolina, including review of their programs, projects, sources and amounts of income, performance and accomplishments, and determination of whether expenditures were in all cases appropriate and necessary.
- (3) To inquire into the role of the North Carolina Utilities Commission, the Public Staff, and the several utility companies in the development of alternate sources of energy.
- (4) To inquire into the individual and collective effort of the utility companies to encourage the conservation of energy and thus reduce requirements for additional generating facilities.
- (5) To review and evaluate changes in federal law and regulation, or changes brought about by court actions, as well as changes in technology affecting utilities, to determine whether the State's laws require modification as a result of those changes.
- (6) To submit evaluations to the General Assembly, from time to time, of the performance of the North Carolina Utilities Commission, the Public Staff, and the various utilities operating in the State. A proposed draft of such evaluations shall be submitted to the North Carolina Utilities Commission, the Public Staff and the affected public utilities prior to submission to the General Assembly and the affected entity shall be given an opportunity to be heard before the Joint Committee prior to the completion of the evaluation and its submission to the General Assembly.
- (7) To make reports and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties set out in this section.
- (8) To undertake such additional studies or evaluations as may, from time to time, be requested by the President of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either House of the General Assembly. (1985, c. 499, s. 1.)

**§ 120-70.4. Additional powers.**

The Joint Committee, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and 120-19.1 through 120-19.4. The Joint Committee may meet at any time upon the call of either chairman, whether or not the General Assembly is in session. (1985, c. 499, s. 1.)

**§ 120-70.5. Compensation and expenses of members.**

Members of the Joint Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. (1985, c. 499, s. 1.)

**§ 120-70.6. Joint Committee staffing.**

The Joint Committee shall use clerical and professional employees of the General Assembly for its staff, who shall be made available to the Joint Committee by the Legislative Services Commission. The Joint Committee shall have the power to employ other professional staff, upon the determination of the necessity therefor by the Joint Committee; provided, however, that sufficient funds for such outside staff are available within the Joint Committee's budget. Travel and subsistence allowances for staff and employees of the Joint Committee shall be as fixed by G.S. 138-6 and G.S. 138-7 when such travel is approved by either chairman. Employees of the Joint Committee shall not be subject to the Executive Budget Act or to the State Personnel Act. Suitable office and meeting space, and appropriate equipment, shall be assigned to the Joint Committee by the Legislative Services Commission. (1985, c. 499, s. 1.)

**ARTICLE 13.***Joint Legislative Commission on Governmental Operations.***§ 120-74. Appointment of members; terms of office.**

The Commission shall consist of 22 members. The President of the Senate, the President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint nine members from the House. The President pro tempore of the Senate shall appoint eight members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977. (1975, c. 490; 1977, c. 988, s. 1; 1979, c. 932, s. 9; 1981, c. 859, s. 85; 1985, c. 757, s. 142(a)-(c).)

**Effect of Amendments. —**

The 1981 amendment, effective July 1, 1981, substituted "14 members" for "13 members" at the end of the first sentence, and substituted "5 members" for "4 members" near the end of the third sentence.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

The 1985 amendment, effective July 15, 1985, substituted "22" for "14" in the first sentence, substituted "nine" for "five" in the third sentence, and substituted "eight" for "four" in the fourth sentence.

**§ 120-75. Organization of the Commission.**

The President of the Senate and the Speaker of the House of Representatives shall serve as cochairmen of the Commission. Either of the cochairmen may call a meeting of the Commission. (1975, c. 490; 1977, c. 988, s. 2; 1981, c. 859, s. 86.)

**Effect of Amendments. —** The 1981 amendment, effective July 1, 1981, rewrote this section.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

**§ 120-76. Powers and duties of the Commission.**

The Commission shall have the following powers:

- (7) To evaluate and approve or deny requests from the Department of Transportation regarding the funding of federally eligible construction projects as provided in the fourth paragraph of G.S. 136-44.2. (1975, c. 490; 1981, c. 859, s. 87.)

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

**Editor's Note. —** Session Laws 1985, c. 479, s. 18 provides: "The Joint Legislative Commission on Governmental Operations shall oversee:

- "(1) The career ladder pilot programs;
- "(2) The implementation of the Basic Education Program;
- "(3) The planning for the advancement center for teachers;
- "(4) School administrator training programs: who provides them, who designs them, what training they provide, what populations they serve, and whether some or all of these programs should be consolidated; and
- "(5) Any other subjects the Commission deems appropriate."

Session Laws 1985, c. 479, s. 177 provides: "Of the funds appropriated to the Department of Transportation from the Highway Fund in Section 3 of this act, the sum of five hundred thousand dollars (\$500,000) for each year of the 1985-87 biennium, which is designated 'State Aid Public Transportation', may be used only for the State's share of the operating cost of the Amtrak Passenger Service and may not be used for any other purpose. These funds shall be allotted on a quarterly basis. The expenditure of State operating funds in excess of this amount is prohibited and the De-

partment of Transportation shall continue reporting to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on a quarterly basis on this expenditure. Further, the funding is contingent upon continued federal funding and a written agreement with Amtrak to continue this service to North Carolina. In addition, the Joint Legislative Commission on Governmental Operations shall review and comment on the agreement made between the State of North Carolina and Amtrak pursuant to the provisions of G.S. 120-76(1) and G.S. 120-76(6).

"The Department's quarterly reports to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division shall include:

- "(1) The current operating and capital costs for the service;
- "(2) Information on needed improvements to facilities;
- "(3) The number of passengers using train service and passenger miles from various points along the route; and
- "(4) Cost sharing by local governments and other public and private organizations."

**Effect of Amendments. —** The 1981 amendment, effective July 1, 1981, added subdivision (7).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

## § 120-79. Commission staffing.

(a) The Commission shall use available secretarial employees of the General Assembly, or may employ, and may remove, such professional and clerical employees as the Commission deems proper. The chairmen may assign and direct the activities of the employees of the Commission, subject to the advice of the Commission.

(b) The employees of the Commission shall receive salaries that shall be fixed by the Legislative Services Commission and shall receive travel and subsistence allowances fixed by G.S. 138-6 and 138-7 when such travel is approved by either chairman, subject to the advice of the Commission. The employees of the Commission shall not be subject to the Executive Budget Act or to the State Personnel Act.

(1975, c. 490; 1981, c. 859, ss. 88, 89.)

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

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, substituted "chairmen" for "chairman" near the beginning

of the second sentence of subsection (a), and substituted "either chairman" for "the chairman" near the end of the first sentence of subsection (b).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§§ 120-80 to 120-84: Reserved for future codification purposes.

## ARTICLE 13A.

### *Joint Legislative Committee to Review Federal Block Grant Funds.*

## § 120-84.1. Committee established; purpose.

There is established the Joint Legislative Committee to Review Federal Block Grant Funds. The Committee shall review acceptance and use of all federal block grant funds received by the State between August 31, 1981, and July 1, 1983. For purposes of this act, "block grant" means a block grant under the Omnibus Budget Reconciliation Act of 1981. (1981, c. 1127, s. 63.)

**Editor's Note.** — Session Laws 1981, c. 1127, s. 89, contains a severability clause.

## CASE NOTES

**Constitutionality.** — Those parts of §§ 120-84.1 through 120-84.5 which purport to vest a legislative committee with certain powers over federal block grants when the General Assembly is not in session constitute

an unconstitutional delegation of legislative power, and also violate N.C. Const., Art. I, § 6 and N.C. Const., Art. III, § 5(3). Advisory Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

## § 120-84.2. Membership.

(a) The Committee consists of 12 members as follows:

(1) Six members of the House of Representatives appointed by the Speaker;

(2) Six members of the Senate appointed by the Lieutenant Governor. Initial appointments shall be made by October 10, 1981, and those appointees shall serve until July 1, 1983. Members may continue to serve despite expiration of a term in the General Assembly, whether or not the member has been re-elected, but resignation or removal from the General Assembly constitutes resignation or removal from the Committee. A member continues to serve until his successor is appointed. Vacancies shall be filled within 30 days by the original appointing authority. (1981, c. 1127, s. 63.)

### CASE NOTES

**Constitutionality.** — Those parts of §§ 120-84.1 through 120-84.5 which purport to vest a legislative committee with certain powers over federal block grants when the General Assembly is not in session constitute an unconstitu-

tional delegation of legislative power, and also violate N.C. Const., Art. I, § 6 and N.C. Const., Art. III, § 5(3). Advisory Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

## § 120-84.3. Organization.

(a) The Speaker of the House of Representatives and the Lieutenant Governor shall designate cochairmen of the Committee. Meetings shall be called by either of the cochairmen, and callings are subject to the Rules of the House of Representatives and the Senate.

(b) All members, including the cochairmen have the right to vote. A quorum is seven members. No action may be taken except by a majority vote, with at least seven members present and voting. House and Senate members may not vote separately; all voting is joint. If neither cochairman is present but there is a quorum, the members may elect a temporary chairman and hold a meeting.

(c) Members receive subsistence and travel as provided in G.S. 120-3.1. The Committee is funded by the Legislative Services Commission.

(d) The Committee may request professional and clerical assistance from the Legislative Services Commission. (1981, c. 1127, s. 63.)

### CASE NOTES

**Constitutionality.** — Those parts of §§ 120-84.1 through 120-84.5 which purport to vest a legislative committee with certain powers over federal block grants when the General Assembly is not in session constitute

an unconstitutional delegation of legislative power, and also violate N.C. Const., Art. I, § 6 and N.C. Const., Art. III, § 5(3). Advisory Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

## § 120-84.4. Powers.

The Committee may review all aspects of the acceptance and use of federal block grant funds. The Committee may also make recommendations to the General Assembly for legislation relating to federal block grant funds and may suggest mechanisms for legislative review of all federal funds, at all stages of the process, from application through receipt, appropriation, and expenditure. (1981, c. 1127, s. 63; 1981 (Reg. Sess., 1982), c. 1389, s. 10.)

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment added the language

beginning “and may suggest mechanisms” at the end of the second sentence.

**CASE NOTES**

**Constitutionality.** — Those parts of §§ 120-84.1 through 120-84.5 which purport to vest a legislative committee with certain powers over federal block grants when the General Assembly is not in session constitute

an unconstitutional delegation of legislative power, and also violate N.C. Const., Art. I, § 6 and N.C. Const., Art. III, § 5(3). Advisory Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

**§ 120-84.5. Review procedure.**

(a) After federal block grant funds have been accepted by the General Assembly, the Director of the Budget shall propose administration and use of those funds. All proposals shall be submitted to the Committee, or to the General Assembly if it is in session, for its review.

(b) None of the following actions with regard to State use of federal block grant funds may be taken without the review of the Committee or of the General Assembly if it is in session:

- (1) Acceptance of federal block grants,
- (2) Determination of pro rata reduction procedures and amounts for State programs,
- (3) Determination of distribution formulas,
- (4) Transfer of funds between block grants,
- (5) Intradepartmental transfer of block grant funds,
- (6) Encumbrance of anticipated block grant funds,
- (7) Adoption of departmental rules relating to federal block grant funds,
- (8) Contracting between State departments involving block grant funds, and
- (9) Any other final action affecting acceptance or use of federal block grant funds.

The Committee shall review the recommended action within 40 days of receiving a request for review from the Office of State Budget and Management. All federal block grant funds are subject to appropriation by the General Assembly. (1981, c. 1127, s. 63; 1981 (Reg. Sess., 1982), c. 1389, ss. 11, 12.)

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment substituted “review” for “prior approval” in the second sentence of subsection (a) and in the introductory language of subsection (b). In subsection (b) the amendment also substituted “review the rec-

ommended action within 40 days of receiving a request for review” for “take action within 40 days of receiving a request for approval,” in the next-to-last sentence and added the last sentence.

**CASE NOTES**

**Constitutionality.** — Those parts of §§ 120-84.1 through 120-84.5 which purport to vest a legislative committee with certain powers over federal block grants when the General Assembly is not in session constitute an unconstitutional delegation of legislative power, and also violate N.C. Const., Art. I, § 6 and N.C. Const., Art. III, § 5(3). Advisory Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

**The General Assembly may not delegate**

**to a legislative committee the power to determine whether the State or its agencies will accept the grants nor the authority to determine how the funds will be spent.** Advisory Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

**This section purports to give to a 12-member committee of legislators power over action proposed to be taken by the Governor with respect to the administration and use of federal block grant funds.** Advisory

Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

In several of the instances set forth in this section the Committee would be exercising legislative functions. In those instances there would be an unlawful delegation of legislative power. In the other instances the Committee would be exercising authority that is executive

or administrative in character. In those instances there would be a violation of the separation of powers provisions of the Constitution and an encroachment upon the constitutional power of the Governor. Advisory Opinion In re Separation of Powers, — N.C. —, 295 S.E.2d 589 (1982).

## ARTICLE 14.

### *Legislative Ethics Act.*

#### Part 1. Code of Legislative Ethics.

### § 120-86. Bribery, etc.

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which he is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that such legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of his duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer to threaten economically, directly or indirectly, that legislator with the intent to influence the legislator in the discharge of his legislative duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer to threaten economically, directly or indirectly, that legislator with the intent to influence that legislator in the discharge of his legislative duties.

(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.

(e) Violation of subsection (a) or (b) is a Class I felony. Violation of subsection (c) is not a crime but is punishable under G.S. 120-103. (1975, c. 564, s. 1; 1983, c. 780, s. 2.)

**Editor's Note.** — Session Laws 1983, c. 780, s. 3, provides: "Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." The act became effective July 18, 1983.

**Effect of Amendments.** — The 1983 amendment, effective July 18, 1983, designated the existing provisions of this section as subsection (a) and added subsections (b) to (e).

### Part 3. Legislative Ethics Committee.

#### § 120-99. Creation; composition.

The Legislative Ethics Committee is created to consist of a chairman and eight members, four Senators appointed by the President of the Senate, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and four members of the House of Representatives appointed by the Speaker of the House, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

The President of the Senate shall designate a member of the General Assembly as chairman of the Committee in odd-numbered years, and the Speaker of the House shall designate a member of the General Assembly as chairman of the Committee in even-numbered years. The chairman will vote only in the event of a tie vote.

The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee. (1975, c. 564, s. 1; 1985, c. 790, s. 6.)

**Effect of Amendments.** — The 1985 amendment, effective July 18, 1985, added the last paragraph.

### ARTICLE 14A.

#### *Committees on Pensions and Retirement.*

#### § 120-111.1. Creation.

A standing committee is hereby created in the House of Representatives to be known as the Committee on Pensions and Retirement, to consist of a minimum of four members to be appointed by the Speaker of the House of Representatives. A standing committee is hereby created in the Senate to be known as the Committee on Pensions and Retirement, to consist of the following members at the minimum, the President pro tempore of the Senate, the Chairmen of the Senate Committees on Appropriations, Finance and Ways and Means. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 2.)

**Effect of Amendments.** — The 1981 amendment deleted the former third through sixth sentences, concerning the Joint Committee on Pensions and Retirement.

#### § 120-111.2. Duties.

With respect to public officers and public employees to whom State-administered retirement benefit or pension plans are applicable, the Senate and House Committees on Pensions and Retirement shall:

(1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 3.)

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

**Effect of Amendments.** — The 1981 amendment, in the introductory paragraph, substituted "Senate and House Committees on Pensions and Retirement" for "Joint Committee on Pensions and Retirement."

### § 120-111.3. Analysis of legislation.

Every bill, which creates or modifies any provision for the retirement of public officers or public employees or for the payment of retirement benefits or of pensions to public officers or public employees, shall, upon introduction in either house of the General Assembly, be referred to the Committee on Pensions and Retirement of each house. When the bill is reported out of committee it shall be accompanied by a written report by the Committee on Pensions and Retirement containing, among other matters which the Committee deems relevant, the actuarial note required by Article 15 of Chapter 120 of the General Statutes, and pursuant to the Rules of the General Assembly, and an evaluation of the proposed legislation's actuarial soundness and adherence to sound retirement and pension policy.

Whenever a bill is considered by the Committee on Pensions and Retirement that proposes changes in the benefits of any State-administered retirement or pension plan to be financed by unencumbered actuarial experience gains generated either through a change in actuarial assumptions adopted by the plan for the previous budget year or through a continuation of the actuarial assumptions adopted by the plan for the previous budget year, the Committee shall give equal consideration to the effects that such unencumbered actuarial gains would have upon annual employer or State contributions to the plan and to the amount by which the plan's unfunded accrued liabilities, if any, might be reduced. If such unencumbered actuarial experience gains could be used to modify annual employer or State contributions to the plan resulting in a corresponding effect upon State appropriations, the committee on Pensions and Retirement shall, upon a favorable report, refer the bill to the Committee on Appropriations of the same house before the bill is considered by that house. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 4; 1985, c. 187; c. 400, s. 10.)

**Effect of Amendments.** — The 1981 amendment, in the second sentence of the present first paragraph, deleted "Joint" preceding "Committee" in two places.

Session Laws 1985, c. 187, effective May 16, 1985, added the second paragraph.

Session Laws 1985, c. 400, s. 10, effective June 17, 1985, substituted "each house" for "that house" at the end of the first sentence.

### § 120-111.4. Staff and actuarial assistance.

Upon application of the chairman of the Senate or House Committee on Pensions and Retirement, the Legislative Services Commission shall provide staff, including actuarial assistance, to aid the committee in its work. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 5.)

**Effect of Amendments.** — The 1981 amendment substituted "chairman of the Senate or House" for "Cochairmen of the Joint."

## ARTICLE 15.

*Retirement Systems Actuarial Note Act.*

## § 120-114. Actuarial notes.

(c) The author of each bill or resolution shall also present a copy of the bill or resolution to any actuary employed by the retirement system affected by the bill or resolution in question. Such actuary shall prepare an actuarial note and transmit it to the author or authors of the measure in quintuplicate no later than two weeks after the request for the actuarial note is received. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. The provisions of this subsection may be waived for any local government retirement or pension plans not administered by the State.

(1977, c. 503, s. 3; 1985, c. 189.)

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

amendment, effective retroactively to August 1, 1977, added the last sentence of subsection (c).

**Effect of Amendments.** — The 1985

§§ 120-115 to 120-120: Reserved for future codification purposes.

## ARTICLE 16.

*Legislative Appointments to Boards and Commissions.*

## § 120-121. Legislative appointments.

(a) In any case where the General Assembly is called upon by law to appoint a member to any board or commission, that appointment shall be made by enactment of a bill.

(b) A bill may make more than one appointment.

(c) The bill shall state the name of the person being appointed, the board or commission to which the appointment is being made, the effective date of the appointment, the date of expiration of the term, the county of residence of the appointee, and whether the appointment is made upon the recommendation of the Speaker of the House of Representatives, President Pro Tempore of the Senate, or the President of the Senate.

(d) Nothing in this section or any other statute precludes any member of the General Assembly from proposing an amendment to any bill making an appointment to a board or commission, or from introducing a bill to make an appointment to a board or commission, where an appointment by the General Assembly is authorized by law. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 717, s. 111; 1985, c. 290, s. 9.)

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1191, which enacted this Article and enacted and amended numerous sections throughout the General Statutes, provides, in s. 1: "This act may be cited as the Separation of Powers Act of 1982."

Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, inserted

"President Pro Tempore of the Senate" in subsection (c).

The 1985 amendment, effective May 31, 1985, added subsection (d).

## § 120-122. Vacancies in legislative appointments.

When a vacancy occurs, other than by the expiration of term, in any office subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives, upon the recommendation of the President Pro Tempore of the Senate, or upon the recommendation of the President of the Senate, and the vacancy occurs either: (i) after election of the General Assembly but before convening of the regular session; (ii) when the General Assembly has adjourned to a date certain, which date is more than 10 days after the date of adjournment; or (iii) after sine die adjournment of the regular session, then the Governor may appoint a person to serve until the expiration of the term or until the General Assembly fills the vacancy, whichever occurs first. The General Assembly may fill the vacancy in accordance with G.S. 120-121 during a regular or extra session. Before making an appointment, the Governor shall consult the officer who recommended the original appointment to the General Assembly (the Speaker of the House of Representatives, the President Pro Tempore of the Senate, or the President of the Senate), and ask for a written recommendation. After receiving the written recommendation, the Governor must within 30 days either appoint the person recommended or inform the officer who made the recommendation that he is rejecting the recommendation. Failure to act within 30 days as required under the provisions of the preceding sentence shall be deemed to be approval of the candidate, and the candidate shall be eligible to enter the office in as full and ample extent as if the Governor had executed the appointment. The Governor may not appoint a person other than the person so recommended. Any positions subject to appointment by the 1981 General Assembly but not filled prior to sine die adjournment of the 1981 Session may be filled by the Governor under this section as if it were a vacancy occurring after the General Assembly had made an appointment. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 717, ss. 112, 113; 1985, c. 752, ss. 1, 2.)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, inserted "upon the recommendation of the President

Pro Tempore of the Senate" in the first sentence and inserted "the President Pro Tempore of the Senate" in the third sentence.

The 1985 amendment, effective July 15, 1985, added the present fourth and fifth sentences.

## § 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

- (1) The Board of Agriculture, as established by G.S. 106-2.
- (1a) (For effective date see note) The Administrative Rules Review Commission as established by G.S. 143A-55.3.
- (2) The Art Museum Building Commission, as established by G.S. 143B-59.
- (3) The Governor's Advocacy Council for Persons with Disabilities, as established by G.S. 143B-403.2.
- (3a) The State Banking Commission, as established by G.S. 53-92.

- (4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.
- (5) The Board of Transportation, as established by G.S. 143B-350.
- (6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.
- (6a) The North Carolina Technological Development Authority as created by G.S. 143B-471.
- (7) The Coastal Resources Commission, as established by G.S. 113A-104.
- (8) The Environmental Management Commission, as established by G.S. 143B-283.
- (9) The State Fire Commission, as established by G.S. 58-27.30.
- (10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-27.20.
- (11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.
- (12) The North Carolina Capital Building Authority, as established by G.S. 129-40.
- (13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.
- (14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.
- (15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.
- (16) Repealed by Session Laws 1985, c. 479, s. 153(b), effective July 1, 1985.
- (17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.
- (18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.
- (19) The State Farm Operations Commission, as established by G.S. 106-26.13.
- (20) The Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund, as established by G.S. 143-166.
- (21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.
- (22) The Commission for Mental Health, Mental Retardation and Substance Abuse Services, as established by G.S. 143B-148.
- (23) The Governor's Waste Management Board, as established by G.S. 143B-216.12.
- (24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.
- (25) The North Carolina Ports Railway Commission, as established by G.S. 143B-469.
- (26) The North Carolina State Ports Authority, as established by G.S. 143B-452.
- (27) The Property Tax Commission, as established by G.S. 143B-223.
- (28) The Social Services Commission, as established by G.S. 143B-154.
- (29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
- (30) The Wildlife Resources Commission, as established by G.S. 143-240.
- (31) The Council on the Status of Women, as established by G.S. 143B-393.
- (32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
- (33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.

- (33a) The North Carolina Board for Need-Based Student Loans, as established by G.S. 143-47.21.
- (34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.
- (34a) The Committee on Art in State Buildings, as established by G.S. 143-408.4.
- (34b) The North Carolina Housing Commission as established by G.S. 147-33.10.
- (35) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, as established by G.S. 135-39."
- (36) The Milk Commission as established by G.S. 106-266.7.
- (37) The State Board of Chiropractic Examiners as established by G.S. 90-139.
- (38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.
- (39) The North Carolina Capital Building Authority as established by G.S. 129-40.
- (40) The Alarm System Licensing Board, as established by G.S. 74D-4.
- (41) Board of directors of the North Carolina Agricultural Facilities Finance Agency as established by G.S. 122B-5.
- (42) (Effective When Funds Are Appropriated). — The Crime Victims Compensation Commission, as established by G.S. 15B-3.
- (43) The North Carolina Marine Science Council, as established by G.S. 143B-389.
- (44) The Child Day Care Commission, as established by G.S. 143B-168.1.
- (45) The North Carolina Medical Database Commission, as established by G.S. 131E-211. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, s. 2; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c).)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Session Laws 1983, c. 789, which added subdivision (41), provides in s. 3:

"Effective Date. This chapter shall become effective upon certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by this Chapter has been approved by the people of the State." The amendment was adopted by vote of the people at the election held May 8, 1984, and was certified to the Secretary of State by the State Board of Elections on Nov. 27, 1984. See N.C. Const., Art. V, § 11.

Session Laws 1983, c. 832, which added subdivision (42), provides in s. 6:

"This act shall become effective when funds are appropriated by the General Assembly to the Department of Crime Control and Public Safety to implement the provisions of this act. No claims may be filed under this act for any

criminally injurious conduct occurring before the effective date of this act or after December 31, 1991. Moneys remaining after payment of claims under this Chapter shall revert to the General Fund on July 1, 1993. This act is repealed effective July 1, 1993."

Session Laws 1983, c. 761, s. 259; Session Laws 1985, c. 479, s. 230; and Session Laws 1985, c. 746, s. 12, are severability clauses.

The reference in subdivision (34b) to § 147-33.10 was apparently intended to refer to § 147-33.12.

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

Section 18.2 of Session Laws 1985, c. 746, provides: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provides that sections 5 and 6 of the act, which added §§ 143A-55.2 through 143A-55.6 and added (1a) of this section, shall become effective 30 days from the date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective. Section 19 of Session Laws 1985, c. 746, provides that the act shall not affect contested cases commenced before Jan. 1, 1986, and that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

**Effect of Amendments.** — Session Laws 1983, c. 328, s. 1.1, effective June 1, 1983, added subdivision (3a).

Session Laws 1983, c. 558, s. 5, effective Sept. 1, 1983, added subdivision (33).

Session Laws 1983, c. 559, s. 4, effective June 17, 1983, added subdivision (34).

Session Laws 1983, c. 717, effective July 11, 1983, in s. 2 of the act substituted "G.S. 116-37.1" for "G.S. 116-37" in subdivision (21) and substituted "G.S. 143B-393" for "G.S. 143B-294" in subdivision (31); in s. 3 added subdivisions (33a), (34a), and (35); in s. 43.2 added subdivision (39); in s. 99 added subdivision (36); in s. 105 added subdivision (37); and in s. 110 added subdivision (38).

Session Laws 1983, c. 761, s. 179, effective July 15, 1983, deleted "Medical" preceding "Student Loans" in subdivision (33a), as enacted by c. 717.

Session Laws 1983, c. 778, s. 2, effective July 1, 1983, added subdivision (34b).

Session Laws 1983, c. 786, s. 9, effective July 18, 1983, added subdivision (40).

Session Laws 1983, c. 789, s. 2 added subdivision (41). See Editor's note as to the effective date of the act.

Session Laws 1983 s. 832, s. 2, added subdivision (42). See Editor's note as to the effective date of the act.

Session Laws 1983, c. 871, s. 3, effective July 20, 1983, deleted "Review of Applications for" preceding "Incentive" in subdivision (16).

Session Laws 1983, c. 899, s. 3, effective July 21, 1983, added subdivision (6a).

The 1983 (Reg. Sess., 1984) amendment, effective June 27, 1984, deleted subdivision (11), which read "The North Carolina Land Conservancy Corporation, as established by G.S. 113A-137," and rewrote subdivision (16), which formerly read "The Committee for Incentive Pay for State Employees, as established by G.S. 126-64."

Session Laws 1985, c. 202, s. 5, effective July 1, 1985, added subdivision (43).

Session Laws 1985, c. 479, s. 153(b) effective July 1, 1985, deleted subdivision (16), relating to the Governor's Commission on Governmental Productivity.

Session Laws 1985, c. 589, s. 37, effective Jan. 1, 1986, substituted "G.S. 122C-431" for "G.S. 122-120" in subdivision (24).

Session Laws 1985, c. 666, s. 10, effective July 10, 1985, substituted "G.S. 58-27.20" for "G.S. 143B-422" in subdivision (10).

Session Laws 1985, c. 746, s. 6, added subdivision (1a). For effective date of this amendment, see the Editor's Note under this section.

Session Laws 1985, c. 757, s. 155(b), effective July 1, 1985, added subdivision (44).

Session Laws 1985, c. 757, s. 167(h), effective July 15, 1985, substituted "G.S. 58-27.30" for "G.S. 143B-481" in subdivision (9).

Session Laws 1985, c. 757, s. 179(e), effective July 15, 1985, substituted "by G.S. 143B-426.30" for "by G.S. 143B-441" in subdivision (18).

Session Laws 1985, c. 757, s. 206(f), effective July 15, 1985, substituted "G.S. 116-233" for "G.S. 115C-223" in subdivision (17).

The 1985 amendment by c. 757, s. 208(c), effective July 1, 1985, added subdivision (45).

§§ 120-124 to 120-128: Reserved for future codification purposes.

## ARTICLE 17.

### *Confidentiality of Legislative Communications.*

#### § 120-129. Definitions.

As used in this Article:

- (1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

- (1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.
- (2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, and employees of the Institute of Government; but does not mean legislators and members of the Council of State.
- (3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, ss. 1-3.)

**Editor's Note.** — Session Laws 1983, c. 900, s. 2, makes this Article effective upon ratification. The act was ratified July 21, 1983.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 29,

1984, inserted subdivision (1a), inserted "or of legislative commissions" in subdivision (2), and substituted "member-elect, member-designate, or" for "duly elected or appointed" in subdivision (3).

## § 120-130. Drafting and information requests to legislative employees.

(a) A drafting request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator.

(b) An information request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator. Notwithstanding the preceding sentences of this subsection, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.

(c) Any supporting documents submitted or caused to be submitted to a legislative employee by a legislator in connection with a drafting or information request are confidential. Except to the extent necessary to answer the request, neither the document nor copies of it, nor the identity of the person, firm, or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.

(d) Drafting or information requests or supporting documents are not "public records" as defined by G.S. 132-1. (1983, c. 900, s. 1.)

## § 120-131. Documents produced by legislative employees.

(a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.

(b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:

- (1) Bill or resolution and it has been introduced;

- (2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;
- (3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or
- (4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session or on the floor of a house.

A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

(c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that he had made such a request not be divulged. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 4.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 29, 1984, substituted "legislative commission" for "study commission, or study" in subdivision (b)(4).

## § 120-132. Testimony by legislative employees.

No present or former legislative employees may be required to disclose any information that the individual, while employed or retained by the State, may have acquired:

- (1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;
- (2) On the floor of either house of the General Assembly, or in any office of a legislator;
- (3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.

Notwithstanding the provisions of the preceding sentence, the presiding judge of a court of competent jurisdiction may compel that disclosure, if in his opinion, the same is necessary to a proper administration of justice. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 5.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 29, 1984, inserted "or a legislative commission" at the end of subdivision (1).

## § 120-133. Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the ratification of the act establishing the relevant district plan. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the ratification of the act establishing the relevant district plan. (1983, c. 900, s. 1.)

## § 120-134. Penalty.

Violation of any provision of this Article shall be grounds for disciplinary action in the case of employees and for removal from office in the case of public officers. No criminal penalty shall attach for any violation of this Article. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 6.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 29, 1984, substituted “this Article” for “this section [Article]” in the first sentence.

§§ 120-135 to 120-139: Reserved for future codification purposes.

## ARTICLE 18.

### *Review of Proposals to License New Occupations and Professions.*

## § 120-140. Findings and purposes.

The General Assembly finds that the number of licensed occupations and professions has substantially increased and that licensing plans have occasionally been established without a determination that the police power of the State is reasonably exercised by the establishment of such licensing plans. The General Assembly further finds that by establishing criteria and procedures for reviewing proposed licensing plans, it will be better able to evaluate the need for new licensing plans. To this end it is the purpose of this Article to assure that no new licensing plan shall be established unless the following criteria are met:

- (1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
- (2) The profession or occupation possesses qualities that distinguish it from ordinary labor;
- (3) Practice of the profession or occupation requires specialized skill or training;
- (4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and
- (5) The public is not effectively protected by other means. (1983 (Reg. Sess., 1984), c. 1089, s. 1; 1985, c. 173, s. 3.)

**Editor’s Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1089, s. 2, makes this Article effective August 1, 1984, and provides that it shall expire January 1, 1987.

**Effect of Amendments.** — The 1985 amendment, effective May 10, 1985, in the introductory paragraph, substituted “licensing

plans” for “licensing boards” in two places in the first sentence and at the end of the second sentence, substituted “licensing plans” for “occupational and professional boards” in the second sentence, and substituted “licensing plan” for “licensing board” in the third sentence.

## § 120-141. Definitions.

As used in this Article:

- (1) "Assessment report" means a report that initially describes the need for and the fiscal impact of a new licensing plan.
- (2) "Committee" means the Legislative Committee on New Licensing Plans.
- (3) "Licensing plan" means (a) a board, commission or other body established to regulate the eligibility of a person to engage in an occupation or profession or (b) the proposed licensing of an occupation or profession by an existing licensing body.
- (4) "Supplementary report" means a report that assesses the changes proposed by an amendment or committee substitute which would alter a legislative proposal to create a new licensing plan and for which an assessment report has already been prepared. (1983 (Reg. Sess., 1984), c. 1089, s. 1; 1985, c. 173, ss. 1-3.)

**Effect of Amendments.** — The 1985 amendment, effective May 10, 1985, substituted "Article" for "Chapter" in the introductory language, substituted "licensing plan" for "licensing board" at the end of subdivision (1) and for "occupational licensing board" in subdivision (4), substituted "Legislative Committee on New Licensing Plans" for "Legislative

Committee on New Occupational and Professional Licensing Boards" in subdivision (2), and rewrote subdivision (3), which read "'Licensing' means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession."

## § 120-142. Assessment of proposed licensing plans.

(a) Every legislative proposal introduced in the General Assembly after August 1, 1984, proposing (1) the establishment of a licensing plan, or (2) a study of the need to establish a licensing plan shall have attached to it, at the time of its consideration by any committee of either house of the General Assembly, an assessment report which shall describe the need for the proposed licensing plan. Assessment reports shall be attached to the original of each legislative proposal to establish a new licensing plan which is reported favorably by any committee of either house of the General Assembly, but shall be separate therefrom, shall be clearly designated as assessment reports, and shall not constitute any part of the expression of legislative intent proposed by the formation of a licensing plan.

(b) If the proposal to establish a licensing plan is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Plans which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a licensing plan may obtain an assessment report from the Committee only if a legislator requests such report.

(c) Assessment reports shall be prepared and returned to the requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the request is received. Supplementary reports shall be prepared and returned to the appropriate committee chairman or sponsor or requesting legislator not later than 30 days after the Committee receives the request. The Committee shall not consider any request until it has received the information required by G.S. 120-143(a).

(d) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary and final reports shall be kept in the Legislative Library for public inspection.

(e) All assessment reports shall contain an evaluation of the proposed licensing plan in terms of clarity, conciseness, conformity with existing statutes and general principles of administrative law, and specificity of the delegation of authority to promulgate rules and set fees. (1983 (Reg. Sess., 1984), c. 1089, s. 1; 1985, c. 173, s. 3.)

**Effect of Amendments.** — The 1985 amendment, effective May 10, 1985, substituted references to licensing plans for references to occupational or professional licensing boards throughout the section and substituted

“Legislative Committee on New Licensing Plans” for “Legislative Committee on New Occupational and Professional Licensing Boards” in subsection (b).

### § 120-143. Procedure and criteria to be used in preparation of assessment reports.

(a) The Legislative Committee on New Licensing Plans shall conduct an evaluation of the need for each new licensing plan; provided, however, that the Committee, when evaluating the proposed licensing of an occupation or profession by an existing licensing body, shall evaluate only the occupation or profession to be licensed and shall not assess the need for the licensing of any other occupation or profession already regulated by the same licensing body.

If a legislator or other person or organization is seeking to establish a new occupational or professional licensing board [licensing plan], that legislator or other person or organization shall have the burden of demonstrating to the Committee that the criteria listed in G.S. 120-140 are met, and shall furnish the Committee additional information to show:

- (1) That the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;
- (2) The approximate number of people who would be regulated and the number of persons who are likely to utilize the services of the occupation or profession;
- (3) That the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;
- (4) That other states have regulatory provisions similar to the one proposed;
- (5) How the public will benefit from regulation of the occupation or profession;
- (6) How the occupation or profession will be regulated, including the qualifications and disciplinary procedures to be applied to practitioners;
- (7) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;
- (8) That no other licensing plan regulates similar or parallel functions;
- (9) That the educational requirements for licensure, if any, are fully justified; and
- (10) Any other information the Committee considers relevant to the proposed regulatory plan.

The Committee shall adopt an appropriate form for use by applicants. The form shall contain a list of questions to be completed by the person or organization requesting the assessment report and a copy of this Article.

(b) In preparing an assessment report with respect to a legislative proposal to establish a new licensing plan the Committee shall consider, but shall not be limited to considering, the factors listed in subsection (a). The report shall analyze the effects of the new licensing plan and shall include the Committee's recommendation on whether the General Assembly should approve the new licensing plan. The Committee shall make specific findings in its report on each of the following:

- (1) Whether the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
- (2) Whether the profession or occupation possesses qualities that distinguish it from ordinary labor;
- (3) Whether practice of the profession or occupation requires specialized skill or training;
- (4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence; and
- (5) Whether the public can be effectively protected by other means.

(c) The Committee shall furnish a preliminary copy of the final assessment report to the requesting legislator at least 10 days before the final report is released. The requesting legislator shall have an opportunity to respond to the Committee draft. The Committee shall consider all such responses in the preparation of its final report.

(d) If the Committee recommends against licensure, it may suggest alternative measures for regulation of the occupation or profession. (1983 (Reg. Sess., 1984), c. 1089, s. 1; 1985, c. 173, ss. 3, 4.)

**Editor's Note.** — "Licensing plan" has been bracketed in following "occupational or professional licensing board" in the second paragraph of the introductory language of subsection (a), pursuant to Session Laws 1985, c. 173, s. 3, which made similar changes throughout this section in references to occupational and professional licensing boards.

**Effect of Amendments.** — The 1985 amendment, effective May 10, 1985, substi-

tuted "Legislative Committee on New Licensing Plans" for "Legislative Committee on New Occupational and Professional Licensing Boards" near the beginning of the first sentence of subsection (a), added the proviso at the end of the first sentence of subsection (a), and substituted reference to licensing plans for references to occupational and professional licensing boards throughout the section.

## § 120-144. Hearings by Legislative Committee on New Licensing Plans; final action by Committee.

(a) Before submitting an assessment report the Committee may, in its discretion, hold one or more public hearings in the legislative building.

(b) When assessment reports involving the same or similar occupations or professions are pending before the Committee, the Committee may consider jointly any or all of the matters to be addressed by the reports. (1983 (Reg. Sess., 1984), c. 1089, s. 1; 1985, c. 173, s. 3.)

**Effect of Amendments.** — The 1985 amendment, effective May 10, 1985, substituted "Legislative Committee on New Licens-

ing Plans" for "Legislative Committee on New Occupational and Professional Licensing Boards" in the catchline.

## § 120-145. Legislative Committee on New Licensing Plans.

(a) The Legislative Committee on New Licensing Plans is created to consist of a Chairman and eight members, four Senators appointed by the President of the Senate, four members of the House of Representatives appointed by the Speaker of the House and the Chairman to be appointed as provided herein. The President of the Senate shall appoint a Senator to be Chairman of the Committee who shall serve until the convening of the General Assembly in 1985.

(b) The Speaker of the House shall appoint a member of the House of Representatives as Chairman upon the convening of the General Assembly in 1985 who shall serve until the organization of the General Assembly in 1987. Thereafter the President of the Senate and the Speaker of the House shall alternate the appointment of the Chairman to serve during each biennial session of the General Assembly. The Chairman may vote only in the event of a tie vote. The members of the Committee shall likewise serve biennial terms. If the Office of Chairman or any member shall become vacant, the vacancy shall be filled for the unexpired term by the authority making the initial appointment. Five members shall constitute a quorum of the Committee.

(c) The Chairman and members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties if and when authorized by the Legislative Services Commission, and may meet with such approval whenever there is a request for an assessment report. The Committee is authorized to use the facilities of the State legislative building and legislative office building. Clerical and professional staff shall be provided by the Legislative Services Commission. (1983 (Reg. Sess., 1984), c. 1089, s. 1; 1985, c. 173, s. 3.)

**Effect of Amendments.** — The 1985 amendment, effective May 10, 1985, substituted "Legislative Committee on New Licensing Plans" for "Legislative Committee on New

Occupational and Professional Licensing Boards" in the catchline and in the first sentence of subsection (a).

§§ 120-146 to 120-149: Reserved for future codification purposes.

## ARTICLE 19.

### *Commission on Agriculture, Forestry, and Seafood Awareness.*

## § 120-150. Creation; appointment of members.

There is created an Agriculture, Forestry, and Seafood Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture, forestry, and seafood sectors of the State's economy. Members shall be as follows:

- (1) Three appointed by the Governor;
- (2) Three appointed by the President of the Senate;
- (3) Three appointed by the Speaker of the House;
- (4) The chairman of the House Agriculture Committee;
- (5) The chairman of the Senate Agriculture Committee;

- (6) The Commissioner of Agriculture or his designee;
- (7) A member of the Board of Agriculture designated by the chairman of the Board of Agriculture;
- (8) The President of the North Carolina Farm Bureau Federation, Inc., or his designee;
- (9) The Master of the North Carolina State Grange or his designee; and
- (10) The Secretary of the Department of Natural Resources and Community Development.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. The cochairmen of the Commission shall be the chairmen of the Senate and House Agriculture Committees respectively. (1985, c. 792, s. 20.1.)

**Editor's Note.** — Session Laws 1985, c. 792, s. 1 provides that the act shall be known as "The Independent Study Commissions and Committees Act of 1985."

Session Laws 1985, c. 792, s. 21 makes this Article effective upon ratification. The act was ratified July 18, 1985.

### § 120-151. Advisory Committee.

Upon proper motion and by a vote of a majority of the members present, the Commission may appoint an Advisory Committee. Members of the Advisory Committee should be from the various organizations, commodity groups, associations, and councils representing agriculture, forestry, and seafood. The purpose of the Advisory Committee shall be to render technical advice and assistance to the Commission. The Advisory Committee shall consist of no more than 20 members plus a chairman who shall be appointed by the cochairmen of the Commission. (1985, c. 792, s. 20.1.)

### § 120-152. Subsistence and travel expenses.

The members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Members who are officials or employees of the State of North Carolina shall receive subsistence and travel allowances at the rate set forth in G.S. 138-6. All other members plus the Chairman of the Advisory Committee shall be paid the per diem allowances at the rates set forth in G.S. 138-5. Other members of the Advisory Committee shall serve on a voluntary basis and not receive subsistence and travel expenses. (1985, c. 792, s. 20.1.)

### § 120-153. Facilities and staff.

The Commission may hold its meetings in the State Legislative Building with the approval of the Legislative Services Commission. The Legislative Services Commission shall provide necessary professional and clerical assistance to the Commission. (1985, c. 792, s. 20.1.)

### § 120-154. Duties.

The Commission shall bring to the attention of the General Assembly the influence of agriculture, forestry, and seafood on the economy of the State, develop alternatives for increasing the public awareness of agriculture, forestry, and seafood, study the present status of agriculture, forestry, and seafood, identify problems limiting future growth and development of the industry, develop an awareness of the importance of science and technological de-

velopment to the future of agriculture, forestry, and seafood industries, and formulate plans for new State initiatives and support for agriculture, forestry, and seafood and for the expansion of opportunities in these sectors.

In conducting its study the Commission may hold public hearings and meetings across the State.

The Commission shall report to the General Assembly at least one month prior to the first regular session of each General Assembly. (1985, c. 792, s. 20.1.)

**Chapter 121.**  
**Archives and History.**

**Article 1.**  
**General Provisions.**

|   |   |
|---|---|
| <p>Sec.<br/>121-4. Powers and duties of the Department of Cultural Resources.</p> | <p>Sec.<br/>121-5. Public records and archives.<br/>121-6. Historical publications.<br/>121-8. Historic preservation program.</p> |
|---|---|

ARTICLE 1.

*General Provisions.*

**§ 121-1. Short title.**

**Legal Periodicals.** — For article, “Preservation Law 1976-1980: Faction, Property Rights and Ideology,” see 11 N.C. Cent. L.J. 276 (1980).

**§ 121-4. Powers and duties of the Department of Cultural Resources.**

The Department of Cultural Resources shall have the following powers and duties:

- (14) With the approval of the Historical Commission, to charge and collect fees not to exceed cost for photographs, photocopies of documents, microfilm and other microforms and other audio or visual reproductions of public records or other documentary materials, objects, artifacts, and research materials; and for the restoration and preservation of documents and other materials important for archival or historical purposes. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C. S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1; 1957, c. 330, s. 1; 1959, c. 68, s. 1; 1971, c. 345, s. 3; 1973, c. 476, s. 48; 1977, c. 464, s. 38; 1981, c. 721.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out. **Effect of Amendments.** — The 1981 amendment added subdivision (14).

**§ 121-5. Public records and archives.**

(d) Preservation of Permanently Valuable Records. — Public records certified by the Department of Cultural Resources as being of permanent value shall be preserved in the custody of the agency in which the records are normally kept or of the North Carolina State Archives. Any State, county, municipal, or other public official is hereby authorized and empowered to turn over to the Department of Cultural Resources any State, county, municipal, or other public records no longer in current official use, and the Department of Cultural Resources is authorized in its discretion to accept such records, and having done so shall provide for their administration and preservation in the North Carolina State Archives. When such records have been thus surrendered, photocopies, microfilms, typescripts, or other copies of them shall be made and certified under seal of the Department, upon application of any person, which certification shall have the same force and effect as if made by

the official or agency by which the records were transferred to the Department of Cultural Resources; and the Department may charge reasonable fees for such copies. The Department may answer written inquiries for nonresidents of North Carolina and for such service charge a search and handling fee not to exceed ten dollars (\$10.00), the receipts from which fee shall be used to defray the cost of providing such service. (1907, c. 714, s. 5; C. S., s. 6145; 1939, c. 249; 1943, c. 237; 1945, c. 55; 1953, c. 224; 1955, c. 543, s. 1; 1959, c. 1162; 1973, c. 476, s. 48; 1979, c. 361; c. 801, s. 95; 1981, c. 406, ss. 1, 2.)

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

**Effect of Amendments.** —

The 1981 amendment repealed the second

1979 amendment (by Session Laws 1979, c. 801) but expressly left the first 1979 amendment (by Session Laws 1979, c. 361) in effect, thereby substituting a \$10.00 fee for a \$5.00 fee in the last sentence of subsection (d).

## § 121-6. Historical publications.

(c) It shall be the duty and the responsibility for the Department of Cultural Resources to edit and publish a second or new series of the most significant records of colonial North Carolina. From records which have been compiled in the North Carolina State Archives concerning the colonial period of North Carolina, a selection of the most significant documents shall be made therefrom by a skilled and competent editor. The editor shall edit, according to acceptable scholarly standards, the selected materials which shall be published in documentary volumes not to exceed approximately 700 pages each in length until full and representative published colonial records of North Carolina shall have been achieved. The number of copies of each volume to be so printed shall be determined by the Department of Cultural Resources, and such determination shall be based on the number of copies the Department can reasonably expect to sell in a period of 10 years from the date of publication. In any year during which the Department of Cultural Resources has completed a volume and has it ready for publication, the Department may include in its continuation budget for that year sufficient funds to pay the estimated costs of publishing the volume. In the event that the volume is not published during that year, the appropriation made, or any unencumbered balance, shall revert to the general fund. (1971, c. 480, s. 6; 1973, c. 476, s. 48; 1979, c. 1010; 1981 (Reg. Sess., 1982), c. 1290.)

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

**Effect of Amendments.** —

The 1981 (Reg. Sess., 1982) amendment, ef-

fective July 1, 1982, added the last two sentences in subsection (c).

## § 121-8. Historic preservation program.

(g) **Abandoned Cemeteries.** — The Department of Cultural Resources is authorized to take appropriate measures to record and permanently preserve information of significant historical genealogical or archaeological value when, in the opinion of the Department, any such information located within an abandoned cemetery is in imminent danger of loss or destruction because of the condition or circumstances of the cemetery. The Department may obtain access to any abandoned cemetery for the purpose of recording and preserving information of significant historical, genealogical or archaeological value pursuant to Chapter 15, Article 4A of the General Statutes: Provided, that prior to the requesting of the administrative warrant, the Department

shall contact the affected landowners and request their consent for access to their lands for the purpose of gathering such information. If consent is not granted, the Department shall give reasonable notice of the time, place and before whom the administrative warrant will be requested so that the owner or owners may have an opportunity to be heard. Service of this notice may be in any manner prescribed by N.C.G.S. 1A-1 Rule 4(j). Any measures taken by the Department pursuant to this subsection shall be effected in such a manner as to cause as little inconvenience or disruption as possible to the owners of the land upon which the abandoned cemetery is located and of land necessary to obtain access to the cemetery. (1973, c. 476, s. 48; 1981, c. 215.)

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

**Effect of Amendments.** — The 1981 amendment added subsection (g).

**Legal Periodicals.** —

For article discussing legal issues of historic preservation for local governments in North Carolina, see 17 Wake Forest L. Rev. 707 (1981).

## § 121-9. Historic properties.

**Legal Periodicals.** — For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

For article discussing legal issues of historic preservation for local government in North Carolina, see 17 Wake Forest L. Rev. 707 (1981).

## § 121-12. North Carolina Historical Commission.

**Legal Periodicals.** — For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

### ARTICLE 4.

#### *Conservation and Historic Preservation Agreements Act.*

## § 121-34. Short title.

**Legal Periodicals.** — For an article entitled, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

For an article entitled, "Reaffirmation of Local Initiative: North Carolina's 1979 Historic Preservation Legislation," see 11 N.C. Cent. L.J. 243 (1980).

For an article entitled, "Revolving Funds: In the Vanguard of the Preservation Movement," see 11 N.C. Cent. L.J. 256 (1980).

For an article entitled, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

## § 121-35. Definitions.

**Legal Periodicals.** — For an article entitled, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

## § 121-36. Applicability.

**Legal Periodicals.** — For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act: As-

essment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

## § 121-40. Assessment of land or improvements subject to agreement.

**Legal Periodicals.** — For an article entitled, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

## § 121-41. Public recording of agreements.

**Legal Periodicals.** — For an article entitled, "The North Carolina Historic Preservation and Conservation Agreements Act: As-

essment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

## Chapter 122.

### Hospitals for the Mentally Disordered.

#### Article 1.

##### Organization and Management.

Sec.

- 122-1. [Repealed.]
- 122-1.1A, 122-1.2. [Repealed.]
- 122-3, 122-4. [Repealed.]
- 122-7 to 122-7.2. [Repealed.]
- 122-8.1 to 122-8.2. [Repealed.]
- 122-11.4. [Repealed.]
- 122-11.6. [Repealed.]
- 122-12 to 122-15. [Repealed.]
- 122-16, 122-16.1. [Repealed.]
- 122-19. [Repealed.]
- 122-21 to 122-23. [Repealed.]

#### Article 1A.

##### Licensure of Facilities for the Mentally Ill, the Mentally Retarded and Substance Abusers.

- 122-23.1 to 122-23.10. [Repealed.]

#### Article 2.

##### Officers and Employees.

- 122-24, 122-24.1. [Repealed.]
- 122-27, 122-28. [Repealed.]
- 122-31. [Repealed.]
- 122-33 to 122-35. [Repealed.]

#### Article 2B.

##### Rehabilitation of Alcoholics.

- 122-35.13 to 122-35.17. [Repealed.]

#### Article 2D.

##### Community Drug Abuse Programs.

- 122-35.24 to 122-35.32. [Repealed.]

#### Article 2F.

##### Area Mental Health, Mental Retardation, and Substance Abuse (Alcohol and Drug Abuse) Programs.

###### Part 1. Policy Statement; Definitions.

- 122-35.35, 122-35.36. [Repealed.]

###### Part 2. Authorization of Area Mental Health, Mental Retardation, and Substance Abuse Services.

- 122-35.37 to 122-35.41. [Repealed.]

###### Part 3. Responsibilities of Area Mental Health, Mental Retardation, and Substance Abuse Authorities.

- 122-35.42 to 122-35.52. [Repealed.]

##### Part 4. Appropriations for Mental Health, Mental Retardation, and Substance Abuse Service Programs.

Sec.

- 122-35.53 to 122-35.57. [Repealed.]

#### Article 3.

##### Admission of Patients; General Provisions; Patients' Rights.

###### Part 1. Admission of Patients; General Provisions.

- 122-36 to 122-43. [Repealed.]
- 122-48 to 122-51. [Repealed.]
- 122-53 to 122-55. [Repealed.]

###### Part 2. Patients' Rights.

- 122-55.1 to 122-55.12. (See note) [Repealed.]

###### Part 3. Rights of Minor Patients.

- 122-55.13, 122-55.14. [Repealed.]

#### Article 4.

##### Voluntary Admission.

- 122-56.1 to 122-56.10. [Repealed.]

#### Article 5A.

##### Involuntary Commitment.

- 122-58.1 to 122-58.27. [Repealed.]

#### Article 7B.

##### Public Intoxication.

- 122-65.10 to 122-65.13. [Repealed.]

#### Article 9.

##### Centers for Mentally Retarded.

- 122-69 to 122-71.3. [Repealed.]

#### Article 9A.

##### Mentally Retarded Services Funds.

- 122-71.4 to 122-71.6. [Repealed.]

#### Article 10.

##### Private Hospitals for the Mentally Disordered.

- 122-72 to 122-74. [Repealed.]
- 122-81 to 122-82. [Repealed.]

#### Article 11.

##### Mentally Ill Criminals.

- 122-85, 122-85.1. [Repealed.]

**Article 12.****John Umstead Hospital.**

Sec.

122-92 to 122-98. [Repealed.]

**Article 12A.****Facilities for Treatment and Education of Emotionally Disturbed Children.**

122-98.1, 122-98.2. [Repealed.]

**Article 12B.****Black Mountain Center, Alcohol Rehabilitation Center, and Juvenile Evaluation Center Joint Security Force.**

122-98.3. (See note) [Repealed.]

**Article 13.****Interstate Compact on Mental Health.**

Sec.

122-99 to 122-104. [Repealed.]

**Article 15.****Studies and Programs on Alcoholism.**

122-109. [Repealed.]

122-112 to 122-119. [Repealed.]

**Article 16.****North Carolina Alcoholism Research Authority.**

122-120 to 122-122. [Repealed.]

**ARTICLE 1.*****Organization and Management.***

**§ 122-1:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — As to comparable sections of repealed Chapter 122 and new Chapter 122C, see the table at the end of Chapter 122C.

Session Laws 1985, c. 589, s. 64 provides that prosecutions for offenses occurring before the effective date of the act (January 1, 1986) are not abated or affected by the act, and that the statutes that would be applicable but for the act remain applicable to those prosecutions.

Session Laws 1985, c. 589, s. 63(g) provides that any person serving as a guardian under the authority of former § 122-24.1 shall continue to serve as guardian notwithstanding the repeal of that section.

Session Laws 1985, c. 589, s. 63(f) provides that if any appeal under §§ 122-35.41, 122-35.50, or 122-35.52 is pending on the effective date of the act (January 1, 1986), it shall be governed by the law and rules in effect at the time of the appeal, and that if any appeal was allowable under one of those sections, but was not taken before the effective date of the act, it shall be governed by § 122C-145.

Session Laws 1985, c. 589, s. 63(c) provides: "Where any right enumerated in G.S. 122-55.2(b) or G.S. 122-55.14(b) has been restricted under G.S. 122-55.2(d) or G.S. 122-55.14(c), and the period of restriction had not expired before January 1, 1986, then such limitation shall, unless otherwise terminated, remain effective for the shorter of:

"(1) the period for which it was stated to be effective; or

"(2) seven days after December 31, 1985."

Session Laws 1985, c. 589, s. 63(k) provides that substance abusers committed as outpatients pursuant to § 122-58.7A:1 or § 122-58.8 prior to the effective date of the act (January 1, 1986) shall not be subject to the provisions of §§ 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to §§ 122C-281 through 122C-289.

Session Laws 1985, c. 589, s. 63(n) provides that any ordinance, rule, or regulation made under § 122-95 and in effect on December 31, 1985, shall continue in effect until amended, modified, or repealed by the Secretary of Human Resources under § 122C-403.

Session Laws 1985, c. 589, s. 63(d) provides: "Because this act becomes effective at the middle of a fiscal year, the Secretary may adopt rules to implement G.S. 122C-147 for fiscal year 1985-86 to cover the transition between G.S. 122-35.53 and G.S. 122C-147."

Session Laws 1985, c. 589, s. 66 makes this Chapter effective January 1, 1986. Section 66 provides further that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification of the act, but shall not become effective before January 1, 1986. The act was ratified July 4, 1985.

Session Laws 1985, c. 589, s. 65 is a severability clause.

**§§ 122-1.1A, 122-1.2:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-1.1A was derived from Session Laws 1981, c. 51, s. 3. Repealed § 122-1.2 was amended by Session Laws 1981, c. 51, s. 3.

**§§ 122-3, 122-4:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed §§ 122-3 and 122-4 were amended by Session Laws 1981, c. 51, s. 3.

**§§ 122-7 to 122-7.2:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-7.1 was amended by Session Laws 1981, c. 51, s. 3; 1981, c. 412, s. 4; and 1983, c. 383, s. 9. Repealed § 122-7.2 was amended by Session Laws 1981, c. 51, s. 3.

**§§ 122-8.1, 122-8.2:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-8.1 was amended by Session Laws 1983, c. 383, s. 10; 1983, c. 491; 1983, c. 638, s. 22; and 1983, c. 864, s. 4.

**§ 122-11.4:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**§ 122-11.6:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**§§ 122-12 to 122-15:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed §§ 122-12 and 122-13 were amended by Session Laws 1981, c. 51, s. 3.

**§§ 122-16, 122-16.1:** Repealed by Session Laws 1981, c. 614, s. 4, effective July 1, 1981.

**Cross References.** — As to regulations promulgated by the Secretary of Human Resources concerning the deportment of persons and the use of motor vehicles at State institutions, see §§ 143-116.6 and 143-116.7.

**Editor's Note.** — Repealed § 122-16 was amended by Session Laws 1981, c. 635, s. 4. Repealed § 122-16.1 was amended by Session Laws 1981, c. 51, s. 3.

§ **122-19:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

§§ **122-21 to 122-23:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

## ARTICLE 1A.

### *Licensure of Facilities for the Mentally Ill, the Mentally Retarded and Substance Abusers.*

§§ **122-23.1 to 122-23.10:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed §§ 122-23.1 to 122-23.10 were derived from Session Laws 1983, c. 718, s. 1. Repealed § 122-23.2 was amended by Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 4. Repealed § 122-23.3 was amended by Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 5.

## ARTICLE 2.

### *Officers and Employees.*

§§ **122-24, 122-24.1:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(g) provides that any person serving as a guardian under the authority of former § 122-24.1 shall continue to serve as guardian notwithstanding the repeal of that section.

§§ **122-27, 122-28:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-27 was amended by Session Laws 1983, c. 548.

§ **122-31:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

§§ **122-33 to 122-35:** Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-33 was amended by Session Laws 1981, c. 635, s. 5.

## ARTICLE 2B.

*Rehabilitation of Alcoholics.*

§§ 122-35.13 to 122-35.17: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

## ARTICLE 2D.

*Community Drug Abuse Programs.*

§§ 122-35.24 to 122-35.32: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-35.26 was amended by Session Laws 1981, c. 51, s. 3.

## ARTICLE 2F.

*Area Mental Health, Mental Retardation, and Substance Abuse (Alcohol and Drug Abuse) Programs.*

## Part 1. Policy Statement; Definitions.

§§ 122-35.35, 122-35.36: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-35.35 was amended by Session Laws 1983, c. 383, s. 1. Repealed § 122-35.36 was amended by Session Laws 1981, c. 51, ss. 3, 4; 1981, c. 539, s. 1; 1983, c. 280; 1983, c. 383, s. 2.

Part 2. Authorization of Area Mental Health, Mental Retardation, and Substance Abuse Services.

§§ 122-35.37 to 122-35.41: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(f) provides that if any appeal under §§ 122-35.41, 122-35.50, or 122-35.52 is pending on the effective date of the act (January 1, 1986), it shall be governed by the law and rules in effect at the time of the appeal, and that if any appeal was allowable under one of those sections, but was not taken before the effective date of the act, it shall be governed by § 122C-145.

Repealed §§ 122-35.37 and 122-35.39 were amended by Session Laws 1981, c. 51, s. 3. Repealed § 122-35.40 was amended by Session Laws 1981, c. 52; 1983, c. 6. Repealed §§ 122-35.40B and 122-35.40C were derived from Session Laws 1981, c. 539, s. 2. Repealed § 122-35.40D was derived from Session Laws 1981, c. 539, s. 4. Repealed § 122-35.41 was amended by Session Laws 1981, c. 51, s. 3; 1981, c. 614, s. 7.

### Part 3. Responsibilities of Area Mental Health, Mental Retardation, and Substance Abuse Authorities.

§§ 122-35.42 to 122-35.52: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(f) provides that if any appeal under §§ 122-35.41, 122-35.50, or 122-35.52 is pending on the effective date of the act (January 1, 1986), it shall be governed by the law and rules in effect at the time of the appeal, and that if any appeal was allowable under one of those sections, but was not taken before the effective date of the act, it shall be governed by § 122C-145.

Repealed § 122-35.43 was amended by Session Laws 1981, c. 51, s. 3; 1983, c. 383, s. 3. Repealed § 122-35.45 was amended by Session Laws 1981, c. 51, s. 3. Repealed § 122-35.45A was derived from Session Laws 1983, c. 281. Repealed § 122-35.49 was amended by Session Laws 1981, c. 51, s. 3; 1981, c. 539, ss. 3, 4. Repealed § 122-35.50 was amended by Session Laws 1981, c. 51, s. 3. Repealed §§ 122-35.51 and 122-35.52 were amended by Session Laws 1981, c. 51, s. 3; 1983, c. 718, s. 3.

### Part 4. Appropriations for Mental Health, Mental Retardation, and Substance Abuse Service Programs.

§§ 122-35.53 to 122-35.57: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(d) provides: "Because this act becomes effective at the middle of a fiscal year, the Secretary may adopt rules to implement G.S. 122C-147 for fiscal year 1985-86 to cover the transition between G.S. 122-35.53 and G.S. 122C-147."

Repealed § 122-35.53 was amended by Session Laws 1981, c. 51, s. 3; 1983, cc. 5, 25, 402. Repealed § 122-35.57 was amended by Session Laws 1981, c. 51, s. 3.

## ARTICLE 3.

### *Admission of Patients; General Provisions; Patients' Rights.*

#### Part 1. Admission of Patients; General Provisions.

§§ 122-36 to 122-43: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-39 was amended by Session Laws 1981, c. 51, s. 3.

§§ 122-48 to 122-51: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

§§ 122-53 to 122-55: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

## Part 2. Patients' Rights.

§§ 122-55.1 to 122-55.12 (See note): Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(c) provides:

"Where any right enumerated in G.S. 122-55.2(b) or G.S. 122-55.14(b) has been restricted under G.S. 122-55.2(d) or G.S. 122-55.14(c), and the period of restriction had not expired before January 1, 1986, then such limitation shall, unless otherwise terminated, remain effective for the shorter of:

"(1) the period for which it was stated to be effective; or

"(2) seven days after December 31, 1985."

Repealed § 122-55.6 was amended by Session Laws 1981, c. 328, ss. 1, 2. Repealed § 122-55.8 was derived from Session Laws 1981, c. 1012, and was amended by Session Laws 1985, c. 99, effective April 16, 1985, which rewrote the section.

## Part 3. Rights of Minor Patients.

§§ 122-55.13, 122-55.14: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(c) provides:

"Where any right enumerated in G.S. 122-55.2(b) or G.S. 122-55.14(b) has been restricted under G.S. 122-55.2(d) or G.S. 122-55.14(c), and the period of restriction had

not expired before January 1, 1986, then such limitation shall, unless otherwise terminated, remain effective for the shorter of:

"(1) the period for which it was stated to be effective; or

"(2) seven days after December 31, 1985."

## ARTICLE 4.

### *Voluntary Admission.*

§§ 122-56.1 to 122-56.10: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-56.3 was amended by Session Laws 1983, c. 383, s. 4. Repealed § 122-56.5 was amended by Session

Laws 1983, c. 302, s. 1. Repealed § 122-56.7 was amended by Session Laws 1983, c. 889, ss. 1, 2.

## ARTICLE 5A.

### *Involuntary Commitment.*

§§ 122-58.1 to 122-58.27: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(k) provides that substance abusers committed as outpatients pursuant to § 122-58.7A:1 or § 122-58.8 prior to the effective date of the act (January 1, 1986) shall not be subject to the provisions of §§ 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings may be insti-

tuted regarding such individuals pursuant to §§ 122C-281 through 122C-289.

Repealed § 122-58.1 was amended by Session Laws 1983, c. 638, s. 1; 1983, c. 864, s. 4. Repealed § 122-58.2 was amended by Session Laws 1983, c. 638, s. 2; 1983, c. 864, s. 4. Repealed § 122-58.3 was amended by Session Laws 1983, c. 383, s. 5; 1983, c. 638, ss. 3-5;

1983, c. 864, s. 4. Repealed § 122-58.4 was amended by Session Laws 1983, c. 380, ss. 4, 10; 1983, c. 638, ss. 6, 7, 25.1; 1983, c. 864, s. 4. Repealed § 122-58.5 was amended by Session Laws 1983, c. 638, s. 8; 1983, c. 864, s. 4. Repealed § 122-58.6 was amended by Session Laws 1983, c. 380, s. 5; 1983, c. 638, ss. 9, 10; 1983, c. 864, s. 4. Repealed § 122-58.6A was derived from Session Laws 1983, c. 638, s. 11. Repealed § 122-58.7 was amended by Session Laws 1983, c. 380, s. 6; 1983, c. 638, s. 12; 1983, c. 864, s. 4. Repealed § 122-58.7A was amended by Session Laws 1981, c. 537, s. 6; 1983, c. 380, s. 7. Repealed § 122-58.7A:1 was derived from Session Laws 1983, c. 638, s. 13. Repealed § 122-58.8 was amended by Session Laws 1981, c. 537, s. 1; 1983, c. 380, s. 8; 1983, c. 638, s. 14; 1983, c. 864, s. 4. Repealed § 122-58.8A was derived from Session Laws 1983, c. 638, s. 15. Repealed § 122-58.10A was derived from Session Laws 1983, c. 638, s. 16.

Repealed § 122-58.10B was derived from Session Laws 1983, c. 638, s. 17. Repealed § 122-58.11 was amended by Session Laws 1981, c. 537, ss. 2-4; 1983, c. 638, ss. 18, 19; 1983, c. 864, s. 4. Repealed § 122-58.11A was derived from Session Laws 1983, c. 638, s. 20. Repealed § 122-58.12 was amended by Session Laws 1983, c. 275, ss. 1, 2. Repealed § 122-58.13 was amended by Session Laws 1981, c. 537, s. 5; 1983, c. 383, s. 6; 1983, c. 638, s. 21; 1983, c. 864, s. 4. Repealed § 122-58.14 was amended by Session Laws 1983, c. 138, ss. 1, 2. Repealed § 122-58.20 was amended by Session Laws 1983, c. 380, s. 9. Repealed § 122-58.21 was amended by Session Laws 1981, c. 442. Repealed § 122-58.22 was amended by Session Laws 1981, c. 412, s. 4; 1981, c. 519, ss. 3, 4; 1981, c. 747, s. 66. Repealed § 122-58.27 was derived from Session Laws 1981, c. 936, s. 1.

## ARTICLE 7B.

### *Public Intoxication.*

§§ 122-65.10 to 122-65.13: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-65.11 was amended by Session Laws 1981, c. 519, s. 5.

## ARTICLE 9.

### *Centers for Mentally Retarded.*

§§ 122-69 to 122-71.3: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-69 was amended by Session Laws 1981, c. 51, s. 3. Repealed § 122-70 was amended by Session Laws 1981, c. 51, s. 3; 1983, c. 383, s. 7. Repealed § 122-71.1 was amended by Session Laws 1983, c. 383, s. 8.

## ARTICLE 9A.

### *Mentally Retarded Services Funds.*

§§ 122-71.4 to 122-71.6: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

## ARTICLE 10.

*Private Hospitals for the Mentally Disordered.*

§§ 122-72 to 122-74: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-72 was amended by Session Laws 1981, c. 51, s. 3; 1983, c. 718, s. 4.

§§ 122-81 to 122-82: Repealed by Session Laws 1985, ch. 589, s. 1, effective January 1, 1986.

## ARTICLE 11.

*Mentally Ill Criminals.*

§§ 122-85, 122-85.1: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

## ARTICLE 12.

*John Umstead Hospital.*

§§ 122-92 to 122-98: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(n) provides that any ordinance, rule, or regulation made under § 122-95 and in effect on December 31, 1985, shall continue in effect until amended, modified, or repealed by the Secretary of Human Resources under § 122C-403.

Repealed § 122-96 was amended by Session Laws 1981, c. 614, s. 6. Repealed § 122-98 was amended by Session Laws 1981, c. 491, s. 1; 1981, c. 964, s. 19; 1981, c. 1127, s. 49; 1983, c. 761, s. 165.

## ARTICLE 12A.

*Facilities for Treatment and Education of Emotionally Disturbed Children.*

§§ 122-98.1, 122-98.2: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-98.2 was derived from Session Laws 1981, c. 77.

## ARTICLE 12B.

*Black Mountain Center, Alcohol Rehabilitation Center,  
and Juvenile Evaluation Center Joint Security Force.*

§ 122-98.3 (See note): Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Editor's Note.** — Repealed § 122-98.3 was derived from Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 30, and was amended by Session Laws 1985, c. 408, s. 2, effective July 1, 1985, which designated the first paragraph as

subsection (a) and added the last two sentences of subsection (a), and by Session Laws 1985, c. 408, s. 4, effective July 4, 1985, which added subsection (b).

## ARTICLE 13.

*Interstate Compact on Mental Health.*

§§ 122-99 to 122-104: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

## ARTICLE 15.

*Studies and Programs on Alcoholism.*

§ 122-109: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

§§ 122-112 to 122-119: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

## ARTICLE 16.

*North Carolina Alcoholism Research Authority.*

§§ 122-120 to 122-122: Repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986.

**Chapter 122A.**

**North Carolina Housing Finance Agency.**

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| <p>Sec.<br/>122A-3. Definitions.<br/>122A-4. North Carolina Housing Finance Agency.<br/>122A-5. General powers.<br/>122A-5.5. Rehabilitation Loan Authority.<br/>122A-5.6. Terms and conditions of loans to and by mortgage lenders.</p> | <p>Sec.<br/>122A-5.7. Homeownership Assistance Fund authorized; authority.<br/>122A-8. Bonds and notes.<br/>122A-8.1. Powers of the State Treasurer.<br/>122A-16. Oversight by committees of General Assembly; annual reports.</p> |
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**§ 122A-1. Short title.**

**Legal Periodicals. —**

For survey of 1982 law relating to constitutional law, see 61 N.C.L. Rev. 1052 (1983).

**CASE NOTES**

**Construction Beneficial to Entire Building Industry. —** Unquestionably, when construction of residential housing is made possible by the North Carolina Housing Finance Agency's assistance, all persons in the building industry benefit. In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

**§ 122A-3. Definitions.**

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

- (8) "Mortgage" or "mortgage loan" means a mortgage loan for residential housing, including, without limitation, a mortgage loan to finance, either temporarily or permanently, the construction, rehabilitation, improvement, or acquisition and rehabilitation or improvement of residential housing and a mortgage loan insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage;
- (17) "Rehabilitation" means the renovation or improvement of residential housing by the owner of said residential housing. (1969, c. 1235, s. 3; 1973, c. 1296, ss. 3-6, 8-14, 16, 17; 1975, c. 19, s. 42; 1977, c. 1083, s. 2; 1979, 2nd Sess., c. 1238, s. 1; 1981, c. 344, s. 1; 1983, c. 148, s. 1.)

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

**Effect of Amendments. —**

The 1981 amendment added subdivision (17).

The 1983 amendment, effective April 7, 1983, substituted "rehabilitation, improvement, or acquisition and rehabilitation or improvement" for "rehabilitation or improvement" preceding "of residential housing" in subdivision (8).

**CASE NOTES**

**Applied in** In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

### § 122A-4. North Carolina Housing Finance Agency.

(a) There is hereby created a body politic and corporate to be known as "North Carolina Housing Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Agency shall be governed by a board of directors composed of 13 members. The directors of the Agency shall be residents of the State and shall not hold other public office.

(c) The General Assembly shall appoint eight directors, four upon the recommendation of the Speaker of the House of Representatives (at least one of whom shall have had experience with a mortgage-servicing institution and one of whom shall be experienced as a licensed real estate broker), and four upon the recommendation of the President of the Senate (at least one of whom shall be experienced with a savings and loan institution and one of whom shall be experienced in home building). Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Notwithstanding any other provision of law, the terms of the four noncategorical appointments by the General Assembly shall expire on June 30, 1983. Subsequent noncategorical appointments shall be for terms of two years each. The terms of the initial categorical appointees by the General Assembly upon the recommendation of the Speaker shall expire on June 30, 1983; the terms of subsequent appointees shall be two years. The term of one of the initial categorical appointees by the General Assembly upon the recommendation of the President of the Senate shall expire on June 30, 1983, and the other on June 30, 1985; the terms of subsequent appointees shall be four years.

(d) The Governor shall appoint four of the directors of the Agency; one of such appointees shall be experienced in community planning, one shall be experienced in subsidized housing management, one shall be experienced as a specialist in public housing policy, and one shall be experienced in the manufactured housing industry. The four appointees of the Governor shall be appointed for staggered four-year terms, two being appointed initially for three years and two for four years, and shall continue in office until their successors are duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term.

(e) Any member of the board of directors shall be eligible for reappointment. The 12 members of the board shall then elect a thirteenth member to the board by simple majority vote. Each member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially, and a record of such oath shall be filed in the office of the Secretary of State.

(f) The Governor shall designate from among the members of the Board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the Board of Directors of the Agency. The Agency shall exercise all of its prescribed statutory powers independently of any principal State Department except as described in this Chapter. The Executive Director of the Agency shall be appointed by the Board of Directors, subject to approval by the Governor. All staff and employees of the Agency shall be appointed by the Executive Director, subject to approval by the Board of Directors; shall be eligible for participation in the State Employees' Retirement System; and shall be exempt from the provisions of the State Personnel Act; provided, however, that the Executive Director shall, on or before Janu-

ary 15 of each year, subject to the approval of the Board of Directors, designate those employees of the Agency which are employed in secretarial, clerical or administrative positions. All employees other than the Executive Director shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The salary of the Executive Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. The salary of the Executive Director and all staff and employees of the Agency shall not be subject to any limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the State Personnel Act. The Board of Directors shall, subject to the approval of the Governor, elect and prescribe the duties of such other officers as it shall deem necessary or advisable, and the General Assembly shall fix the compensation of such officers in the Budget Appropriation Act. The books and records of the Agency shall be maintained by the Agency and shall be subject to periodic review and audit by the State.

No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Agency shall receive no compensation for their services but shall be entitled to receive, from funds of the Agency, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

The Executive Director shall administer, manage and direct the affairs and business of the Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The Secretary of the Agency shall keep a record of the proceedings of the Agency and shall be custodian of all books, documents and papers filed with the Agency, the minute book or journal of the Agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Agency and to give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4; 1981, c. 895, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 32; 1983, c. 148, s. 4; c. 717, ss. 36-37; 1985, c. 479, s. 222.)

**Cross References.** — For state personnel system, see Chapter 126.

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

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

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

**Effect of Amendments.** — The 1981 amendment substituted "13" for "14" in the second sentence, deleted the former third sentence, which read: "One member shall be the Secretary of the Department of Natural Resources and Community Development serving

ex officio," substituted "12" for "13" and "thirteenth" for "fourteenth" in the eleventh sentence, and substituted the last eight sentences of the first paragraph for the former last three sentences of the first paragraph, which read: "The Agency shall be placed within the Department of Natural Resources and Community Development; provided, however, that the approval of the Secretary of Natural Resources and Community Development shall not be required for the exercise by the Agency of any of the powers granted by this Chapter. The Board of Directors shall, subject to the approval of the Secretary of the Department of Natural Resources and Community Development, elect and appoint and prescribe the duties of such other officers as it shall deem necessary or advisable, and the Advisory Budget Commission shall fix the compensation of such officers. All personnel employed by the Agency shall be subject to the State Personnel Act and the books and records of the Agency shall be subject to audit by the State."

The 1981 (Reg. Sess., 1982) amendment (the Separation of Powers Act of 1982) substituted present subsections (a) through (e) for the former first 13 sentences of the former first paragraph. The balance of the former first paragraph has been designated as subsection (f).

Session Laws 1981 (Reg. Sess., 1982), c. 1191, s. 33, provides that nothing in s. 32 of the act, which amended this section, shall be construed as affecting the terms of office or requiring reappointment of the four directors of the Housing Finance Agency appointed by the Governor and serving on June 17, 1982, the effective date thereof.

The first 1983 amendment, effective April 7, 1983, deleted the former third sentence of subsection (f), which read "The Secretary of Natural Resources and Community Development or his designee shall serve as secretary of the Board."

The second 1983 amendment, effective July 11, 1983, rewrote the eighth sentence of the first paragraph of subsection (f), which read "The Board of Directors shall set the salary of

the Executive Director and all other staff and employees of the Agency his positions are not designated as secretarial, clerical or administrative, subject to prior approval by the Advisory Budget Commission," substituted "other than the Executive Director" for "designated as secretarial, clerical, or administrative" in the seventh sentence of subsection (f), and substituted "the General Assembly shall fix the compensation of such officers in the Budget Appropriation Act" for "The Advisory Budget Commission shall fix the compensation of such officers" at the end of the tenth sentence of subsection (f).

The 1985 amendment by c. 479, s. 222, effective July 1, 1985, rewrote the seventh sentence of subsection (f), which formerly read "The salary of the Executive Director shall be fixed by the Governor after consultation with the Advisory Budget Commission."

#### **State Government Reorganization. —**

Session Laws 1981, c. 895, s. 1, provides: The North Carolina Housing Finance Agency is transferred to the Office of State Budget and Management; this transfer shall be neither a Type I nor Type II transfer as defined by G.S. 143A-6; the purpose of this transfer is to permit the board of directors of the North Carolina Housing Finance Agency to exercise the powers granted to the agency by Chapter 122A of the General Statutes and all management functions of the agency, as defined by G.S. 143A-6(c), independently of the direction, supervision or control of the Office of State Budget and Management; provided, however, that the agency shall be subject to the management functions of reporting and budgeting, as defined by G.S. 143A-6 to the extent that the agency shall submit its budgets and reported expenditures to the Office of State Budget and Management in accordance with the provisions of the Executive Budget Act and shall receive any monies appropriated to the agency by the General Assembly through appropriations to the Office of State Budget and Management which are designated for use by the agency.

### **CASE NOTES**

**Stated** in *In re Denial of Approval to Issue Hous. Bonds*, 307 N.C. 52, 296 S.E.2d 281 (1982).

## **§ 122A-5. General powers.**

The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

- (4a) To make loans to mortgage lenders on terms and conditions requiring the proceeds thereof to be used by such mortgage lenders to origi-

nate new mortgage loans to (i) sponsors of residential housing for persons and families of lower income and persons and families of moderate income and (ii) persons and families of lower income and persons and families of moderate income for residential housing. The loans to mortgage lenders and the loans to be made by such mortgage lenders shall be made on such applicable terms and conditions as are set forth in rules and regulations of the Agency; Provided, however, that loans shall be made by such mortgage lenders only upon the determination by the Agency that such financing is not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions.

- (18) To establish and maintain an office for the transaction of its business in the City of Raleigh and at such place or places as the board of directors deems advisable or necessary in carrying out the purposes of this Chapter; provided, however, that the Agency shall comply with the provisions of Articles 6 and 7 of Chapter 146 of the General Statutes governing the acquisition of office space;

(1969, c. 1235, s. 5; 1973, c. 1296, ss. 21-24, 27, 29, 35, 36, 40-43; 1975, c. 616, ss. 1, 2; 1981, c. 895, s. 3; 1983, c. 148, s. 2.)

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

**Effect of Amendments.** — The 1981 amendment substituted the present provisions of subdivision (18) for the former provisions,

which read: "To maintain an office in the City of Raleigh and at such other place or places as it may determine."

The 1983 amendment, effective April 7, 1983, added subdivision (4a).

#### CASE NOTES

**Applied in In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).**

### § 122A-5.4. Housing for persons and families of moderate income.

#### CASE NOTES

**This section was enacted for a public purpose,** and is, therefore, a valid exercise of the State's power to tax under the N.C. Const., Art. V, § 2. *In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).*

The reason and justification for the Agency's existence, is to make available decent, safe and sanitary housing to persons and families of lower income who cannot otherwise obtain such housing accommodations. In expanding the Agency's power to help those with moder-

ate incomes, the legislature is acting with the same public purpose in mind. *In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).*

In enacting this section the legislature has appropriately responded to the changing conditions in the residential housing market, and the benefits flowing from this section are benefits for the common good of all the people of the State. *In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).*

### § 122A-5.5. Rehabilitation Loan Authority.

(a) In order to effectuate the authority of the Agency to participate in commitments to purchase and to purchase mortgage loans for the rehabilitation of existing residential housing the Agency is hereby empowered to adopt, modify or repeal rules and regulations governing the making or participation in the making of mortgage loans and the purchase or participation in commitments for the purchase of mortgage loans for the rehabilitation of existing residential housing.

(b) The rules and regulations of the Agency adopted pursuant to this section shall provide at a minimum that:

- (1) Rehabilitation mortgage loans shall be for the purpose of owner-financed improvements to or renovation of residential housing;
- (2) Requirements for eligibility for rehabilitation mortgage loans shall be consistent with all applicable federal laws and regulations governing bonds for rehabilitation mortgage loans in order to insure that such bonds are exempt from taxation. (1981, c. 344, s. 2.)

### § 122A-5.6. Terms and conditions of loans to and by mortgage lenders.

(a) The Agency shall from time to time adopt, modify, amend or repeal rules and regulations governing the making of loans to mortgage lenders and the application of the proceeds thereof. These rules and regulations shall be designed to effectuate the general purposes of this Chapter and the following specific objectives: (i) the construction and rehabilitation of decent, safe and sanitary residential housing available to persons and families of lower income and persons and families of moderate income at prices or rentals that they can afford; (ii) the encouragement of private enterprise and investment to sponsor, build and rehabilitate residential housing for persons and families of lower income and persons and families of moderate income; and (iii) the restriction of the financial return and benefit to the mortgage lenders from such loans to an amount that is necessary to induce their participation and that is not excessive as determined by prevailing market conditions.

(b) Notwithstanding any other provision of this section, the interest rate or rates and other terms of the loans to mortgage lenders made from the proceeds of any issue of bonds of the Agency shall provide that the amounts received by the Agency in repayment of the loans and interest thereon shall be at least sufficient to assure the payment of the principal of and the interest on the bonds as they become due.

(c) The Agency shall enter into a written agreement with each mortgage lender that shall require as a condition of each loan to such mortgage lender that the mortgage lender shall originate new mortgage loans within a reasonable period of time as determined by the Agency's rules and regulations and that such new mortgage loans shall have such stated maturities as determined by the Agency's rules and regulations.

(d) The loans to mortgage lenders shall be general obligations of the respective mortgage lenders owing them. The Agency shall require that such loans shall be additionally secured as to payment of both principal and interest by a pledge and lien upon collateral security. The collateral security itself shall be in such amount as the Agency determines will assure the payment of the principal of and the interest on the bonds as they become due. Collateral security shall be deemed to be sufficient if the principal of and the interest on the collateral security, when due, will be sufficient to pay the principal of and the interest on the bonds. The collateral security shall consist of any of the

following items: (i) direct obligations of, or obligations guaranteed by, the State or the United States of America; (ii) bonds, debentures, notes or other evidences of indebtedness, satisfactory to the Agency, issued by any of the following federal agencies: Bank for Cooperatives, Federal Intermediate Credit Bank, Federal Home Loan Bank System, Export-Import Bank of Washington, Federal Land Banks, the Federal National Mortgage Association or the Government National Mortgage Association; (iii) direct obligations of or obligations guaranteed by the State; (iv) mortgages insured or guaranteed by the United States of America or an instrumentality of it as to payment of principal and interest; (v) any other mortgages secured by real estate on which there is located a residential structure, the collateral value of which shall be determined by the regulations issued from time to time by the Agency; (vi) obligations of Federal Home Loan Banks; (vii) certificates of deposit of banks or trust companies, including the trustee, organized under the laws of the United States or any state, which have a combined capital and surplus of at least fifteen million dollars (\$15,000,000); (viii) Bankers Acceptances; and (ix) commercial paper that has been classified for rating purposes by Dun & Bradstreet, Inc., as Prime-1 or by Standard & Poor's Corp. as A-1.

(e) The Agency may require as a condition of any loan to a mortgage lender such representations and warranties that it determines to be necessary to secure such loans and to carry out the purposes of this section. (1983, c. 148, s. 3.)

**Editor's Note.** — Session Laws 1983, c. 148, s. 5, makes this section effective upon ratification. The act was ratified April 7, 1983.

### § 122A-5.7. Homeownership Assistance Fund authorized; authority.

The North Carolina Housing Finance Agency is authorized to establish a Homeownership Assistance Fund (hereinafter referred to as "the Fund") to assist families of low and moderate income in the purchase of affordable residential housing. To achieve this purpose, the Agency may use the Fund to provide additional security for eligible loans, to subsidize down payments, principal payments and interest payments, and to provide any type of mortgage assistance the Agency deems necessary. The Fund shall operate as a revolving fund. The Agency shall adopt rules for the operation and use of the Fund. These funds shall be used for people who otherwise would be unable to receive subsidized loans from the Housing Finance Agency. (1983, c. 923, s. 203.)

**Editor's Note.** — Session Laws 1983, c. 923, s. 267, makes this section effective upon ratification. The act was ratified July 22, 1983.

### § 122A-8. Bonds and notes.

The Agency is hereby authorized to provide for the issuance, at one time or from time to time, of not exceeding one billion five hundred million dollars (\$1,500,000,000) bonds of the Agency to carry out and effectuate its corporate purposes; provided, however, that not more than fifty million dollars (\$50,000,000) bonds shall be issued prior to June 30, 1971. The Agency also is hereby authorized to provide for the issuance, at one time or from time to time

of (i) bond anticipation notes in anticipation of the issuance of such bonds and (ii) construction loan notes to finance the making or purchase of mortgage loans to sponsors of residential housing for the construction, rehabilitation or improvement of residential housing; provided, however, that the total amount of bonds, bond anticipation notes and construction loan notes outstanding at any one time shall not exceed one billion five hundred million dollars (\$1,500,000,000) excluding therefrom any bond anticipation notes for the payment of which bonds shall have been issued. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or assets of the Agency. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Agency at such price or prices and under such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 43 years from their date or dates, as may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the filing with the Local Government Commission of North Carolina of a resolution of the Agency requesting that its bonds and notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as said Commission shall determine to be for the best interest of the Agency and best effectuate the purposes of this Chapter provided that such sale shall be approved by the Agency.

The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

Prior to the preparation of definitive bonds, the Agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the

State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. (1969, c. 1235, s. 8; 1973, c. 1296, s. 48; 1979, c. 844; 1979, 2nd Sess., c. 1238, s. 2; 1981, c. 343; 1983 (Reg. Sess., 1984), c. 1062, s. 2; 1985, c. 769, s. 2.)

**Effect of Amendments. —**

The 1981 amendment substituted "43 years" for "40 years" in the seventh sentence of the first paragraph.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "eight hundred fifty million dollars (\$850,000,000)" for "seven hundred fifty million dollars

(\$750,000,000)" in two places in the first paragraph.

The 1985 amendment, effective July 16, 1985, substituted "one billion five-hundred million dollars (\$1,500,000,000)" for "eight hundred fifty million dollars (\$850,000,000)" in two places in the first paragraph.

### CASE NOTES

**Applied in** *In re Denial of Approval to Issue Hous. Bonds*, 307 N.C. 52, 296 S.E.2d 281 (1982).

## § 122A-8.1. Powers of the State Treasurer.

Notwithstanding any other provisions of this act, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Agency and with the approval of the Local Government Commission.

The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this act.

The North Carolina Housing Finance Agency shall determine when a bond issue is indicated. The Agency shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys.

The State Treasurer shall have the exclusive power to employ and designate the financial consultants, underwriters, and bond attorneys to be associated with the bond issue; provided, at least annually, the Treasurer shall seek the written recommendations of the Housing Finance Agency; and, subsequent to each bond issue, the Treasurer shall conduct a formal performance evaluation of the financial consultants, underwriters and bond attorneys which shall be open to public inspection.

The Director of the Budget after consultation with the Advisory Budget Commission shall provide to the State Treasurer the funds necessary to defray the costs incurred in performing the fiscal functions reserved to the Treasurer under this act from the funds allocated to the Agency pursuant to the 1975 Session Laws.

Nothing in this act is intended to abrogate or diminish the inherent power of the State Treasurer to negotiate the terms and conditions of the bonds and notes, and to issue the bonds and notes authorized by General Statutes Chapter 122A. (1977, c. 673, s. 5; 1983, c. 717, s. 38; 1985, c. 723, s. 5.)

**Editor's Note. —** Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments. —** The 1983

amendment, effective July 11, 1983, substituted "Director of the Budget after consultation with the Advisory Budget Commission" for "Advisory Budget Commission" in the next-to-last paragraph.

The 1985 amendment, effective July 12, 1985, added the language beginning "provided, at least annually" at the end of the fourth paragraph.

## § 122A-16. Oversight by committees of General Assembly; annual reports.

The Finance Committee of the House of Representatives and the Finance Committee of the Senate shall exercise continuing oversight of the Agency in order to assure that the Agency is effectively fulfilling its statutory purpose; provided, however, that nothing in this Chapter shall be construed as required by the Agency to receive legislative approval for the exercise of any of the powers granted by this Chapter. The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the Office of State Budget and Management, State Auditor, the aforementioned committees of the General Assembly, the Advisory Budget Commission and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Agency during such year. The Agency shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Agency. The Agency shall on January 1 and July 1 of each year submit a written report of its activities to the Joint Legislative Commission on Governmental Operations. The Agency shall also at the end of each fiscal year submit a written report of its budget expenditures by line item to the Joint Legislative Commission on Governmental Operations. (1969, c. 1235, s. 16; 1973, c. 1296, s. 56; 1977, c. 673, s. 3; c. 771, s. 4; 1981, c. 895, s. 4; 1981 (Reg. Sess., 1982), c. 1191, s. 34; 1983 (Reg. Sess., 1984), c. 1034, s. 134.)

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

**Effect of Amendments.** — The 1981 amendment, in the second sentence, substituted "The Office of State Budget and Management" for "Secretary of the Department of Natural Resources and Community Development."

The 1981 (Reg. Sess., 1982) amendment (the Separation of Powers Act of 1982) added the last sentence.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added the last sentence.

## Chapter 122B.

### North Carolina Agricultural Facilities Finance Act.

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#### § 122B-1. Short title.

This Chapter shall be known, and may be cited, as the "Agricultural Facilities Finance Act." (1983, c. 789, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 789, s. 3, provides: "Effective Date. This Chapter shall become effective upon certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by this

Chapter has been approved by the people of the State." The amendment was adopted by vote of the people at the election held May 8, 1984, and the amendment was certified to the Secretary of State by the State Board of Elections on Nov. 27, 1984. See N.C. Const., Art. V, § 11.

#### § 122B-2. Legislative findings.

It is hereby declared that for the benefit of the people of the State of North Carolina, the increase in their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that action be taken to finance the construction, acquisition and development of agricultural facilities; that it is essential for agricultural facilities within the State to be able to construct and renovate facilities in order to accomplish the purposes of this Chapter; and that it is the purpose of this Chapter to provide a measure of assistance to agricultural facilities to provide the necessary financing for such development to accomplish the purposes of this Chapter, all to the public benefit and good, to the extent and in the same manner provided herein. (1983, c. 789, s. 1.)

### § 122B-3. Definitions.

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (1) "Agency" means the North Carolina Agricultural Facilities Finance Agency created by this Chapter, or, should said agency be abolished or otherwise divested of its functions under this Chapter, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Chapter to the agency.
- (2) "Agricultural facility" means:
  - a. All real property constituting farms; or
  - b. All real property of farmer-owned cooperatives used for the processing of agricultural products; or
  - c. All structures, fixtures, machinery, equipment and personal property attached or to be attached to such real property as set forth in a or b or used in connection therewith and all improvements or alterations thereon. In the case of farmer-owned cooperatives, such structures, fixtures, machinery, equipment, and personal property must be used for the processing of agricultural products.
- (3) "Bonds" or "notes" means the bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Chapter, including refunding bonds.
- (4) "Borrower" means any party to a loan agreement except the agency.
- (5) "Cost," as applied to any project or any portion thereof financed under the provisions of this Chapter, means all or any part of the cost of acquisition, construction, reconstruction, alteration, and enlargement of a project, including all lands, structures, fixtures, machinery or equipment, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest during construction, the cost of consulting and legal services, the cost of administrative and other expenses related or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service.
- (6) "Lender" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, mortgage banking company, the Federal government and any other financial institution authorized to transact business in the State and making project loans.
- (7) "Loan agreement" means an agreement providing for the agency, or a lender with which the agency has contracted, to loan the proceeds from the issuance of bonds or notes pursuant to this Chapter to one or more borrowers to be used to pay the costs of an agricultural facility and providing for the repayment of such loan.
- (8) "Project" means real property and all buildings, structures, improvements, additions, alterations, extensions, enlargements thereto or other facilities for the use primarily as an agricultural facility and other structures or facilities related thereto or required, useful or convenient therefor, or any combination of the foregoing, and shall also include site preparation, landscaping, furniture, machinery, equipment, personal property and all other items necessary or conve-

nient for the operation of an agricultural facility in the manner for which its use is intended.

- (9) "Project loan" means the lending of proceeds from the issuance of bonds or notes pursuant to this Chapter by one or more lenders to one or more borrowers to be used to pay the costs of a project.
- (10) "State" means the State of North Carolina. (1983, c. 789, s. 1.)

#### **§ 122B-4. Agricultural Facilities Finance Agency.**

There is hereby created a body politic and corporate to be known as the "North Carolina Agricultural Facilities Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. All powers, rights and duties conferred by this Chapter or other provisions of law upon the agency shall be exercised by the board of directors of the agency, hereinafter referred to as the board. (1983, c. 789, s. 1.)

#### **§ 122B-5. Board of directors; membership; terms; chairman and vice-chairman; expenses; record of proceedings; quorum.**

(a) The board shall consist of the State Treasurer and the Commissioner of Agriculture, both of whom shall serve ex officio and five additional members, three of whom shall be appointed by the Governor. The General Assembly upon the recommendation of the President of the Senate shall appoint one member and upon the recommendation of the Speaker of the House of Representatives shall appoint one additional member. The five additional members of the board shall be residents of the State, shall not hold other public office and shall be engaged in agriculture, agribusiness or agricultural financing. The five appointive members of the board shall be appointed for staggered terms, the two members appointed by the General Assembly being appointed initially for one year, and the Governor's appointees being appointed initially one for two years, one for three years and one for four years, as designated by the Governor, and each member of the board shall continue in office until his successor shall be duly appointed by the appropriate appointing authority and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. The members appointed by the Governor shall be appointed for four-year terms after the original appointments and the members appointed by the General Assembly shall be appointed for two-year terms after the original appointments. The subsequent appointments made by the General Assembly shall be made for two-year terms to begin July 1, 1985, and biennially thereafter. The appointments made by the Governor shall expire on June 30 of each year in which they are to expire, and subsequent appointments made by the Governor shall be made for terms to begin on July 1 of each year in which a term expires. Any member of the board shall be eligible for reappointment. Each appointive member of the board may be removed by the appropriate appointing authority for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointive member of the board shall before entering upon his duties take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the board.

The board shall elect and appoint and prescribe the duties of a secretary-treasurer and such other officers as it shall deem necessary or advisable, which officers need not be members of the board.

(b) No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the board shall receive no compensation for their services but shall be entitled to receive, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(c) The secretary-treasurer of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. The secretary-treasurer shall have authority to cause copies to be made of all minutes and other records and documents of the agency and to give certificates under the official seal of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

(d) Four members of the board shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board duly called and held shall be necessary for any action taken by the board; Provided, however, that the board may appoint an executive committee to act on behalf of the board during the period between regular meetings of the board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The agency shall be contained within the Department of Agriculture as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b). (1983, c. 789, s. 1; 1985, c. 583, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective July 3, 1985, inserted the present sixth and seventh sentences of subsection (a).

## § 122B-6. General powers.

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

- (1) To make and execute contracts, agreements and other instruments necessary or incidental to the exercise of its powers and duties under this Chapter;
- (2) To participate with lenders in the making of project loans; Provided, however, that such project loans shall be made only upon the determination by the agency that loans are not otherwise available from private lenders upon reasonably equivalent terms and conditions; Provided further that no such project loan shall be made in an amount greater than five hundred thousand dollars (\$500,000) with respect to any individual or two million dollars (\$2,000,000) with respect to any farmer-owned cooperative; Provided further that the total amount of indebtedness with regards to project loans to any individual in his individual capacity and as a member of a farmer-owned cooperative shall not exceed five hundred thousand dollars (\$500,000) at any one time;

- (3) To collect and pay reasonable fees and charges in connection with the making of, purchasing and servicing project loans, notes, bonds or other evidence of indebtedness;
- (4) To acquire on a temporary basis real property, or an interest therein, in its own name, by purchase, transfer or foreclosure, where such acquisition is necessary or appropriate to protect any project loan in which the agency has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to rent or lease such property pending such sale, transfer or conveyance;
- (5) To purchase or participate in the purchase and enter into commitments by itself or with others for the purchase of project loans made by lenders to any borrower when the agency has given its approval prior to the initial making of the project loan; Provided, however, that any such purchase shall be made only upon the determination by the agency that the project loans were, at the time initial agency approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
- (6) To consent, whenever it deems necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any project loan, contract or agreement of any kind to which the agency is a party;
- (7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof its bonds and notes;
- (8) To include in any borrowing such amounts as may be deemed necessary by the agency to pay financing charges, interest on its bonds for a period not exceeding two years from their date, consultant, advisory and legal fees and such other expenses as are necessary or incident to such borrowing;
- (9) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effect its corporate purposes;
- (10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and such other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency therefor;
- (11) To conduct studies and surveys reflecting the need for projects and their location, financing and construction;
- (12) To service or contract for the servicing of project loans;
- (13) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities;
- (14) To sue and be sued in its own name, plead and be impleaded;
- (15) To purchase or to participate in the purchase and enter into commitments by itself or together with others for the purchase of federally insured securities; Provided, however, that the agency shall first determine that the proceeds of such securities shall be used for the purpose of making project loans, all as specified in regulations to be adopted by the agency;
- (16) To charge and to apportion among borrowers its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Chapter;

- (17) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (18) To adopt an official seal and alter the same at pleasure;
- (19) To do all other things necessary or convenient to carry out the purposes of this Chapter; and
- (20) To provide technical assistance to any county, city, town or other political subdivision or instrumentality of the State and to profit and nonprofit entities in the development or operation of agricultural facilities and the distribution of data and information concerning the development of agricultural facilities and agricultural employment in the State. (1983, c. 789, s. 1.)

### **§ 122B-7. Criteria and requirements for project loans.**

Any project loan undertaken pursuant to this Chapter shall be in accordance with the following criteria and requirements:

- (1) No project loan shall be made to any borrower which is not financially responsible and capable of fulfilling its obligations, including its obligations under a loan agreement to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge such other responsibilities as may be imposed under the loan agreement; and
- (2) No project loan shall be made unless the agency determines that loans are not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions. (1983, c. 789, s. 1.)

### **§ 122B-8. Loans to lenders.**

The agency may make, and undertake commitments to make, from proceeds from the issuance of bonds or notes pursuant to this Chapter, loans to lenders under terms and conditions requiring such loans to be used by such lenders to make project loans. Project loan commitments and project loans shall be originated through and serviced by a lender. (1983, c. 789, s. 1.)

### **§ 122B-9. Requirements for lenders.**

Prior to the making of any loan authorized by G.S. 122B-8, the agency shall require a lender to certify that:

- (1) The proceeds received by the lender in accordance with G.S. 122B-8 shall be used by such lender within a reasonable period of time to make project loans;
- (2) The project loan is, or will be, a prudent investment; and
- (3) The borrower is financially responsible and capable of fulfilling its obligations under the project loan. (1983, c. 789, s. 1.)

### **§ 122B-10. Optional requirements for lenders; insurance or guarantee necessary.**

Prior to the making of any loan authorized by G.S. 122B-8, the agency may, but is not obligated to, require a lender to:

- (1) Obtain any type of security the agency deems reasonable or necessary to secure the project loan; or

- (2) Receive funds in connection with the project loan in such amount and subject to such conditions as the agency deems reasonable or necessary.

No project loan shall be made unless it is insured by a reputable insurer or guaranteed by a reputable guarantor or both. (1983, c. 789, s. 1.)

### **§ 122B-11. Investment, purchase or assignment of project loans by agency.**

The agency may invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of project loans. The agency shall not invest in, purchase or make commitments to invest in or purchase or take assignments or make commitments to take assignments of project loans unless the agency determines that loans were, at the time approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions. (1983, c. 789, s. 1.)

### **§ 122B-12. Rules and regulations.**

The agency shall promulgate rules and regulations governing its activities authorized under this Chapter, including but not limited to rules and regulations relating to any or all of the following:

- (1) Procedures for making loans to lenders;
- (2) Procedures for the making of project loans;
- (3) Procedures for the investment in, purchase, assignment or sale of project loans;
- (4) Rates, fees, charges and other terms and conditions for originating or servicing project loans;
- (5) The type and amount of collateral or security to be provided to assure repayment of loans made by the agency to lenders;
- (6) The type and amount of collateral or security to be provided to assure repayment of project loans;
- (7) The nature and amount of fees to be charged by the agency to provide for expenses and reserves of the agency;
- (8) Standards and requirements for the allocation of available money of the agency to make loans among lenders;
- (9) The maturities, terms, conditions and interest rates for loans made to lenders;
- (10) The maturities, terms, conditions and interest rates for project loans made, purchased, sold, assigned or committed pursuant to this Chapter; and
- (11) Any other matters related to the duties of powers exercised by the agency under this Chapter. (1983, c. 789, s. 1.)

### **§ 122B-13. Credit of State not pledged.**

Bonds or notes issued under the provisions of this Chapter shall not be secured by a pledge of the faith and credit of the State or of any political subdivision thereof or be deemed to create an indebtedness of the State, or of any such political subdivision thereof, requiring any voter approval, but shall be payable solely from the revenues and other funds provided therefor. Each bond or note issued under this Chapter shall contain on the face thereof a statement to the effect that the agency shall not be obligated to pay the same

nor the interest thereon except from the revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged as security for the payment of the principal of, redemption premium, if any, or the interest on such bond or note.

Expenses incurred by the agency in carrying out the provisions of this Chapter may be made payable from funds provided pursuant to, or made available for use under, this Chapter and no liability shall be incurred by the agency hereunder beyond the extent to which moneys shall have been so provided. (1983, c. 789, s. 1.)

## § 122B-14. Bonds and notes.

(a) The agency is hereby authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the agency in an amount not to exceed 200 million dollars to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this Chapter for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the agency at such price or prices and upon such terms and conditions as may be determined by the agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the agency. The agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. No bonds or notes may be issued by the agency under this Chapter unless the issuance thereof is approved by the Local Government Commission of North Carolina.

(b) The agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of such bonds or notes which shall contain such information and have attached to it such documents concerning the proposed financing and prospective borrower, vendee or lessee as the Secretary may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements mentioned in this Chapter, the effect of the proposed financ-

ing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will effectuate the purposes of this Chapter.

Upon the filing with the Local Government Commission of a resolution of the agency requesting that its bonds or notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interest of the agency and shall best effectuate the purposes of this Chapter, provided that such sale shall be approved by the agency.

(c) The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes.

(d) Prior to the preparation of definitive bonds, the agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds, when such bonds shall have been executed and are available for delivery. The agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(e) Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes. (1983, c. 789, s. 1.)

## § 122B-15. Powers of the State Treasurer.

Notwithstanding any other provisions of this Chapter, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under this Chapter upon request of the agency and with the approval of the Local Government Commission.

The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this Chapter.

The agency shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters and bond attorneys. The State Treasurer shall have the exclusive power to employ and designate the financial consultants, underwriters and bond attorneys to be associated with the bond issue.

Nothing in this Chapter is intended to abrogate or diminish the inherent power of the State Treasurer to negotiate the terms and conditions of the bonds and notes and to issue the bonds and notes authorized by this Chapter. (1983, c. 789, s. 1.)

**§ 122B-16. Trust agreement or resolution.**

In the discretion of the agency any bonds or notes issued under the provisions of this Chapter may be secured by a trust agreement by and between the agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the agency received pursuant to this Chapter, including, without limitation, fees, loan repayments, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project loan and may grant a deed of trust or a mortgage on any project. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders or any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the agency, including any payments in respect of any federally guaranteed security or any federally insured mortgage note, the duties, if any, of the agency, with respect to the acquisition, construction, maintenance, repair and operation of any project, the fees, loan repayments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this Chapter shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Chapter and of such trust agreement or resolution; except that the agency may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the agency. Any such trust agreement or resolution may set off the rights and remedies, including foreclosure of any deed of trust or mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the agency may deem reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any project or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the agency. (1983, c. 789, s. 1.)

**§ 122B-17. Revenues; pledges of revenues.**

(a) The agency is hereby authorized to fix and to collect fees, loan repayments and charges in connection with any project loan, and to contract with any borrower therefor. The agency may require that the borrower shall operate, repair or maintain the project and shall bear the cost thereof and other costs of the agency in connection with the project loan, all as may be provided

in a loan agreement or other contract with the agency or a lender, in addition to other obligations imposed under such agreement or contract.

(b) The fees, loan repayments and charges shall be fixed as so to provide a fund sufficient, together with such other funds as may be made available therefor, (i) to pay the costs of operating, repairing and maintaining the project to the extent that adequate provision for the payment of such costs has not otherwise been provided for (ii) to pay the principal of and the interest on all bonds or notes as the same shall become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, such bonds; and such fees, loan repayments and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the project.

(c) All pledges of fees, loan repayments, charges and other revenues under the provisions of this Chapter shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether such parties have notice thereof. The resolution or any trust agreement by which a pledge is created or any loan agreement, or other agreement need not be filed or recorded except in the records of the agency.

(d) The State of North Carolina does pledge to and agree with the holders of any bonds or notes issued by the agency that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the agency at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected loan repayments, fees and charges in connection with any project loan and in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with such other funds as may be made available therefor, to pay the cost of operating, repairing and maintaining the project, to pay the principal of and the interest on all bonds and notes as the same shall become due and payable and to create and maintain any reserves provided therefor and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met and discharged. (1983, c. 789, s. 1.)

## § 122B-18. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, including without limitation, fees, loan repayments, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project loan, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this Chapter, subject to such limitations as this Chapter and such resolution or trust agreement may pro-

vide. Any such moneys may be invested as provided in G.S. 159-30, as it may from time to time be amended. (1983, c. 789, s. 1.)

### **§ 122B-19. Remedies.**

Any holder of bonds or notes issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the agency pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by the agency or by any officer thereof. (1983, c. 789, s. 1.)

### **§ 122B-20. Investment securities.**

All bonds, notes and interest coupons appertaining thereto issued under this Chapter are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under said Article 8, subject only to the provisions of the bonds and notes pertaining to registration. (1983, c. 789, s. 1.)

### **§ 122B-21. Bonds or notes eligible for investment.**

Bonds or notes issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of this State is now or may hereafter be authorized by law. (1983, c. 789, s. 1.)

### **§ 122B-22. Refunding bonds or notes.**

The agency is hereby authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds or notes and, if deemed advisable by the agency, for any corporate purpose of the agency.

The issuance of such bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the agency in respect of the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds or notes, insofar as such provisions may be appropriate therefor.

Refunding bonds or notes may be sold or exchanged for outstanding bonds or notes issued under this Chapter and, if sold, the proceeds thereof may be

applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such refunding bonds or notes, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in the resolution authorizing the issuance of, or in the trust agreement securing, such bonds or notes, to the payment of any interest on such refunding bonds or notes and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accrued thereon will be required for the purposes intended. (1983, c. 789, s. 1.)

### **§ 122B-23. Annual report.**

The agency shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Chapter for the preceding year to the Governor, the State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The agency shall cause an audit of its books and accounts relating to its activities under this Chapter to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the agency. (1983, c. 789, s. 1.)

### **§ 122B-24. Officers not liable.**

No member or officer of the agency shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof.

Any bonds or notes issued by the agency under the provisions of this Chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1983, c. 789, s. 1.)

### **§ 122B-25. Conflict of interest.**

If any member, officer or employee of the agency shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the agency, such interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the member, officer or employee having such interest therein shall not participate on behalf of the agency in the authorization of any such contract. (1983, c. 789, s. 1.)

### **§ 122B-26. Additional method.**

The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; Provided, however, that the issuance of bonds or notes under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1983, c. 789, s. 1.)

**§ 122B-27. Liberal construction.**

This Chapter, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof. (1983, c. 789, s. 1.)

**§ 122B-28. Inconsistent laws inapplicable.**

Insofar as the provisions of this Chapter are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Chapter shall be controlling. (1983, c. 789, s. 1.)

**§ 122B-29. Provisions severable.**

The provisions of this Chapter are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. (1983, c. 789, s. 1.)

**Chapter 122C.**

**Mental Health, Mental Retardation, and  
Substance Abuse Act of 1985.**

**Article 1.**

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**Article 3.**

**Clients' Rights.**

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**Article 4.**

**Organization and System for Delivery  
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- 122C-221. Admissions.  
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- 122C-231. Admissions.  
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#### Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

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- Part 13. Voluntary Admissions, Involuntary Commitment and Discharge of Non-State Residents and the Return of North Carolina Resident Clients.
- 122C-341. Determination of residence.  
 122C-342. Voluntary admissions and discharges.  
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 122C-344. Citizens of other countries.  
 122C-345. Return of a non-State resident client to his resident state.  
 122C-346. Authority of the Secretary to enter reciprocal agreements.  
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- Part 14. Interstate Compact on Mental Health.
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**Special Provisions.**

**Part 1. Camp Butner and Community of Butner.**

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- 122C-421. Joint security force.  
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- 122C-431. North Carolina Alcoholism Research Authority created.  
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**ARTICLE 1.**

*General Provisions.*

**§ 122C-1. Short title.**

This Chapter may be cited as the Mental Health, Mental Retardation, and Substance Abuse Act of 1985. (1985, c. 589, s. 2.)

**Editor's Note.** — As to comparable sections of repealed Chapter 122 and new Chapter 122C, see the table at the end of Chapter 122C.

Session Laws 1985, c. 589, s. 64 provides that prosecutions for offenses occurring before the effective date of the act (January 1, 1986) are not abated or affected by the act, and that the statutes that would be applicable but for the act remain applicable to those prosecutions.

Session Laws 1985, c. 589, s. 66 makes this Chapter effective January 1, 1986. Section 66

provides further that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification of the act, but shall not become effective before January 1, 1986. The act was ratified July 4, 1985.

Session Laws 1985, c. 589, s. 65 is a severability clause.

**§ 122C-2. Policy.**

The policy of the State is to assist individuals with mental illness, mental retardation, and substance abuse problems in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide services to eliminate, reduce, or prevent the disabling effects of mental illness, mental retardation, and substance abuse through a service delivery system designed to meet the needs of clients in the least restrictive available setting, if the least restrictive setting is therapeutically most appropriate, and to maximize their quality of life.

State and local governments shall develop and maintain a unified system of services centered in area programs. The public service system will strive to

provide a continuum of services for clients while considering the availability of services in the private sector.

The furnishing of services to implement the policy of this section requires the cooperation and financial assistance of counties, the State, and the federal government. (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2; c. 771.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, substituted “and local” for “and to local” in the first sentence of the second paragraph.

### § 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

- (1) “Area authority” means the area mental health, mental retardation, and substance abuse authority.
- (2) “Area board” means the area mental health, mental retardation, and substance abuse board.
- (3) “Camp Butner reservation” means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.
- (4) “City” has the same meaning as in G.S. 153A-1(1).
- (5) “Catchment area” means the geographic part of the State served by a specific area authority.
- (6) “Client” means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.
- (7) “Client advocate” means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.
- (8) “Commission” means the Commission for Mental Health, Mental Retardation, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (9) “Confidential information” means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. “Confidential information” does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.
- (10) “County of residence” of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.
- (11) “Dangerous to himself or others” means:
  - a. “Dangerous to himself” means that within the recent past:
    1. The individual has acted in such a way as to show:
      - I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

- II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or
2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
  3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

- b. "Dangerous to others" means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.
- (12) "Department" means the North Carolina Department of Human Resources.
  - (13) "Division" means the Division of Mental Health, Mental Retardation and Substance Abuse Services of the Department.
  - (13a) "Eligible psychologist" means a licensed practicing psychologist who has at least two years' clinical experience.
  - (14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mentally retarded, or substance abusers, and includes:
    - a. An "area facility", which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
    - b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or mentally retarded, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

- c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
  - d. The psychiatric service of North Carolina Memorial Hospital;
  - e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;
  - f. A "State facility", which is a facility that is operated by the Secretary;
  - g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
  - h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mental retarded, or substance abusers.
- (15) "Guardian" means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35 of the General Statutes.
- (16) "Habilitation" means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.
- (17) "Incompetent adult" means an adult individual adjudicated incompetent.
- (18) "Intoxicated" means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.
- (19) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.
- (20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian, or an attorney-in-fact acting under a valid durable power of attorney that authorizes him to provide or consent to medical care and hospitalization for the principal; or (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.
- (21) "Mental illness" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so lessens or impairs the youth's capacity either to develop or exercise age appropriate or age adequate self-control, judgment, or initiative in the conduct of his activities and social relationships as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control.
- (22) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (23) "Mentally retarded with accompanying behavior disorder" means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

- (24) "Next of kin" means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.
- (25) "Operating costs" means expenditures made by an area authority in the delivery of services for mental health, mental retardation, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.
- (26) "Operator" means the individual who is responsible for the management of a licensable facility.
- (27) "Outpatient treatment" as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.
- (28) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.
- (29) "Physician" means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.
- (30) "Provider of support services" means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.
- (30a) "Psychologist" means an individual licensed to practice psychology under Chapter 90. The term "eligible psychologist" is defined in subdivision (13a).
- (31) "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or mental retardation or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.
- (32) "Responsible professional" means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.
- (33) "Secretary" means the Secretary of the Department.
- (34) "Single portal of entry and exit policy" means an admission and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include

the complete exclusion of clients from admission to any specific State or area facility.

- (35) "Single portal area" means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.
- (36) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.
- (37) "Substance abuser" means an individual who engages in substance abuse. (1899, c. 1, s. 28; Rev., s. 4574; C. S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2.)

**Effect of Amendments.** — Session Laws 1985, c. 695, s. 1, effective January 1, 1986, added subdivisions (13a) and (30a).

Session Laws 1985, c. 777, s. 2, effective January 1, 1986, inserted "by law or" following "authority" in clause (ii) of subdivision (20).

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980). For survey of 1983 law on constitutional law, see 62 N.C.L. Rev. 1149 (1984).

#### CASE NOTES

**Editor's Note.** — The cases cited below were decided under comparable provisions of former Chapter 122.

**Statutory language establishes a two prong test for dangerousness to self.** The first prong addresses self-care ability regarding one's daily affairs. The second prong, which also must be satisfied for involuntary commitment to result, mandates a specific finding of a probability of serious physical debilitation resulting from the more general finding of lack of self-caring ability. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980); In re Crainshaw, 54 N.C. App. 429, 283 S.E.2d 553 (1981); In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

**Failure to Care for Needs as Dangerousness.** — Failure of a person to properly care for her medical needs, diet, grooming and general affairs would meet the required test of dangerousness to self. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

**Unusual eating habits alone do not amount to danger** as contemplated in this statute. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

**The State may involuntarily commit a person who cannot be relied upon to maintain the proper diet necessary to her welfare and who has no income to cover the expense of**

food, clothing, fuel or shelter. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

**Trial court must find three elements present in order to find that respondent is dangerous to others:** (1) within the recent past (2) respondent has (a) inflicted serious bodily harm on another, or (b) attempted to inflict serious bodily harm on another, or (c) threatened to inflict serious bodily harm on another, or (d) has acted in such a manner as to create a substantial risk of serious bodily harm to another, and (3) there is a reasonable probability that such conduct will be repeated. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

**Present statutory definition of "dangerous to others" does not require a finding of overt acts.** In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

**Prisoners receiving mental health care** were not covered by subsection (g) of former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62); the statute applied only to mental health patients who were not imprisoned with the Department of Corrections. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in Department of Human Resources-operated facilities, § 143B-261.1 and the regulations adopted pursuant thereto apply, rather than former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remain in prison for their mental health care. *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

**Applied** in *In re Collins*, 49 N.C. App. 243, 271 S.E.2d 84 (1980); *In re Frick*, 49 N.C. App. 273, 271 S.E.2d 84 (1980).

**Quoted** in *In re Guffey*, 54 N.C. App. 462, 283 S.E.2d 534 (1981).

**Stated** in *In re Holt*, 54 N.C. App. 352, 283 S.E.2d 413 (1981); *In re Guffey*, 54 N.C. App. 462, 283 S.E.2d 534 (1981).

**Cited** in *Willie M. v. Hunt*, 657 F.2d 55 (4th Cir. 1981); *In re Perkins*, 60 N.C. App. 592, 299 S.E.2d 675 (1983).

## § 122C-4. Use of phrase "client or his legally responsible person."

Except as otherwise provided by law, whenever in this Chapter the phrase "client or his legally responsible person" is used, and the client is a minor or an incompetent adult, the duty or right involved shall be exercised not by the client, but by the legally responsible person. (1985, c. 589, s. 2.)

§§ 122C-5 to 122C-20: Reserved for future codification purposes.

## ARTICLE 2.

### *Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.*

## § 122C-21. Purpose.

The purpose of this Article is to provide for licensure of facilities for the mentally ill, mentally retarded, and substance abusers by the development, establishment, and enforcement of basic rules governing:

- (1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and
- (2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

## § 122C-22. Exclusions from licensure; deemed status.

(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

- (1) Physicians and psychologists engaged in private office practice;
- (2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, mentally retarded, or substance abusers;
- (3) State and federally-operated facilities;
- (4) Domiciliary care homes licensed under Chapter 131D of the General Statutes;
- (5) Developmental child day care centers licensed under Article 7 of Chapter 110 of the General Statutes;

- (6) Persons subject to licensure under rules of the Social Services Commission;
- (7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and
- (8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14).

(b) If a licensable facility is certified by a nationally-recognized agency, such as the Joint Commission on Accreditation of Hospitals, then the Commission may by rule deem the facility licensed under this Article. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, deleted “duly licensed under Chapter 90 of the General Statutes and” following “Physicians and psychologists” at the beginning of subdivision (a)(1).

## § 122C-23. Licensure.

(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, mentally retarded or substance abusers without a current license issued by the Secretary.

(b) Each license is issued only for the premises named in the application and for the operator named in the application and shall not be transferable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Secretary for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Secretary shall issue a license if the Secretary finds that the operator complies with this Article and the rules of the Commission and Secretary.

(e) Unless a license is provisional or has been suspended or revoked, it shall be valid for a period not to exceed two years from the date of issue. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule or rules. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. The noncompliance may not present an immediate threat to the health and safety of the individuals in the licensable facility. A provisional license for an additional period of time to meet the noncompliance may not be issued.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150A of the General Statutes. (1899, c. 1, s. 60; Rev., s. 4600; C. S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 813, s. 1; c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, ss. 133, 152; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 718, ss. 1, 4; 1985, c. 589, s. 2.)

## § 122C-24. Adverse action on a license.

(a) The Secretary may deny, suspend, amend, or revoke a license in any case in which the Secretary finds that there has been a substantial failure to comply with any provision of this Article or any rule adopted pursuant to it. Actions under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150A of the General Statutes.

(b) When an appeal is filed concerning the denial, suspension, amendment, or revocation of a license, a copy of the proposal for decision shall be sent to the Chairman of the Commission in addition to the parties specified in G.S. 150A-34. The Chairman or members of the Commission designated by the Chairman may submit for the Secretary's consideration written or oral comments concerning the proposal prior to the issuance of a final agency decision in accordance with G.S. 150A-36. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

## § 122C-25. Inspections; confidentiality.

(a) The Secretary shall make or cause to be made inspections that the Secretary considers necessary. Facilities licensed under this Article shall be subject to inspection at all times by the Secretary.

(b) Notwithstanding G.S. 8-53, G.S. 8-53.3 or any other law relating to confidentiality of communications involving a patient or client, in the course of an inspection conducted under this section, representatives of the Secretary may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any individual who is or has been a patient, resident, or client of a licensable facility and the personnel records of those individuals employed by the licensable facility.

A licensable facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or an employee of the Department to disclose the following information to someone not authorized to receive the information:

- (1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or
- (2) The name of anyone who has furnished information concerning a licensable facility without the individual's consent.

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars (\$500.00).

All confidential or privileged information obtained under this section and the names of persons providing this information are exempt from Chapter 132 of the General Statutes.

(c) The Secretary shall adopt rules regarding inspections, that, at a minimum, provide for:

- (1) A general administrative schedule for inspections; and
- (2) An unscheduled inspection without notice, if there is a complaint alleging the violation of any licensing rule adopted under this Article. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

### § 122C-26. Powers of the Commission.

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

- (1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;
- (3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article; and
- (4) Adopt rules for the waiver of rules adopted under this Article. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

### § 122C-27. Powers of the Secretary.

The Secretary shall:

- (1) Administer and enforce the provisions, rules, and decisions pursuant to this Article;
- (2) Appoint hearing officers to conduct appeals under this Article;
- (3) Prescribe by rule the contents of the application for licensure and renewal;
- (4) Inspect facilities and records of each facility to be licensed under this Article under the rules and decisions pursuant to this Article;
- (5) Issue a license upon a finding that the applicant and facility comply with the provisions of this Article and the rules of the Commission and the Secretary;
- (6) Define by rule procedures for submission of periodic reports by facilities licensed under this Article;
- (7) Grant, deny, suspend, or revoke a license under this Article;
- (8) In accordance with rules of the Commission, make final agency decisions for appeals from the denial, suspension, or revocation of a license in accordance with G.S. 122C-24; and
- (9) In accordance with rules of the Commission, grant waiver for good cause of any rules implementing this Article that do not affect the health, safety, or welfare of individuals within a licensable facility. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

### § 122C-28. Penalties.

Operating a licensable facility without a license is a misdemeanor and is punishable by a fine not to exceed fifty dollars (\$50.00), for the first offense and a fine, not to exceed five hundred dollars (\$500.00), for each subsequent offense. Each day's operation of a licensable facility without a license is a separate offense. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

### § 122C-29. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the way provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a licensable facility operating without a license or in a way that threatens the health, safety, or welfare of the individuals in the licensable facility.

(b) If any individual interferes with the proper performance or duty of the Secretary in carrying out this Article, the Secretary may institute an action in the superior court of the county in which the interference occurred for injunctive relief against the continued interference, irrespective of all other remedies at law. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

§§ 122C-30 to 122C-50: Reserved for future codification purposes.

### ARTICLE 3.

#### *Clients' Rights.*

#### § 122C-51. Declaration of policy on clients' rights.

It is the policy of the State to assure basic human rights to each client of a facility. These rights include the right to dignity, privacy, humane care, and freedom from mental and physical abuse, neglect, and exploitation. Each facility shall assure to each client the right to live as normally as possible while receiving care and treatment.

It is further the policy of this State that each client who is admitted to and is receiving services from a facility has the right to treatment, including access to medical care and habilitation, regardless of age or degree of mental illness, mental retardation, or substance abuse. Each client has the right to an individualized written treatment or habilitation plan setting forth a program to maximize the development or restoration of his capabilities. (1973, c. 475, s. 1; c. 1436, ss. 1, 8; 1985, c. 589, s. 2.)

**Editor's Note.** — The correct citation to the opinion of the Attorney General in the bound volume under former § 122-55.1, the comparable provision in former Chapter 122, is 48 N.C.A.G. 9.

**Legal Periodicals.** — For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

#### § 122C-52. Right to confidentiality.

(a) Confidential information acquired in attending or treating a client is not a public record under Chapter 132 of the General Statutes.

(b) Except as authorized by G.S. 122C-53 through G.S. 122C-56, no individual having access to confidential information may disclose this information.

(c) Except as provided by G.S. 122C-53 through G.S. 122C-56, each client has the right that no confidential information acquired be disclosed by the facility.

(d) No provision of G.S. 122C-53 through G.S. 122C-56 permitting disclosure of confidential information may apply to the records of a client when federal statutes or regulations applicable to that client prohibit the disclosure of this information.

(e) Except as required or permitted by law, disclosure of confidential information to someone not authorized to receive the information is a misdemeanor and is punishable by a fine, not to exceed five hundred dollars (\$500.00). (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1965, c. 800, s. 4; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2.)

**Legal Periodicals.** — For survey of 1979 law on evidence, see 58 N.C.L. Rev. 1456 (1980).

#### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Cited in** *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412 (1982).

### § 122C-53. Exceptions; client.

(a) A facility may disclose confidential information if the client or his legally responsible person consents in writing to the release of the information to a specified person. This release is valid for a specified length of time and is subject to revocation by the consenting individual.

(b) A facility may disclose the fact of admission or discharge of a client to the client's next of kin whenever the responsible professional determines that the disclosure is in the best interest of the client.

(c) Upon request a client shall have access to confidential information in his client record except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to a client, the client may request that the information be sent to a physician or psychologist of the client's choice, and in this event the information shall be so provided.

(d) Except as provided by G.S. 90-21.4(b), upon request the legally responsible person of a client shall have access to confidential information in the client's record; except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to the legally responsible person, the legally responsible person may request that the information be sent to a physician or psychologist of the legally responsible person's choice, and in this event the information shall be so provided.

(e) A client advocate's access to confidential information and his responsibility for safeguarding this information are as provided by subsection (g) of this section.

(f) As used in subsection (g) of this section, the following terms have the meanings specified:

(1) "Internal client advocate" means a client advocate who is employed by the facility or has a written contractual agreement with the Department or with the facility to provide monitoring and advocacy services to clients in the facility in which the client is receiving services; and

(2) "External client advocate" means a client advocate acting on behalf of a particular client with the written consent and authorization;

a. In the case of a client who is an adult and who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes, of the client; or

b. In the case of any other client, of the client and his legally responsible person.

(g) An internal client advocate shall be granted, without the consent of the client or his legally responsible person, access to routine reports and other confidential information necessary to fulfill his monitoring and advocacy functions. In this role, the internal client advocate may disclose confidential

information received to the client involved, to his legally responsible person, to the director of the facility or his designee, to other individuals within the facility who are involved in the treatment or habilitation of the client, or to the Secretary in accordance with the rules of the Commission. Any further disclosure shall require the written consent of the client and his legally responsible person. An external client advocate shall have access to confidential information only upon the written consent of the client and his legally responsible person. In this role, the external client advocate may use the information only as authorized by the client and his legally responsible person.

(h) In accordance with G.S. 122C-205, the facility shall notify the appropriate individuals upon the escape from and subsequent return of clients to a 24-hour facility.

(i) Upon the request of a client, a facility shall disclose to an attorney confidential information relating to that client. (1973, c. 475, s. 1; c. 1436, ss. 2-5; 1985, c. 589, s. 2.)

#### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Prisoners receiving mental health care** were not covered by former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62); the statutes applied only to mental health patients who were not imprisoned with the Department of Corrections. *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in Department of Human Resources-operated facilities, § 143B-261.1 and the regulations adopted pursuant thereto apply, rather than former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remained in prison for their mental health care. *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

### § 122C-54. Exceptions; abuse reports and court proceedings.

(a) A facility shall disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure.

(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court, the facility may send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d).

(c) Certified copies of written results of examinations by physicians and records in the cases of clients voluntarily admitted or involuntarily committed and facing district court hearings and rehearings pursuant to Article 5 of this Chapter shall be furnished by the facility to the client's counsel, the attorney representing the State's interest, and the court. The confidentiality of client information shall be preserved in all matters except those pertaining to the necessity for admission or continued stay in the facility or commitment under review. The relevance of confidential information for which disclosure is sought in a particular case shall be determined by the court with jurisdiction over the matter.

(d) Any individual seeking confidential information contained in the court files or the court records of a proceeding made pursuant to Article 5 of this Chapter may file a written motion in the cause setting out why the information is needed. A district court judge may issue an order to disclose the confidential information sought if he finds the order is appropriate under the

circumstances and if he finds that it is in the best interest of the individual admitted or committed or of the public to have the information disclosed.

(e) Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of this Chapter may be expunged from the files of the court. The minor and his legally responsible person shall be informed in writing by the court of the right provided by this subsection at the time that the application for admission is filed with the court.

(f) A State facility and the psychiatric service of North Carolina Memorial Hospital may disclose confidential information to staff attorneys of the Attorney General's office whenever the information is necessary to the performance of the statutory responsibilities of the Attorney General's office or to its performance when acting as attorney for a State facility or the psychiatric service of North Carolina Memorial Hospital.

(g) A facility may disclose confidential information to an attorney who represents either the facility or an employee of the facility, if such information is relevant to litigation, to the operations of the facility, or to the provision of services by the facility. An employee may discuss confidential information with his attorney or with an attorney representing the facility in which he is employed.

(h) A facility may disclose confidential information for purposes of complying with Article 44 of Chapter 7A of the General Statutes and Article 6 of Chapter 108A of the General Statutes, or as required by other State or federal law. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1977, c. 696, s. 1; 1979, c. 147; c. 915, s. 20; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2.)

### § 122C-55. Exceptions; care and treatment.

(a) Any area or State facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of North Carolina Memorial Hospital upon a written determination by the responsible professional possessing the information that the sharing of information is necessary for the appropriate and effective care and treatment of the client and that failure to share this information would be detrimental to the care and treatment of the client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client.

(b) A facility, physician, or other individual responsible for evaluation, management, supervision, or treatment of respondents examined or committed for outpatient treatment under the provisions of Article 5 of this Chapter may request, receive, and disclose confidential information to the extent necessary to enable them to fulfill their responsibilities.

(c) A facility may furnish confidential information in its possession to the Department of Correction when requested by that department regarding any client of that facility when the inmate has been determined by the Department of Correction to be in need of treatment for mental illness, mental retardation, or substance abuse. The Department of Correction may furnish to a facility confidential information in its possession about treatment for mental illness, mental retardation, or substance abuse that the Department of Correction has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has

been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure.

(d) A responsible professional may disclose confidential information when in his opinion there is an imminent danger to the health or safety of the client or another individual or there is a likelihood of the commission of a felony or violent misdemeanor.

(e) A responsible professional may exchange confidential information with a physician or other health care provider who is providing emergency medical services to a client. Disclosure of the information is limited to that necessary to meet the emergency as determined by the responsible professional.

(f) A facility may disclose confidential information to a provider of support services whenever the facility has entered into a written agreement with a person to provide support services and the agreement includes a provision in which the provider of support services acknowledges that in receiving, storing, processing, or otherwise dealing with any confidential information, he will safeguard and not further disclose the information.

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose confidential information to State or federal government agencies. Disclosure is limited to that confidential information necessary to establish financial benefits for a client. After establishment of these benefits, the consent of the client or his legally responsible person is required for further release of confidential information under this subsection.

(h) Within a facility, employees, students, consultants or volunteers involved in the care, treatment, or habilitation of a client may exchange confidential information as needed for the purpose of carrying out their responsibility in serving the client.

(i) Upon specific request, a responsible professional may release confidential information to a physician or psychologist who referred the client to the facility. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 15.)

**Effect of Amendments.** — The 1985 “practicing” preceding “psychologist” in sub-amendment, effective January 1, 1986, deleted section (i).

## § 122C-56. Exceptions; research and planning.

(a) The Secretary may require information that does not identify clients from State and area facilities for purposes of preparing statistical reports of activities and services and for planning and study. The Secretary may also receive confidential information from State and area facilities when specifically required by other State or federal law.

(b) The Secretary may have access to confidential information from private or public agencies or agents for purposes of research and evaluation in the areas of mental health, mental retardation, and substance abuse. No confidential information shall be further disclosed.

(c) A facility may disclose confidential information to persons responsible for conducting general research or clinical, financial, or administrative audits if there is a justifiable documented need for this information. A person receiv-

ing the information may not directly or indirectly identify any client in any report of the research or audit or otherwise disclose client identity in any way. (1965, c. 800, s. 4; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

### § 122C-57. Right to treatment and consent to treatment.

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and his legally responsible person shall be informed in advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted client or his legally responsible person has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client or his legally responsible person. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client or his legally responsible person in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or his designee, either:

- (1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give him a realistic opportunity of improving his condition;
- (2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm himself or others before improvement of his condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client or his legally responsible person. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client or his legally responsible person prior to their initiation. (1973, c. 475, s. 1; c. 1436, ss. 6, 7; 1981, c. 328, ss. 1, 2; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(o) provides: "The Department of Human Resources shall prepare a report regarding alternative procedures to G.S. 122C-57(e) designed to better protect the involuntary client's right to consent or refuse specific treatment measures. Included in this report shall be an assessment of the feasibility of appointing a guardian ad litem or a guardian for a respondent while he is held involuntarily in a 24-

hour facility. If the 1985 General Assembly Adjournment Resolution allows a report from the Mental Health Study Commission during the 1986 Short Session, then the Department's report shall be made to the Mental Health Study Commission by March 1, 1986. If not, then the Department's report shall be made to the Mental Health Study Commission no later than September 1, 1986." The 1985 General Assembly allowed the report.

## § 122C-58. Civil rights and civil remedies.

Except as otherwise provided in this Chapter, each adult client of a facility keeps the same right as any other citizen of North Carolina to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, register and vote, bring civil actions, and marry and get a divorce, unless the exercise of a civil right has been precluded by an unrevoked adjudication of incompetency. This section shall not be construed as validating the act of any client who was in fact incompetent at the time he performed the act. (1973, c. 475, s. 1; c. 1436, ss. 2-5; 1985, c. 589, s. 2.)

### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Prisoners receiving mental health care** were not covered by former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62); the statutes applied only to mental health patients who were not imprisoned with the Department of Corrections. *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in Department of Human Resources-operated facilities, § 143B-261.1 and the regulations adopted pursuant thereto apply, rather than former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remained in prison for their mental health care. *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

## § 122C-59. Use of corporal punishment.

Corporal punishment may not be inflicted upon any client. (1973, c. 475, s. 1; 1985, c. 589, s. 2.)

## § 122C-60. Use of physical restraints or seclusion.

(a) Physical restraint or seclusion of a client shall be employed only when there is imminent danger of abuse or injury to himself or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record.

(b) The Commission may adopt rules to implement this section. (1973, c. 475, s. 1; 1985, c. 589, s. 2.)

### § 122C-61. Treatment rights in 24-hour facilities.

In addition to the rights set forth in G.S. 122C-57, each client who is receiving services at a 24-hour facility has the following rights:

- (1) The right to receive necessary treatment for and prevention of physical ailments based upon the client's condition and projected length of stay. The facility may seek to collect appropriate reimbursement for its costs in providing the treatment and prevention; and
- (2) The right to have, as soon as practical during treatment or habilitation but not later than the time of discharge, an individualized written discharge plan containing recommendations for further services designed to enable the client to live as normally as possible. A discharge plan may not be required when it is not feasible because of an unanticipated discontinuation of a client's treatment. With the consent of the client or his legally responsible person, the professionals responsible for the plans shall contact appropriate agencies at the client's destination or in his home community before formulating the recommendations. A copy of the plan shall be furnished to the client or to his legally responsible person and, with the consent of the client, to the client's next of kin. (1973, c. 475, s. 1; c. 1436, ss. 6, 7; 1981, c. 328, ss. 1, 2; 1985, c. 589, s. 2.)

### § 122C-62. Additional rights in 24-hour facilities.

(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

- (1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;
- (2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, mental retardation, or substance abuse professionals of his choice; and
- (3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

- (1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;
- (2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;
- (3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;
- (4) Make visits outside the custody of the facility unless:
  - a. Commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

- b. The client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or
- c. The client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

- (5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;
- (6) Except as prohibited by law, keep and use personal clothing and possessions;
- (7) Participate in religious worship;
- (8) Keep and spend a reasonable sum of his own money;
- (9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and
- (10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. In recognition of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Article. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:

- (1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;
- (2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, private mental health, mental retardation, or substance abuse professionals, of his or his legally responsible person's choice; and
- (3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:

- (1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;
- (2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;
- (3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;
- (4) Receive special education and vocational training in accordance with federal and State law;

- (5) Be out of doors daily and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;
- (6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision;
- (7) Participate in religious worship;
- (8) Have access to individual storage space for the safekeeping of personal belongings;
- (9) Have access to and spend a reasonable sum of his own money; and
- (10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b) (2) and (d) (3) of this section if restrictions are necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b) (2), (b) (4), (b) (5), (b) (10), (d) (3), (d) (5) and (d) (8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section. (1973, c. 475, s. 1; c. 1436, ss. 2-5, 8; 1985, c. 589, s. 2.)

#### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Prisoners receiving mental health care** were not covered by former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62); the statutes applied only to mental health patients

who were not imprisoned with the Department of Corrections. *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in Department of Human Resources-operated facilities, § 143B-261.1 and the regulations adopted pursuant thereto apply, rather

than former § 122-36 (see now § 122C-3) and former § 122-55.2 (see now §§ 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remained in prison for their

mental health care. *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

### § 122C-63. Assurance for continuity of care for individuals with mental retardation.

(a) Any individual with mental retardation admitted for residential care or treatment for other than respite or emergency care to any residential facility operated under the authority of this Chapter and supported all or in part by state-appropriated funds has the right to residential placement in an alternative facility if the client is in need of placement and if the original facility can no longer provide the necessary care or treatment.

(b) The operator of a residential facility providing residential care or treatment, for other than respite or emergency care, for individuals with mental retardation shall notify the area authority serving the client's county of residence of his intent to close a facility or to discharge a client who may be in need of continuing care at least 60 days prior to the closing or discharge.

The operator's notification to the area authority of intent to close a facility or to discharge a client who may be in need of continuing care constitutes the operator's acknowledgement of the obligation to continue to serve the client until:

- (1) The area authority determines that the client is not in need of continuing care;
- (2) The client is moved to an alternative residential placement; or
- (3) Sixty days have elapsed;

whichever occurs first.

In cases in which the safety of the client who may be in need of continuing care, of other clients, of the staff of the residential facility, or of the general public, is concerned, this 60-day notification period may be waived by securing an emergency placement in a more secure and safe facility. The operator of the residential facility shall notify the area authority that an emergency placement has been arranged within 24 hours of the placement. The area authority and the Secretary shall retain their respective responsibilities upon receipt of this notice.

(c) An individual who may be in need of continuing care may be discharged from a residential facility without further claim for continuing care against the area authority or the State if:

- (1) After the parent or guardian, if the client is a minor or an adjudicated incompetent adult, or the client, if an adult not adjudicated incompetent, has entered into a contract with the operator upon the client's admission to the original residential facility the parent, guardian, or client who entered into the contract refuses to carry out the contract, or
- (2) After an alternative placement for a client in need of continuing care is located, the parent or guardian who admitted the client to the residential facility, if the client is a minor or an adjudicated incompetent adult, or the client if an adult not adjudicated incompetent, refuses the alternative placement.

(d) Decisions made by the area authority regarding the need for continued placement or regarding the availability of an alternative placement of a client may be appealed pursuant to the appeals process of the area authority and subsequently to the Secretary or the Commission under their rules. If the appeal process extends beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange a temporary placement in a State facility for the mentally retarded pending the outcome of the appeal.

(e) The area authority that serves the county of residence of the client is responsible for assessing the need for continuity of care and for the coordination of the placement among available public and private facilities whenever the authority is notified that a client may be in need of continuing care. If an alternative placement is not available beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange for a temporary placement in a State facility for the mentally retarded. The area authority shall retain responsibility for coordination of placement during a temporary placement in a State facility.

(f) The Secretary is responsible for coordinative and financial assistance to the area authority in the performing of its duties to coordinate placement so as to assure continuity of care and for assuring a continuity of care placement beyond the operator's 60-day obligation period.

(g) The area authority's financial responsibility, through local and allocated State resources, is limited to:

- (1) Costs relating to the identification and coordination of alternative placements;
- (2) If the original facility is an area facility, maintenance of the client in the original facility for up to 60 days; and
- (3) Release of allocated categorical State funds used to support the care or treatment of the specific client at the time of alternative placement if the Secretary requires the release.

(h) In accordance with G.S. 143B-147(a)(1) the Commission shall develop programmatic rules to implement this section, and, in accordance with G.S. 122C-112(a)(6), the Secretary shall adopt budgetary rules to implement this section. (1981, c. 1012; 1985, c. 589, s. 2.)

## § 122C-64. Human rights committees.

Human rights committees responsible for protecting the rights of clients shall be established at each State facility and may be established for area authorities. The Commission shall adopt rules for the establishment of committees. These rules shall include the composition and duties of the committees and procedures for appointment of the members by the Secretary for State facilities and by the area board for area authorities. (1985, c. 589, s. 2.)

## § 122C-65. Offenses relating to clients.

(a) For the protection of clients receiving treatment or habilitation in a 24-hour facility, it is unlawful for any individual who is not a mentally retarded client in a facility:

- (1) To assist, advise, or solicit, or to offer to assist, advise, or solicit a client of a facility to leave without authority;
- (2) To transport or to offer to transport a client of a facility to or from any place without the facility's authority;
- (3) To receive or to offer to receive a minor client of a facility into any place, structure, building, or conveyance for the purpose of engaging in any act that would constitute a sex offense, or to solicit a minor client of a facility to engage in any act that would constitute a sex offense;
- (4) To hide an individual who has left a facility without authority; or
- (5) To engage in, or offer to engage in an act with a client of a facility that would constitute a sex offense.

(b) Violation of this section is a misdemeanor and is punishable as provided in G.S. 14-3. (1899, c. 1, s. 53; Rev., s. 3694; C. S., s. 6171; 1963, c. 1184, ss. 1, 6; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, ch. 589, s. 63(b) provides that this section and § 122C-66 apply only to acts or omissions occurring on or after January 1, 1986.

## § 122C-66. Protection from abuse and exploitation; reporting.

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client or borrows or takes personal property from a client is guilty of a misdemeanor and is punishable as provided in G.S. 14-3. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of a facility who witnesses or has knowledge of a violation of subsection (a) or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars (\$500.00).

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without his consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which a reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7A-543 or G.S. 108A-102.

(f) The facility shall investigate or provide for the investigation of all reports made under the provisions of this section. (1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, ch. 589, s. 63(b) provides that § 122C-65 and this section apply only to acts or omissions occurring on or after January 1, 1986.

## § 122C-67. Other rules regarding abuse, exploitation, neglect not prohibited.

G.S. 122C-66 does not prohibit the Commission from adopting rules for State and area facilities and does not prohibit other facilities from issuing policies regarding other forms of prohibited abuse, exploitation, or neglect. (1985, c. 589, s. 2.)

§§ 122C-68 to 122C-100: Reserved for future codification purposes.

#### ARTICLE 4.

### *Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.*

#### Part 1. Policy.

##### § 122C-101. Policy.

Within the public system of mental health, mental retardation, and substance abuse services, there are both area and State facilities. An area authority is the locus of coordination among public services for clients of its catchment area. To assure the most appropriate and efficient care of clients within the publicly supported service system, area authorities are encouraged to develop and secure approval for a single portal of entry and exit policy for their catchment areas. (1985, c. 589, s. 2.)

§§ 122C-102 to 122C-110: Reserved for future codification purposes.

#### Part 2. State, County and Area Authority.

##### § 122C-111. Administration.

The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director shall administer the programs of the area authority and enforce the rules of the area board, applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area directors and State facility directors shall provide for the coordination of services between area authorities and State facilities. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

##### § 122C-112. Powers and duties of the Secretary.

(a) The Secretary shall:

- (1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;
- (2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;
- (3) Operate State facilities and adopt rules pertaining to their operation;
- (4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;
- (5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;
- (6) Adopt rules governing the expenditure of all area authority funds;
- (7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;
- (8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.

- (9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;
  - (10) Promote public awareness and understanding of mental health, mental illness, mental retardation, and substance abuse;
  - (11) Administer and enforce rules that are conditions of participation in federal or State financial aid; and
  - (12) Carry out G.S. 122C-361.
- (b) The Secretary may:
- (1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, mental retardation, and substance abuse programs;
  - (2) Sponsor training opportunities in the fields of mental health, mental retardation, and substance abuse;
  - (3) Promote and conduct research in the fields of mental health, mental retardation, and substance abuse;
  - (4) Provide technical assistance for the development and improvement of prevention services;
  - (5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, mental retardation, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;
  - (6) Accept, allocate, and spend any federal funds for mental health, mental retardation, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, mental retardation, or substance abuse purposes specified;
  - (7) Enter agreements authorized by G.S. 122C-346. ( C.S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, c. 32; c. 164; 1945, c. 952, s. 9; 1947, c. 537, ss. 5, 6; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, ss. 3, 6, 10; c. 1184, s. 6; 1965, c. 800, s. 1; c. 929, s. 3; 1969, c. 676, s. 2; 1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s.7; 1979, c. 358, ss. 2-4, 23; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2.)

### § 122C-113. Cooperation between Secretary and other agencies.

(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, mentally retarded, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, mental retardation, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, mentally retarded, or substance abusers.

(c) The Secretary shall adopt rules to assure this coordination. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-114. Powers and duties of the Commission.

The Commission shall have authority as provided by this Chapter, Chapters 90 and 148 of the General Statutes, and by G.S. 143B-147. (C. S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 5; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, s. 10; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-115. Powers and duties of counties and cities.

(a) Except as provided in G.S. 153A-77, a county shall provide mental health, mental retardation, and substance abuse services through an area authority.

(b) Counties and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

(c) Within a catchment area designated by the Commission, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary. ( 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 5, 23; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-116. Status of area authority.

An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 2; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2.)

### § 122C-117. Powers and duties of the area authority.

(a) The area authority shall:

- (1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, mental retardation, and substance abuse services;
- (2) Provide services to clients in the catchment area;
- (3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;
- (4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
- (5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
- (6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board. (1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2.)

## § 122C-118. Structure of area board.

(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows:

- (1) In a single-county area, by the board of county commissioners;
- (2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) In a single county area, the board of county commissioners shall appoint the members of the area board who may be removed with or without cause.

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office.

(e) The area board shall include:

- (1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;
- (2) At least two physicians licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina;
- (3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;
- (4) At least one individual each representing the interests of or from citizens' organizations representing the interests of individuals with:
  - a. Mental illness;
  - b. Mental retardation;
  - c. Alcoholism; and
  - d. Drug abuse;
- (5) At least one representative from local hospitals or area planning organizations; and
- (6) At least one attorney licensed to practice in North Carolina.

(f) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining members for four years. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 5, 6, 23; c. 455; 1981, c. 51, s. 3; c. 52; 1983, c. 6; c. 383, s. 1; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(D) provides that until any change is made in the size of an area board under subsection (a) of this section, it shall remain the same size as on December 31, 1985.

### § 122C-119. Organization of area board.

(a) The area board shall meet at least six times per year.

(b) Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4; 1977, c. 568, s. 1; 1979, c. 358, ss. 6, 23; c. 455; 1981, c. 52; 1983, c. 6; 1985, c. 589, s. 2.)

### § 122C-120. Compensation of area board members.

(a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board and the amounts shall not exceed those authorized by G.S. 138-5 for State boards.

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board. (1979, c. 358, s. 28; 1985, c. 589, s. 2.)

### § 122C-121. Area director.

The area director is an employee of the area board and shall serve at the pleasure of the area board. The director is responsible for the staff appointments, for implementation of the policies and programs of the board in compliance with rules of the Commission and the Secretary, and for the supervision of all service programs and staff. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-122. Public guardians.

The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35-1.7(4), serve as guardians for adults adjudicated incompetent under the provisions of Article 1A of Chapter 35 of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a guardianship proceeding brought under that Article. Bond shall be required or purchased as provided by G.S. 35-1.19. (1977, c. 679, s. 7; c. 725, s. 7; 1979, c. 358, s. 26; 1985, c. 589, s. 2.)

#### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122. Cited in *Thomas S. v. Morrow*, 601 F. Supp. 1055 (W.D.N.C. 1984).

§§ 122C-123 to 122C-130: Reserved for future codification purposes.

### Part 3. Service Delivery System.

#### § 122C-131. Composition of system.

Mental health, mental retardation, and substance abuse services of the public system in this State shall be delivered through area authorities and State facilities. (1985, c. 589, s. 2.)

#### § 122C-132. Single portal of entry and exit designation.

(a) The public system should provide for a single portal of entry and exit policy. In order to accomplish this objective, an area authority desiring designation as a single portal area shall present to the Secretary a single portal of entry and exit plan approved by the area board. The decision as to whether to choose to submit a plan is in the discretion of the area authority after weighing the policy goal stated in this subsection and in G.S. 122C-101.

(b) In order for a single portal area to be designated, the single portal of entry and exit plan shall be subject to approval by the Secretary. Once an area is designated by the Secretary as a single portal area, any changes to the plan shall be subject to approval by the Secretary. However, an approved plan and designation as a single portal area shall remain in force pending approval of any changes.

(c) The plan shall include but not be limited to:

- (1) A specific listing of facilities to be covered by the single portal of entry and exit plan;
- (2) Procedures for review of individuals to be admitted to or discharged from State and area facilities;
- (3) Procedures for shared responsibility when individuals are admitted directly to a State facility;
- (4) Evidence of incorporation of these plans within the contracts between the area authority and the State facilities as required by G.S. 122C-143(c) and with other public and private agencies as required in G.S. 122C-141;
- (5) Evidence of cooperative arrangements with local law enforcement, local courts, and the local medical society; and
- (6) Procedures for review of citizen complaints.

(d) Residents of a county in a designated single portal area shall be admitted to or discharged from State and area facilities through the area authority as described in the area's single portal of entry and exit policy. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 2, 12; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, ss. 1-3; 1985, c. 589, s. 2.)

§§ 122C-133 to 122C-140: Reserved for future codification purposes.

### Part 4. Area Facilities.

#### § 122C-141. Provision of services.

(a) The area authority may provide services directly and may contract with

other public or private agencies, institutions, or resources for the provision of services.

(b) All area authority services provided directly or under contract shall meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. The Secretary may delay payments and, with written notification of cause, may reduce or deny payment of funds if an area authority fails to meet these requirements. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; c. 614, s. 7; 1985, c. 589, s. 2.)

### **§ 122C-142. Contract for services.**

(a) When the area authority contracts with persons for the provision of services, the area authority shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. Terms of the contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. The Secretary may also monitor contracted services to assure that rules and State statutes are met.

(b) When the area authority contracts for services, it may provide funds to purchase liability insurance, to provide legal representation, and to pay any claim with respect to liability for acts, omissions, or decisions by members of the boards or employees of the persons with whom the area authority contracts. These acts, omissions, and decisions shall be ones that arise out of the performance of the contract and may not result from actual fraud, corruption, or actual malice on the part of the board members or employees. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; 1985, c. 589, s. 2.)

### **§ 122C-143. Plans and budgets required by the Secretary.**

(a) Subject to the rules of the Secretary, area authorities shall develop and submit plans and budgets, including annual plans and budgets that provide for the delivery of services to residents of the catchment area.

(b) The annual plan and budget shall include an inventory of existing services, a description of the needs of catchment area residents, and major actions to be completed by the area authority to meet the identified needs. It shall also include strategies consistent with Parts 7 and 8 of Article 5 of this Chapter for maximum utilization of area facilities.

(c) The annual plan and budget shall include a plan for contracting with those State facilities designated to serve residents of the catchment area.

(d) The annual plan and budget shall show the planned spending of all local, State, and federal funds for each service according to the source of the funds.

(e) In addition to annual plans and budgets, the Secretary may require area authorities to develop with State facilities joint long-range plans that identify needs and resources to address those needs in the least restrictive setting, if the least restrictive setting is therapeutically most appropriate, and that provide a method for coordination of services.

(f) Plans and budgets and subsequent changes are subject to approval by the Secretary. If the Secretary disapproves a plan and budget or subsequent changes, the Secretary may delay payments and with written notification of

cause may reduce or deny payment of funds. If the Secretary later approves the plan and budget or subsequent changes, restoration of funds is within the discretion of the Secretary. (1973, c. 1408, s. 1; 1977, c. 568, s. 1; c. 679, ss. 7, 8; 1979, c. 358, ss. 12, 26, 27; 1981, c. 51, s. 3; 1983, c. 383, s. 3; 1985, c. 589, s. 2.)

### § 122C-144. Reports.

(a) Periodically as specified by the Secretary by rule, each area authority shall provide the Secretary and the board or boards of county commissioners with:

- (1) A budget report that indicates receipts and expenditures for the total area authority according to a reporting format prescribed by the Secretary. This format shall conform as nearly as practical to the recommended budget format of the Local Government Commission under the provisions of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes; and
- (2) An audit report prepared by an independent certified public accountant, which report may be made by the county independent certified public accountant as a part of the county's normal annual audit if satisfactory to the Secretary.

(b) The Secretary may require reports of activities and services of the area authority, but the reports may not identify individual clients of the area authority unless specifically required by State statute, federal statute or regulation, or unless valid consent for the release has been given by the client or legally responsible person.

(c) Reports required of the area authority by the Secretary shall be reviewed by the Secretary biennially, and only those reports considered necessary by the Secretary shall thereafter be required.

(d) If an area authority fails to file required reports within the time limit set by the Secretary, the Secretary may:

- (1) Delay payments; and
- (2) With written notification of cause and subject to an appeal as provided by G.S. 122C-145, may reduce or deny payment of funds. (1977, c. 568, s. 1; 1979, c. 358, ss. 13, 30; 1985, c. 589, s. 2.)

### § 122C-145. Appeal by area authorities.

(a) The area authority may appeal to the Commission any action regarding rules under the jurisdiction of the Commission or rules under the joint jurisdiction of the Commission and the Secretary.

(b) The area authority may appeal to the Secretary any action regarding rules under the jurisdiction of the Secretary.

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150A of the General Statutes. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 19; 1981, c. 51, s. 3; c. 614, s. 7; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(f) provides that if any appeal under §§ 122-35.41, 122-35.50, or 122-35.52 is pending on the effective date of the act (January 1, 1986), it shall be governed by the law and rules

in effect at the time of the appeal, and that if any appeal was allowable under one of those sections, but was not taken before the effective date of the act, it shall be governed by this section.

### § 122C-146. Fee for service.

The area authority and its contractual agencies shall prepare fee schedules for services and shall make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals able to pay, including insurance and third-party payment. However, no individual may be refused services because of an inability to pay. All funds collected from fees from area authority operated services shall be used for the fiscal operation or capital improvements of the area authority's programs. The collection of fees by an area authority may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue. (1977, c. 568, s. 1; 1979, c. 358, s. 16; 1985, c. 589, s. 2.)

### § 122C-147. Allocation of funds to area authorities.

(a) All State and federal funds appropriated within the Department's budget for area mental health, mental retardation, and substance abuse services shall be allocated to area authorities in accordance with the annual plan and budget adopted by the area authority and approved by the Secretary. An area authority may receive and allocate non-State resources for capital purchases, capital improvements, and equipment acquisitions if the expenditures are made in the support of the annual plan. The final share of State and federal funds shall be allocated on the basis of actual expenditures and reported in a way prescribed by the Secretary. Unspent State and federal funds shall be remitted to the Department within 60 days after the date that a certified audit is rendered as required by the Local Government Commission. If an audit is not submitted to the State within five days of the due date for the audit as approved by the Local Government Commission, Department funds for the area authority may be withheld by the Secretary until the audit is submitted.

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

- (1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a residential facility or (ii) in contracting with a private, nonprofit corporation that operates residential facilities for the mentally ill, mentally retarded, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation.
- (2) Upon cessation of the use of the residential facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the residential facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it may be held by the area authority with the consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent to this variation shall be by

resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority.

(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property, including by lease-purchase agreement. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150A of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in *Willie M., et al. vs. Hunt, et al.* (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in *Willie M., et al. vs. Hunt, et al.* (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation under contract with the area authority and used or to be used as a residential facility. Prior to the use of county appropriated funds for this purpose, the area authority must obtain consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property. (1973, c. 476, s. 133; c. 613; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 29; 1981, c. 51, s. 3; 1983, c. 5; c. 25; c. 402; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 25, establishes a schedule of priorities for allocating funds to local area mental health programs and local education agencies to provide appropriate treatment and education programs to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent

or assaultive behavior, identified as a class in the case of *Willie M., et al. vs. Hunt, et al.* The act appropriates funds to the Division of Mental Health, Mental Retardation, and Substance Abuse, to the Division of Youth Services, and to the Department of Public Education, establishes a reserved fund, and provides for certain reporting requirements. The act fur-

ther provides that the prohibitions on use of State funds prescribed by G.S. 122-35.53(c) do not apply to any funds appropriated for the treatment of members of the above named class.

Session Laws 1983, c. 761, s. 77, effective July 1, 1983, sets out legislative findings with regard to funds and programs serving members of the class of Willie M., et al. vs. Hunt, et al., provides for the expenditure of funds on behalf of this class, and provides for certain reporting requirements.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 61, and Session Laws 1985, c. 479, s. 85, set out legislative findings with regard to the children identified as a class in the case of Willie M., et al. vs. Hunt, et al. The section also indicates the legislative intent with regard to expenditure of funds appropriated for the class members and provides for a supplemental reserve fund to be allocated to local education agencies to serve class members. In addition, the section sets out reporting requirements and authorizes the Department of Human Resources to ensure the provision of appropriate services to class members where a local program is not providing appropriate services.

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 76, provides that in addition to reports required by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 61, the Department of Human

Resources and Public Education shall report periodically to the Commission on Children with Special Needs, as requested by the Commission, on operations of programs to benefit Willie M. class members.

Session Laws 1985, c. 589, s. 63(d) provides: "Because this act becomes effective at the middle of a fiscal year, the Secretary may adopt rules to implement G.S. 122C-147 for fiscal year 1985-86 to cover the transition between G.S. 122-35.53 and G.S. 122C-147."

Session Laws 1985, c. 791, ss. 18 and 18.1 provide:

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

"The State Board of Education is directed to determine the most cost effective methods of educating Willie M. students and to report its findings to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by March 1, 1986."

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

## **§ 122C-148. Allocations to be made annually; base grant; additional allocations.**

Subject to the provisions of this Article, allocations shall be made annually by the Secretary to area authorities for the provision of community-based services. Provided sufficient funds are appropriated, the allocations shall be made in the form of a base grant computed on the basis of one thousand two hundred dollars (\$1,200) per 1,000 population within the catchment area. Additional allocations may be made to area authorities on the conditions and formula basis provided by G.S. 122C-147 through G.S. 122C-151. (1977, c. 568, s. 1; 1979, c. 358, s. 22; 1985, c. 589, s. 2.)

## **§ 122C-149. Allocation of matching funds to area authorities.**

(a) State-appropriated matching funds shall be distributed subject to rules of the Secretary which set a formula based on the relative fiscal capacity of the county to fund mental health, mental retardation, and substance abuse services. The rules shall be reviewed biennially by the Secretary. Area authority funds used for matching State funds shall include fees from services including Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds. Except as specifically provided, area financial participation to match State allocations may not include State or federal funds.

(b) Area authorities may not use funds received under G.S. 20-179.2(f) or G.S. 90-96.01(a)(4) to match funds under this section. (1977, c. 568, s. 1; 1979, c. 358, ss. 31, 32; 1985, c. 589, s. 2.)

### **§ 122C-150. Direct grants for services.**

In addition to the allocations provided in G.S. 122C-148 and G.S. 122C-149, the Department shall make direct grants to area authorities from State and federal funds appropriated for special programs. The grants shall be for the treatment of individuals by area facilities rather than in State facilities and shall be administered as provided in G.S. 122C-147. (1977, c. 568, s. 1; 1979, c. 358, s. 24; 1985, c. 589, s. 2.)

### **§ 122C-151. Responsibilities of those receiving appropriations.**

All resources allocated to and received by any area authority and used for programs of mental health, mental retardation, substance abuse or other related fields are subject to the conditions specified in this Article and to the rules of the Commission and the Secretary. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 25; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### **§ 122C-152. Liability insurance and waiver of immunity as to torts of agents, employees, and board members.**

(a) An area authority, by securing liability insurance as provided in this section, may waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent, employee, or board member of the area authority when acting within the scope of his authority or within the course of his duties or employment. Governmental immunity is waived by the act of obtaining this insurance, but it is waived by only to the extent that the area authority is indemnified by insurance for the negligence or tort.

(b) Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation licensed and authorized to execute insurance contracts in this State and shall by its terms adequately insure the area authority against any and all liability for any damages by reason of death or injury to a person or property proximately caused by the negligent acts or torts of the agents, employees, and board members of the area authority when acting within the course of their duties or employment. The area board shall determine the extent of the liability and what agents, employees by class, and board members are covered by any insurance purchased pursuant to this subsection. Any company or corporation that enters into a contract of insurance as described in this section with the authority, by this act waives any defense based upon the governmental immunity of the area authority.

(c) Any persons sustaining damages, or, in the case of death, his personal representative, may sue an area authority insured under this section for the recovery of damages in any court of competent jurisdiction in this State, but only in a county located within the geographic limits of the authority. It is no defense to any action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of the area authority if, and to the extent that, the authority has insurance coverage as provided by this section.

(d) Except as expressly provided by subsection (c) of this section, nothing in this section deprives any area authority of any defense whatsoever to any action for damages or to restrict, limit, or otherwise affect any defense which the area authority may have at common law or by virtue of any statute. Nothing in this section relieves any person sustaining damages nor any personal representative of any decedent from any duty to give notice of a claim to the area authority or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

(e) The area authority may incur liability pursuant to this section only with respect to a claim arising after the authority has procured liability insurance pursuant to this section and during the time when the insurance is in force.

(f) No part of the pleadings that relate to or allege facts as to a defendant's insurance against liability may be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. This liability does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. These issues shall be heard and determined by the judge, and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance. (1981, c. 539, s. 2; 1985, c. 589, s. 2.)

### **§ 122C-153. Defense of agents, employees, and board members.**

(a) Upon request made by or in behalf of any agent, employee, or board member or former agent, employee, or board member of the area authority, any area authority may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member. The defense may be provided by the local board by employing counsel or by purchasing insurance that requires that the insurer provide the defense. Nothing in this section requires any area authority to provide for the defense of any action or proceeding of any nature.

(b) An area authority may budget funds for the purpose of paying all or part of the claim made or any civil judgment entered against any of its agents, employees, or board members or former agents, employees, or board members when a claim is made or judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member of the area authority. Nothing in this section shall authorize any area authority to budget funds for the purpose of paying any claim made or civil judgment against any of its agents, employees, or board members, or former agents, employees, or board members, if the authority finds that the agent, employee, or board member acted or failed to act because of actual fraud, corruption, or actual malice on his part. Any authority may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section requires any authority to pay any claim or judgment referred to, and the purchase of insurance coverage for payment of the claim or judgment may not be considered an assumption of any liability not covered by the insurance contract and may not be deemed an assumption of liability or payment of any claim or judgment in excess of the limits of coverage in the insurance contract.

(c) Subsection (b) of this section does not authorize an authority to pay all or part of a claim made or civil judgment entered or to provide a defense to a

criminal charge unless (i) notice of the claim or litigation is given to the area authority before the time that the claim is settled or civil judgment is entered; and (ii) the area authority has adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against agents, employees, or board members or former agents, employees, or board members shall be defended or paid.

(d) The board or boards of county commissioners that establish the area authority and the Secretary may allocate funds not otherwise restricted by law, in addition to the funds allocated for the operation of the program, for the purpose of paying legal defense, judgments, and settlements under this section. (1981, c. 539, s. 2; 1985, c. 589, s. 2.)

### § 122C-154. Personnel.

Employees under the direct supervision of the area authority are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-155. Supervision of services.

Unless otherwise specified, client services are the responsibility of a qualified professional. Direct medical and psychiatric services shall be provided by a qualified psychiatrist or a physician with adequate training and experience acceptable to the Secretary. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-156. Salary plan for employees of the area authority.

(a) The area authority shall establish a salary plan which shall set the salaries for employees of the area authority. The salary plan shall be in compliance with Chapter 126 of the General Statutes. In a multi-county area, the salary plan shall not exceed the highest paying salary plan of any county in that area. In a single-county area, the salary plan shall not exceed the county's salary plan. The salary plan limitations set forth in this section may be exceeded only if the area authority and the board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations.

(b) An area authority may purchase life insurance or health insurance or both for the benefit of all or any class of authority officers or employees as a part of its compensation. An area authority may provide other fringe benefits for authority officers and employees.

(c) An area authority that is providing health insurance under subsection (b) of this section may provide health insurance for all or any class of former officers and employees of the area authority who are receiving benefits under Article 3 of Chapter 128 of the General Statutes. Health insurance may be paid entirely by the area authority, partly by the area authority and former officer or employee, or entirely by the former officer or employee, at the option of the area board. (1977, c. 568, s. 1; 1979, c. 358, ss. 15, 23; 1985, c. 589, s. 2.)

### § 122C-157. Establishment of a professional reimbursement policy.

The area authority shall adopt and enforce a professional reimbursement policy. This policy shall (i) require that fees for the provision of services received directly under the supervision of the area authority shall be paid to the area authority, (ii) prohibit employees of the area authority from providing services on a private basis which require the use of the resources and facilities of the area authority, and (iii) provide that employees may not accept dual compensation and dual employment unless they have the written permission of the area authority. (1977, c. 568, s. 1; 1979, c. 358, s. 17; 1985, c. 589, s. 2.)

### § 122C-158. Privacy of personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other State statute concerning access to public records, personnel files of employees or applicants for employment maintained by an area authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the area authority with respect to that employee, including his application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the area authority.

(b) The following information with respect to each employee is a matter of public record: name; age; date of original employment or appointment to the area authority; current position title; current salary; date and amount of most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders.

(c) All information contained in an employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and is open to inspection only in the following instances:

- (1) The employee or an authorized agent may examine portions of his personnel file except (i) letters of reference solicited before employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) An area authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine the part of an employee's personnel file that is ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any part of a personnel file pursuant to G.S. 122C-25(b) or G.S. 122C-192(a) or when the inspection is considered by the official having custody of the records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency. No information may be

divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

- (6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
  - (7) The area authority may tell any person of the employment or nonemployment, promotion, demotion, suspension, or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the area authority shall determine in writing that the release is essential to maintaining public confidence in the administration of services or to maintaining the level and quality of services. This written determination shall be retained as a record for public inspection and shall become part of the employee's personnel file.
- (d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:
- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the area authority service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
  - (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal action of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
  - (3) Information that might identify an undercover law-enforcement officer or a law-enforcement informer.
  - (4) Notes, preliminary drafts, and internal communications concerning an employee. In the event these materials are used for any official personnel decision, then the employee or an authorized agent has a right to inspect these materials.
- (e) The area authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the area authority as long as each personnel file so examined is retained.
- (f) The area authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in the employee's file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.
- (g) Permitting access, other than that authorized by this section, to a personnel file of an employee of an area authority is a misdemeanor and is punishable by a fine, not to exceed five hundred dollars (\$500.00).
- (h) Anyone who, knowing that he is not authorized to do so, examines, removes, or copies information in a personnel file of an employee of an area authority is guilty of a misdemeanor and is punishable by a fine, not to exceed five hundred dollars (\$500.00). (1983, c. 281; 1985, c. 589, s. 2.)

§§ 122C-159 to 122C-180: Reserved for future codification purposes.

## Part 5. State Facilities.

### § 122C-181. Secretary's jurisdiction over State facilities.

(a) Except as provided in subsection (b) of this section, the Secretary shall operate the following facilities:

- (1) For the mentally ill:
  - a. Cherry Hospital;
  - b. Dorothea Dix Hospital;
  - c. John Umstead Hospital; and
  - d. Broughton Hospital; and
- (2) For the mentally retarded:
  - a. Caswell Center;
  - b. O'Berry Center;
  - c. Murdoch Center;
  - d. Western Carolina Center; and
  - e. Black Mountain Center; and
- (3) For substance abusers:
  - a. Walter B. Jones Alcoholic Rehabilitation Center;
  - b. Alcoholic Rehabilitation Center at Butner; and
  - c. Alcoholic Rehabilitation Center at Black Mountain; and
- (4) As special care facilities:
  - a. Wilson Special Care Center;
  - b. Whitaker School; and
  - c. Wright School.

(b) The Secretary may, with the approval of the Governor and Council of State, close any State facility. (Code, ss. 2227, 2240; 1899, c. 1, s. 1; Rev., s. 4542; C.S., s. 6151; 1945, c. 952, s. 8; 1947, c. 537, s. 2; 1949, c. 1206, s. 1; 1955, c. 887, s. 1; 1959, c. 348, s. 1; c. 1002, s. 1; c. 1008; c. 1028, ss. 1-4; 1961, c. 513; c. 1173, ss. 1, 2, 4; 1963, c. 1166, ss. 2, 10, 12; c. 1184, s. 6; 1967, c. 151; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138; 1975, c. 19, s. 41; 1977, c. 679, s. 7; 1981, c. 51, s. 3; c. 77; c. 412, s. 4; 1983, c. 383, s. 9; 1985, c. 589, s. 2.)

### § 122C-182. Authority to contract with area authorities.

To establish a coordinated system of services for its clients, a State facility shall contract with an area authority. Contracted services shall meet the rules of the Commission and the Secretary. (1985, c. 589, s. 2.)

### § 122C-183. Appointment of employees as police officers who may arrest without warrant.

The director of each State facility may appoint as special police officers the number of employees of their respective facilities they consider necessary. Within the grounds of the State facility the employees appointed as special police officers have all the powers of police officers of cities. They have the right to arrest without warrant individuals committing violations of the State law or the ordinances or rules of that facility in their presence and to bring the offenders before a magistrate who shall proceed as in other criminal cases. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C.S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12; 1973, c. 108, s. 73; c. 673, s. 12.1; 1981, c. 635, s. 5; 1985, c. 589, s. 2.)

**§ 122C-184. Oath of special police officers.**

Before exercising the duties of a special police officer, the employees appointed under G.S. 122C-183 shall take an oath or affirmation of office before an officer empowered to administer oaths. The oath or affirmation shall be filed with the records of the Department. The oath or affirmation of office is: State of North Carolina: . . . . . County.

I, . . . . ., do solemnly swear (or affirm) that I will well and truly execute the duties of office of special police officer in and for the State facility called . . . . ., according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said facility, and to suppress nuisances, and to suppress and prevent disorderly conduct within these grounds. So help me, God.

Sworn and subscribed before me, this . . . . . day of . . . . ., A.D. . . . . (1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C. S., s. 6182; 1963, c. 1166, s. 11; 1973, c. 108, s. 74; c. 476, s. 133; 1985, c. 589, s. 2.)

**§ 122C-185. Application of funds belonging to State facilities.**

(a) All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S. 143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S. 146-30.

(d) All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with G.S. 143-12.1.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State treasury in accordance with G.S. 147-77. (1899, c. 1, s. 34; Rev., s. 4552; C. S., s. 6167; 1963, c. 1166, s. 13; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

**§ 122C-186. General Assembly visitors of State facilities.**

The members of the General Assembly are ex officio visitors of all State facilities, provided that the common law right of visitation of a State facility is abrogated to the extent that it does not include the right to access to confidential information. This right of access is only as granted by statute. (1963, c. 1184, s. 1; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

§§ 122C-187 to 122C-190: Reserved for future codification purposes.

## Part 6. Quality Assurance.

### § 122C-191. Quality of services.

(a) The assurance that services provided are of the highest possible quality within available resources is an obligation of the area authority and the Secretary.

(b) Each area authority and State facility shall comply with the rules of the Commission regarding quality assurance activities, including: program evaluation; utilization and peer review; and staff qualifications, privileging, supervision, education, and training. These rules may not nullify compliance otherwise required by Chapter 126 of the General Statutes.

(c) Each area authority and State facility shall develop internal processes to monitor and evaluate the level of quality obtained by all its programs and services including the activities prescribed in the rules of the Commission.

(d) The Secretary shall develop rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary. (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2.)

### § 122C-192. Review and protection of information.

(a) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to confidentiality of communications involving a patient or client, as needed to ensure quality assurance activities, the Secretary may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of a client of an area authority or State facility. The Secretary may also review the personnel records of employees of an area authority or State facility.

(b) An area authority, State facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or his representative to disclose:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning an area authority or State facility without that individual's consent.

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars (\$500.00).

(c) The Secretary shall adopt rules to ensure that unauthorized disclosure does not occur.

(d) All confidential or privileged information obtained under this section and the names of individuals providing such information are not public records under Chapter 132 of the General Statutes. (1985, c. 589, s. 2.)

§§ 122C-193 to 122C-200: Reserved for future codification purposes.

## ARTICLE 5.

*Procedures for Admission and Discharge of Clients.*

## Part 1. General Provisions.

## § 122C-201. Declaration of policy.

It is State policy to encourage voluntary admissions to facilities. It is further State policy that no individual shall be involuntarily committed to a 24-hour facility unless he is mentally ill or a substance abuser and dangerous to himself or others, or unless he is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others. All admissions and commitments shall be accomplished under conditions that protect the dignity and constitutional rights of the individual.

It is further State policy that, except as provided in G.S. 122C-212(b), individuals who have been voluntarily admitted shall be discharged upon application and that involuntarily committed individuals shall be discharged as soon as a less restrictive mode of treatment is appropriate. (1973, c. 723, s. 1; c. 726, s. 1; c. 1084; c. 1408, s. 1; 1977, c. 400, s. 1; 1979, c. 915, ss. 2, 11; 1983, c. 638, s. 1; c. 864, s. 4; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(e) provides that respondents committed to a facility for a specific period of time before the effective date of Article 5 of Chapter 122C are deemed to have been committed the same period of time under that Article.

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For an article on the result of the 1979 statutory changes in involuntary civil commitment in North Carolina, see 60 N.C.L. Rev. 985 (1982).

For an article on the attorney's role in involuntary civil commitment in North Carolina, see 60 N.C.L. Rev. 1027 (1982).

For article discussing involuntary commitment of the mentally disabled, see 14 N.C. Cent. L.J. 406 (1984).

For note discussing the overinclusive and underinclusive nature of the North Carolina involuntary civil commitment system, see 63 N.C.L. Rev. 241 (1984).

## CASE NOTES

**Editor's Note.** — The cases cited below were decided under comparable provisions of former Chapter 122.

**Constitutionality.** — The statutory scheme for involuntary commitment is constitutional. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983).

**The North Carolina General Assembly has enacted an excellent legislative scheme** which adequately protects the interests of all who may be involved in an involuntary commitment proceeding. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983).

**Public Policy to Prevent Unnecessary Commitments.** — The policy of this State is to prevent the possibility that persons who are not mentally ill or inebriated and dangerous to themselves or others would be involuntarily committed. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

**Purpose of Involuntary Commitment Proceeding.** — Two purposes for the involuntary commitment statute are (1) to allow temporary withdrawal from society of those who may be dangerous and (2) to provide treatment. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

**Requirements for Entering Commitment Order.** — To enter a commitment order, the trial court is required to ultimately find two distinct facts, i.e., that the respondent is mentally ill and is dangerous to himself or to others. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

**Applied In** In re Perkins, 60 N.C. App. 592, 299 S.E.2d 675 (1983).

**Cited in** Willie M. v. Hunt, 657 F.2d 55 (4th Cir. 1981); State v. Harris, 306 N.C. 724, 295 S.E.2d 391 (1982).

## § 122C-202. Applicability of Article.

This Article applies to all facilities unless expressly provided otherwise. Specific provisions that are delineated by the disability of the client, whether mentally ill, mentally retarded, or substance abuser, also apply to all facilities for that client's disability. Provisions that refer to a specific facility or type of facility apply only to the designated facility or facilities. (1985, c. 589, s. 2.)

### § 122C-202.1. Hospital privileges.

Nothing in this Article related to admission, commitment, or treatment shall be deemed to mandate hospitals to grant or deny to any individuals privileges to practice in hospitals. (1985, c. 589, s. 2.)

## § 122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.

The admission or commitment to a facility of an alleged mentally ill individual, an alleged substance abuser, or an alleged mentally retarded individual under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapters 33 or 35 of the General Statutes and incompetency proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2.)

## § 122C-204. Civil liability for corruptly attempting admission or commitment.

Nothing in this Article relieves from liability in any suit instituted in the courts of this State any individual who unlawfully, maliciously, and corruptly attempts to admit or commit any individual to any facility under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2.)

## § 122C-205. Return of clients to 24-hour facilities.

(a) When a client of a 24-hour facility who:

- (1) Has been involuntarily committed;
- (2) Is being detained pending a judicial hearing;
- (3) Has been voluntarily admitted but is a minor or incompetent adult;
- (4) Has been placed on conditional release from the facility; or
- (5) Is a competent adult who has been voluntarily admitted and who, in the opinion of the responsible professional at the facility involved is currently dangerous to himself or others escapes or breaches the condition of his release, if applicable, the responsible professional shall immediately notify the appropriate law-enforcement officer of the county of residence of the client, the appropriate law-enforcement officer of the county where the facility is located, and, if applicable, shall have recorded in the client's record the condition of release that has been breached. If there are reasonable grounds to believe that the client is in any county other than his county of residence, the responsible professional shall also notify the appropriate law-enforcement officer of that county. Upon receipt of notice, the law-enforcement officer shall take the client into custody and have the client returned to the facility from which the client has escaped or has been condi-

tionally released. Transportation of the client back to the facility shall be provided in the same manner as described in G.S. 122C-251. Law-enforcement officers notified of a client's escape or breach of conditional release shall be notified of his return.

- (b) The responsible professional shall also notify:
- (1) The next of kin or legally responsible person;
  - (2) The clerk of superior court of the county of residence of the client;
  - (3) The area authority of the county of residence, if appropriate; and
  - (4) The physician or eligible psychologist who performed the first examination for commitment, if appropriate, of the escape or breach of condition of the client's release upon the occurrence of either action and of his subsequent return to the facility. (1899, c. 1, s. 27; Rev., s. 4563; C. S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3; 1973, c. 673, s. 11; 1983, c. 548; 1985, c. 589, s. 2; c. 695, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subdivision (b)(4).

## § 122C-206. Transfers of clients between 24-hour facilities.

(a) Before transferring a voluntary adult client from one 24-hour facility to another, the responsible professional at the original facility shall: (i) get authorization from the receiving facility that the facility will admit the client; (ii) get consent from the client; and (iii) if consent to share information is granted by the client, notify the next of kin of the time and location of the transfer. The preceding requirements of this paragraph may be waived if the client has been admitted under emergency procedures to a State facility not serving the client's region of the State. Following an emergency admission, the client may be transferred to the appropriate State facility without consent according to the rules of the Commission.

(b) Before transferring a respondent held for a district court hearing or a committed respondent from one 24-hour facility to another, the responsible professional at the original facility shall:

- (1) Obtain authorization from the receiving facility that the facility will admit the respondent; and
- (2) Provide reasonable notice to the respondent, or legally responsible person, of the reason for the transfer and document the notice in the client's record.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer is completed. If the transfer is completed before the judicial commitment hearing, these proceedings shall be initiated by the receiving facility.

(c) Minors and incompetent adults, admitted pursuant to Parts 3 and 4 of this Article, may be transferred from one 24-hour facility to another following the same procedures specified in subsection (b) of this section. In addition, the legally responsible person shall be consulted before the proposed transfer. If the transfer is completed before the judicial determination required in G.S. 122C-223 or G.S. 122C-232, these proceedings shall be initiated by the receiving facility.

(d) Minors and incompetent adults, admitted pursuant to Part 5 of this Article, may be transferred from one 24-hour facility to another provided that prior to transfer the responsible professional at the original facility shall:

- (1) Obtain authorization from the receiving facility that the facility will admit the client; and

- (2) Provide reasonable notice to the client regarding the reason for transfer and document the notice in the client's record; and
- (3) Provide reasonable notice to and consult with the legally responsible person regarding the reason for the transfer and document the notice and consultation in the client's record.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the legally responsible person that the transfer is completed.

(e) The responsible professional may transfer a client from one facility to another for emergency medical treatment, emergency medical evaluation, or emergency surgery without notice to or consent from the client. Within a reasonable period of time the responsible professional shall notify the next of kin or the legally responsible person of the client of the transfer.

(f) When a client is transferred to another facility solely for medical reasons, the client shall be returned to the original facility when the medical care is completed unless the responsible professionals at both facilities concur that discharge of the client who is not subject to G.S. 122C-266(b) is appropriate.

(g) The Commission may adopt rules to implement this section. (1919, c. 330; C.S., s. 6163; 1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 537, s. 9; c. 623, s. 1; 1953, c. 675, s. 15; 1955, c. 1274, s. 1; 1959, c. 1002, s. 11; 1963, c. 1166, ss. 10, 12; 1973, c. 475, s. 1; c. 476, s. 133; c. 673, ss. 7, 8; c. 1436, ss. 6, 7; 1977, c. 679, s. 7; 1981, c. 51, s. 3; c. 328, ss. 1, 2; 1985, c. 589, s. 2.)

### § 122C-207. Confidentiality.

Court records made in all proceedings pursuant to this Article are confidential, and are not open to the general public except as provided for by G. S. 122C-54(d). (1977, c. 696, s. 1; 1979, c. 164, s. 2; c. 915, s. 20; 1985, c. 589, s. 2.)

**Legal Periodicals.** — For an article on the result of the 1979 statutory changes in involuntary civil commitment in North Carolina, see 60 N.C.L. Rev. 985 (1982).

### § 122C-208. Voluntary admission not admissible in involuntary proceeding.

Except when considering treatment history as it pertains to an involuntary outpatient commitment, the fact that an individual has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding. (1985, c. 589, s. 2.)

### § 122C-209. Voluntary admissions acceptance.

Nothing contained in Parts 2 through 5 of this Article requires a private physician or private facility to accept an individual as a client for examination or treatment. Examination or treatment at a private facility or by a private physician is at the expense of the individual to the extent that charges are not disposed of by contract between the area authority and private facility. (1985, c. 589, s. 2.)

**§ 122C-210. Guardian to pay expenses out of estate.**

It is the duty of the guardian who has legal custody of the estate of an incompetent individual held pursuant to the provisions of this Article in a facility to supply funds for his support in the facility during the stay as long as there are sufficient funds for that purpose over and beyond maintaining and supporting those individuals who may be legally dependent on the estate. (1985, c. 589, s. 2.)

**§ 122C-210.1. Immunity from liability.**

No facility or any of its officials, staff, or employees, or any physician or other individual who is responsible for the examination, management, supervision, treatment, or release of a client and who follows accepted professional judgment, practice, and standards is civilly liable, personally or otherwise, for actions arising from these responsibilities or for actions of the client. This immunity is in addition to any other legal immunity from liability to which these facilities or individuals may be entitled. (1899, c. 1, s. 31; Rev., s. 4560; C.S., s. 6172; 1961, c. 511, s. 1; 1973, c. 673, s. 10; 1983, c. 638, s. 15; c. 864, s. 4; 1985, c. 589, s. 2.)

**Part 2. Voluntary Admissions and Discharges, Competent Adults, Facilities for the Mentally Ill and Substance Abusers.****§ 122C-211. Admissions.**

(a) Except as provided in subsections (b) through (e) of this section, any individual in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility for the mentally ill or substance abusers by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the individual seeking admission, is required. The application form shall be available at all times at all facilities. However, no one shall be denied admission because application forms are not available. An evaluation shall determine whether the individual is in need of care, treatment, habilitation or rehabilitation for mental illness or substance abuse or further evaluation by the facility. Information provided by family members regarding the individual's need for treatment shall be reviewed in the evaluation. An individual may not be accepted as a client if the facility determines that the individual does not need or cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the individual is not in need of further evaluation by the facility. The facility shall give to an individual who is denied admission a referral to another facility or facilities that may be able to provide the treatment needed by the client.

(b) In 24-hour facilities the application shall acknowledge that the applicant may be held by the facility for a period of 72 hours after any written request for release that he may make, and shall acknowledge that the 24-hour facility may have the legal right to petition for involuntary commitment of the applicant during that period. At the time of application, the facility shall tell the applicant about procedures for discharge.

(c) Any individual who voluntarily seeks admission to a 24-hour facility in which medical care is an integral component of the treatment shall be examined and evaluated by a physician of the facility within 24 hours of admission.

The evaluation shall determine whether the individual is in need of treatment for mental illness or substance abuse or further evaluation by the facility. If the evaluating physician determines that the individual will not benefit from the treatment available, the individual shall not be accepted as a client.

(d) Any individual who voluntarily seeks admission to any 24-hour facility, other than one in which medical care is an integral component of the treatment, shall have a medical examination within 30 days before or after admission if it is reasonably expected that he will receive treatment for more than 30 days. When applicable, this examination may be included in an examination conducted to meet the requirements of G.S. 122C-223 or G.S. 122C-232.

(e) When an individual from a single portal area seeks admission to an area or State 24-hour facility, the admission shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself for admission to the facility directly and is in need of an emergency admission, he may be accepted for admission. The facility shall notify the area authority within 24 hours of the admission. Further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan. (1945, c. 952, s. 47<sup>1/2</sup>; 1963, c. 1184, s. 22; 1973, c. 723, s. 1; c. 1084; 1983, c. 383, s. 4; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(i) provides that Parts 2 through 4 of Article 5 of Chapter 122C shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occurring on or after the effective date of the act (January 1, 1986), and that in addition, §§ 122C-212 and 122C-224 shall apply to all

voluntary clients discharged from such a facility on or after the effective date of the act.

**Legal Periodicals.** — For an article entitled "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

## § 122C-212. Discharges.

(a) Except as provided in subsections (b) and (c) of this section, an individual who has been voluntarily admitted to a facility shall be discharged upon his own request. A request for discharge from a 24-hour facility shall be in writing.

(b) An individual who has been voluntarily admitted to a 24-hour facility may be held for 72 hours after his written application for discharge is submitted.

(c) When an individual from a single portal area who has been voluntarily admitted to an area or State 24-hour facility is discharged, the discharge shall follow the procedures as prescribed in the area plan. (1973, c. 723, s. 1; c. 1084; 1983, c. 383, s. 4; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(i) provides that Parts 2 through 4 of Article 5 of Chapter 122C shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occur-

ring on or after the effective date of the act (January 1, 1986), and that in addition, this section and § 122C-224 shall apply to all voluntary clients discharged from such a facility on or after the effective date of the act.

§§ 122C-213 to 122C-220: Reserved for future codification purposes.

### Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

#### § 122C-221. Admissions.

Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance abuser and in need of treatment. The provisions of G.S. 122C-211 shall apply to admissions of minors under this Part. Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for a minor. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(i) provides that Parts 2 through 4 of Article 5 of Chapter 122C shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occur-

ring on or after the effective date of the act (January 1, 1986), and that in addition, §§ 122C-212 and 122C-224 shall apply to all voluntary clients discharged from such a facility on or after the effective date of the act.

#### § 122C-222. Emergency admission to a 24-hour facility.

(a) In an emergency situation, a minor who is mentally ill or a substance abuser and in need of treatment may be admitted to a 24-hour facility upon his own written application, and the application shall serve as the initiating document for the hearing conducted in accordance with G.S. 122C-223. Within 24 hours of admission, the facility shall notify the legally responsible person of the admission unless notification is impossible due to inability to identify the legally responsible person or to inability to locate or contact him after all reasonable means to establish contact have been attempted.

(b) If after 30 days no legally responsible person can be located, the responsible professional shall initiate proceedings for juvenile protective services as described in Article 44 of Chapter 7A of the General Statutes in either the minor's county of residence or in the county in which the facility is located. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2.)

#### § 122C-223. Judicial determination.

(a) When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days of the day that the minor is admitted to the facility. A continuance of not more than five days may be granted upon motion of:

- (1) The court;
- (2) Respondent's counsel; or
- (3) The responsible professional.

The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted. These rules shall be designed to ensure that no minor is improperly admitted to or remains in a 24-hour facility.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary. The written application for voluntary admis-

sion shall serve as the initiating document for the hearing. The court shall determine whether the minor is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the minor. If the court finds that these requirements have not been met, it shall order that the minor be released. A finding of dangerousness to himself or others is not necessary to support the determination that further treatment should be undertaken.

(c) When it appears that an extended period of diagnostic evaluation is necessary before a recommendation can be made to the court, the responsible professional may request a continued stay in the facility not to exceed 30 days for diagnosis and evaluation. The following procedures apply:

- (1) At least 48 hours in advance of the regularly calendared hearing provided in subsection (a) of this section, the responsible professional shall give written notice to the clerk of superior court, the minor, the legally responsible person, and the attorneys for all parties that diagnosis and evaluation of the minor cannot be completed before the calendared hearing and that he will request that the court authorize a period of continued stay in the facility not to exceed 30 days for the purpose of diagnosing and evaluating the minor.
- (2) The court shall determine whether there exist reasonable grounds to believe:
  - a. That the minor is probably mentally ill or a substance abuser;
  - b. That the minor may, upon diagnosis and evaluation, be found to meet the criteria for admission as set out in subsection (b) of this section; and
  - c. That the additional time is required to complete the diagnosis and evaluation.
- (3) If the court finds that the criteria set out in subdivision (2) of this subsection have been met, it shall authorize a period of continued stay in the facility for diagnosis and evaluation, not to exceed 30 days, and establish a new date for the hearing provided in subsection (a) of this section to occur by the end of the specified period. During this period, medical, psychiatric, psychological, educational, and social evaluation shall be undertaken and reasonable and appropriate medication and treatment that is consistent with accepted medical standards may be administered.
- (4) If the court does not make findings of fact as set out in subdivision (2) of this subsection, the minor shall be ordered released.

(d) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent minors, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(e) In addition to the notice of hearings and rehearings to the minor and his counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person who signed the application for voluntary admission. The legally responsible person who signed the application for voluntary admission, may also file a written waiver of his right to receive notice with the clerk of court. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2.)

**Legal Periodicals.** — For an article entitled "Civil Commitment of Minors: Due and

Undue Process," see 58 N.C.L. Rev. 1133 (1980).

**CASE NOTES**

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

Cited in *State v. Wilkinson*, 302 N.C. 393, 275 S.E.2d 836 (1981).

**OPINIONS OF ATTORNEY GENERAL**

**Editor's Notes.** — The opinion cited below was rendered under comparable provisions of former Chapter 122.

child prior to judicial determination of the need for further treatment at the treatment facility. Only the court or the treatment facility could release the minor child and only then upon determination that the child did not need further hospitalization. See opinion of Attorney General to Mary B. Chamblee, Assistant Public Defender, 26th Judicial District, 49 N.C.A.G. 166 (1980).

**Following Admission of Minor Child to Treatment Facility Only Court or Facility May Release the Minor.** — Pursuant to the current provisions of former § 122-56.7 (see now § 122C-223), parents who applied for admission of their minor child to a treatment facility could not later obtain a discharge of the

**§ 122C-224. Discharges.**

(a) Except as provided in subsection (b) of this section, a minor shall be discharged upon his legally responsible person's request as provided in G.S. 122C-212. However, a minor admitted upon his own application shall be discharged upon his own application as provided in G.S. 122C-212.

(b) After the court has concurred in the admission of a minor to a 24-hour facility as provided in G.S. 122C-223, only the facility or the court may release the minor when either determines that the minor is no longer in need of treatment at the facility. If the legally responsible person believes that release is in the best interest of the minor, and the facility refuses release, the legally responsible person may apply to the court for a hearing for discharge. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(i) provides that Parts 2 through 4 of Article 5 of Chapter 122C shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occur-

ring on or after the effective date of the act (January 1, 1986), and that in addition, § 122C-212 and this section shall apply to all voluntary clients discharged from such a facility on or after the effective date of the act.

**§§ 122C-225 to 122C-230:** Reserved for future codification purposes.

**Part 4. Voluntary Admissions and Discharges, Incompetent Adults, Facilities for the Mentally Ill and Substance Abusers.**

**§ 122C-231. Admissions.**

Except as otherwise provided in this Part an incompetent adult may be admitted to a facility when the individual is mentally ill or a substance abuser and in need of treatment. The provisions of G.S. 122C-211 shall apply to admissions of an incompetent adult under this Part except that the legally responsible person shall act for the individual, in applying for admission to a

facility, in consenting to medical treatment when consent is required, in giving or receiving any legal notice, and in any other legal procedure under this Article. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(i) provides that Parts 2 through 4 of Article 5 of Chapter 122C shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occur-

ring on or after the effective date of the act (January 1, 1986), and that in addition, §§ 122C-212 and 122C-224 shall apply to all voluntary clients discharged from such a facility on or after the effective date of the act.

## § 122C-232. Judicial determination.

(a) When an incompetent adult is admitted to a 24-hour facility where the incompetent adult will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days of the day that the incompetent adult is admitted to the facility. A continuance of not more than five days may be granted upon motion of:

- (1) The court;
- (2) Respondent's counsel; or
- (3) The responsible professional.

The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted; these rules shall be designed to ensure that no incompetent adult is improperly admitted to or remains in a facility.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary; the written application for voluntary admission shall serve as the initiating document for the hearing. The court shall determine whether the incompetent adult is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the incompetent adult. If the court finds that these requirements have not been met, it shall order that the incompetent adult be released. A finding of dangerousness to self or others is not necessary to support the determination that further treatment should be undertaken.

(c) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent incompetent adults, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(d) In addition to the notice of hearings and rehearings to the incompetent adult and his counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person, or his successor. The legally responsible person, or his successor may also file with the clerk of court a written waiver of his right to receive notice. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2.)

### § 122C-233. Discharges.

(a) Except as provided in subsection (b) of this section, an incompetent adult shall be discharged upon the request of the legally responsible person as provided in G.S. 122C-212.

(b) After the court has concurred in the admission of an incompetent adult to a 24-hour facility as provided in G.S. 122C-232, only the facility or the court may release the incompetent adult at any time when either determines that the incompetent adult does not need further treatment at the facility. If the legally responsible person believes that release is in the best interest of the incompetent adult, and the facility refuses release, the legally responsible person may apply to the court for a hearing for discharge. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2.)

§§ 122C-234 to 122C-240: Reserved for future codification purposes.

## Part 5. Voluntary Admissions and Discharges, Minors and Adults, Facilities for Individuals with Mental Retardation.

### § 122C-241. Admissions.

(a) Except as provided in subsection (c) of this section an individual with mental retardation may be admitted to a facility for the mentally retarded in order that he receive care, habilitation, training, or treatment. Application for admission is made as follows:

- (i) A minor with mental retardation may be admitted upon application by both the father and the mother if they are living together and, if not, by the parent or parents having custody or by the legally responsible person.
- (ii) An adult with mental retardation who has been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon application by his guardian.
- (iii) An adult with mental retardation who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon his own application.

(b) Prior to admission to a 24-hour facility, the individual shall be examined and evaluated by a physician or psychologist to determine whether the individual is mentally retarded. In addition, the individual shall be examined and evaluated by a qualified mental retardation professional no sooner than 31 days prior to admission or within 72 hours after admission to determine whether the individual is in need of care, habilitation, training or treatment by the facility. If the evaluating professional determines that the individual will not benefit from an admission, the individual shall not be admitted as a client.

(c) An admission to an area or State 24-hour facility of an individual from a single portal area shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself or is presented for admission to a State facility for the mentally retarded directly and is in need of an emergency admission, he may be accepted for admission. The State facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the individual is the joint responsibility of the area authority and the State facility as prescribed in the area plan. (1963, c. 1184, s. 6; 1965, c. 800, s. 12; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 383, s. 7; 1985, c. 589, s. 2; c. 695, s. 14.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(j) provides that the admission of individuals residing in facilities for individuals with mental retardation on the effective date of the act (January 1, 1986) shall be reviewed by the facility within two years subsequent to the effective date to assure that the admission conforms to the provisions of this section.

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, substituted "or psychologist" for "licensed practicing psychologist or psychological associate" in the first sentence of subsection (b).

## § 122C-242. Discharges.

(a) Except as provided in subsections (b) through (d) of this section, discharges from facilities for individuals with mental retardation are made upon request of the individual authorized in G.S. 122C-241(a) to make application for admission or by the director of the facility.

(b) Any adult who has not been declared incompetent and who is admitted to a 24-hour facility shall be discharged upon his own request, unless the director of the facility has reason to believe that the adult is endangering himself by the discharge. In this case the individual may be held for a period not to exceed five days while the director petitions for the adjudication of incompetency of the individual and the appointment of an interim guardian under Chapters 33 or 35 of the General Statutes.

(c) Any individual admitted to a 24-hour facility may be discharged when in the judgment of the director of the facility the individual is no longer in need of care, treatment, habilitation or rehabilitation by the facility or the individual will no longer benefit from the service available. In the case of an area or State facility rules adopted by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be followed.

(d) When the individual to be discharged from an area or State 24-hour facility is a resident of a single portal area, the discharge shall follow the procedures described in the area plan. (1963, c. 1184, s. 6; 1973, c. 476, s. 133; 1983, c. 383, s. 8; 1985, c. 589, s. 2.)

§§ 122C-243 to 122C-250: Reserved for future codification purposes.

## Part 6. Involuntary Commitment — General Provisions.

### § 122C-251. Transportation.

(a) Except as provided in subsections (f) and (g), transportation of a respondent within a county under the involuntary commitment proceedings of this Article, including admission and discharge, shall be provided by the city or county. The city has the duty to provide transportation of a respondent who is a resident of the city or who is taken into custody in the city limits. The county has the duty to provide transportation for a respondent who resides in the county outside city limits or who is taken into custody outside of city limits. However, cities and counties may contract with each other to provide transportation.

(b) Except as provided in subsections (f) and (g) or in G.S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a 24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense.

(c) Transportation of a respondent may be by city- or county-owned vehicles or by private vehicle by contract with the city or county. To the extent feasible, law-enforcement officers transporting respondents shall dress in plain clothes and shall travel in unmarked vehicles.

(d) In providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent.

(e) In providing transportation required by this section, the law-enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law-enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a clerk, a magistrate, or a district court judge, where applicable, may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this Article. This authorization shall only be granted in cases where the danger to the public, the family or friends of the respondent, or the respondent himself is not substantial. The family or immediate friends of the respondent shall bear the costs of providing this transportation.

(g) The governing body of a city or county may adopt a plan for transportation of respondents in involuntary commitment proceedings in this Article. Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protections for both the public and the respondent. Law enforcement, other affected agencies, and the area authority shall participate in the planning. If any person other than a law-enforcement agency is designated by a city or county, the person so designated shall provide the transportation and follow the procedures in this Article. References in this Article to a law-enforcement officer apply to this person.

(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. The State (when providing transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable cost of transportation from either (i) the respondent or some other individual liable for his support and maintenance, if there is property sufficient to pay the cost; or (ii) the county of residence of an indigent respondent. (1899, c. 1, s. 32; Rev., s. 4555; 1919, c. 326, s. 4; C. S., ss. 6201, 6202; 1945, c. 952, ss. 29, 30; 1953, c. 256, s. 6; 1961, c. 186; 1963, c. 1184, s. 1; 1969, c. 982; 1973, c. 1408, s. 1; 1979, c. 915, ss. 21, 22; 1983, c. 138, ss. 1, 2; 1985, c. 589, s. 2.)

## **§ 122C-252. Twenty-four hour facilities for custody and treatment of involuntary clients.**

State facilities, 24-hour facilities licensed under this Chapter or hospitals licensed under Chapter 131E may be designated by the Secretary as facilities for the custody and treatment of involuntary clients. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of the client and the general public. Facilities so designated

may detain a client under the procedures of Parts 7 and 8 of this Article both before a district court hearing and after commitment of the respondent. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2.)

### § 122C-253. Fees under commitment order.

Nothing contained in Parts 6, 7, or 8 of this Article requires a private physician, private psychologist, or private facility to accept a respondent as a client either before or after commitment. Treatment at a private facility or by a private physician or private psychologist is at the expense of the responder to the extent that the charges are not disposed of by contract between the area authority and the private facility. An area authority and its contract agencies shall set and recover fees for inpatient or outpatient treatment services provided under a commitment order in accordance with G.S. 122C-146. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16; 1981, c. 537, s. 1; 1983, c. 380, s. 8; c. 638, s. 14; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 3.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "private psychologist" in the first sentence and inserted "or private psychologist" in the second sentence.

### § 122C-254. Housing responsibility for certain clients in or escapes from involuntary commitment.

(a) Any individual who has been involuntarily committed under the provisions of this Article to a 24-hour facility:

- (1) Who escapes from or is absent without authorization from the facility before being discharged; and
- (2) Who is charged with a criminal offense committed after the escape or during the unauthorized absence; and
- (3) Whose involuntary commitment is determined to be still valid by the judge or judicial officer who would make the pretrial release determination regarding the criminal offense under the provisions of G.S. 15A-533 and G.S. 15A-534; or
- (4) Who is charged with committing a crime while still residing in the facility and whose commitment is still valid as prescribed by subdivision (3) of this section;

shall be denied pretrial release pursuant to G.S. 15A-533 and G.S. 15A-534. In lieu of pretrial release, and pending the additional proceedings on the criminal offense, the individual shall be returned to the 24-hour facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his commitment.

(b) Absent findings of lack of mental responsibility for his criminal offense or lack of competency to stand trial for the criminal offense, the involuntary commitment of an individual as described in subsection (a) of this section shall not be utilized in lieu of nor shall it constitute a bar to proceeding to trial for the criminal offense. At any time that the district court or the responsible professional of the 24-hour facility finds that the individual should be unconditionally discharged, committed for outpatient treatment, or conditionally released, the facility shall notify the clerk of superior court in the county in which the criminal charge is pending before making the change in status. At this time, a pretrial release determination pursuant to the provisions of G.S.

15A-533 and G.S. 15A-534 shall be made. In this event, arrangements for returning the individual for the pretrial release determination shall be the responsibility of the clerk of superior court.

(c) An individual who has been processed in accordance with subsections (a) and (b) of this section may not later be returned to a 24-hour facility before trial except pursuant to involuntary commitment proceedings by the district court in accordance with Parts 7 and 8 of this Article or after proceedings in accordance with the provisions of G.S. 15A-1002 or G.S. 15A-1321.

(d) Other involuntarily committed respondents who escape, but do not meet the additional criteria specified in subsection (a) of this section, are handled in accordance with the provisions of G.S. 122C-205. (1981, c. 936, s. 1; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(h) provides that subsections (a) through (c) of this section apply to persons alleged to have committed crimes on or after October 1, 1981.

**§§ 122C-255 to 122C-260:** Reserved for future codification purposes.

### Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

#### **§ 122C-261. Affidavit and petition before clerk or magistrate; custody order.**

(a) Anyone who has knowledge of an individual who is: (i) mentally ill and either dangerous to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably (i) mentally ill and either dangerous to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, he shall issue an order to a law-enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, he shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003 or G.S. 15A-1321, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, he may be accepted for admission in accordance with G.S. 122C-266. The facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subsections (a) and (b); and inserted "or eligible psychologist" in the first and last sentences of subsection (d) and substituted "or eligible psychologist recommends" for "petitioner's recommendation is for" in the fourth sentence of subsection

(d); and inserted "or eligible psychologist" in subsection (f).

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

**Editor's Note.** — The cases cited below were decided under comparable provisions of former Chapter 122.

**Requirements of former § 122-58.3 (see now §§ 122C-261 and 122C-281) were required to be followed diligently.** In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980); In re Barnhill, — N.C. App. —, 325 S.E.2d 308 (1985).

**Contents and Sufficiency of Affidavit.** — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**Petition for involuntary commitment which was not confirmed by oath or affir-**

**mation before a duly authorized certifying officer did not comply with the requirements of former § 122-58.3(a) (see now §§ 122C-261, 122C-281) and could not serve as a basis for involuntary commitment.** In re Ingram, — N.C. App. —, 328 S.E.2d 588 (1985).

**Statement Held Not to Establish Grounds for Commitment.** — Statement that "respondent has strange behavior and irrational in her thinking" was not a statement of fact but a pure conclusion of the affiant, and did not suffice to establish reasonable grounds for issuance of commitment order. In re Ingram, — N.C. App. —, 328 S.E.2d 588 (1985).

**Statement Held Not to Establish Mental Illness or Dangerousness.** — Statements that respondent "Leaves home and no one knows of her whereabouts, and at times spends

the night away from home. Accuses husband of improprieties" did not establish facts showing or tending to show that respondent was mentally ill or dangerous to herself or others. In re

Ingram, — N.C. App. —, 328 S.E.2d 588 (1985).

**Applied** in In re Crouse, 65 N.C. App. 696, 309 S.E.2d 568 (1983).

## § 122C-262. Special emergency procedure for violent individuals.

When an individual subject to commitment under the provisions of this Part is also violent and requires restraint and when delay in taking him to a physician or eligible psychologist for examination would likely endanger life or property, a law-enforcement officer may take the individual into custody and take him immediately before a magistrate or clerk. The law-enforcement officer shall execute the affidavit required by G.S. 122C-261 and in addition shall swear that the respondent is violent and requires restraint and that delay in taking the respondent to a physician or eligible psychologist for an examination would endanger life or property.

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a physician or eligible psychologist for an examination would endanger life or property, he shall order the law-enforcement officer to take the respondent directly to a 24-hour facility described in G.S. 122C-252.

Respondents received at a 24-hour facility under the provisions of this section shall be examined and processed thereafter in the same way as all other respondents under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1985, c. 589, s. 2; c. 695, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in the first and second paragraphs.

**Legal Periodicals.** — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Former § 122-58.18 (see now §§ 122C-262 and 122C-282) was not intended to be used indiscriminately** and clearly defined the limited time and circumstances for such use. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**Affidavit.** — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**May Rely on Information Gained from**

**Others.** — An officer's petition for involuntary commitment of respondent pursuant to the emergency procedures for violent persons was not required to be dismissed because the officer did not personally observe the respondent in an act of violence but relied on information gained from others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**No Overt Act Required.** — In finding one to be imminently dangerous, there is no requirement of an overt act. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**Concealing a potentially dangerous weapon is evidence of imminent danger.** In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

### § 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

(a) Without unnecessary delay after assuming custody, the law-enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, he shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, he may be detained under appropriate supervision in his home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility.

(b) The examination set forth in subsection (a) of this section is not required if:

- (1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;
- (2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found not guilty by reason of insanity or incapable of proceeding; or
- (3) The respondent is in custody under the special emergency procedure described in G.S. 122C-262.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous mental illness or mental retardation including, if available, previous treatment history;
- (2) Dangerousness to himself or others as defined in G.S. 122C-3(11);
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment.

(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

- (1) If the physician or eligible psychologist finds that:
  - a. The respondent is mentally ill;
  - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
  - c. Based on the respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C-3(11); and
  - d. His current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment;

The physician or eligible psychologist shall so show on [the] his examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to his regular residence or to the home of a consenting individual, and he shall be released from custody.

(2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, he shall recommend inpatient commitment, and he shall so show on [the] his examination report. The law-enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law-enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission for custody, observation, and treatment and immediately notify the clerk of superior court of his actions.

(3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician or eligible psychologist and the facts on which they are based shall be in writing in all cases. The physician or eligible psychologist shall send a copy of the findings to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

(f) When outpatient commitment is recommended, the examining physician or eligible psychologist, if different from the proposed outpatient treatment physician or center, shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at the address at a specified date and time. The examining physician or eligible psychologist before the appointment shall notify by telephone the designated outpatient treatment physician or center and shall send a copy of the notice and his examination report to the physician or center. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 5, 6.)

**Editor's Note.** — Session Laws 1985, c. 695, substituted "his" for "physician's" near the end of the first sentences of subdivisions (d)(1) and (d)(2). The word "the" preceding "his" probably also should have been deleted by the act and has therefore been bracketed.

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subsections

(a), (b), and (c); inserted "or eligible psychologist" throughout subsection (d), and substituted "his" for "physician's" near the end of subdivision (d)(1) and in subdivision (d)(2); and inserted "or eligible psychologist" in subsection (e) and in two places in subsection (f).

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

## CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Duty of Physician to Make Examination.** — Former § 122-58.4 (see now §§ 122C-263 and 122C-283) imposed a positive duty to make the examination before signing the certificate. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d

160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

**Physical Presence of Person to Be Examined Required.** — "Examine" requires that the person to be examined be physically in the presence of the qualified physician, so that the physician may actually utilize his five senses, or such of them as he deems necessary,

in carrying out the mandate of this section. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

The requirement that the law-enforcement officer must take and present the person to be examined to the physician requires that the person must be physically present before the physician for the purpose of the examination. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

**Relief from Wrongful Certification.** — A physician's failure to perform an examination prior to signing certificate is a violation of the statute, and if plaintiff is involuntarily com-

mitted as a result of defendant's actions, a cause of action arises against defendant, and this is true regardless of what may have prompted defendant to fail to make the examination of plaintiff. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied 305 N.C. 301, 290 S.E.2d 703 (1982).

**Relevance of Reasons for Failing to Examine.** — The reasons defendant physician failed to make the required examination prior to signing certificate were competent on the question of punitive damages, but not on the issue of whether defendant violated his statutory duty to plaintiff. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied 305 N.C. 301, 290 S.E.2d 703 (1982).

## § 122C-264. Duties of clerk of superior court.

(a) Upon receipt of a physician's or eligible psychologist's finding that the respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is recommended, the clerk of superior court of the county where the petition was initiated, upon direction of a district court judge, shall calendar the matter for hearing and shall notify the respondent, the proposed outpatient treatment physician or center, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Upon receipt of a physician's or eligible psychologist's finding that a respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is recommended, the clerk of superior court of the county where the 24-hour facility is located shall, after determination required by G.S. 122C-261(c) and upon direction of a district court judge, assign counsel if necessary, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(c) Notice to the respondent, required by subsections (a) and (b) of this section, shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be sent at least 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(d) In cases described in G.S. 122C-266(b) in addition to notice required in subsections (a) and (b) of this section, the clerk of superior court shall notify the chief district judge and the district attorney in the county in which the defendant was found not guilty by reason of insanity or incapable of proceeding. The notice shall be given in the same way as the notice required by subsection (c) of this section. The judge or the district attorney may file a written waiver of his right to notice under this subsection with the clerk of court.

(e) The clerk of superior court of the county where outpatient commitment is to be supervised shall keep a separate list regarding outpatient commitment and shall prepare quarterly reports listing all active cases, the assigned supervisor, and the disposition of all hearings, supplemental hearings, and rehearings.

(f) The clerk of superior court of the county where inpatient commitment hearings and rehearings are held shall provide all notices, send all records and maintain a record of all proceedings as required by this Part; provided

that if the respondent has been committed to a 24-hour facility in a county other than his county of residence and the district court hearing is held in the county of the facility, the clerk of superior court in the county of the facility shall forward the record of the proceedings to the clerk of superior court in the county of respondent's residence, where they shall be maintained by receiving clerk. (1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, ss. 8, 16; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 7.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist's" in subsections (a) and (b).

### § 122C-265. Outpatient commitment; examination and treatment pending hearing.

(a) If a respondent, who has been recommended for outpatient commitment by an examining physician or eligible psychologist different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law-enforcement officer or other person authorized under G.S. 122C-251 to take the respondent into custody and take him immediately to the outpatient treatment physician or center for evaluation. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination.

(b) The examining physician or the proposed outpatient treatment physician or center may prescribe to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards pending the district court hearing.

(c) In no event may a respondent released on a recommendation that he meets the outpatient commitment criteria be physically forced to take medication or forceably detained for treatment pending a district court hearing.

(d) If at any time pending the district court hearing the outpatient treatment physician or center determines that the respondent does not meet the criteria of G.S. 122C-263(d)(1), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If a respondent becomes dangerous to himself or others pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated.

(f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient commitment hearing, notice shall be sent by the clerk of court in the county where the respondent is being held to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding shall be terminated. (1983, c. 638, s. 11; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 6.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subsection (a).

### § 122C-266. Inpatient commitment; second examination and treatment pending hearing.

(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

- (1) If the physician finds that the respondent is mentally ill and is dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, he shall hold the respondent at the facility pending the district court hearing.
- (2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), he shall show his findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of his findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. He shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and his examination report to the proposed outpatient treatment physician or center.
- (3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), he shall release the respondent and the proceedings shall be terminated.
- (4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law-enforcement officer or other person designated to provide transportation shall return the respondent to the originating county.

(b) If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing.

(c) The findings of the physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be sent to the clerk of superior court by reliable and expeditious means.

(d) Pending the district court hearing, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. Except as provided in subsection (b) of this section, if at any time pending the district court hearing, the attending physician determines that the respondent no longer meets the criteria of either G.S. 122C-263(d)(1) or (d)(2), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If the 24-hour facility described in G.S. 122C-252 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination must occur not later than the following regular working day. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c. 638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subsection (e).

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Applied in** *In re Barnhill*, — N.C. App. —, 325 S.E.2d 308 (1985).

## § 122C-267. Outpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence.

(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent.

(e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's judicial district, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the client is indigent, the copies shall be provided at State expense.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-262(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459; 1977, c. 400, s. 7; c. 1126, s. 1; 1979, c. 915, ss. 7, 13; 1983, c. 380, s. 6; c. 638, ss. 12, 13; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 8.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "and psychologists" in subsection (c).

administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

**Legal Periodicals.** — For survey of 1979

## § 122C-268. Inpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). A continuance of not more than five days may be granted upon motion of:

- (1) The court;
- (2) Respondent's counsel; or
- (3) The State,

sufficiently in advance to avoid movement of the respondent.

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of North Carolina Memorial Hospital, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held at the facility to which he is assigned under this Part.

(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing.

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's judicial district, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(h) The hearing shall be closed to the public unless the respondent requests otherwise.

(i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others. The court shall record the facts that support its findings. (1985, c. 589, s. 2; c. 695, s. 8.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "and psychologists" in subsection (f).

law on civil procedure, see 59 N.C.L. Rev. 1049 (1981).

**Legal Periodicals.** — For survey of 1980

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

## CASE NOTES

**Editor's Note.** — The cases cited below were decided under comparable provisions of former Chapter 122.

**The 10-day custody period prior to a full adversary hearing does not constitute a denial of due process.** In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**Findings Prerequisite to Commitment.** — Statutory mandate requires as a condition to a valid commitment order that the district court find two distinct facts: first, that the respondent is mentally ill or inebriate, as defined in former § 122-36 (see now § 122C-3); and second, that the respondent is dangerous to himself or others. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

To enter a commitment order, the trial court is required to ultimately find two distinct facts, i.e., that the respondent is mentally ill and is dangerous to himself or to others. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

**Two distinct facts must be found by clear, cogent, and convincing evidence:** first, that the respondent is mentally ill or inebriate and second, that the respondent is dangerous to himself or others. It is not the court's function to appeal to determine if the evidence offered meets the statutory standard but simply to determine whether there was any competent evidence to support the factual findings made. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983).

**Trial court must find three elements present in order to find that respondent is dangerous to others:** (1) within the recent past (2) respondent has (a) inflicted serious bodily harm on another, or (b) attempted to inflict serious bodily harm on another, or (c) threatened to inflict serious bodily harm on another, or (d) has acted in such a manner as to create a substantial risk of serious bodily harm to another, and (3) there is a reasonable probability that such conduct will be repeated. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

**No Overt Act Required.** — The present statutory definition of "dangerous to others" does not require a finding of overt acts. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

**It is for the trier of fact to determine whether evidence offered in a particular case is clear, cogent, and convincing.** In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

The Court of Appeals does not consider whether the evidence of respondent's mental illness and dangerousness was clear, cogent and convincing. It is for the trier of fact to determine whether the competent evidence offered in a particular case met the burden of proof. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

The trier of fact alone must determine whether the evidence presented is clear, cogent and convincing. A court's only function on appeal is to determine whether there was any competent evidence to support the factual findings made. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

**In its order the trial court must record the facts** upon which its ultimate findings are based. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

Pursuant to subsection (i) of this section the facts supporting the danger the patient presents to herself and to others must be recorded by the trial court. In re Crainshaw, 54 N.C. App. 429, 283 S.E.2d 553 (1981).

**Order of commitment was not void on its face** where the court recorded the facts by placing "x's" by the recorded facts on the order of commitment form. In re Crouse, 65 N.C. App. 696, 309 S.E.2d 568 (1983).

**Standards on Review.** — On appeal from an order of commitment, the questions for determination in the Court of Appeals become (1) whether the Court's ultimate findings are indeed supported by the "facts" which the Court recorded in its order as supporting its findings, and (2) whether in any event there was competent evidence to support the Court's findings. In re Frick, 49 N.C. App. 273, 271 S.E.2d 84 (1980).

On appeal of a commitment order, the function of the Court of Appeals is to determine whether there was any competent evidence to support the facts recorded in the commitment order and whether the trial court's ultimate findings of mental illness and dangerous to self or others were supported by the facts recorded in the order. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

**Applied** in In re Rogers, 300 N.C. 747, 268 S.E.2d 221 (1980); In re Holt, 54 N.C. App. 352, 283 S.E.2d 413 (1981).

**Quoted** in In re Barnhill, — N.C. App. —, 325 S.E.2d 308 (1985).

**Cited** in In re Perkins, 60 N.C. App. 592, 299 S.E.2d 675 (1983).

### **§ 122C-269. Venue of district court hearing when respondent held at a 24-hour facility pending hearing.**

(a) In all cases where the respondent is held at a 24-hour facility pending the district court hearing as provided in G.S. 122C-268, unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-268(d).

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or a rehearing required by G.S. 122C-276(b) or G.S. 122C-277(b) shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change. (1975, 2nd Sess., c. 983, s. 133; 1981, c. 537, s. 6; 1983, c. 380, s. 7; 1985, c. 589, s. 2.)

### **§ 122C-270. Attorneys to represent the respondent and the State.**

(a) The senior regular resident superior court judge of a judicial district in which a State facility for the mentally ill is located shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill or mentally retarded with an accompanying behavior disorder. This special counsel shall serve at the pleasure of the appointing judge, may not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys as fixed by the Administrative Officer of the Courts. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Administrative Office of the Courts shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned by a district judge of the district. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Administrative Officer of the Courts, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, a district court judge shall appoint counsel for indigent respondents from members of the bar of the county in accordance with G.S. 122C-268(d).

(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respon-

dent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held at North Carolina Memorial Hospital under this Article. (1973, c. 47, s. 2; c. 1408, s. 1; 1977, c. 400, s. 11; 1979, c. 915, s. 12; 1983, c. 275, ss. 1, 2; 1985, c. 589, s. 2.)

### § 122C-271. Disposition.

(a) If an examining physician or eligible psychologist has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined in G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.
- (2) If the court does not find that the respondent meets the criteria of commitment set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility at which he was last a client so notified.

(b) If the respondent has been held in a 24-hour facility pending the district court hearing, the court may make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show.

- (2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252, or a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center, for a period not in excess of 90 days. However, an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others may not be committed to a State, area or private facility for the mentally retarded. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.
- (3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which he was last a client so notified.
- (4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16; 1981, c. 537, s. 1; 1983, c. 380, s. 8; c. 638, s. 14; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subsection (a).

## § 122C-272. Appeal.

Judgement of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General represents the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1979, c. 915, s. 19; 1985, c. 589, s. 2.)

**Legal Periodicals.** — For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1049 (1981).

## § 122C-273. Duties for follow-up on commitment order.

(a) If the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

- (1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician or his designee shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.
- (2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician or his designee may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C-263 if the clerk or magistrate issues a custody order within six hours after the examination was performed.
- (3) In no case may the respondent be physically forced to take medication or forceably detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.
- (4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental

hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.

- (5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to himself or others as defined by G.S. 122C-3(11) may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised.

(b) If the respondent on outpatient commitment intends to move or moves to another county within the State, the designated outpatient treatment physician or center shall request that the clerk of court in the county where the outpatient commitment is being supervised calendar a supplemental hearing.

(c) If the respondent moves to another state or to an unknown location, the designated outpatient treatment physician or center shall notify the clerk of superior court of the county where the outpatient commitment is supervised and the outpatient commitment shall be terminated.

(d) If the commitment order directs inpatient treatment, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards. The attending physician shall release or discharge the respondent in accordance with G.S. 122C-277. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2.)

**Legal Periodicals.** — For an article entitled "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

## § 122C-274. Supplemental hearings.

(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated outpatient treatment physician or center. The respondent shall be notified at least 72 hours before the hearing by personally serving on him an order to appear. Other persons shall be notified as provided in G.S. 122C-264(c).

(b) The procedures for the hearing shall follow G.S. 122C-267.

(c) In supplemental hearings for alleged noncompliance, the court shall determine whether the respondent has failed to comply and, if so, the causes for noncompliance. If the court determines that the respondent has failed or refused to comply it may:

(1) Upon finding probable cause to believe that the respondent is mentally ill and dangerous to himself or others, order an examination by the same or different physician or eligible psychologist as provided in G.S. 122C-263(c) in order to determine the necessity for continued outpatient or inpatient commitment;

(2) Reissue or change the outpatient commitment order in accordance with G.S. 122C-271; or

(3) Discharge the respondent from the order and dismiss the case.

(d) At the supplemental hearing for a respondent who has moved or intends to move to another county, the court shall determine if the respondent meets the criteria for outpatient commitment set out in G.S. 122C-263(d)(1). If the court determines that the respondent no longer meets the criteria for outpatient commitment, it shall discharge the respondent from the order and dis-

miss the case. If the court determines that the respondent continues to meet the criteria for outpatient commitment, it shall continue the outpatient commitment but shall designate a physician or center at the respondent's new residence to be responsible for the management or supervision of the respondent's outpatient commitment. The court shall order the respondent to appear for treatment at the address of the newly designated outpatient treatment physician or center and shall order venue for further court proceedings under the outpatient commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the outpatient commitment has been supervised shall transfer the records regarding the outpatient commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the outpatient commitment has been supervised shall send a copy of the court's order directing the continuation of outpatient treatment under new supervision to the newly designated outpatient treatment physician or center.

(e) At any time during the term of an outpatient commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing by the respondent to the clerk of superior court of the county where the outpatient commitment is being supervised. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1). The court may either reissue or change the commitment order or discharge the respondent and dismiss the case.

(f) At supplemental hearings requested pursuant to G.S. 122C-277(a) for transfer from inpatient to outpatient commitment, the court shall determine whether the respondent meets the criteria for either inpatient or outpatient commitment. If the court determines that the respondent continues to meet the criteria for inpatient commitment, it shall order the continuation of the original commitment order. If the court determines that the respondent meets the criteria for outpatient commitment, it shall order outpatient commitment for a period of time not in excess of 90 days. If the court finds that the respondent does not meet either criteria, the respondent shall be discharged and the case dismissed. (1983, c. 638, s. 17; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subdivision (c)(1).

## § 122C-275. Outpatient commitment; rehearings.

(a) Fifteen days before the end of the initial or subsequent periods of outpatient commitment if the outpatient treatment physician or center determines that the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so notify the clerk of superior court of the county where the outpatient commitment is supervised. If the respondent no longer meets the criteria, the physician shall so notify the clerk who shall dismiss the case; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the physician or center shall notify the clerk that discharge is recommended. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing.

(b) Notice and procedures of rehearings are governed by the same procedures as initial hearings, and the respondent has the same rights he had at the initial hearing including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-263(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated outpatient treatment physician or center. If the respondent continues to meet the criteria of G.S. 122C-263(d)(1), the court may order outpatient commitment for an additional period not in excess of 180 days. (1983, c. 638, s. 20; c. 864, s. 4; 1985, c. 589, s. 2.)

#### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122. N.C. App. 705, 306 S.E.2d 510, appeal dismissed, 309 N.C. 633, 308 S.E.2d 716 (1983), — U.S. —, 104 S. Ct. 1583, 80 L. Ed. 2d 117 (1984).

**Constitutionality.** — See *In re Rogers*, 63

### § 122C-276. Inpatient commitment; rehearings.

(a) Fifteen days before the end of the initial inpatient commitment period if the attending physician determines that commitment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the judicial district in which the facility is located, shall calendar the rehearing. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding of the time and place of the hearing.

(b) Fifteen days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, having been found not guilty by reason of insanity or incapable of proceeding, if the attending physician determines that commitment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of superior court who shall schedule a rehearing as provided in subsection (a) of this section.

(c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the judicial district in which the facility is located or a district court judge temporarily assigned to that district.

(d) Notice and proceedings of rehearings are governed by the same procedures as initial hearings and the respondent has the same rights he had at the initial hearing including the right to appeal.

(e) At rehearings the court may make the same dispositions authorized in G.S. 122C-271(b) except a second commitment order may be for an additional period not in excess of 180 days.

(f) Fifteen days before the end of the second commitment period and annually thereafter, the attending physician shall review and evaluate the condition of each respondent; and if he determines that a respondent is in continued need of inpatient commitment or, in the alternative, in need of outpatient commitment, or a combination of both, he shall so notify the respondent, his counsel, and the clerk of superior court of the county, in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court

judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. No third or subsequent inpatient recommitment order shall be for a period longer than one year.

(g) At any rehearings the court has the option to order outpatient commitment for a period not in excess of 180 days in accordance with the criteria specified in G.S. 122C-263(d)(1) and following the procedures as specified in this Article. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 9; 1979, c. 915, ss. 9, 17; 1981, c. 537, ss. 2-4; 1983, c. 638, ss. 18, 19; c. 864, s. 4; 1985, c. 589, s. 2.)

## § 122C-277. Release and conditional release; judicial review.

(a) Except as provided in subsection (b) of this section, the attending physician shall discharge a committed respondent unconditionally at any time he determines that the respondent is no longer in need of inpatient commitment. However, if the attending physician determines that the respondent meets the criteria for outpatient commitment as defined in G.S. 122C-263(d)(1), he may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued. Except as provided in subsection (b) of this section, the attending physician may also release a respondent conditionally for periods not in excess of 30 days on specified medically appropriate conditions. Violation of the conditions is grounds for return of the respondent to the releasing facility. A law-enforcement officer, on request of the attending physician, shall take a conditional releasee into custody and return him to the facility in accordance with G.S. 122C-205. Notice of discharge and of conditional release shall be furnished to the clerk of superior court of the county of commitment and of the county in which the facility is located.

(b) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court of the county in which the facility is located of his determination regarding the proposed discharge or conditional release. The clerk shall then schedule a rehearing to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122C-271(b). The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the district where respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing.

(c) If a committed respondent under either subsection (a) or (b) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent. (1973, c. 726, s. 1; c. 1408, s. 1; 1981, c. 537, s. 5; 1983, c. 383, s. 6; c. 638, s. 21; c. 864, s. 4; 1985, c. 589, s. 2.)

### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Applied** in Pangburn v. Saad, — N.C. App. —, 326 S.E.2d 365 (1985).

§§ 122C-278 to 122C-280: Reserved for future codification purposes.

Part 8. Involuntary Commitment of Substance Abusers,  
Facilities for Substance Abusers.

§ 122C-281. Affidavit and petition before clerk or magistrate; custody order.

(a) Any individual who has knowledge of a substance abuser who is dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably a substance abuser and dangerous to himself or others, he shall issue an order to a law-enforcement officer or any other person authorized by G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-283(c). If the physician or eligible psychologist recommends commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for commitment, he shall issue an order for transportation to or custody at a 24-hour facility or release the respondent, pending hearing, as described in G.S. 122C-283(d)(1). If a physician or eligible psychologist executes an affidavit for commitment of a respondent, a second qualified professional shall perform the examination required by G.S. 122C-285.

(e) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-283(c) shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a facility directly, he may be accepted for admission in accordance with G.S. 122C-285. The facility shall notify the area authority within 24 hours of admission and further planning of treatment for the individual is the joint responsibility of the area authority and the facility as prescribed in the area plan. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(k) provides that substance abusers committed as outpatients pursuant to § 122-58.7A:1 or 122-58.8 prior to the effective date of the act (January 1, 1986) shall not be subject to the provisions of §§ 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to §§ 122C-281 through 122C-289.

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in subsections

(a) and (b); inserted "or eligible psychologist" in the first and last sentences of subsection (d) and substituted "or eligible psychologist recommends" for "petitioner's recommendation is for" in the fourth sentence of subsection (d); and inserted "or eligible psychologist" in subsection (f).

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

### CASE NOTES

**Editor's Note.** — The cases cited below were decided under comparable provisions of former Chapter 122.

**Requirements of former § 122-58.3 (see now §§ 122C-261 and 122C-281) were required to be followed diligently.** In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980); In re Barnhill, — N.C. App. —, 325 S.E.2d 308 (1985).

**Contents and Sufficiency of Affidavit.** — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**Applied** In re Crouse, 65 N.C. App. 696, 309 S.E.2d 568 (1983).

## § 122C-282. Special emergency procedure for violent individuals.

When an individual subject to commitment under the provisions of this Part is also violent and requires restraint and when delay in taking him to a physician or eligible psychologist for examination would likely endanger life or property, a law-enforcement officer may take the person into custody and take him immediately before a magistrate or clerk. The law-enforcement officer shall execute the affidavit required by G.S. 122C-281 and in addition shall swear that the respondent is violent and requires restraint and that delay in taking the respondent to a physician or eligible psychologist for an examination would endanger life or property.

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a physician or eligible psychologist for an examination would endanger life or property, he shall order the law-enforcement officer to take the respondent directly to a 24-hour facility described in G.S. 122C-252.

Respondents received at a 24-hour facility under the provisions of this section shall be examined and processed thereafter in the same way as all other respondents under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1985, c. 589, s. 2; c. 695, s. 2.)

**Effect of Amendments.** The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in the first and second paragraphs.

**Legal Periodicals.** — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

## CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Former § 122-58.18 (see now §§ 122C-262 and 122C-282) was not intended to be used indiscriminately** and clearly defined the limited time and circumstances for such use. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**Affidavit.** — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**May Rely on Information Gained from**

**Others.** — An officer's petition for involuntary commitment of respondent pursuant to the emergency procedures for violent persons was not required to be dismissed because the officer did not personally observe the respondent in an act of violence but relied on information gained from others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**No Overt Act Required.** — In finding one to be imminently dangerous, there is no requirement of an overt act. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

**Concealing a potentially dangerous weapon is evidence of imminent danger.** In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

### § 122C-283. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

(a) Without unnecessary delay after assuming custody, the law-enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, he shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility if one is available; if an area facility is not available, he may be detained under appropriate supervision, in his home, in a private hospital or a clinic, or in a general hospital, but not in a jail or other penal facility.

(b) The examination set forth in subsection (a) of this section is not required if:

- (1) The affiant who obtained the custody order is a physician or eligible psychologist; or
- (2) The respondent is in custody under the special emergency procedure described in G.S. 122C-282.

In these cases when it is recommended that the respondent be detained in a 24-hour facility, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous substance abuse including, if available, previous treatment history; and
- (2) Dangerousness to himself or others as defined in G.S. 122C-3(11).

(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

- (1) If the physician or eligible psychologist finds that the respondent is a substance abuser and is dangerous to himself or others, he shall recommend commitment and whether the respondent should be released or be held at a 24-hour facility pending hearing and shall so show on [the] his examination report. Based on the physician's or eligible psychologist's recommendation the law-enforcement officer

or other designated individual shall take the respondent to a 24-hour facility described in G.S. 122C-252 or release the respondent.

- (2) If the physician or eligible psychologist finds that the condition described in subdivision (1) of this subsection does not exist, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician or eligible psychologist and the facts on which they are based shall be in writing in all cases. A copy of the findings shall be sent to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 9.)

**Editor's Note.** — Session Laws 1985, c. 695, substituted "his" for "physician's" near the end of the first sentence of subdivision (d)(1). The word "the" preceding "his" probably also should have been deleted by the act and has therefore been bracketed.

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, in-

serted "or eligible psychologist" throughout this section and substituted "his" for "physician's" in the first sentence of subdivision (d)(1) and inserted "or eligible psychologist's" in the second sentence of that subdivision.

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

#### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Duty of Physician to Make Examination.** — Former § 122-58.4 (see now §§ 122C-263 and 122C-283) imposed a positive duty to make the examination before signing the certificate. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

**Physical Presence of Person to Be Examined Required.** — "Examine" requires that the person to be examined be physically in the presence of the qualified physician, so that the physician may actually utilize his five senses, or such of them as he deems necessary, in carrying out the mandate of this section. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

The requirement that the law-enforcement officer must take and present the person to be examined to the physician requires that the person must be physically present before the

physician for the purpose of the examination. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

**Relief from Wrongful Certification.** — A physician's failure to perform an examination prior to signing certificate is a violation of the statute, and if plaintiff is involuntarily committed as a result of defendant's actions, a cause of action arises against defendant, and this is true regardless of what may have prompted defendant to fail to make the examination of plaintiff. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

**Relevance of Reasons for Failing to Examine.** — The reasons defendant physician failed to make the required examination prior to signing certificate were competent on the question of punitive damages, but not on the issue of whether defendant violated his statutory duty to plaintiff. *McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

### § 122C-284. Duties of clerk of superior court.

(a) Upon receipt of a physician's or eligible psychologist's finding that a respondent is a substance abuser and dangerous to himself or others and that commitment is recommended, the clerk of superior court of the county where the facility is located, if the respondent is held in a 24-hour facility, or the clerk of superior court where the petition was initiated shall upon direction of

a district court judge assign counsel, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Notice to the respondent required by subsection (a) of this section shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be given by mailing at least 72 hours before the hearing a copy by first-class mail postage prepaid to the individual at his last known address.

(c) Upon receipt of notice that transportation is necessary to take a committed respondent to a 24-hour facility pursuant to G.S. 122C-290(b), the clerk shall issue a custody order for the respondent.

(d) The clerk of superior court shall upon the direction of a district court judge calendar all hearings, supplemental hearings, and rehearings and provide all notices required by this Part. (1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, s. 8; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 10.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist's" near the beginning of subsection (a).

## § 122C-285. Commitment; second examination and treatment pending hearing.

Within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a qualified professional. This professional shall be a physician if the initial commitment evaluation was conducted by an eligible psychologist. The examination shall include the assessment specified in G.S. 122C-283(c). If the qualified professional finds that the respondent is a substance abuser and is dangerous to himself or others, he shall hold and treat the respondent at the facility or designate other treatment pending the district court hearing. If the qualified professional finds that the respondent does not meet the criteria for commitment under G.S. 122C-283(d)(1), he shall release the respondent and the proceeding shall be terminated. In this case the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the custody order originated. If the respondent is released, the law-enforcement officer or other person designated to provide transportation shall return the respondent to the originating county. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c. 638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 11.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted the second sentence.

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Applied in** *In re Barnhill*, — N.C. App. —, 325 S.E.2d 308 (1985).

### 122C-286. Commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon its own motion or upon motion of the responsible professional, the respondent, or the State, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the responsible professional of the area authority or the proposed treating physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, the court shall appoint counsel to represent him.

(e) Hearings may be held at an area facility or a private facility if it is located within the judge's judicial district or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted shall be furnished by the clerk to the respondent on request. If the respondent is indigent, the copies shall be provided at State expense.

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area authority or physician who is responsible for the management and supervision of the respondent's treatment. (1985, c. 589, s. 2; c. 695, s. 8.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "and psychologists" in subsection (c).

### § 122C-287. Disposition.

The court may make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the respondent is a substance abuser and is dangerous to himself or others, it shall order for a period not in excess of 180 days commitment to and treatment by an area authority or physician who is responsible for the management and supervision of the respondent's commitment and treatment.
- (2) If the court finds that the respondent does not meet the commitment criteria set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility in which he was last treated so notified. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16; 1981, c. 537, s. 1; 1983, c. 380, s. 8; c. 638, s. 14; c. 864, s. 4; 1985, c. 589, s. 2.)

### § 122C-288. Appeal.

Judgment of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General shall represent the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part (1973, c. 726, s. 1; c. 1408, s. 1; 1979, c. 915, s. 19; 1985, c. 589, s. 2.)

**Legal Periodicals.** — For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1049 (1981).

### § 122C-289. Duty of assigned counsel; discharge.

Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal. Upon completion of an appeal, assigned counsel is discharged. If the respondent is committed, assigned counsel remains responsible for his representation until discharged by order of district court or until the respondent is otherwise unconditionally discharged. (1973, c. 1408, s. 1; 1985, c. 589, s. 2.)

### § 122C-290. Duties for follow-up on commitment order.

(a) The area authority or physician responsible for management and supervision of the respondent's commitment and treatment may prescribe or administer to the respondent reasonable and appropriate treatment either on an outpatient basis or in a 24-hour facility.

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the area authority or physician may have the respondent taken to a 24-hour facility described in G.S. 122C-252. Transportation shall be provided as specified in G.S. 122C-251 upon notice by the area authority or physician that transportation is necessary. Prior to the placement in the 24-hour facility, a physician shall determine that treatment in the facility will benefit the respondent. If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291.

(c) If the respondent intends to move or moves to another county within the State, the area authority or physician shall notify the clerk of court in the county where the commitment is being supervised and request that a supplemental hearing be calendared.

(d) If the respondent moves to another state or to an unknown location, the designated area authority or physician shall notify the clerk of superior court of the county where the commitment is supervised and the commitment shall be terminated. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(k) provides that substance abusers committed as outpatients pursuant to § 122-58.7A:1 or 122-58.8 prior to the effective date of the act (January 1, 1986) shall not be subject to the provisions of §§ 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to §§ 122C-281 through 122C-289.

**§ 122C-291. Supplemental hearings.**

(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated area authority or physician. Notice shall be provided in accordance with G.S. 122C-284(b). The procedures for the hearing shall follow G.S. 122C-286.

(b) At the supplemental hearing for a respondent who has moved or may move to another county, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent no longer meets the criteria for commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for commitment, it shall continue the commitment but shall designate an area authority or physician at the respondent's new residence to be responsible for the management or supervision of the respondent's commitment. The court shall order the respondent to appear for treatment at the address of the newly designated area authority or physician and shall order venue for further court proceedings under the commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the commitment has been supervised shall transfer the records regarding the commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the commitment has been supervised shall send a copy of the court's order directing the continuation of treatment under new supervision to the newly designated area authority or physician.

(c) At a supplemental hearing for a respondent to be held longer than 45 consecutive days in a 24-hour facility, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent continues to meet the criteria and that further treatment in the 24-hour facility is necessary, the court may authorize continued care in the facility for not more than 90 days, after which a rehearing for the purpose of determining the need for continued care in the 24-hour facility shall be held, or the court may order the respondent released from the 24-hour facility and continued on the commitment on an outpatient basis. If the court determines that the respondent no longer meets the criteria for commitment the respondent shall be released and his case dismissed.

(d) At any time during the term of commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing to the clerk of superior court. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria for commitment. The court may reissue or change the commitment order or discharge the respondent and dismiss the case. (1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(k) provides that substance abusers committed as outpatients pursuant to § 122-58.7A:1 or 122-58.8 prior to the effective date of the act (January 1, 1986) shall not be subject

to the provisions of §§ 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to §§ 122C-281 through 122C-289.

**§ 122C-292. Rehearings.**

(a) Fifteen days before the end of the initial or subsequent periods of commitment if the area authority or physician determines that the responder continues to meet the criteria specified in G.S. 122C-283(d)(1), the clerk of superior court of the county where commitment is supervised shall be notified. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing. If the respondent no longer meets the criteria, the area authority or physician shall so notify the clerk who shall dismiss the case.

(b) Rehearings are governed by the same notice and procedures as initial hearings, and the respondent has the same rights he had at the initial hearing, including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-283(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated area authority or physician. If the respondent continues to meet the criteria of G.S. 122C-283(d)(1), the court may order commitment for additional periods not in excess of 365 days each. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 9; 1979 c. 915, ss. 9, 17; 1981, c. 537, ss. 2-4; 1983, c. 638, ss. 18-19; 864, s. 4; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(k) provides that substance abusers committed as outpatients pursuant to § 122-58.7A:1 or 122-58.8 prior to the effective date of the act (January 1, 1986) shall not be subject

to the provisions of §§ 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to §§ 122C-281 through 122C-289.

**§ 122C-293. Release by area authority or physician.**

The area authority or physician as designated in the order shall discharge a committed respondent unconditionally at any time he determines that the respondent no longer meets the criteria of G.S. 122C-283(d)(1). Notice of discharge and the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the commitment was ordered. (1973, c. 726, s. 1; c. 1408, s. 1; 1981, c. 537, s. 5; 1983, c. 383, s. 6; c. 638, s. 21; c. 864, s. 4; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(k) provides that substance abusers committed as outpatients pursuant to § 122-58.7A:1 or 122-58.8 prior to the effective date of the act (January 1, 1986) shall not be subject

to the provisions of §§ 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to §§ 122C-281 through 122C-289.

**CASE NOTES**

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

**Applied in** Pangburn v. Saad, — N.C. App. —, 326 S.E.2d 365 (1985).

**122C-294. Local plan.**

Each area authority shall develop a local plan with local law-enforcement agencies, local courts, local hospitals, and local medical societies necessary to facilitate implementation of this Part. (1973, c. 1408, s. 1; 1977, c. 679, s. 8; 1979, c. 358, ss. 26, 27; 1985, c. 589, s. 2.)

§ 122C-295 to 122C-300: Reserved for future codification purposes.

**Part 9. Public Intoxication.****122C-301. Assistance to an individual who is intoxicated in public; procedure for commitment to shelter or facility.**

(a) An officer may assist an individual found intoxicated in a public place by taking any of the following actions:

- (1) The officer may direct or transport the intoxicated individual home;
- (2) The officer may direct or transport the intoxicated individual to the residence of another individual willing to accept him;
- (3) If the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility;
- (4) If the intoxicated individual is apparently in need of but apparently unable to provide for himself immediate medical care, the officer may direct or transport him to an area facility, hospital, or physician's office; or the officer may direct or transport the individual to any other appropriate health care facility; or
- (5) If the intoxicated individual is apparently a substance abuser and is apparently dangerous to himself or others, the officer may proceed as provided in Part 8 of this Article.

(b) In providing the assistance authorized by subsection (a) of this section, the officer may use reasonable force to restrain the intoxicated individual if it appears necessary to protect himself, the intoxicated individual, or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Part.

(c) If the officer takes the action described in either subdivision (a)(3) or (a)(4) of this section, the facility to which the intoxicated individual is taken may detain him only until he becomes sober or a maximum of 24 hours. The individual may stay a longer period if he wishes to do so and the facility is able to accommodate him.

(d) Any individual who has knowledge that a person assisted to a shelter or other facility under subdivisions (a)(3) or (a)(4) of this section is a substance abuser and is dangerous to himself or others may proceed as provided in Part 8 of this Article. (1977, 2nd Sess., c. 1134, s. 2; 1981, c. 519, s. 5; 1985, c. 589, s. 2.)

### **§ 122C-302. Cities and counties may employ officers to assist intoxicated individuals.**

A city or county may employ officers to assist individuals who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public including the administration of first aid. An officer employed by a city or county to assist intoxicated individuals has the powers and duties set out in G.S. 122C-301 within the same territory in which criminal laws are enforced by law-enforcement officers of that city or county. (1977, 2nd Sess., c. 1134, s. 2; 1985, c. 589, s. 2)

### **§ 122C-303. Use of jail for care for intoxicated individual**

In addition to the actions authorized by G.S. 122C-301(a), an officer may assist an individual found intoxicated in a public place by directing or transporting that individual to a city or county jail. That action may be taken only if the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care and if no other facility is readily available to receive him. The officer and employees of the jail are exempt from liability as provided in G.S. 122C-301(b). The intoxicated individual may be detained at the jail only until he becomes sober or a maximum of 24 hours and may be released at any time to a relative or other individual willing to be responsible for his care. (1977, 2nd Sess., c. 1134, s. 3; 1985, c. 589, s. 2.)

§§ 122C-304 to 122C-310: Reserved for future codification purposes.

## **Part 10. Voluntary Admissions, Involuntary Commitments and Discharges, Inmates and Parolees, Department of Correction.**

### **§ 122C-311. Individuals on parole.**

Any individual who has been released from any correctional facility or parole is admitted, committed and discharged from facilities in accordance with the procedures specified in this Article for other individuals. (1959, c. 1002, s. 24; 1963, c. 1184, s. 28; 1973, c. 253, s. 4; 1985, c. 589, s. 2.)

### **§ 122C-312. Voluntary admissions and discharges of inmates of the Department of Correction.**

Inmates in the custody of the Department of Correction may seek voluntary admission to State facilities for the mentally ill or substance abusers. The provisions of Part 2 of this Article shall apply except that an admission may be accomplished only when the Secretary and the Secretary of the Department of Correction jointly agree to the inmate's request. When an inmate is admitted he shall be discharged in accordance with the provisions of Part 2 of this Article except that an inmate who is ready for discharge, but still under a term of incarceration, shall be discharged only to an official of the Department of Correction. The Department of Correction is responsible for the security and cost of transporting inmates to and from facilities under the provisions of this section. (1979, c. 547; 1985, c. 589, s. 2.)

**Legal Periodicals.** — For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

### 122C-313. Inmate becoming mentally ill and dangerous to himself or others.

(a) An inmate who becomes mentally ill and dangerous to himself or others after incarceration in any facility operated by the Department of Correction in the State is processed in accordance with Part 7 of this Article, as modified by this section, except when the provisions of Part 7 are manifestly inappropriate. A staff psychiatrist or eligible psychologist of the correctional facility shall execute the affidavit required by G.S. 122C-261 and send it to the clerk of superior court of the county in which the correctional facility is located. Upon receipt of the affidavit, the clerk shall calendar a district court hearing and notify the respondent and his counsel as required by G.S. 122C-284(a). The hearing is conducted in a district courtroom. If the judge finds by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others, he shall order him transferred for treatment to a State facility designated by the Secretary. The judge shall not order outpatient commitment for an inmate-respondent.

(b) If the sentence of an inmate-respondent expires while he is committed to a State facility, he is considered in all respects as if he had been initially committed under Part 7 of this Article.

(c) If the sentence of an inmate-respondent has not expired, and if in the opinion of the attending physician of the State facility an inmate-respondent ceases to be mentally ill and dangerous to himself or others, he shall notify the Department of Correction which shall arrange for the inmate-respondent's return to a correctional facility.

(d) Special counsel at a State facility shall represent any inmate who becomes mentally ill and dangerous to himself or others while confined in a correctional facility in the same county, otherwise counsel is assigned in accordance with G.S. 122C-270(d).

(e) The Department of Correction is responsible for the security and cost of transporting inmates to and from State facilities under the provisions of this section. (1899, c. 1, s. 66; Rev., s. 4619; C. S., s. 6238; 1923, c. 165, s. 55; 1945, c. 952, s. 55; 1955, c. 887, s. 14; 1957, c. 1232, s. 26; 1963, c. 1184, s. 27; 1965, c. 300, s. 13; 1973, c. 253, s. 3; c. 1433; 1977, c. 679, s. 8; 1979, c. 358, s. 27; c. 915, s. 11; 1985, c. 589, s. 2; c. 695, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, inserted "or eligible psychologist" in the second sentence of subsection (a).

#### CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

Cited in *Baugh v. Woodard*, 56 N.C. App. 180, 287 S.E.2d 412 (1982).

§§ 122C-314 to 122C-320: Reserved for future codification purposes.

Part 11. Voluntary Admissions, Involuntary Commitments and Discharges, the Psychiatric Service of North Carolina Memorial Hospital.

**§ 122C-321. Voluntary admissions and discharges.**

Any individual in need of treatment for mental illness or substance abuse may seek voluntary admission to the psychiatric service of North Carolina Memorial Hospital. Procedures for admission and discharge shall be made in accordance with Parts 2 through 4 of this Article. The applicant may be admitted only upon the approval of the director of the psychiatric service or his designee. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2; 1973, c. 723, s. 3; c. 1084, 1985, c. 589, s. 2.)

**§ 122C-322. Involuntary commitments.**

(a) Except as otherwise specifically provided in this section references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers, or area authorities, or private facilities shall include the psychiatric service of North Carolina Memorial Hospital. The psychiatric service may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. However, no individual may be held at or committed to the psychiatric service without the prior approval of the director of the psychiatric service or his designee.

(b) Initial hearings, supplemental hearings, and rehearings may be held at the psychiatric service facility or at any place in Orange County where district court can be held under G.S. 7A-133. Legal counsel for the respondent at all hearings and rehearings shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d). (1977, c. 738, s. 1; 1981, c. 442; 1985, c. 589, s. 2.)

CASE NOTES

**Editor's Note.** — The case cited below was decided under comparable provisions of former Chapter 122.

Those who are intoxicated but not dis-

ruptive may be assisted but not arrested. *State v. Cooke*, 49 N.C. App. 384, 271 S.E.2d 561 (1980).

§§ 122C-323 to 122C-330: Reserved for future codification purposes.

Part 12. Voluntary Admissions, Involuntary Commitments and Discharges, Veterans Administration Facilities.

**§ 122C-331. Voluntary admissions and discharges.**

Veterans in need of treatment for mental illness or substance abuse may seek voluntary admission to a facility operated by the Veterans Administration. Procedures for admission and discharge shall be made in accordance with Parts 2 and 4 of this Article. The Veterans Administration may require

additional procedures not inconsistent with these Parts. (1973, c. 1408, s. 1; 1985, c. 589, s. 2.)

### § 122C-332. Involuntary commitments.

(a) Except as otherwise specifically provided in this section, references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers, or area authorities, or private facilities shall include the facilities operated by the Veterans Administration. Veterans Administration facilities may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. Eligibility of the veteran-respondent for treatment at a Veterans Administration facility and the availability of space shall be determined by the Veterans Administration in all cases before sending or committing a veteran-respondent.

(b) Initial hearings, supplemental hearings, and rehearings for veteran-respondents may be held at the facility or at the county courthouse in the county in which the facility is located, and counsel shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d). (1985, c. 589, s. 2.)

### § 122C-333. Order of another state.

The judgment or order of commitment by a court of competent jurisdiction of another state, committing a person to the Veterans Administration or another federal agency that is located in this State shall have the same force and effect on the committed person while in this State as in the jurisdiction of the court entering the judgment or making the order. The courts of the committing state shall retain jurisdiction of the person so committed for the purpose of inquiring into the mental condition of the person, and for determining the necessity for continuance of his restraint. Consent is given to the application of the law of the committing state on the authority of the chief officer of any facility of the Veterans Administration or of any institution operated in this State by any other federal agency to retain custody, transfer, parole, or discharge the committed person. (1985, c. 589, s. 2.)

§§ 122C-334 to 122C-340: Reserved for future codification purposes.

## Part 13. Voluntary Admissions, Involuntary Commitment and Discharge of Non-State Residents and the Return of North Carolina Resident Clients.

### § 122C-341. Determination of residence.

It is the responsibility of the facility to determine if a client is not a resident of the State. (1899, c. 1, s. 18; Rev., ss. 3591, 4587, 4588; C. S., ss. 6187, 6188; 1945, c. 952, ss. 16, 17; 1947, c. 537, s. 11; 1953, c. 256, s. 3; 1957, c. 1386; 1963, c. 1184, s. 1; 1973, c. 673, s. 13; 1985, c. 589, s. 2.)

### § 122C-342. Voluntary admissions and discharges.

A non-State resident may be admitted to and discharged from a facility on a voluntary basis in accordance with Parts 2 through 5 of this Article at his own expense. If the facility determines that the client should be returned to his own state the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate shall apply. (1899, c. 1, s. 16; Rev., s. 4584; C. S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, s. 18; 1963, c. 1184, s. 1; 1971, c. 1140; 1973, c. 476, s. 133; c. 673 s. 13; 1985, c. 589, s. 2.)

### § 122C-343. Involuntary commitments.

Involuntary commitments of non-State residents are made under the provisions of Parts 6 through 8 of this Article. If after commitment to a 24-hour facility the facility determines that the respondent needs long-term care and should be returned to his state of residence, the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate, shall apply. (1899, c. 1, s. 16; Rev., s. 4584; C. S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, s. 18; 1963, c. 1184, s. 1; 1971, c. 1140; 1973, c. 476, s. 133; c. 673, s. 13; 1985, c. 589, s. 2.)

### § 122C-344. Citizens of other countries.

In addition to the provisions of G.S. 122C-341 through G.S. 122C-343, if a 24-hour facility determines that a client is not a citizen of the United States, the facility shall notify the Governor of this State of the name of the client, the country and place of his residence in the country and other facts in the case as can be obtained, together with a copy of pertinent medical records. The Governor shall send the information to the Secretary of State at Washington, D.C., with the request that he tell the minister resident or plenipotentiary of the country of which the client is alleged to be a citizen. (1899, c. 1, s. 16; Rev., s. 4585; C. S., s. 6211; 1963, c. 1184, s. 1; 1985, c. 589, s. 2.)

### § 122C-345. Return of a non-State resident client to his resident state.

(a) Except as provided in subsection (c) of this section, it is the responsibility of the director of a facility to arrange for the transfer of a client to his resident state. The cost of returning the client to his resident state is the responsibility of the client or his family.

(b) A non-State resident client of an area 24-hour facility may be transferred to a State facility in accordance with G.S. 122C-206 in order for the client to be returned to his resident state.

(c) A non-State resident client of a State facility may be returned to his resident state under procedures established under G.S. 122C-346 or G.S. 122C-361. The cost of returning a client to his resident state under this subsection shall be the responsibility of the State. (1899, c. 1, s. 16; Rev., s. 4584; C. S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, ss. 18, 20; 1955, c. 887, s. 13; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1; 1971, c. 1140; 1973, c. 476, s. 133; c. 673, s. 13; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-346. Authority of the Secretary to enter reciprocal agreements.

The Secretary may enter agreements with other states for the return of non-State resident clients to their resident state and for the return of North Carolina residents to North Carolina when under treatment in another state. (1947, c. 537, s. 20; 1955, c. 887, s. 13; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

### § 122C-347. Return of North Carolina resident clients from other states.

North Carolina residents who are in treatment in another state may be returned to North Carolina either under an agreement authorized in G.S. 122C-346 or under the provisions of G.S. 122C-361. The cost of returning a North Carolina resident to this State is the responsibility of the sending state. Within 72 hours after admission in a State facility, a returned resident shall be evaluated. The returned resident may agree to a voluntary admission or may be released, or proceedings for an involuntary commitment under this Article may be initiated as necessary by the responsible professional in the facility. (1945, c. 952, s. 34; 1947, c. 537, s. 19; 1959, c. 1002, ss. 20, 21; 1963, c. 1184, s. 1; 1965, c. 800, s. 9; 1969, c. 982; 1973, c. 476, ss. 133, 138; c. 673, s. 13; 1985, c. 589, s. 2.)

### § 122C-348. Residency not affected.

(a) A nonresident of this State who is under care in a 24-hour facility in this State is not considered a resident. No length of time spent in this State while a client in a 24-hour facility is sufficient to make a nonresident a resident or entitled to care or treatment.

(b) A North Carolina resident who is under care and treatment in a 24-hour facility in another state shall retain his residency in North Carolina. (1899, c. 1, s. 18; Rev., ss. 3591, 4587, 4588; C. S., ss. 6187, 6188; 1945, c. 952, ss. 16, 17; 1947, c. 537, ss. 11, 20; 1953, c. 256, s. 3; 1955, c. 887, s. 13; 1957, c. 1386; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1; 1973, c. 476, s. 133; c. 673, s. 13; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

§§ 122C-349 to 122C-360: Reserved for future codification purposes.

## Part 14. Interstate Compact on Mental Health.

### § 122C-361. Compact entered into; form of Compact.

The Interstate Compact on Mental Health is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

#### ARTICLE I.

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care

and treatment bears no primary relation to the residence or citizenship of the patient but, that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this Compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in term of such welfare.

## ARTICLE II.

As used in this Compact:

- (a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the Compact or from which it is contemplated that a patient may be so sent.
- (b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the Compact or to which it is contemplated that a patient may be so sent.
- (c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.
- (d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this Compact.
- (e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.
- (f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.
- (g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.
- (h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

## ARTICLE III.

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this Article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this Article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified

medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this Compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that it would be taken if he were a local patient.

(e) Pursuant to this Compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### ARTICLE IV.

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities have responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### ARTICLE V.

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a way reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### ARTICLE VI.

The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this Compact through any and all states party to this Compact, without interference.

## ARTICLE VII.

(a) No person shall be deemed a patient of more than one institution at an given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this Compact, but any two or more party state may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this Compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions as to the payment of costs, or responsibilities therefor.

(d) Nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this Compact.

(e) Nothing in this Compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

## ARTICLE VIII.

(a) Nothing in this Compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this Article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

## ARTICLE IX.

(a) No provision of this Compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this Compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

#### ARTICLE X.

(a) Each party state shall appoint a "Compact Administrator" who, on behalf of his state, shall act as general coordinator of activities under the Compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the Compact by his state either in the capacity of sending or receiving state. The Compact Administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the Compact or any patient processed thereunder.

(b) The Compact Administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this Compact.

#### ARTICLE XI.

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this Compact.

#### ARTICLE XII.

This Compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

#### ARTICLE XIII.

(a) A state party to this Compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and Compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the Compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

#### ARTICLE XIV.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party 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 party thereto, 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. (1959, c. 1003, s. 1; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

### **§ 122C-362. Compact Administrator.**

Pursuant to the Compact, the Secretary is the Compact Administrator and acting jointly with like officers of other party states, may adopt rules to carry out more effectively the terms of the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact, of any supplementary agreement, or agreements entered into by this State. (1959, c. 1003, s. 2; 1963, c. 1184, s. 12; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

### **§ 122C-363. Supplementary agreements.**

The Compact Administrator may enter into supplementary agreement with appropriate officials of other states pursuant to Articles VII and XI of the Compact. In the event that these supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, no such agreement shall be effective until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of this service. (1959, c. 1003, s. 3; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

### **§ 122C-364. Financial arrangements.**

The Compact Administrator, with the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into under it. (1959, c. 1003, s. 4; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

### **§ 122C-365. Transfer of clients.**

The Compact Administrator is directed to consult with the immediate family or legally responsible person of any proposed transferee. (1959, c. 1003, s. 5; 1963, c. 1184, ss. 12, 38; 1985, c. 589, s. 2.)

### **§ 122C-366. Transmittal of copies of Part.**

Copies of this Part shall, upon its approval, be transmitted by the Compact Administrator to the governor of each state, the attorney general of each state, the Administrator of General Services of the United States, and the Council of State Governments. (1959, c. 1003, s. 6; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

§§ 122C-367 to 122C-400: Reserved for future codification purposes.

## ARTICLE 6.

### *Special Provisions.*

#### Part 1. Camp Butner and Community of Butner.

##### **§ 122C-401. Use of Camp Butner Hospital authorized.**

The State may use the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of modern up-to-date facilities for the care and treatment of citizens of this State. (1947, c. 789, s. 2; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

##### **§ 122C-402. Application of State highway and motor vehicle laws at State institutions on Camp Butner reservation.**

The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, and driveways on the Camp Butner reservation that are on the grounds of any State facility or any State institution operated by the Department or by the Department of Correction. Any person violating any of the provisions of Chapter 20 of the General Statutes in or on these streets, alleys, or driveways shall upon conviction be punished as prescribed in that Chapter. This section does not interfere with the ownership and control of the streets, alleys, and driveways on the grounds as is now vested by law in the Department. (1949, c. 71, s. 2; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

##### **§ 122C-403. Ordinances and rules for enforcement of Part.**

The Secretary may adopt rules and ordinances necessary to enforce the provisions of this Part and to carry out its purpose and intent for the better administration of State facilities and institutions located on the Camp Butner reservation. Included may be rules:

- (1) To regulate the use of streets, alleys, sidewalks, bridges, and driveways and to establish parking areas.
- (2) To promote the health, safety, morals, or general welfare of those residing on, occupying, renting, or using any property or facilities within its limits and those visiting and patronizing any State facility or State institution on the Camp Butner reservation by:
  - a. Regulating and restricting the height, number of stories, and size of buildings and other structures, the percentage of lot to be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, to regulate markets, and prescribe at what place marketable products may be sold, and to condemn and remove all buildings or cause them to be removed at the expense of the owner, when dangerous to life, health, or other property.

- b. To regulate places of amusement and entertainment, and to regulate, restrict, or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments. Any regulations shall be consistent with any permits issued by the North Carolina Alcoholic Beverage Control Commission.
- c. To regulate and prohibit the running at large of dogs, horses, mules, cattle, sheep, swine, goats, chickens, and other animals and fowl of every description.
- d. To prevent and abate nuisances whether on public or private property.
- e. To regulate the subdivision of land. This regulation shall be in accordance with the procedures and subject to the limitations set forth in Part 2 of Article 19 of Chapter 160A of the General Statutes.

Any rules adopted pursuant to this section may apply to part or all of the Camp Butner reservation. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1965, c. 933; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(n) provides that any ordinance, rule, or regulation made under § 122-95 and in effect on December 31, 1985, shall continue in effect

until amended, modified, or repealed by the Secretary of Human Resources under this section.

## § 122C-404. Community of Butner Planning Commission.

(a) There is established the Community of Butner Planning Commission.

(b) The Community of Butner Planning Commission shall consist of seven members, three appointed by the Secretary and four appointed by the Board of Commissioners of Granville County. All members shall reside within the Camp Butner reservation.

(c) The initial appointments shall be made for terms to begin January 1, 1986. Of the initial members, one appointment of the Secretary and one appointment of the Board of Commissioners of Granville County shall be for one-year terms, one appointment of the Secretary and one appointment of the Board of Commissioners of Granville County shall be for two-year terms, and one appointment of the Secretary and two appointments of the Board of Commissioners of Granville County shall be for three-year terms. Upon expiration, all succeeding terms shall be for three years.

(c1) The Community of Butner Planning Commission shall hold an annual public meeting for receiving public nominations to be forwarded to the Board of County Commissioners of Granville County and to the Secretary for their consideration for appointment to the Community of Butner Planning Commission.

(c2) Members of the Community of Butner Planning Commission may be removed for cause by the appointing authority.

(d) Members shall receive reimbursement for travel, per diem, and subsistence in accordance with Chapter 138 of the General Statutes. Expenses of the Community of Butner Planning Commission under this subsection shall be paid by the Department.

(e) The Community of Butner Planning Commission shall elect a chairman and a vice-chairman from its membership for a one-year term, and shall elect a clerk for a one-year term.

(f) The initial meeting of the Community of Butner Planning Commission shall be called by the Secretary. The Commission shall establish a regular meeting schedule that provides for meetings at least quarterly. Special meetings may be called by the Secretary, the chairman, or on the written request of two members.

(g) The Community of Butner Planning Commission shall adopt rules for its procedures.

(h) Prior to the adoption of any ordinance or rule under this section that will apply to the territory of Camp Butner reservation other than the grounds of State facilities or State institutions, the Secretary shall consult with the Community of Butner Planning Commission.

(i) In addition to the duties prescribed by this section, the Secretary may assign other duties to the Community of Butner Planning Commission that relate to the Community of Butner or the Camp Butner reservation. (1985, c. 589, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 589, s. 63(m), made effective upon ratification by s. 66, provides that the Planning Advisory Committee for the Town of Butner shall hold a public meeting in 1985 for receiving public nomi-

nations to be forwarded to the County Commissioners and Secretary for their consideration in making initial appointments to the Community of Butner Planning Commission under this section. The act was ratified July 4, 1985.

## § 122C-405. Recordation of ordinances and rules; printing and distribution.

All ordinances and rules adopted under this Part shall be filed and made available in accordance with Chapter 150A of the General Statutes. (1949, c. 71, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 614, s. 6; 1985, c. 589, s. 2.)

## § 122C-406. Violations made misdemeanor.

A person who violates an ordinance or rule adopted under this Part is guilty of a misdemeanor and is punishable by a fine, not to exceed fifty dollars (\$50.00), and imprisonment, not to exceed 30 days. (1949, c. 71, s. 5; 1985, c. 589, s. 2.)

## § 122C-407. Water and sewer system.

(a) The Department may acquire, construct, establish, enlarge, maintain, operate, and contract for the operation of a water supply and distribution system and a sewage collection and disposal system for the Camp Butner reservation.

(b) These water and sewer systems may be operated for the benefit of persons and property within the Camp Butner reservation and areas outside the reservation within reasonable limitations specifically including any sanitary district or city in Durham or Granville Counties.

(c) The Secretary may fix and enforce water and sewer rates and charges in accordance with G.S. 160A-314 as if it were a city. (1985, c. 589, s. 2.)

**§ 122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.**

(a) The Secretary of Crime Control and Public Safety may employ special police officers for the territory of the Camp Butner reservation. The territorial jurisdiction of these special police officers shall include: (i) the Camp Butner reservation; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of the reservation and the sanitary district. The Secretary of Crime Control and Public Safety may organize these special police officers into a public safety department for that territory and may establish it as a division within that principal department as permitted by Chapter 143B of the General Statutes.

(b) After taking the oath of office required for law-enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville Counties in those counties respectively. Within the territorial jurisdiction stated in subsection (a) of this section, the special police officers have the primary responsibility to enforce the laws of North Carolina and any ordinance or regulation applicable to that territory adopted under authority of this Part or under G.S. 143-116.6 or G.S. 143-116.7 or under the authority granted any other agency of the State and also have the powers set forth for firemen in Articles 3, 5 and 6 of Chapter 69 of the General Statutes. Any civil or criminal process to be served on any individual confined at any State facility within the territorial jurisdiction described in subsection (a) of this section shall be forwarded by the sheriff of the county in which the process originated to the Director of the Butner Public Safety Division. Special police officers authorized by this section shall be assigned to transport any individual transferred to or from any State facility within the territorial jurisdiction described in subdivision (a) of this section to or from the psychiatric service of North Carolina Memorial Hospital. (1949, c. 71, s. 6; 1955, c. 887, s. 1; 1959, c. 35; c. 1028, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 491, s. 1; c. 964, s. 19; c. 1127, s. 49; 1983, c. 761, s. 165; 1985, c. 589, s. 2.)

**State Government Reorganization.** — Session Laws 1981, c. 491, s. 2, provides: "The Butner Public Safety Department is transferred by a type I transfer, as defined in G.S. 143A-6, from the Department of Human Resources to the Department of Crime Control and Public Safety. All transfers of personnel,

equipment, appropriations, and functions shall be completed by September 1, 1981, but the Secretary of Crime Control and Public Safety shall have authority over the personnel, equipment, appropriations, and functions transferred by this section upon the effective date of this act [July 1, 1981]."

**§ 122C-409. Community of Butner comprehensive emergency management plan.**

The Department of Crime Control and Public Safety shall establish an emergency management agency as defined in G.S. 166A-4(2) for the Community of Butner and the Camp Butner reservation. (1985, c. 589, s. 2.)

§§ 122C-410 to 122C-420: Reserved for future codification purposes.

## Part 2. Black Mountain Joint Security Force.

### § 122C-421. Joint security force.

(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. These special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7A-571(4) outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during such person's immediate and continuous flight from that territory.

(b) These special police officers may exercise any and all of the powers enumerated in this Part upon or in pursuit from the property formerly occupied by the Black Mountain Center and transferred to the Department of Correction by Senate Bill 388 and House Bill 709 of the 1985 Session of the General Assembly. These special police officers shall exercise said powers upon the property transferred to the Department of Correction only by agreement of the Departments of Correction and Human Resources. (1983 (Reg. Sess., 1984), c. 1116, s. 30; 1985, c. 408, ss. 3, 5; c. 589, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, designated the first paragraph as subsection (a), added the last two sentences of subsection (a) and added subsection (b).

§§ 122C-422 to 122C-430: Reserved for future codification purposes.

## Part 3. North Carolina Alcoholism Research Authority.

### § 122C-431. North Carolina Alcoholism Research Authority created.

(a) The North Carolina Alcoholism Research Authority is created and shall consist of and be governed by a nine-member board to be appointed by the Governor. Three of the members shall be appointed for a two-year term, three shall be appointed for a four-year term and three shall be appointed for a six-year term; thereafter all appointments shall be for terms of six years. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term.

(b) The board shall elect one of its members as chairman and one as vice-chairman. The director of the Center for Alcohol Studies of The University of North Carolina at Chapel Hill shall serve ex officio as executive secretary to

the Authority. Board members shall receive the same per diem, subsistence, and travel allowances as members of similar State boards and commissions, provided funds are available in the "Alcoholism Research Fund" for this purpose. (1973, c. 682, ss. 1, 2; 1985, c. 589, s. 2.)

### **§ 122C-432. Authorized to receive and spend funds.**

The Authority may receive funds from State, federal, private, or other sources. These funds shall be held separately and designated as the "Alcoholism Research Fund". The Authority shall spend the Fund on research as to the causes and effects of alcohol abuse and alcoholism and for the training of alcohol research personnel. Expenditures for the purposes specified in this section shall be made as grants to nonprofit corporations, organizations, agencies, or institutions engaging in such research or training. The Authority may also pay necessary administrative expenses from the Fund. (1973, c. 682, s. 3; 1985, c. 589, s. 2.)

### **§ 122C-433. Applications for grants; promulgation of rules.**

(a) Applications for grants are processed by the Center for Alcohol Studies. All applications shall be reviewed by scientific consultants to the Center; and the Center, after review and study, shall make recommendations to the Authority as to the awarding of grants. The Center shall also furnish to the Authority clerical assistance as may be required.

(b) The Authority shall adopt rules relative to applications for grants, the reviewing of grants and awarding of grants. (1973, c. 682, ss. 4, 5; 1985, c. 589, s. 2.)

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| 122-35.24      | Repealed            |                | 122C-345        |                | 122C-283        |
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| 122-58.6A .....               | 122C-265        | 122-58.20 ..... | 122C-264        | 122-81 .....   | Repealed        |
| 122-58.7 .....                | 122C-267        |                 | 122C-284        | 122-81.1 ..... | 122C-211        |
| 122-58.7A .....               | 122C-269        | 122-58.21 ..... | 122C-322        | 122-81.2 ..... | 122C-207        |
| 122-58.7A:1 .....             | 122C-267        | 122-58.22 ..... | Repealed        |                | 122C-261        |
| 122-58.8 .....                | 122C-253        | 122-58.23 ..... | Repealed        |                | 122C-281        |
|                               | 122C-271        | 122-58.24 ..... | 122C-270        | 122-82 .....   | Repealed        |
|                               | 122C-287        | 122-58.25 ..... | 122C-54         | 122-85 .....   | 122C-313        |
| 122-58.8A .....               | 122C-210.1      |                 | 122C-207        | 122-85.1 ..... | 122C-311        |
| 122-58.9 .....                | 122C-272        | 122-58.26 ..... | 122C-54         | 122-92 .....   | 122C-401        |
|                               | 122C-288        | 122-58.27 ..... | 122C-254        | 122-93 .....   | Repealed        |
| 122-58.10 .....               | 122C-270        | 122-65.10 ..... | 122C-3          | 122-94 .....   | 122C-402        |
|                               | 122C-289        | 122-65.11 ..... | 122C-301        | 122-95 .....   | 122C-3          |
| 122-58.10A .....              | 122C-264        | 122-65.12 ..... | 122C-302        |                | 122C-403        |
|                               | 122C-273        | 122-65.13 ..... | 122C-303        | 122-96 .....   | 122C-405        |
|                               | 122C-290        | 122-69 .....    | 122C-112        | 122-97 .....   | 122C-406        |
| 122-58.10B .....              | 122C-274        |                 | 122C-181        | 122-98 .....   | 122C-408        |
| 122-58.11 .....               | 122C-276        | 122-69.1 .....  | Repealed        | 122-98.1 ..... | 122C-181        |
|                               | 122C-292        | 122-70 .....    | 122C-241        | 122-98.2 ..... | 122C-181        |
| 122-58.11A .....              | 122C-275        | 122-71 .....    | Repealed        | 122-98.3 ..... | 122C-421        |
| 122-58.12 .....               | 122C-270        | 122-71.1 .....  | 122C-242        | 122-99 .....   | 122C-361        |
| 122-58.13 .....               | 122C-277        | 122-71.2 .....  | 122C-65         | 122-100 .....  | 122C-362        |
|                               | 122C-293        | 122-71.3 .....  | Repealed        | 122-101 .....  | 122C-363        |
| 122-58.14 .....               | 122C-251        | 122-71.4 .....  | Repealed        | 122-102 .....  | 122C-364        |
| 122-58.15 .....               | 122C-332        | 122-71.5 .....  | Repealed        | 122-103 .....  | 122C-365        |
| 122-58.16 .....               | 122C-143        | 122-71.6 .....  | Repealed        | 122-104 .....  | 122C-366        |
|                               | 122C-294        | 122-72 .....    | 122C-23         | 122-109 .....  | 122C-112        |
| 122-58.17 Sec. 63(e) (Uncod.) |                 | 122-72.1 .....  | 122C-23         | 122-120 .....  | 122C-431        |
| 122-58.18 .....               | 122C-262        | 122-73 .....    | Repealed        | 122-121 .....  | 122C-432        |
|                               | 122C-282        | 122-74 .....    | Repealed        | 122-122 .....  | 122C-433        |
| 122-58.19 .....               | Repealed        |                 |                 |                |                 |

**Chapter 123.**  
**Impeachment.**

**ARTICLE 1.**

*The Court.*

**§ 123-5. Causes for impeachment.**

**Legal Periodicals.** — For an article entitled, "Removing Local Elected Officials from Office in North Carolina," see 16 Wake Forest L. Rev. 547 (1980).

**CASE NOTES**

**Applied in** *In re Kivett*, 309 N.C. 635, 309 S.E.2d 442 (1983).

**Chapter 123A.**  
**Industrial Development.**

Sec.

123A-1 to 123A-27. [Repealed.]

**§§ 123A-1 to 123A-27:** Repealed by Session Laws 1983, c. 717, s. 39 effective July 11, 1983.

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Repealed § 123A-23 was amended by Session Laws 1983, c. 913, s. 21.

## Chapter 124.

### Internal Improvements.

Sec.  
124-2. State deemed shareholder in corporation accepting appropriation.

Sec.  
124-4. Report to General Assembly; contents.  
124-5. Approval of encumbrance on State's interest in corporations.

#### § 124-2. State deemed shareholder in corporation accepting appropriation.

When an appropriation is made by the State to any work of internal improvement conducted by a corporation, the State shall be considered, if so directed in the act making the appropriation, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of money appropriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed. (1925, c. 157, s. 2; 1985, c. 792, s. 13.21.)

**Editor's Note.** — Session Laws 1985, c. 792, s. 1 provides that the act shall be known as "The Independent Study Commissions and Committees Act of 1985."

**Effect of Amendments.** — The 1985 amendment, effective July 18, 1985, substituted "if so directed in the act making the appropriation" for "unless otherwise directed."

#### § 124-4. Report to General Assembly; contents.

The Governor and Council of State shall biennially report to the General Assembly:

- (1) The condition of all railroads or other works of internal improvement in which the State has an interest, and they shall at the same time suggest such improvement, enlargement, or extension of such work as they shall deem proper, and such new works of similar nature as shall seem to them to be demanded by the growth of trade or the general prosperity of the State.
  - (2) The amount, condition, and character of the State's interest in other railroads, or other works of internal improvement in which the State has taken stock, to which she has loaned money, or whose bonds she holds as security.
  - (3) The condition of such roads or other corporate bodies, in detail, as are referred to in G.S. 124-3, giving their entire financial condition, the amount and market value of the stock, receipts and disbursements for the previous year or since the last report; the amount of real and personal property of such corporations, its estimated value, and such suggestions with regard to the State's interest in the same as may to them seem warranted by the status of the roads or corporations.
- (1925, c. 157, s. 4; 1985, c. 792, ss. 13.22 — 13.24.)

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

**Editor's Note.** — Session Laws 1985, c. 792, s. 1 provides that the act shall be known as "The Independent Study Commissions and Committees Act of 1985."

**Effect of Amendments.** — The 1985 amendment, effective July 18, 1985, deleted "canals" following "The condition of all railroads" in subdivision (1), deleted "roads, canals" following "interest in other railroads" in subdivision (2), and substituted "G.S. 124-3" for "the previous section" in subdivision (3).

## § 124-5. Approval of encumbrance on State's interest in corporations.

No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State. (1925, c. 157, s. 5; 1981 (Reg. Sess., 1982), c. 1372, s. 5; 1983, c. 905, ss. 10, 11; 1985, c. 792, ss. 13.25-13.26.)

**Editor's Note.** — Session Laws 1985, c. 792, s. 1 provides that the act shall be known as "The Independent Study Commissions and Committees Act of 1985."

**Effect of Amendments.** — The 1981 (Reg. Sess. 1982) amendment added the second and third sentences.

The 1983 amendment, effective July 21, 1983, substituted "the date of convening of the 1985 Regular Session of the General Assembly" for "June 1, 1983" in the second sentence and substituted "period ending on convening of the 1985 Regular Session" for "11-month period" in the last sentence.

The 1985 amendment, effective July 18, 1985, substituted "in which the State owns the

majority of any class of voting stock" for "in which the State has or owns any stock or any interests" and deleted the last two sentences which formerly read "Prior to taking any action under this section between July 1, 1982 and the date of convening of the 1985 Regular Session of the General Assembly, concerning the Atlantic and North Carolina Railroad or the North Carolina Railroad, the Governor and Council of State shall give at least 20 days' notice to the Legislative Research Commission. No extension of any lease to expire December 31, 1994, may be granted to the lessee or the operating company of the railroad during that period ending on convening of the 1985 Regular Session."

# Chapter 125.

## Libraries.

### Article 1.

#### State Library Agency.

### Article 3.

#### Library Records.

Sec.  
125-2. Powers and duties of Department of Cultural Resources.

Sec.  
125-18. Definitions.  
125-19. Confidentiality of library user records.

## ARTICLE 1.

### *State Library Agency.*

### § 125-2. Powers and duties of Department of Cultural Resources.

The Department of Cultural Resources shall have the following powers and duties:

- (4) To purchase and maintain a general collection of books, periodicals, newspapers, maps, films and audiovisual materials, and other materials for the use of the people of the State as a means for the general promotion of knowledge within the State. The scope of the Library's collections shall be determined by the Secretary of Cultural Resources upon consideration of the recommendation of the State Library Commission; and in making these decisions, the Secretary shall take into account the book collections of public libraries and college and university libraries throughout the State and the availability of such collections to the general public. All materials owned by the State Library shall be available for free circulation to public libraries and to all citizens of the State under rules and regulations fixed by the Librarian, except that the Librarian may restrict the circulation of books and other materials which, because they are rare or are used intensively in the Library for reference purposes or for other good reasons, should be retained in the Library at all times. The public schools shall be given equal priority in borrowing all films which are available for circulation.

(1955, c. 505, s. 3; 1961, c. 1161; 1973, c. 476, s. 84; 1977, c. 645, s. 1; 1981, c. 918, s. 4; 1983, c. 819.)

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

**Effect of Amendments.** — The 1981 amendment substituted "State Library Com-

mission" for "State Library Committee" in the second sentence of subdivision (4).

The 1983 amendment, effective July 19, 1983, added the last sentence of subdivision (4).

## ARTICLE 3.

*Library Records.***§ 125-18. Definitions.**

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

- (1) "Library" means a library established by the State; a county, city, township, village, school district, or other local unit of government or authority or combination of local units of governments and authorities; community college or university; or any private library open to the public.
- (2) "Library record" means a document, record, or other method of storing information retained by a library that identifies a person as having requested or obtained specific information or materials from a library. "Library record" does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general. (1985, c. 486, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 486, s. 3 makes this Article effective October 1, 1985. Section 1 of Session Laws 1985, c. 486 provides: "This act may be cited as the Library Privacy Act."

**§ 125-19. Confidentiality of library user records.**

(a) Disclosure. — A library shall not disclose any library record that identifies a person as having requested or obtained specific materials, information, or services, or as otherwise having used the library, except as provided for in subsection (b).

(b) Exceptions. — Library records may be disclosed in the following instances:

- (1) When necessary for the reasonable operation of the library;
- (2) Upon written consent of the user; or
- (3) Pursuant to subpoena, court order, or where otherwise required by law. (1985, c. 486, s. 2.)

**Chapter 126.**  
**State Personnel System.**

**Article 1.**

**State Personnel System Established.**

- Sec.  
126-3. Office of State Personnel established; administration and supervision; appointment, compensation and tenure of Director.  
126-4. Powers and duties of State Personnel Commission.  
126-5. (See note) Employees subject to Chapter; exemptions.

**Article 2.**

**Salaries and Leave of State Employees.**

- 126-8.1. Paid leave for certain athletic competition.  
126-8.2. Replacement of law-enforcement officer on final sick leave.

**Article 3.**

**Local Discretion as to Local Government Employees.**

- 126-11. Local personnel system may be established; approval and monitoring; rules and regulations.

**Article 5.**

**Political Activity of Employees.**

- 126-13. Appropriate political activity of State employees defined.  
126-14. Promise or threat to obtain political contribution or support.  
126-14.1. Threat to obtain political contribution or support.  
126-15.1. Probationary State employee defined.

**Article 6.**

**Equal Employment Opportunity; Assisting in Obtaining State Employment.**

- 126-16. (Effective until July 1, 1986) Equal employment opportunity by State Departments and agencies and local political subdivisions.

Sec.

- 126-16. (Effective July 1, 1986) Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

**Article 7.**

**The Privacy of State Employee Personnel Records.**

- 126-25. Remedies of employee objecting to material in file.

**Article 8.**

**Employee Appeals of Grievances and Disciplinary Action.**

- 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.  
126-39. State employee defined.  
126-40. [Repealed.]  
126-41. Attorney and witness fees.  
126-42. [Reserved.]

**Article 9.**

**The Administrative Procedure Act and Modifications.**

- 126-43. The Administrative Procedure Act.

**Article 11.**

**Governor's Commission on Governmental Productivity.**

- 126-64 to 126-73. [Repealed.]

**Article 12.**

**Work Options Program for State Employees.**

- 126-74. Work Options Program established.  
126-75. Work options for State employees.  
126-76. Promoting Work Options Program.  
126-77. Authority of agencies to participate.  
126-78. Administration.  
126-79. Report required.

## ARTICLE 1.

*State Personnel System Established.***§ 126-1. Purpose of Chapter; application to local employees.**

## CASE NOTES

This chapter establishes and provides for the administration of the state personnel system. *Yow v. Alexander County Dep't of Social Servs.*, 70 N.C. App. 174, 319 S.E.2d 626, cert. denied, 312 N.C. 625, 323 S.E.2d 927 (1984).

**Property Interest in Employment.** — An employee who is subject to the State Personnel Act and who holds a "trainee" appointment as defined by the North Carolina Administrative Code does not have a property interest in her

continued employment which is protected by the due process clause of the Fourteenth Amendment. *Yow v. Alexander County Dep't of Social Servs.*, 70 N.C. App. 174, 319 S.E.2d 626, cert. denied, 312 N.C. 625, 323 S.E.2d 927 (1984).

Cited in *Luck v. Employment Security Comm'n*, 50 N.C. App. 192, 272 S.E.2d 607 (1980); *North Carolina Dep't of Cor. v. Hill*, — N.C. —, 329 S.E.2d 377 (1985).

**§ 126-3. Office of State Personnel established; administration and supervision; appointment, compensation and tenure of Director.**

There is hereby established the Office of State Personnel (hereinafter referred to as "the Office") which shall be placed for organizational purposes within the Department of Administration. Notwithstanding the provisions of North Carolina State government reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws [Chapter 143A], the Office of State Personnel shall exercise all of its statutory powers in this Chapter independent of control by the Secretary of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as "the Director") appointed by the Governor and subject to the supervision of the Commission for purposes of this Chapter. The salary of the Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. The Director shall serve at the pleasure of the Governor. (1965, c. 640, s. 2; 1975, c. 667, s. 5; 1983, c. 717, s. 40; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

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

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "General Assembly in the Budget Appro-

priation Act" for "Governor subject to the approval of the Advisory Budget Commission" at the end of the next-to-last sentence.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act at the end of this section.

**§ 126-4. Powers and duties of State Personnel Commission.**

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

- (1) A position classification plan which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

- (2) A compensation plan which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.
- (3) For each class of positions, reasonable qualifications, as to age, character, physical condition, and other attributes pertinent to the work to be performed.
- (4) A recruitment program to attract applicants to public employment and determine the relative fitness of applicants for the respective positions.
- (5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment.
- (6) The appointment, promotion, transfer, demotion and suspension.
- (7) Cooperation with the Department of Public Instruction, the State Board of Education, the Board of Governors of the University of North Carolina, and the colleges and universities of the State in developing pre-service and in-service training programs.
- (7a) The separation of employees.
- (8) The evaluation of employee performance, the granting of salary increments, and a program of meritorious service awards.
- (9) The investigation of complaints and the hearing of appeals of applicants, employees, and former employees and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, and reinstatement in all cases as the Commission shall find justified. "Reinstatement" as used in this subdivision refers to the reemployment of a former State employee who separated from service in good standing.
- (10) Such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.
- (11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.
- (12) The appointment of hearing officers to hear appeals at various locations around the State as provided for in Article 3 of Chapter 150A, and the relationship of the record made by such hearing officers to proceedings by the Commission.
- (13) The employment of independent attorneys to represent the Department when some conflict would result from using Department of Justice attorneys.
- (14) The implementation of G.S. 126-5(e).

Such policies and rules shall not limit the power of any elected or appointed department head, in his discretion and upon his determination that it is in the best interest of the Department, to transfer, demote, or separate a State

- (1) Employee in a grade 60 or lower position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- (2) Employee in a grade 61 to grade 65 position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- (3) Employee in a grade 66 to grade 70 position who has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or

- (4) Employee in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 6 preceding months. (1965, c. 640, s. 2; 1971, c. 1244, s. 14; 1975, c. 66, ss. 6, 7; 1977, c. 288, s. 1; c. 866, ss. 1, 17, 20; 1985, c. 617, ss. 2, 3; 1991, s. 50(b).)

**Editor's Note.** —

Session Laws 1985, c. 617, s. 6 provides that except as otherwise provided in the act, application of the act shall be prospective only.

**Effect of Amendments.** — The 1985 amendment by c. 617, ss. 2, 3, effective July 5, 1985, added subdivision (14) to the first paragraph, deleted "employee who has not been

continuously employed by the State of North Carolina for the immediate five preceding years" at the end of the introductory language of the second paragraph, and added subdivisions (1) through (4) in the second paragraph.

The 1985 amendment by c. 791, s. 50(b), effective June 30, 1985, added the last sentence of subdivision (10).

### CASE NOTES

**Property Interest in Employment.** — An employee who is subject to the State Personnel Act and who holds a "trainee" appointment as defined by the North Carolina Administrative Code does not have a property interest in her continued employment which is protected by the due process clause of the Fourteenth Amendment. *Yow v. Alexander County Dep't of Social Servs.*, 70 N.C. App. 174, 319 S.E.2d 626, cert. denied, 312 N.C. 625, 323 S.E.2d 927 (1984).

**Discretion of Personnel Commission to Award Back Pay and Benefits.** — Where a

permanent State employee is dismissed for performance of duty reasons, without sufficient warnings as required by § 126-35, upon reinstating the employee the decision whether or not to award back pay and benefits is within the sound discretion of the Personnel Commission. *Jones v. Department of Human Resources*, 300 N.C. 687, 268 S.E.2d 500 (1980).

**Applied in** *Dyer v. Bradshaw*, 54 N.C. App. 136, 282 S.E.2d 548 (1981).

**Stated in** *Fracaro v. Priddy*, 514 F. Supp. 191 (M.D.N.C. 1981).

## § 126-5. (See note) Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to all State employees not herein exempt, to employees of area mental health, mental retardation, substance abuse authorities, and to employees of local social services departments, public health departments, and local civil defense agencies that receive federal grant-in-aid funds; and the provisions of this Chapter may apply to such other county employees as the several boards of county commissioners may from time to time determine.

(b) As used in this section, "policymaking position" means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) An employee of the State of North Carolina who:

- a. is in a grade 60 or lower position and has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- b. is in a grade 61 to grade 65 position and has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- c. is in a grade 66 to grade 70 position and has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or

d. is in a grade 71 or higher position and has not been continuously employed by the State of North Carolina for the immediate 60 preceding months.

- (2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.
- (3) Employees in policymaking positions designated as exempt pursuant to G.S. 126-5(d).

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- (1) Constitutional officers of the State.
- (2) Officers and employees of the Judicial Department.
- (3) Officers and employees of the General Assembly.
- (4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
- (5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State or consultation with the Advisory Budget Commission.
- (6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (8) Instructional and research staff, physicians, and dentists of The University of North Carolina.
- (9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-1(5) [116-11(5)], and 116-14.
- (10) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20.
- (11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).

(c2) The provisions of this Chapter shall not apply to:

- (1) Public school superintendents, principals, teachers, and other public school employees.
  - (2) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.
- (d) (1) General. — The Governor may designate as exempt policymaking positions, as provided below, in each of the following departments:
- a. Department of Administration;
  - b. Department of Commerce;
  - c. Department of Correction;
  - d. Department of Crime Control and Public Safety;
  - e. Department of Cultural Resources;
  - f. Department of Human Resources;
  - g. Department of Natural Resources and Community Development;
  - h. Department of Revenue; and
  - i. Department of Transportation.

The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Superintendent of Public Instruction, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate as exempt policymaking positions, as provided below, in their respective offices.

- (2) Number. — The number of policymaking positions designated as exempt in each department or office listed in subsection (d)(1), except the Department of Commerce, shall be limited to one and two-tenths percent (1.2%) of the number of full-time positions in the department or office, or 30 positions, whichever is greater. The Governor may designate 85 policymaking positions as exempt in the Department of Commerce. Provided, however, that the Governor or elected department head may request that additional policymaking positions be designated as exempt. The request shall be made by sending a list of policymaking positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional policymaking positions to be designated as exempt. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the policymaking positions shall be designated as exempt. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt; the policymaking positions shall not be designated as exempt during the interim.
- (3) Letter. — These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.
- (4) Vacancies. — In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person.
- (5) Creation, Transfer, or Reorganization. — The Governor or elected department head may designate as exempt a policymaking position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.
- (6) Reversal. — Subsequent to the designation of a policymaking position as exempt as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor or by an elected department head in a letter to the State

Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

- (7) Hearing Officers. — Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his position by the department head authorized to designate the exempt position except:

- (1) When an employee who has the minimum service requirements described in subsection (c)(1) above but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or
- (2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and step as his most recent subject position.

This subsection shall apply to employees removed from exempt positions after July 1, 1985.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt.

(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the question shall be investigated by the State Personnel Office and decided by the State Personnel Commission. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 43; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c).)

**Editor's Note. —**

Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 33, effective July 1, 1984, added a new

subsection (c1) to this section. However, Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 96, repealed Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 33, also effective July 1, 1984. Subsection (c1), therefore, never went into effect.

In subdivision (c1)(9) of this section, a reference to § 116-11(5) has been bracketed in following the reference to § 116-1(5), since a reference to § 116-11(5) was apparently intended.

Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

Session Laws 1985, c. 617, s. 6 provides that except as otherwise provided in the act, application of the act shall be prospective only.

Session Laws 1985, c. 589, s. 65 is a severability clause.

**Effect of Amendments. —**

The first 1983 amendment, effective July 11, 1983, substituted "or consultation with the Advisory Budget Commission or fixed by" for "or the Advisory Commission or" in subsection (c).

The second 1983 amendment, effective July 20, 1983, deleted the phrase "blind or visual handicapped employees of the Department Human Resources, Division of Services for the Blind, Business Enterprise Section, vendor stand employees" following "Judicial Department" in subsection (c).

The 1985 amendment by c. 589, s. 38, effective January 1, 1986, inserted "to employees area mental health, mental retardation, and substance abuse authorities" preceding "and employees of local social services department public health departments," and deleted "mental health clinics" thereafter in subsection (c).

The 1985 amendment by c. 617, s. 1, effective July 5, 1985, rewrote this section.

The 1985 amendment by c. 757, s. 206(c) effective July 15, 1985, added subdivision (c1)(11).

## CASE NOTES

**The 1977 amendment clearly evinced an intent to change an employee's rights** from mere entitlement to assistance in relocation to entitlement to an offer of a job for which he is qualified once such an opening becomes available. *North Carolina Dep't of Cor. v. Hill*, — N.C. —, 329 S.E.2d 377 (1985).

**Property Interest in Employment. —** An employee who is subject to the State Personnel Act and who holds a "trainee" appointment as defined by the North Carolina Administrative Code does not have a property interest in her continued employment which is protected by the due process clause of the Fourteenth Amendment. *Yow v. Alexander County Dep't of Social Servs.*, 70 N.C. App. 174, 319 S.E.2d 626, cert. denied, 312 N.C. 625, 323 S.E.2d 927 (1984).

**The term "priority" in the language of subsection (e) providing "such employee shall have priority to any position that becomes**

available for which the employee is qualified gives an affected employee the right to an automatic offer of a position which becomes available. *North Carolina Dep't of Cor. v. Hill*, — N.C. —, 329 S.E.2d 377 (1985).

**In subsection (e), the phrase "such employee shall have priority to any position that becomes available for which the employee is qualified"** means that if the employee is qualified for a job in state government which is available, he must be offered this job before it can be filled by anyone else by promotion or otherwise. *North Carolina Dep't of Cor. v. Hill*, — N.C. —, 329 S.E.2d 377 (1985).

**Quoted in Employment Security Comm'n v. Lachman**, 52 N.C. App. 368, 278 S.E.2d 30 (1981); *Employment Sec. Comm'n v. Lachman*, 305 N.C. 492, 290 S.E.2d 616 (1982); *Area Mental Health v. Speed*, 69 N.C. App. 247, 31 S.E.2d 22 (1984).

## ARTICLE 2.

### *Salaries and Leave of State Employees.*

#### § 126-7. Performance salary increases for State employees

**Cross References. —** For provision that the provisions of this section shall not apply to members of the State Highway Patrol, see § 20-187.3(a).

**Editor's Note. —** Session Laws 1985, c. 479, s. 226, as amended by Session Laws 1985, c. 757, ss. 196, 197, provides:

"(a) The General Assembly recognizes that automatic and merit salary increments for

State, community college and public school employees have been frozen since July 1, 1983. Although the General Assembly reaffirms its belief in a merit pay system, in an attempt to minimize the impact of this freeze, the General Assembly finds that all such employees should receive salary increments on the State's salary schedule in the 1985-86 fiscal year as adopted

rsuant to Chapters 115C, 115D, 116, 120, and 126 of the General Statutes.

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

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

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

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

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

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

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

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

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

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

### 126-8.1. Paid leave for certain athletic competition.

(c) The Department of Administration may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the Governor after consultation with the Advisory Budget Commission. (1979, c. 708; 1983, c. 717, s. 42.)

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

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "after consultation with the Advisory Budget Commission" for "and the Advisory Budget Commission" at the end of subsection (c).

**§ 126-8.2. Replacement of law-enforcement officer on financial sick leave.**

When a sworn law-enforcement officer employed by the State is on sick leave, and the head of the department employing the officer has obtained certification from a physician that the officer will not recover and return to duty, a replacement for the officer may be hired even though the resulting number of employees in the department exceeds the number for which an appropriation was made in the Current Operations Appropriations Act, if sufficient funds are available from appropriations to the department for salaries to pay the salary of both the new employee and the officer on sick leave until the officer's accumulated leave is exhausted or his employment is terminated. (1983 (Reg. Sess., 1984), c. 1034, s. 105.)

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

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

**ARTICLE 3.**

*Local Discretion as to Local Government Employees.*

**§ 126-11. Local personnel system may be established; approval and monitoring; rules and regulation.**

(a) The board of county commissioners of any county may establish and maintain a personnel system for all employees of the county subject to its jurisdiction, which system and any substantial changes to the system, shall be approved by the State Personnel Commission as substantially equivalent to the standards established under this Chapter for employees of local departments of social services, local health departments, and area mental health programs, local emergency management programs. If approved by the State Personnel Commission, the employees covered by the county system shall be exempt from all provisions of this Chapter except Article 6.

(b) A board of county commissioners may petition the State Personnel Commission to determine whether any portion of its total personnel system meets the requirements in (a) above. Upon such determination, county employees shall be exempt from the provisions of this Chapter relating to the approved portions of the county personnel system.

(c) The Office of State Personnel shall monitor at least annually county personnel systems approved under this section in order to ensure compliance.

(d) In order to define "substantially equivalent," the State Personnel Commission is authorized to promulgate rules and regulations to implement the federal merit system standards and these regulations at a minimum shall include: recruitment and selection of employees; position classification; personnel administration; training; employee relations; and records and reports. (1966, c. 640, s. 2; 1975, c. 667, s. 2; 1983, c. 674, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 674, s. 2, provides "Nothing in this section shall be construed as authorizing a board of county commissioners to designate any positions as exempt."

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, rewrote this section.

## ARTICLE 5.

### *Political Activity of Employees.*

#### **§ 126-13. Appropriate political activity of State employees defined.**

(a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary State employee shall:

- (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;
- (2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a misdemeanor. (1967, c. 821, s. 1; 1985, c. 469, s. 1; c. 617, s. 5.)

**Editor's Note.** — Session Laws 1985, c. 617, s. 6 provides that except as otherwise provided in the act, application of the act shall be prospective only.

**Effect of Amendments.** — The 1985 amendment by c. 469, s. 1, effective October 1,

1985, substituted "an election" for "a partisan election" in subdivision (a)(2).

The 1985 amendment by c. 617, s. 5, effective July 5, 1985, designated the first paragraph as subsection (a) and added subsection (b).

#### **§ 126-14. Promise or threat to obtain political contribution or support.**

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce a State employee subject to the Personnel Act, probationary State employee, or temporary State employee to support or contribute to a political candidate or party by threatening him with employment termination or discipline or by promising preferential personnel treatment.

(b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment for not more than six months, or both.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or termination in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution. (1967, c. 821, s. 1; 1985, c. 469, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this section, which formerly read "No State employee or official shall use any promise of personal preferential treatment or threat of

loss to encourage or coerce any State employee subject to the Personnel Act or temporary State employees to support or contribute to an political issue, candidate, or party."

### § 126-14.1. Threat to obtain political contribution or support.

(a) It is unlawful for any person to coerce a State employee subject to the Personnel Act, probationary State employee, or temporary State employee to support or contribute to a political candidate or party by explicitly threatening him with employment termination or discipline.

(b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment for not more than six months, or both.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee, who without probable cause falsely accuses a person of violating this section shall be subject to discipline or termination in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution. (1985, c. 469, s. 3.)

**Editor's Note.** — Session Laws 1985, c. 469, s. 5 makes this section effective October 1, 1985.

### § 126-15.1. Probationary State employee defined.

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by G.S. 126-5(d) (1985, c. 469, s. 4.)

**Editor's Note.** — Session Laws 1985, c. 469, s. 5 makes this section effective October 1, 1985.

## ARTICLE 6.

*Equal Employment Opportunity; Assisting in Obtaining State Employment.***§ 126-16. (Effective until July 1, 1986) Equal employment opportunity by State departments and agencies and local political subdivisions.**

All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of age but less than 70 years of age. (1971, c. 823; 1975, c. 158; 1977, c. 866, s. 7; 1979, c. 862, s. 3; 1985, c. 571, s. 2.)

**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered § 126-16.

**Effect of Amendments.** — The 1985

amendment, effective October 1, 1985, substituted "handicapping condition as defined in G.S. 168A-3" for "physical disability" in the first sentence.

## CASE NOTES

**Quoted in** *Area Mental Health v. Speed*, 69 N.C. App. 247, 317 S.E.2d 22 (1984).

**§ 126-16. (Effective July 1, 1986) Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.**

All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of age but less than 70 years of age. (1971, c. 823; 1975, c. 158; 1977, c. 866, s. 7; 1979, c. 862, s. 3; 1983 (Reg. Sess., 1984), c. 1116, s. 111; 1985, c. 571, s. 2.)

**Section Set Out Twice.** — The section above is effective July 1, 1986. For this section as in effect until July 1, 1986, see the preceding section, also numbered § 126-16.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

**Effect of Amendments.** —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1986, inserted "and compensation" near the beginning of the first sentence.

At the direction of the Revisor of Statutes, the catchline has been revised to reflect the amendment.

The 1985 amendment, effective October 1, 1985, substituted "handicapping condition as defined in G.S. 168A-3" for "physical disability" in the first sentence.

## ARTICLE 7.

### *The Privacy of State Employee Personnel Records.*

#### § 126-22. Personnel files not subject to inspection under § 132-6.

##### **Legal Periodicals.** —

For a note on the public's access to public records, see 60 N.C.L. Rev. 853 (1982).

#### § 126-25. Remedies of employee objecting to material in file.

An employee, former employee or applicant for employment who objects to material in his file may place in his file a statement relating to the material he considers to be inaccurate or misleading. An employee, former employee or applicant for employment who objects to material in his file because he considers it inaccurate or misleading may seek the removal of such material from his file in accordance with the grievance procedure of that department, including appeal to the State Personnel Commission. When a department, division, bureau, commission, or other agency agrees or is ordered by the State Personnel Commission or by the General Court of Justice of this State to remove inaccurate or misleading material from an employee's file, which information was placed in the file by the supervisor or other agent of management, it shall destroy the original and all copies of the material removed and may not retain any inaccurate or misleading information derived from the material removed (1975, c. 257, s. 1; c. 667, s. 2; 1977, c. 866, s. 11; 1985, c. 638.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, added the last sentence.

#### CASE NOTES

**Applied in** *Area Mental Health v. Speed*, 69 N.C. App. 247, 317 S.E.2d 22 (1984).

## ARTICLE 8.

### *Employee Appeals of Grievances and Disciplinary Action.*

#### § 126-34. Grievance appeal for State employees.

#### CASE NOTES

**Jurisdiction of State Personnel Commission May Arise under This Section.** — The jurisdiction of the State Personnel Commission is not limited to those cases described in §§ 126-35 and 126-37, but may also arise un-

der this section. *Poret v. State Personnel Commission*, — N.C. App. —, 328 S.E.2d 88 (1985).

**Reclassification May Be Challenged under Section.** — Contention that petitioner's

could not challenge management business decisions such as reclassification through grievances under this section was without merit, as merely denominating a decision a "reclassification" does not insulate it from all scrutiny, in that facially neutral job classifications can be and are used for improper discriminatory purposes. *Poret v. State Personnel Comm'n*, — N.C. App. —, 328 S.E.2d 880 (1985).

**Petitioners, who alleged that they were arbitrarily selected for a pay freeze and**

prevented from transferring to be reclassified positions, had to follow the grievance procedure of this section, since they did not allege one of the prohibited grounds of discrimination. *Poret v. State Personnel Comm'n*, — N.C. App. —, 328 S.E.2d 880 (1985).

**Quoted in** *Area Mental Health v. Speed*, 69 N.C. App. 247, 317 S.E.2d 22 (1984).

**Cited in** *Employment Sec. Comm'n v. Lachman*, 305 N.C. 492, 290 S.E.2d 616 (1982).

## § 126-35. Written statement of reason for disciplinary action.

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 administrative law, see 59 N.C.L. Rev. 1040 (1981).

### CASE NOTES

**Jurisdiction of State Personnel Commission May Also Arise under § 126-34.** — The jurisdiction of the State Personnel Commission is not limited to those cases described in this section and § 126-37, but may also arise under § 126-34. *Poret v. State Personnel Comm'n*, — N.C. App. —, 328 S.E.2d 880 (1985).

**Prior to dismissal for causes relating to performance of duties, a permanent State employee is entitled to three separate warnings** that his performance is unsatisfactory, consisting of (1) an oral warning explaining how he is not meeting the job's requirements; (2) a second oral warning outlining his unsatisfactory performance with a follow-up letter reviewing the points covered by the oral warning; (3) a final written warning setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action, and the employee's appeal rights. *Jones v. Department of Human Resources*, 300 N.C. 687, 268 S.E.2d 500 (1980).

**Duty of State Agencies to Describe "Specific Acts or Omissions" with Particularity.** — This section imposes an affirmative duty on State agencies to inform discharged employees, in writing, of the "specific acts or omissions" that were the reasons for the disciplinary action, and "specific acts or omissions" implies that these incidents should be described with sufficient particularity so that the discharged employee will know precisely what acts or omissions were the basis of his discharge. *Employment Security Comm'n v. Wells*, 50 N.C. App. 389, 274 S.E.2d 256 (1981).

The Employment Security Commission failed to give respondent proper notice of the

reasons for his dismissal as an employee as required by this section where the only information given respondent concerning the reasons for his dismissal was contained in the letter of dismissal, which stated that respondent violated agency procedure in attempting to recruit migrant workers from Florida by phone and personal visit, respondent had forced workers to work for a designated crew leader even though the workers preferred not to work in a crew, and respondent violated agency procedure by not reporting illegal aliens, since the letter did not describe any incidents with sufficient particularity so that respondent could know precisely what acts or omissions were the basis of his discharge. *Employment Security Comm'n v. Wells*, 50 N.C. App. 389, 274 S.E.2d 256 (1981).

**Written Statement of Appeal Rights Required.** — Due process under the United States and North Carolina Constitutions requires that a permanent State employee who has been dismissed be provided with a statement in writing setting forth his rights of appeal before the 15- and 30-day time limits for notice of appeal provided in this section and § 126-38 commence to run. *Luck v. Employment Security Comm'n*, 50 N.C. App. 192, 272 S.E.2d 607 (1980).

**Applied in** *North Carolina A & T Univ. v. Kimber*, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

**Stated in** *Dyer v. Bradshaw*, 54 N.C. App. 136, 282 S.E.2d 548 (1981); *Burwell v. Griffin*, 67 N.C. App. 198, 312 S.E.2d 917 (1984).

**Cited in** *Employment Sec. Comm'n v. Lachman*, 305 N.C. 492, 290 S.E.2d 616 (1982).

## § 126-36. Appeal of unlawful State employment practice.

**Legal Periodicals.** — For article discussing evidentiary standards in employment discrimination suits in light of *Department of Cor. v.*

*Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983), see 6 *Campbell L. Rev.* 163 (1984).

### CASE NOTES

**The ultimate purpose of this section, § 143-422.2, and Title VII (42 U.S.C. 2000e et seq.) is the same;** that is, the elimination of discriminatory practices in employment. *North Carolina Dep't of Cor. v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983).

**North Carolina Supreme Court looks to federal decisions for guidance in establishing evidentiary standards** and principles of law to be applied in discrimination cases. *North Carolina Dep't of Cor. v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983).

For case discussing standards applicable to Title VII cases (42 U.S.C. 2000e et seq.) as promulgated by United States Supreme Court and adopted by North Carolina Supreme Court (insofar as they do not conflict with State statute and case law), see *North Carolina Dep't of Cor. v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983).

**Prima facie case raises an inference of discrimination** only because the court presumes such acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors. Establishment of the prima facie case in effect creates a presumption that the employer unlawfully discriminated against the employee. *North Carolina Dep't of Cor. v. Gibson*, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

**Burden of establishing a prima facie case of disparate treatment is not onerous.** *North Carolina Dep't of Cor. v. Gibson*, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

**Employer Has Burden of Production When Prima Facie Case Made.** — The burden that shifts to the employer is one of production, not persuasion. To rebut the presumption raised by plaintiff's prima facie case, the employer's evidence must raise a genuine issue of fact as to whether it discriminated against plaintiff. To accomplish this, the employer must clearly set forth, through the introduction of admissible evidence, the reason for plaintiff's rejection. The explanation provided must be legally sufficient to justify a judgment

for the employer. *North Carolina Dep't of Cor. v. Gibson*, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

**Burden and Order of Proof in Racial Discrimination Case.** — In racial discrimination cases, the burdens and orders of presentation of proof are as follows: First, the employee carries the initial burden of establishing, by a preponderance of the evidence, a prima facie case of racial discrimination; second, if the employee makes out a prima facie case, the burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection; and third, if the employer meets its burden, the employee is given the opportunity to prove that the employer's stated reasons for termination were in fact a pretext for racial discrimination. *North Carolina Dep't of Cor. v. Gibson*, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983); *Area Mental Health v. Speed*, 69 N.C. App. 247, 317 S.E.2d 22, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

**Use of Evidentiary Standards under Title VII of Civil Rights Act.** — Given the similarity of the language of § 143-422.2 and Title VII of the Civil Rights Act of 1964 and the underlying policy of these statutes, it is appropriate for the Commission to use Title VII evidentiary standards in an employment discrimination case. *North Carolina Dep't of Cor. v. Gibson*, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

**Showing That Termination Is Pretext for Discrimination.** — Plaintiff may succeed in showing that reasons for termination were a pretext for discrimination either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. *North Carolina Dep't of Cor. v. Gibson*, 58 N.C. App. 241, 293 S.E.2d 664 (1982), rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

**§ 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.**

The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission. Appeals involving disciplinary action or alleged discrimination shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B of the General Statutes. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority. An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial de novo. (1975, c. 667, s. 10; 1981, c. 680, s. 1; 1985, c. 746, s. 15.)

**Editor's Note.** — Section 19 of Session Laws 1985, c. 746, provides that the act shall not affect contested cases commenced before Jan. 1, 1986. Section 19 of Session Laws 1985, c. 746, also provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

Session Laws 1985, c. 746, s. 12, contains a severability clause.

**Effect of Amendments.** — The 1981 amendment added the last sentence.

Session Laws 1981, c. 680, s. 2, provides: "This act is effective upon ratification and applies to actions commenced on or after that date [June 25, 1981]."

The 1985 amendment, effective Jan. 1, 1986, substituted the present second and third sentences for the former second, third, fourth and fifth sentences, which provided for the hearing of cases, etc., by the State Personnel Commission or the State Personnel Director.

**Legal Periodicals.** — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

#### CASE NOTES

**Jurisdiction Where Appellant Not Employed Five Continuous Years.** — The State Personnel Commission had jurisdiction to hear Employment Security Commission employee's appeal from a dismissal even though she had not been employed continuously for five years. *Employment Sec. Comm'n v. Lachman*, 305 N.C. 492, 290 S.E.2d 616 (1982).

**Jurisdiction of State Personnel Commission May Also Arise under § 126-34.** — The jurisdiction of the State Personnel Commission is not limited to those cases described in

§ 126-35 and this section, but may also arise under § 126-34. *Poret v. State Personnel Comm'n*, — N.C. App. —, 328 S.E.2d 880 (1985).

**No Restoration without, etc.** — In accord with original. See *Brooks v. Best*, 45 N.C. App. 540, 263 S.E.2d 362 (1980).

Pursuant to this section, the State Personnel Commission may reinstate a state employee to the position from which he has been removed. The implication in this section, however, is that the Commission can only act to correct an

abuse or where there is a wrongful denial. *North Carolina A & T Univ. v. Kimber*, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

**Discretion of Personnel Commission to Award Back Pay and Benefits.** — Where a permanent State employee is dismissed for performance of duty reasons, without sufficient warnings as required by § 126-35, upon rein-

stating the employee the decision whether or not to award back pay and benefits is within the sound discretion of the Personnel Commission. *Jones v. Department of Human Resources*, 300 N.C. 687, 268 S.E.2d 500 (1980).

**Applied** in *Area Mental Health v. Speed*, 69 N.C. App. 247, 317 S.E.2d 22 (1984).

## § 126-38. Time limit for appeals.

### CASE NOTES

**Written Statement of Appeal Rights Required.** — Due process under the United States and North Carolina Constitutions requires that a permanent State employee who has been dismissed be provided with a statement in writing setting forth his rights of appeal before the 15- and 30-day time limits for notice of appeal provided in § 126-35 and this section commence to run. *Luck v. Employment Security Comm'n*, 50 N.C. App. 192, 272 S.E.2d 607 (1980).

**Letter of Grievance.** — Under the Administrative Procedure Act, all that is required in a letter of grievance is that there be a plain statement of the circumstances allegedly constituting an unlawful failure to offer employment, so that respondent may be put upon its defense. *North Carolina Dep't of Cor. v. Hill*, — N.C. —, 329 S.E.2d 377 (1985).

## § 126-39. State employee defined.

For the purposes of this Article, except for positions subject to competitive service and except for appeals brought under G.S. 126-16 and 126-25, the terms "permanent State employee," "permanent employee," "State employee" or "former State employee" as used in this Article shall mean a person

- (1) in a grade 60 or lower position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- (2) in a grade 61 to grade 65 position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- (3) in a grade 66 to grade 70 position who has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or
- (4) in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 60 preceding months

at the time of the act, grievance, or employment practice complained of. (1977, c. 866, s. 15; 1985, c. 617, s. 4.)

**Editor's Note.** — Session Laws 1985, c. 617, s. 6 provides that except as otherwise provided in the act, application of the act shall be prospective only.

**Effect of Amendments.** — The 1985

amendment, effective July 5, 1985, substituted subdivisions (1) through (4) for the language "who has been continuously employed by the State of North Carolina for five years."

### CASE NOTES

**Quoted** in *Employment Security Comm'n v. Lachman*, 52 N.C. App. 368, 278 S.E.2d 307 (1981); *Dyer v. Bradshaw*, 54 N.C. App. 136, 282 S.E.2d 548 (1981).

**Cited** in *Employment Sec. Comm'n v. Lachman*, 305 N.C. 492, 290 S.E.2d 616 (1982).

§ 126-40: Repealed by Session Laws 1985, c. 746, s. 16, effective January 1, 1986.

**Editor's Note.** — Section 19 of Session Laws 1985, c. 746, provides that the act shall not affect contested cases commenced before Jan. 1, 1986. Section 19 of Session Laws 1985, c. 746, also provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

The repealed section was derived from Session Laws 1983, c. 516, s. 1.

Session Laws 1985, c. 746, s. 12, contains a severability clause.

### § 126-41. Attorney and witness fees.

The decision of the Commission assessing or refusing to assess reasonable witness fees or a reasonable attorney's fee as provided in G.S. 126-4(11) is a final agency decision appealable under Article 4 of Chapter 150A of the General Statutes. In addition to the grounds set out in G.S. 150A-51, the reviewing court may reverse or modify the decision of the Commission if the decision is unreasonable or the award is inadequate. The reviewing court shall award court costs and a reasonable attorney's fee for representation in connection with the appeal to an employee who obtains a reversal or modification of the Commission's decision in an appeal under this section. (1985, c. 717.)

**Editor's Note.** — Session Laws 1985, c. 717, s. 2 makes this section effective October 1, 1985.

§ 126-42: Reserved for future codification purposes.

## ARTICLE 9.

### *The Administrative Procedure Act and Modifications.*

### § 126-43. The Administrative Procedure Act.

The provisions of Article 3 of Chapter 150B of the General Statutes shall apply to all hearings required by this Chapter, except as otherwise provided in this Article. A contested case under this Chapter shall be commenced as provided in Article 3 of Chapter 150B of the General Statutes within the time limits set out in this Chapter. (1975, c. 667, s. 11; 1985, c. 746, s. 17.)

**Editor's Note.** — Section 19 of Session Laws 1985, c. 746, provides that the act shall not affect contested cases commenced before Jan. 1, 1986. Section 19 of Session Laws 1985, c. 746, also provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

Session Laws 1985, c. 746, s. 12, contains a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective Jan. 1, 1986, rewrote this section.

## CASE NOTES

**Letter of Grievance.** — Under the Administrative Procedure Act, all that is required in a letter of grievance is that there be a plain statement of the circumstances allegedly constituting an unlawful failure to offer employment, so that respondent may be put upon its

defense. *North Carolina Dep't of Cor. v. Hill*, — N.C. —, 329 S.E.2d 377 (1985).

**Cited in** *Yow v. Alexander County Dep't of Social Servs.*, 70 N.C. App. 174, 319 S.E.2d 626 (1984).

## ARTICLE 11.

*Governor's Commission on Governmental Productivity.*

§§ 126-64 to 126-73: Repealed by Session Laws 1985, c. 479, s. 153(a), effective July 1, 1985.

**Editor's Note.** — Session Laws 1985, c. 791, s. 50(a) provides that notwithstanding the provisions of Session Laws 1985, c. 479, s. 153, which is effective July 1, 1985, persons entitled to receive payments under the Incentive Pay Program as of June 30, 1985, shall receive those payments, and that funds for those payments shall be drawn from the employing agencies' or officers' principal departments' ending balance for the 1984-85 fiscal year.

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

Repealed § 126-64 was amended by Session Laws 1981 (Reg. Sess., 1982), c. 1191, s. 39; 1983, c. 871, s. 1; 1983, c. 913, s. 22; 1983 (Reg. Sess., 1984), c. 995, s. 19). Repealed §§ 126-65, 126-66 were amended by Session Laws 1983, c. 871, s. 1; 1983 (Reg. Sess., 1984), c. 995, s. 19). Repealed § 126-67 was amended by Session Laws 1983, c. 717, s. 43; c. 871, s. 1; 1983, (Reg. Sess., 1984), c. 995, s. 19. Repealed § 126-68 was amended by Session laws 1983, c. 871, s. 1; 1983 (Reg. Sess., 1984), c. 995, s. 19.

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

## ARTICLE 12.

*Work Options Program for State Employees.*

## § 126-74. Work Options Program established.

There is established a Work Options Program for State employees in the Division of State Personnel to be administered by the State Personnel Commission. The State Personnel Director shall assign an employee within the Division of State Personnel, to be known as the State Work Options Coordinator, to direct the Work Options Program as established in this Article. (1981, c. 917, s. 1.)

**Editor's Note.** — Session Laws 1981, c. 917, s. 2, provides: "Nothing herein contained shall be construed to obligate the General Assembly to appropriate any additional funds, nor permit

coverage under the Teachers' and State Employees' Retirement System and health benefits program in Articles 1 and 3 of Chapter 135 except as otherwise provided for therein."

## § 126-75. Work options for State employees.

(a) The following work options allowed State employees are to be included in the program administered under this Article:

- (1) Flexible work hours as established by the State Personnel Commission;
- (2) Job sharing as permitted by the State Personnel Commission;
- (3) Permanent part-time positions as established under the State Personnel Act.

(b) The State Personnel Commission shall examine the present options listed in subsection (a) of this section available to State employees and other options the State Personnel Commission may make available for a comprehensive program of work options for State employees. The State Personnel Commission shall, with the concurrence of the agency, determine the need for additional permanent part-time positions within State Government and how increased use of these positions could benefit employee morale and productiv-

ity as well as increase the use of the available labor force. None of the provisions of this Article shall be administered to reduce the total number of hours per day a State office normally is open to serve the public. (1981, c. 917, s. 1.)

### **§ 126-76. Promoting Work Options Program.**

The State Personnel Commission shall develop a program to expand the use of work options. This program shall include training sessions for agency personnel to instruct them in the use of work options available to State employees. The State Personnel Commission shall also provide technical assistance to agency personnel in developing a Work Options Program for each agency or expanding existing programs in each agency. The Work Options Coordinator shall also identify personnel positions within the State Personnel System which can effectively be structured in job sharing or permanent part-time employment positions. (1981, c. 917, s. 1.)

### **§ 126-77. Authority of agencies to participate.**

The State Personnel Commission shall request from each agency assistance in formulating the Work Options Program. Any division, department, agency, instrumentality or authority shall participate in the program of work options as established in this Article. (1981, c. 917, s. 1.)

### **§ 126-78. Administration.**

The State Personnel Commission and any State division, department, agency, instrumentality or authority participating in the State Work Options Program shall promulgate rules necessary for the administration of the program pursuant to Chapter 150A, "The Administrative Procedures Act". (1981, c. 917, s. 1.)

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

### **§ 126-79. Report required.**

The State Personnel Commission shall require a biennial report of each State division, department, agency, instrumentality or authority on the status of the Work Options Program. The State Personnel Commission shall in turn make a biennial report to the General Assembly on the status of the Work Options Program, including any increase in the use of job sharing, flexible work hours and any other approved work option for State employees. (1981, c. 917, s. 1.)

**Chapter 127A.**

**Militia.**

**Article 1.**

**Classification of Militia.**

Sec.  
127A-7. Composition of unorganized militia.

**Article 3.**

**National Guard.**

127A-40. Pensions for the members of the North Carolina national guard.  
127A-50. Summary courts-martial.  
127A-51. Nonjudicial punishment.  
127A-52. Jurisdiction of courts-martial.  
127A-53. Manual for Courts-Martial.  
127A-55. Forms for courts-martial procedure.

Sec.

127A-56. Powers of courts-martial.

**Article 5.**

**State Defense Militia.**

127A-80. Authority to organize and maintain State defense militia of North Carolina.  
127A-81. State defense militia cadre.

**Article 15.**

**North Carolina National Guard Tuition Assistance Act of 1975.**

127A-193. Benefit.

**ARTICLE 1.**

*Classification of Militia.*

**§ 127A-7. Composition of unorganized militia.**

The unorganized militia shall consist of all other able-bodied citizens of the State and of the United States and such other able-bodied persons who have or shall declare their intention to become citizens of the United States, who shall be at least 17 years of age, except those who have been convicted of a felony or discharged from any component of the military under other than honorable conditions. (1917, c. 200, s. 4; C.S., s. 6794; 1949, c. 1130, s. 1; 1963, c. 1016, s. 2; 1975, c. 604, s. 2; 1983, c. 314, s. 1.)

**Effect of Amendments.** — The 1983 amendment, effective May 16, 1983, substituted the language beginning "except those who have been convicted" for "and, except as otherwise provided by law, under 64 years of age" at the end of the section.

**ARTICLE 3.**

*National Guard.*

**§ 127A-40. Pensions for the members of the North Carolina national guard.**

(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former mem-

bers of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to and transferred from the Department of Crime Control and Public Safety. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251.)

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

**Editor's Note.** — Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** —

The 1983 amendment, effective July 15, 1983, deleted the former second sentence of subsection (f), relating to payments by the Department of State Treasurer to those persons certified, added the present second and subsequent sentences of subsection (f), and added subsections (h) and (i).

#### OPINIONS OF ATTORNEY GENERAL

**Prerequisites to Receipt of Pension.** — A member of the North Carolina National Guard may receive the pension authorized by this section only after he meets the statutory age and length of service requirements and separates

from the Guard with an honorable discharge. See opinion of Attorney General to Mr. Robert A. Melott, Deputy Secretary, Department of Crime Control and Public Safety, 52 N.C.A.G. 118 (1983).

### § 127A-50. Summary courts-martial.

In the national guard, not in the service of the United States, summary courts-martial may be appointed by the commander of any company, battery, detachment, squadron, or any other federally recognized unit, either army or air. Such court shall consist of one officer, who shall have the power to administer oaths and try enlisted personnel of each respective command for breaches of discipline and violations of laws governing such organizations. Such courts shall also have the power to impose fines not exceeding twenty-five dollars (\$25.00) for any single offense, may sentence to forfeiture of pay and allowances, or may sentence enlisted personnel to reduction in rank; but in the case of noncommissioned officers above the fourth enlisted grade, may not adjudge reduction except to the next inferior grade. There shall be no right to demand trial by special court-martial. (1917, c. 200, s. 58; C.S., s. 6828; 1957, c. 136, s. 9; 1963, c. 1018, s. 4; 1975, c. 604, s. 2; 1983, c. 315, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 315, s. 4, provides that the act is effective upon ratification and applies to all military offenses committed after that date. The act was ratified May 16, 1983.

Session Laws 1983, ch. 315, s. 3, is a severability clause.

**Effect of Amendments.** — The 1983 amendment, effective May 16, 1983, added the last sentence.

### § 127A-51. Nonjudicial punishment.

Any commander of the national guard, not in the service of the United States, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States except that there shall be no right to demand trial by special court-martial. (1957, c. 136, s. 10; 1975, c. 604, s. 2; 1983, c. 315, s. 2; c. 316, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 315, s. 4, provides that the act is effective upon ratification and applies to all military offenses committed after that date. The act was ratified May 16, 1983.

Session Laws 1983, c. 315, s. 3, is a severability clause.

**Effect of Amendments.** — The first 1983 amendment, effective May 16, 1983, added

“except that there shall be no right to demand trial by special court-martial” at the end of the section.

The second 1983 amendment, effective May 16, 1983, substituted “as shall be currently in use by the armed forces of the United States” for “1951, as amended from time to time” near the end of the section.

### § 127A-52. Jurisdiction of courts-martial.

The jurisdiction of courts-martial of the national guard, not in the service of the United States, except as to punishments, shall be as prescribed by the Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States. Such courts-martial shall have jurisdiction to try accused persons for offenses committed while serving without the State and while going to and returning from such service without the State in like manner and to the same extent as while serving within the State. (1957, c. 136, s. 10; 1975, c. 604, s. 2; 1983, c. 316, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective May 16, 1983, substituted “as shall be currently in use by the

armed forces of the United States” for “1951, as amended from time to time” at the end of the first sentence.

### § 127A-53. Manual for Courts-Martial.

Trials and proceedings by all courts and boards shall be in accordance with the plans and procedures laid down in the Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States, except as modified by this Chapter. (1917, c. 200, s. 64; C. S., s. 6831; 1957, c. 136, s. 14; 1975, c. 604, s. 2; 1983, c. 316, s. 3.)

**Effect of Amendments.** — The 1983 amendment, effective May 16, 1983, substituted “as shall be currently in use by the armed forces of the United States, except as

modified by this Chapter” for “1951, as amended from time to time” at the end of the section.

### § 127A-55. Forms for courts-martial procedure.

In the national guard, not in the service of the United States, forms for courts-martial procedure shall be substantially as those set forth in the Appendices, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States. (1957, c. 136, s. 13; 1975, c. 604, s. 2; 1983, c. 316, s. 4.)

**Effect of Amendments.** — The 1983 amendment, effective May 16, 1983, substituted "as shall be currently in use by the armed forces of the United States" for "1951, as amended" at the end of the section.

## § 127A-56. Powers of courts-martial.

In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books, papers, records and other articles subject to a subpoena duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court.

In addition to the power to issue warrants set forth in the first paragraph of this section, the arrest and confinement of persons subject to this Chapter may be accomplished by the means and under the procedures set forth in Articles 9 and 10 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States. (1917, c. 200, s. 60; C. S., s. 6830; 1957, c. 136, s. 12; 1975, c. 604, s. 2; 1983, c. 316, s. 5.)

**Effect of Amendments.** — The 1983 amendment, effective May 16, 1983, substituted "as shall be currently in use by the armed forces of the United States" for "1951, as amended from time to time" at the end of the second paragraph.

## ARTICLE 5.

### *State Defense Militia.*

## § 127A-80. Authority to organize and maintain State defense militia of North Carolina.

(b) Such military force shall be designated as the "North Carolina State Defense Militia" and shall be composed of personnel of the unorganized militia as may volunteer for service therein or be drafted as provided by law. To be eligible for service in an enlisted status, a person must be at least 17 years of age. To be eligible for service as an officer, a person must be at least 18 years of age. The force and its personnel shall be additional to and distinct from the national guard organized under existing law. A person may not become a member of the defense militia established under this section, if a member of a reserve component of the armed forces.

(h) All payments are to be made by the Secretary of the Department of Crime Control and Public Safety in accordance with State laws in semiannual installments on the first day of July and the first day of January of each year, but no payment shall be made unless all assemblies and duties required by law are duly performed by all organizations named.

(1941, c. 43; 1943, c. 166; 1945, c. 209, s. 1; c. 835; 1957, c. 1083; 1963, c. 1016, s. 1; 1975, c. 604, s. 2; 1977, c. 70, s. 2; c. 553; 1983, c. 314, ss. 2, 3.)

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

**Effect of Amendments.** — The 1983 amendment, effective May 16, 1983, deleted "and under 50 years of age, or under 64 years

of age and a former member of the armed forces of the United States" at the end of the second sentence of subsection (b), deleted "and under 64" at the end of the third sentence of subsection (b), and substituted "assemblies" for "drills" in subsection (h).

**§ 127A-81. State defense militia cadre.**

(b) The cadre shall be designated the "North Carolina State Defense Militia Cadre" and shall be composed of a force of officers and enlisted personnel raised by appointment of the Governor, or otherwise, as may be provided by law. The Secretary of the Department of Crime Control and Public Safety may reimburse cadre members for expenses actually incurred, not to exceed the amount appropriated and authorized for such purposes by the General Assembly.

(1963, c. 1016, s. 1; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1983, c. 314, s. 4.)

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

**Effect of Amendments.** — The 1983

amendment, effective May 16, 1983, deleted the second sentence of subsection (b), which read "Personnel of the cadre shall serve without pay."

ARTICLE 15.

*North Carolina National Guard Tuition Assistance Act of 1975.*

**§ 127A-193. Benefit.**

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed five hundred dollars (\$500.00) per academic year to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary for a maximum of two thousand dollars (\$2,000). (1975, c. 917, s. 5; 1977, c. 228, s. 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 99, 100.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984,

substituted "monetary educational assistance grant" for "monetary tuition assistance grant" and "maximum of two thousand dollars (\$2,000)" for "maximum of four academic years."

**Chapter 127B.  
Military Affairs.**

**Article 1.**

**Military Property Sales  
Facilities.**

- Sec.  
127B-1. Military property sales facility defined.  
127B-2. Military property defined.  
127B-3. License.  
127B-4. Local governing authorities to grant and control license; bond.  
127B-5. Perjury; punishment.  
127B-6. Records to be kept.  
127B-7. Penalties.

Sec.

127B-8, 127B-9. [Reserved.]

**Article 2.**

**Discrimination Against Military  
Personnel.**

- 127B-10. Purpose.  
127B-11. Private discrimination prohibited.  
127B-12. Public discrimination prohibited.  
127B-13. Refusing entrance prohibited.  
127B-14. Employer discrimination prohibited.  
127B-15. Penalties.

**ARTICLE 1.**

*Military Property Sales Facilities.*

**§ 127B-1. Military property sales facility defined.**

Any person, partnership, association or corporation who engages in the business of selling, consigning, purchasing, transferring or in any way acquiring military property for resale, is a "military property sales facility". Specifically excluded are facilities operated by the United States Government, the State of North Carolina or any of its agencies and persons, partnerships, associations or corporations selling or purchasing military property pursuant to a contract with the United States Government, the State of North Carolina or any of its agencies. (1985, c. 522, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 522, s. 3 makes this Chapter effective October 1, 1985.

Section 2 of Session Laws 1985, c. 522, provides that all local laws governing military property businesses in counties or towns which are inconsistent with the act are repealed.

**§ 127B-2. Military property defined.**

"Military property" means property originally manufactured for the United States or State of North Carolina which is a type and kind issued for use in, or furnished and intended for, the military service of the United States or the militia of the State of North Carolina. (1985, c. 522, s. 1.)

**§ 127B-3. License.**

No person, partnership, association or corporation shall engage in the business of selling military property or purchasing military property for resale without first having obtained a license to do so from the local governing body of the city, town, or county in which it is located and by paying the county, State, and municipal tax required by law, and otherwise complying with the requirements made in this and succeeding sections. The license shall be posted in a prominent place, easily visible to the public, on the designated premises. (1985, c. 522, s. 1.)

### § 127B-4. Local governing authorities to grant and control license; bond.

(a) The governing body of any city, town, or county in this State may grant to such person, partnership, association or corporation as who shall produce satisfactory evidence of good character, a license authorizing such person, partnership, association or corporation to carry on the business of a military property sales facility. The license shall designate the building in which the person, partnership, association or corporation shall carry on the business, and no person, partnership, association or corporation shall carry on the business of a military property sales facility without being duly licensed, nor in any other building than the one designated in the license.

(b) Any person or the principal officers of any association or corporation or all the partners of any partnership applying for a license shall furnish the governing body the following information:

- (1) Full name, and any other names used by the applicant during the preceding five years, or in the case of a partnership, association or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five years;
- (2) Current address, and all addresses used by the applicant during the preceding five years;
- (3) Physical description;
- (4) Age;
- (5) Driver's license number, if any, and state of issuance;
- (6) Recent color photograph;
- (7) Record of felony convictions; and
- (8) Record of other convictions during the preceding five years.

(c) Every person, partnership, association or corporation so licensed to carry on the business of a military property sales facility shall, at the time of receiving a license, file with the governing body of the city, town, or county granting the license, a bond payable to the city, town, or county in the sum of one thousand dollars (\$1,000), to be executed by the person licensed and by two responsible sureties, or a surety company licensed to do business in the State of North Carolina, to be approved of by the governing body. The bond shall be for the faithful performance of the requirements and obligations pertaining to the business licensed. The governing body, may revoke the license and sue for forfeiture of the bond upon a breach of the licensee's duties under the bond. Any person who may obtain a judgment against a military property sales facility and upon which judgment execution is returned unsatisfied may maintain an action in his own name upon the bond of the military property sales facility, in any court having jurisdiction of the amount demanded to satisfy the judgment. (1985, c. 522, s. 1.)

### § 127B-5. Perjury; punishment.

Any person who shall willfully commit perjury in any application for a permit pursuant to this Article shall be guilty of a misdemeanor. (1985, c. 522, s. 1.)

**§ 127B-6. Records to be kept.**

(a) Every military property sales facility owner shall keep a book in which shall be legibly written, at the time of each transaction involving the acquisition by any means of used or new military property by the military property sales facility owner, his employee or agent, from any person, partnership, association or corporation, the following information:

- (1) An account and description of the used or new military property including if applicable, the manufacturer's name, the model, the model number, the serial number of the property, and any engraved numbers or initials found on the property. Property lacking any identifying mark or characteristic shall be marked by the military property sales facility owner in such a way as to allow clear identification of the property.
- (2) The amount of money paid;
- (3) The date of the transaction; and
- (4) The name and residence of the person selling, consigning or transferring the used or new military property.

(b) The military property sales facility owner, or his employee or agent shall require that the person selling the new or used military property, to present two forms of positive identification to him before the military property sales facility personnel may complete any transaction regarding the buying, consigning or acquiring of new or used military property. The presentation of any one state or federal government issued identification containing a photographic representation imprinted on it shall constitute compliance with the identification requirements of this paragraph. The military property sales facility owner or his employee or agent shall legibly record this identification information next to the person's name and residence in the book required to be kept. Both the military property sales facility owner, his employee or agent and the seller, consignor or transferor of the military property shall sign the record entry.

(c) The book shall be a permanent record to be kept at all times on the premises of the place of business of the military property sales facility and shall be made available, during regular business hours, to any law enforcement officer who requests to inspect the book. A copy of the records required to be kept by this section shall be filed within 48 hours of the transaction in the office of the local law enforcement agency serving the city, town, or county which issued the license to the military. Mailing the required copy to the local law enforcement agency within 48 hours shall constitute compliance with this section. (1985, c. 522, s. 1.)

**§ 127B-7. Penalties.**

Any dealer who violates the provisions of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. In addition, any dealer convicted of violating this Article shall be ineligible for a dealer's permit for a period of three years from the date of conviction. Each violation shall constitute a separate and distinct offense. (1985, c. 522, s. 1.)

**§§ 127B-8, 127B-9:** Reserved for future codification purposes.

## ARTICLE 2.

*Discrimination Against Military Personnel.***§ 127B-10. Purpose.**

The General Assembly finds and declares that military personnel in North Carolina vitally affect the general economy of this State and that it is in the public interest and public welfare to ensure that no discrimination against military personnel is practiced by any business. (1985, c. 522, s. 1.)

**§ 127B-11. Private discrimination prohibited.**

No person shall discriminate against any officer, warrant officer or enlisted person of the military or naval forces of the State or of the United States because of their membership therein. No member of these military forces shall be prejudiced or injured by any person, employer, officer or agent of any corporation, company or firm with respect to their employment, position or status or denied or disqualified for employment by virtue of their membership or service in the military forces of this State or of the United States. (1985, c. 522, s. 1.)

**§ 127B-12. Public discrimination prohibited.**

No officer or employee of the State, or of any county, city and county, municipal corporation, school district, water district, or other district shall discriminate against any officer, warrant officer or enlisted person of the military or naval forces of the State or of the United States because of their membership therein. No member of the military forces shall be prejudiced or injured by any officer or employee of the State, or of any county, city and county, municipal corporation, school district, water district, or other district with respect to their employment, appointment, position or status or denied or disqualified for or discharged from their employment or position by virtue of their membership or service in the military forces of this State or of the United States. (1985, c. 522, s. 1.)

**§ 127B-13. Refusing entrance prohibited.**

No person shall prohibit or refuse entrance to any officer, warrant officer or enlisted person of the military or naval forces of this State or of the United States into any public place of entertainment, of amusement, or accommodation because the officer or enlisted person is wearing the uniform of the organization to which they belong or because of their membership or service in the military forces of this State or of the United States. (1985, c. 522, s. 1.)

**§ 127B-14. Employer discrimination prohibited.**

No employer or officer or agent of any corporation, company, or firm, or other person shall discharge any person from employment because of the performance of any emergency military duty by reason of being an officer, warrant officer or enlisted person of the military or naval forces of this State or the United States. (1985, c. 522, s. 1.)

**§ 127B-15. Penalties.**

Any person who violates the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each violation shall constitute a separate and distinct offense. (1985, c. 522, s. 1.)

## Chapter 128. Offices and Public Officers.

### Article 1.

#### General Provisions.

Sec.

- 128-1. No person shall hold more than one office; exception.
- 128-1.2. Ex officio service by county commissioners.
- 128-8. [Repealed.]

### Article 3.

#### Retirement System for Counties, Cities and Towns.

- 128-21. Definitions.

Sec.

- 128-23. Acceptance by cities, towns and counties.
- 128-24. (Effective until September 1, 1986) Membership.
- 128-24. (Effective September 1, 1986) Membership.
- 128-26. Allowance for service.
- 128-27. Benefits.
- 128-28. Administration and responsibility of operation of System.
- 128-30. Method of financing.
- 128-31. Exemptions from execution.

## ARTICLE 1.

### General Provisions.

#### § 128-1. No person shall hold more than one office; exception.

No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly except as provided in G.S. 128-1.1, or by other General Statute. (Const., art. 14, s. 7; Rev., s. 2364; C.S., s. 3200; 1967, c. 24, s. 24; 1969, c. 1070; 1971, c. 697, s. 1; 1983, c. 609, s. 9.)

**Editor's Note.** — Session Laws 1983, c. 609, s. 11, is a severability clause.

**Effect of Amendments.** — The 1983

amendment, effective June 24, 1983, added "or by other General Statute" at the end of the section.

#### § 128-1.1. Dual-office holding allowed.

#### CASE NOTES

Cited in *Ratcliff v. County of Buncombe*, 759 F.2d 1183 (4th Cir. 1985).

#### OPINIONS OF ATTORNEY GENERAL

Serving as President of the board of directors of a telephone membership corporation and on the Board of the Rural Electrification Authority is not prohibited

dual office holding. See opinion of Attorney General to Mr. Aaron A. Hathcock, Administrator, Rural Electrification Authority, 52 N.C.A.G. 107 (1983).

## 128-1.2. Ex officio service by county commissioners.

Except when the resolution of appointment provides otherwise, whenever a board of county commissioners appoints one of its own members to another board or commission, the county commissioner so appointed is considered to be serving on the other board or commission as a part of the duties of his office as county commissioner and shall not be considered to be serving in a separate office. (1983, c. 651, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 651, § 2, makes this section effective upon ratification. The act was ratified June 30, 1983.

**128-8:** Repealed by Session Laws 1981, c. 884, s. 13, effective July 8, 1981.

## ARTICLE 2.

### *Removal of Unfit Officers.*

## 128-16. Officers subject to removal; for what offenses.

### CASE NOTES

The North Carolina Rules of Civil Procedure do not apply to actions brought pursuant to this article. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Actions under this article are neither civil nor criminal, but are merely an inquiry into the conduct of the office holder to determine whether he is unfit to continue in office. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

**Hearing Required.** — Because of the severe adverse consequences possible for the office holder in an action under this article, fundamental fairness entitles such office holder to

a hearing which meets the basic requirements of due process, requirements which must include adequate time and opportunity to prepare to respond to the accusations against him. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Although this article requires a prompt trial, its terms are broad enough to allow the trial court to set the time of trial within his discretion, considering, among other things, the nature of the charges brought and the terms of court available for trial. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

## 128-17. Petition for removal; county attorney to prosecute.

### CASE NOTES

The North Carolina Rules of Civil Procedure do not apply to actions brought pursuant to this article. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Actions under this article are neither civil nor criminal, but are merely an inquiry into the conduct of the office holder to determine whether he is unfit to continue in office. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

Although this article requires a prompt trial, its terms are broad enough to allow the trial court to set the time of trial within his discretion, considering, among other things, the nature of the charges brought and the terms of court available for trial. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

## § 128-18. Petition filed with clerk; what it shall contain; answer.

### CASE NOTES

The North Carolina Rules of Civil Procedure do not apply to actions brought pursuant to this article. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Actions under this article are neither civil nor criminal, but are merely an inquiry into the conduct of the office holder to determine whether he is unfit to continue in office. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

Although this article requires a prompt trial, its terms are broad enough to allow the trial court to set the time of trial within his discretion, considering, among other things, the nature of the charges brought and the terms of court available for trial. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

## § 128-19. Suspension pending hearing; how vacancy filled

### CASE NOTES

The North Carolina Rules of Civil Procedure do not apply to actions brought pursuant to this article. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Actions under this article are neither civil nor criminal, but are merely an inquiry into the conduct of the office holder to determine whether he is unfit to continue in office. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

**Hearing Required.** — Because of the severe adverse consequences possible for the office holder in an action under this article, fundamental fairness entitles such office holder to

a hearing which meets the basic requirements of due process, requirements which must include adequate time and opportunity to prepare to respond to the accusations against him. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Although this article requires a prompt trial, its terms are broad enough to allow the trial court to set the time of trial within his discretion, considering, among other things, the nature of the charges brought and the terms of court available for trial. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

## § 128-20. Precedence on calendar; costs.

### CASE NOTES

The North Carolina Rules of Civil Procedure do not apply to actions brought pursuant to this article. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Actions under this article are neither civil nor criminal, but are merely an inquiry into the conduct of the office holder to determine whether he is unfit to continue in office. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

The purpose of this section is to ensure that charges of misconduct will be re-

solved as quickly as possible, minimizing the risk of loss of public confidence in law enforcement. State ex rel. Leonard v. Huskey, 65 N.C. App. 550, 309 S.E.2d 726 (1983).

Although this article requires a prompt trial, its terms are broad enough to allow the trial court to set the time of trial within his discretion, considering, among other things, the nature of the charges brought and the terms of court available for trial. State ex rel. Leonard v. Huskey, 65 N.C. App. 492, 309 S.E.2d 726 (1983).

## ARTICLE 3.

*Retirement System for Counties, Cities and Towns.***128-21. Definitions.**

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (5) "Average final compensation" shall mean the average annual compensation, not including any terminal payments for unused sick leave, of a member during the four consecutive calendar years of creditable service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages.
- (7a) "Compensation" shall mean all salaries and wages, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work.
- (11b) "Law Enforcement Officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or for the general enforcement of the criminal laws of the State or for serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(1939, c. 390, s. 1; 1941, c. 357, s. 1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 33, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 15, s. 5; 1965, c. 781; 1971, c. 325, ss. 1-4; 1975, 2nd Sess., c. 983, s. 125; 1977, c. 316, ss. 1, 2; 1981, c. 557, ss. 1, 2; 1985, c. 479, s. 196(b); c. 649, s. 3.)

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

**Local Modification.** — City of Asheville: 1981, c. 737; City of Charlotte: 1983, c. 506; (as amended by Art. 3) 1985, c. 185.

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

Session Laws 1985, c. 479, s. 196(u) provides: "Transfers of Assets of the Law Enforcement Officers' Retirement System to Other Retirement Systems. As of January 1, 1986, assets of the Law Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Employees' Retirement System provided for under Article 3 of Chapter 128 of the General Statutes, and the Supplemental Retirement Income Plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

"(1) The regular accumulated contributions of members of the Law Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.

"(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law Enforcement Officers' Retirement System, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.

"(3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the Local Governmental Employees' Retirement System with the amount of such assets to be taken into

account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d)(9).

"(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.

"(5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1)."

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

**Effect of Amendments.** — The 1985 amendment, effective September 1, 1981, inserted ", not including any terminal payment for unused sick leave," in subdivisions (5) and (7a).

The 1985 amendment by c. 479, s. 196(c) effective January 1, 1986, added subdivision (11b).

The 1985 amendment by c. 649, s. 3, effective July 8, 1985, added "but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowance whether or not classified as salary and wages" at the end of subdivision (5).

## § 128-23. Acceptance by cities, towns and counties.

(g) Notwithstanding any other provisions of this Article, any employer who is not a participating employer and who employs law enforcement officers transferred from the Law Enforcement Officers' Retirement System to this Retirement System on January 1, 1986, or who employs law enforcement officers electing to become members of this Retirement System on and after January 1, 1986, shall be employers participating in this Retirement System as this participation pertains to their law enforcement officers. The election of membership in this Retirement System shall be at the sole discretion of law enforcement officers of participating employers described in this subsection

(1939, c. 390, s. 3; 1951, c. 274, s. 1; 1955, c. 1153, s. 1; 1971, c. 325, s. 5; 1973, c. 803, s. 16; 1985, c. 479, s. 196(c).)

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

**Editor's Note.** —

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

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

**Effect of Amendments.** — The 1985 amendment by c. 479, s. 196(c), effective January 1, 1986, added subsection (g).

## § 128-24. (Effective until September 1, 1986) Membership

The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. On and after July 1, 1965, new extension service employees in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees who are required to accept a federal Civil Service appointment may elect in writing on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the local Retirement System.

- (1a) Should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member; provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.
- (2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before 90 days following the date of participation in the Retirement System by such county, city or town: Provided, further, that employees of county social services and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation. Any member on or after July 1, 1969, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.
- (3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.
- (3a) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1, effective July 1, 1982.
- (4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).
- b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed police-

- man or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days and not more than 90 days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.
- c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in 1 below reduced by the amount in 2 below.
1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
  2. The actuarial equivalent of the retirement benefits he previously received.
- d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21(3).
- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written

application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b1), provided that such benefits will be computed in accordance with subsection (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969.

- b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

| <i>Age at Retirement</i> | <i>Percentage Reduction</i> |
|--------------------------|-----------------------------|
| 59                       | 7                           |
| 58                       | 14                          |
| 57                       | 20                          |
| 56                       | 25                          |
| 55                       | 30                          |
| 54                       | 35                          |
| 53                       | 39                          |
| 52                       | 43                          |
| 51                       | 46                          |
| 50                       | 50                          |

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees

setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- c. Should a beneficiary who retired on an early or service retiree retirement allowance be restored to service for a period of time exceeding six calendar months, his retirement allowance shall cease and he shall again become a member of the Retirement System and he shall contribute thereafter at the uniform contribution rate payable by all members. Notwithstanding the foregoing, the beneficiary may irrevocably elect to commence membership immediately upon being restored to service, with cessation of his retiree retirement allowance; and, the acceptance of the first monthly retiree retirement allowance after being restored to service shall be an election to delay membership for the aforementioned six calendar months. Upon his subsequent retirement, he shall be entitled to the greater of the two allowances described in 1 and 2 below.
1. The allowance to which he would be entitled had he not been restored to service with cessation of retirement allowance plus the allowance to which he would be entitled on account of his service after restoration to service and membership. Provided, for the sole purpose of determining retirement eligibility on account of his service after restoration, that his creditable service shall be taken as the sum of his creditable service prior to and subsequent to his restoration to service or
  2. The allowance to which he would be entitled if his retirement were commencing for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service prior to and subsequent to his restoration to service, reduced by the actuarial equivalent of the retirement allowance he previously received; Provided, in no event may he alter his Election of Optional Allowance as previously made.
- d. A beneficiary whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is restored to service shall become a member of the Retirement System and

shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

(5a) Notwithstanding the provisions of paragraphs c and d of the subdivision (5) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System on January 1, 1986, and who also was a contributing member of this Retirement System on January 1, 1986, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on an early or service retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee by an employer participating in the Retirement System after January 1, 1986, becomes subject to the provisions of G.S. 128-24(5)c. and G.S. 128-24(5)d. on and after January 1, 1989.

(6) Employees of a sending agency participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 shall remain members entitled to all benefits of the System provided that the requirements of Article 10 of Chapter 126 are met; provided further, that a member may retain membership status while serving as an assigned employee or employee on leave under the provisions of Article 10 of Chapter 126 for purposes of receiving the death benefit regardless of whether he and his employer are contributing to his account during the exchange period except that no duplicate benefits shall be paid. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854;

1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 1973, c. 243, s. 1; 1977, c. 783, s. 2; 1981, c. 979, s. 2; 1981 (Reg. Sess. 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), 1106, s 2; 1985, c. 479, s. 196(d)-(g).)

**Section Set Out Twice.** — The section above is effective until September 1, 1986. For this section as amended effective September 1, 1986, see the following section, also numbered § 128-24.

**Editor's Note.** — Session Laws 1983, c. 556, s. 3, provides as follows: "Any beneficiary in the Local Governmental Employees' Retirement System or the Teachers' and State Employees' Retirement System who was excluded from membership upon return to service on account of the former G.S. 128-24(5)c. or G.S. 135-3(8)c. may elect to repay all retirement allowances received while so excluded plus an amount equal to the member contributions which would otherwise have been made, to the appropriate Retirement System, and thereby establish retroactive membership service. The election and payment of these amounts must be made by December 31, 1983. The employer of the member shall, coincident with the payment by the member, pay to the appropriate Retirement System an amount equal to the employer contributions which would otherwise have been made while the member was so excluded from membership."

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

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

**Effect of Amendments.** — The 1981 amendment, in paragraph d of subdivision (4), inserted "at the time of retirement" following "sum of the retirement allowance" near the middle of the first sentence and substituted "compensation received for the 12 months of service prior to retirement" for "average final compensation" at the end of the first sentence.

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, deleted former subdivision (3a). The amendment also rewrote subdivision

(5)c, to the extent that a detailed comparison not possible.

Session Laws 1981 (Reg. Sess., 1982), 1396, s. 5, empowers and directs the Board Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to adjust the employers' rates of contribution to the level necessary to fund the provisions of the act.

The 1983 amendment, effective June 1, 1983, rewrote subdivision (5)c and added subdivision (5)d.

The 1983 (Reg. Sess., 1984) amendment by 1106, s. 2, effective September 1, 1985, and not applicable to agreements entered into before the effective date of the act, rewrote paragraph (5)d.

The 1985 amendment by c. 479, s. 196(d)-(g) effective January 1, 1986, rewrote the first sentence, which formerly read "All employees entering or reentering the service of a participating county, city, or town after the date of participation in the Retirement System of such county, city, or town, except that law-enforcement officers, as defined in subsection (m) G.S. 143-166, may elect to become members of the Law-Enforcement Officers' Benefit and Retirement Fund for the North Carolina Local Governmental Employees' Retirement System," deleted a former first proviso of the first sentence of subdivision (2), which read "Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or any political subdivision thereof, shall not be members," added paragraphs b1 and b2 to subdivision (5), and added subdivision (5a).

## § 128-24. (Effective September 1, 1986) Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. On and after July 1, 1965, new extension service employees in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from such county; provided that on and after July 1, 1965, new extension ser

vice employees who are required to accept a federal Civil Service appointment may elect in writing on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the local Retirement System.

- (1a) Should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member; provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.
- (2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before 90 days following the date of participation in the Retirement System by such county, city or town: Provided, further, that employees of county social services and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation. Any member on or after July 1, 1969, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.
- (3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.
- (3a) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1, effective July 1, 1982.
- (4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.
  - a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).

- b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.
- c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in 1 below reduced by the amount in 2 below.
1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
  2. The actuarial equivalent of the retirement benefits he previously received.
- d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21(3).
- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated

contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforesated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b1), provided that such benefits will be computed in accordance with subsection (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969.

- b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

| <i>Age at Retirement</i> | <i>Percentage Reduction</i> |
|--------------------------|-----------------------------|
| 59                       | 7                           |
| 58                       | 14                          |
| 57                       | 20                          |
| 56                       | 25                          |
| 55                       | 30                          |
| 54                       | 35                          |
| 53                       | 39                          |
| 52                       | 43                          |
| 51                       | 46                          |
| 50                       | 50                          |

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any

time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- c. Should a beneficiary who retired on an early or service retirement allowance be reemployed by an employer participating in the Retirement System on a permanent full-time, part-time, temporary, or on fee-for-service basis, whether contractual or otherwise, the retirement allowance shall be suspended if the beneficiary receives or earns any of the following:
1. Salary or fees or both in excess of one thousand five hundred dollars (\$1,500) per month;
  2. Salary or fees or both in excess of thirteen thousand five hundred dollars (\$13,500) during any consecutive 12 calendar months;
  3. Salary or fees or both during any consecutive 12 calendar months, which is greater than fifty percent (50%) of the reported compensation during the 12 months of service preceding the effective date of retirement; or
  4. Salary or fees or both during any month, which when added to the retirement allowance at retirement exceeds the monthly compensation earned immediately prior to retirement, if reemployed by the same employer within 90 days of the effective date of retirement.

The suspension of the retirement allowance shall be effective as of the first day of the month in which the beneficiary meets the conditions set forth in conditions 1 or 4 of this paragraph and effective as of the first day of the next succeeding month following the month in which the beneficiary meets the conditions set forth in conditions 2 or 3 of this paragraph. The retirement allowance shall be reinstated the month following termination of reemployment or the month following the month in which the conditions set forth in this paragraph are no longer met. The Board of Trustees may adjust the monetary limits in this paragraph by an amount equivalent to any across-the-board salary

increase granted to employees of the State by the General Assembly. Each employer shall report information monthly to the Board of Trustees on forms provided by the Board on each reemployed beneficiary sufficient for the effective enforcement of this paragraph. Notwithstanding the foregoing, any beneficiary may irrevocably elect to recommence membership in the Retirement System immediately upon being restored to service, whereupon the retirement allowance shall cease.

- d. A beneficiary whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is restored to service shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

- (5a) Notwithstanding the provisions of paragraphs c and d of the subdivision (5) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System on January 1, 1986, and who also was a contributing member of this Retirement System on January 1, 1986, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on an early or service retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee by an employer participating in the Retirement System after January 1, 1986, becomes subject to the provisions of G.S. 128-24(5)c. and G.S. 128-24(5)d. on and after January 1, 1989.

- (6) Employees of a sending agency participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 shall remain members entitled to all benefits of the System provided that the requirements of Article 10 of Chapter 126 are met provided further, that a member may retain membership status while serving as an assigned employee or employee on leave under the provisions of Article 10 of Chapter 126 for purposes of receiving the death benefit regardless of whether he and his employer are contributing to his account during the exchange period except that no duplicate benefits shall be paid. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2; 1973, c. 243, s. 1; 1977, c. 783, s. 2; 1981, c. 979, s. 2; 1981 (Reg. Sess. 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1106, ss. 1, 2; 1985, c. 479, s. 196(d)-(g); c. 649, s. 2.)

**Section Set Out Twice.** — The section above is effective September 1, 1986. For this section as in effect until September 1, 1986, see the preceding section, also numbered § 128-24.

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

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

**Effect of Amendments.** — Session Laws 1983 (Reg. Sess., 1984), c. 1106, s. 1, as amended by Session Laws 1985, c. 649, s. 2, effective September 1, 1986, and not applicable to agreements entered into before the effective date of the act, rewrote paragraph (5)c.

The 1983 (Reg. Sess., 1984) amendment by c. 1106, s. 2, effective September 1, 1985, and not applicable to agreements entered into before the effective date of the act, rewrote paragraph (5)d.

The 1985 amendment by c. 479, s. 196(d)-(g), effective January 1, 1986, rewrote the first sen-

tence, which formerly read "All employees entering or reentering the service of a participating county, city, or town after the date of participation in the Retirement System of such county, city, or town, except that law-enforcement officers, as defined in subsection (m) of G.S. 143-166, may elect to become members of the Law-Enforcement Officers' Benefit and Retirement Fund for the North Carolina Local Governmental Employees' Retirement System," deleted a former first proviso of the first sentence of subdivision (2), which read "Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members," added paragraphs b1 and b2 to subdivision (5), and added subdivision (5a).

## § 128-26. Allowance for service.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof not to exceed one month of credit for each two years of prior and membership service or fraction thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for service retirement, disability retirement, early retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal

through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the Teachers' and State Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 128-24(3a), may purchase membership service credits for such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 128-30(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

(h1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one half of the cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the

Board of Trustees and receive credit for the service forfeited at time of withdrawal(s), provided that he left service prior to July 1, 1975. Any person who leaves service after June 30, 1975, and who withdraws his contributions in accordance with G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of membership service, repay in total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover the full cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made. The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System.

(1) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) Leaves of Absence Terminated Prior to July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the board of trustees.

(2) Leaves of Absence Terminating On and After July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983 shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

(m) Omitted Membership Service. — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

(1) within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or

- (2) after 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the average yield on the pension accumulation fund for the preceding calendar year; or
- (3) after three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4.)

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

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

Session Laws 1985, c. 407, s. 2 provides:

"Notwithstanding the provisions of G.S. 128-26(m) or G.S. 135-4(u) any member of the Local Governmental Employees' Retirement System or Teachers' and State Employees' Retirement System, who presents clear and convincing evidence that he was quoted a cost to purchase omitted membership service by either Retirement System within three years prior to the effective date of this act under some other rule, regulation or administrative interpretation, shall continue to have the right to purchase omitted membership service based on the same rule, regulation or administrative interpretation if such cost is paid within 180 days of the effective date of this act."

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

Session Laws 1985, c. 49, s. 230 is a severability clause.

**Effect of Amendments.** — The 1981 amendment, effective September 1, 1981, in-

serted "not to exceed one month of credit for each two years of membership service or fraction thereof" in the first paragraph of subsection (e).

The first 1981 (Reg. Sess., 1982) amendment inserted "prior and" preceding "membership service" near the middle of the first paragraph of subsection (e).

Session Laws 1981 (Reg. Sess., 1982), c. 1283, s. 2, provides: "This act is effective upon ratification [June 22, 1982] and applies to limit sick leave as creditable service on or after September 1, 1981."

The second 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, added the next-to-last paragraph in subsection (e).

Session Laws 1981 (Reg. Sess., 1982), c. 1396, s. 5 empowers and directs the Board of Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to adjust the employers' rates of contribution to the level necessary to fund the provisions of the act.

The 1983 amendment, effective July 1, 1983, added subsection (l).

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted "Law Enforcement Officers' Retirement System" for "Law Enforcement Officers' Benefit and Re-

tirement Fund" in the first sentence and inserted "or the rules or regulations of the Law Enforcement Officers' Retirement System" in the second sentence.

The 1985 amendment by c. 407, s. 1, effective June 17, 1985, added subsection (m).

The 1985 amendment by c. 479, s. 196(h), effective January 1, 1986, added the last paragraph of subsection (e).

The 1985 amendment by c. 649, ss. 1 and 4, effective July 8, 1985, added the last sentence of the next-to-last paragraph of subsection (e) and inserted subsection (h1).

## § 128-27. Benefits.

### (a) Service Retirement Benefits. —

- (1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.
  - (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
  - (3) Repealed by Session Laws 1971, c. 325, s. 12.
  - (4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.
  - (5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.
- (b6) Service Retirement Allowance of Members Retiring on or after July 1, 1978, but prior to July 1, 1983. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1978, but prior to July 1, 1983, a member shall receive a service retirement allowance computed as follows:
- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.
  - (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ( $\frac{1}{4}$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
  - (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable

service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b7) Service Retirement Allowances of Members Retiring on or after July 1, 1983, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1983, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven one-hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

- (2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent ( $\frac{1}{4}$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

- (2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b8) Service Retirement Allowance of Law Enforcement Officers Retiring on or after January 1, 1986. — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1986, a member who is a law enforcement officer or an eligible former law enforcement officer, shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

- (2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent ( $\frac{1}{3}$  of 1%) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowances of Members Retiring on or after July 1, 1985. — Upon retirement from service, in accordance with subsection (a)

above, on or after July 1, 1985, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.
- (2) Notwithstanding the foregoing provisions,
  - a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 128-27(d2);

- b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and
- c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired on Account of Disability. — Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent ( $\frac{1}{10}$  of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability

beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The provisions of this subdivision shall not apply to beneficiaries of the Law Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

- (2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.
- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.
  - a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.
  - b. The actuarial equivalent of the retirement benefits he previously received.
- (3a) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1985, shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.
- (4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement Systems shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

- (5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee other than as a law enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this section. Any beneficiary as hereinbefore described who becomes employed as a law enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this section.

(f) Return of Accumulated Contributions. — Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 128, there shall be deducted from any amount otherwise payable hereunder any amount due any participating employer by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any participating employer; provided that, notwithstanding any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be an

employee, any amount due such participating employer by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such participating employer upon demand; provided, further, that such participating employer shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such participating employer nor for any failure by the Retirement System for any reason to make such deductions. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

(f1) Notwithstanding the foregoing provisions, upon or after retirement any member who was a uniformed fireman and any surviving beneficiary of a member who was a uniformed fireman, shall upon submission of an application, be paid the sum of accumulated contributions, with regular interest thereon, made under those provisions of G.S. 128-30(b)(1) that applied from July 1, 1965, through June 30, 1971, to the extent of the contributions required of the member that were in excess of the contributions required of other members of the Local Governmental Employees' Retirement System covered under the Social Security Act as was from time to time in effect; provided that, the return of contributions shall be payable only if the contributions did not increase the retirement allowance of the member or surviving beneficiary under the provisions of this Chapter.

(1) Death Benefit Plan. — The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby 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 System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees 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 System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, 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 greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2; subject to a maximum of twenty thousand dollars (\$20,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a

member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After June 30, 1969 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978 and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, 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. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
  - a. When employment has been terminated, the last day the member actually worked.
  - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).
- (4) A member on leave of absence from his position as a local governmental employee 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, if applicable. 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 local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars (\$20,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan.

(11) Death Benefit Plan for Law Enforcement Officers. — Under all requirements and conditions as otherwise provided for in subsection (1), except for the requirement that the provisions are effective only after an agreement has been executed by the employer and the Director of the Retirement System, all law enforcement officers who are members of the Retirement System shall participate and be eligible for group life insurance benefits under the Plan, and employers shall fund the cost of these benefits.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained the age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1980, which shall become payable on January 1, 1982, as otherwise provided in G.S. 128-27(h), shall be the percentage available therefrom plus an additional six and six-tenths percent (6.6%); provided that in no case shall the increase exceed a total of seven percent (7%). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of the beneficiary.

(z) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary as of July 1, 1983, which shall become payable on July 1, 1984, shall be three and eight-tenths percent (3.8%) as provided in G.S. 128-27(k) plus an additional four and two-tenths percent (4.2%) to a total of eight percent (8%). The provision of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(z1) Notwithstanding the foregoing provisions, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(aa) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable on allowances in effect on June 30, 1985. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959,

c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56.)

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

**Editor's Note.** — Session Laws 1983, c. 761, s. 233, provides that the amendment by s. 227 of c. 761 shall not diminish any inchoate or accrued rights of any member in service on the date of ratification of the act. The act was ratified July 15, 1983.

Session Laws 1983 (Reg. Sess., 1984), c. 1049, s. 4, provides:

"No inchoate or pending right of any beneficiary in receipt of a disability retirement allowance from the Teachers' and State Employees', Local Governmental Employees', or Law Enforcement Officers' Retirement Systems, on the date of ratification of this act shall be diminished."

The act was ratified July 2, 1984.

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

Session Laws 1985, c. 479, s. 196(u) provides:

"Transfers of Assets of the Law Enforcement Officers' Retirement System to Other Retirement Systems. As of January 1, 1986, assets of the Law Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Employees' Retirement System provided for under Article 3 of Chapter 128 of the General Statutes, and the Supplemental Retirement Income plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

"(1) The regular accumulated contributions of members of the Law Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.

"(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law Enforcement Officers' Retirement System, as

calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.

"(3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the Local Governmental Employees' Retirement System with the amount of such assets to be taken into account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d) (9).

"(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.

"(5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1)."

Session Laws 1985, c. 520, ss. 3 and 4, provide:

"Sec. 3. An active or retired extension service employee who was employed in part by a county and in part by the Cooperative Agricultural Extension Service and who was paid his accumulated contributions from either the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System while retaining his accumulated contributions in the other Retirement System for the same period may on or before June 30, 1986, or 90 days after the effective date of this legislation, whichever comes last, repay in a lump sum the accumulated contributions withdrawn with interest and a fee added thereto to be determined by the Board of Trustees and restore the service credit represented thereby.

"Sec. 4. Nothing in this act should be construed to require any employee of the Cooperative Agricultural Extension Service who has elected to become a member of a retirement system for employees of the United States Government to become a member of the Teachers' and State Employees' Retirement System."

Section 8 of Session Laws 1985, c. 751, provides:

"In order to fund the provisions of this act, the Board of Trustees of the Local Governmental Employees' Retirement System, and Law Enforcement Officers' Retirement System with the advice of its consulting actuary, shall apply any unencumbered actuarial gain remaining after application of actuarial gains to any cost-of-living increase granted to retired members effective July 1, 1985, and shall adjust the normal contribution rate of employers, without increase in the total employers' contribution rates and without changes in the amortization periods for liquidation of unfunded accrued liabilities of employers participating in the Retirement System."

Session Laws 1983, c. 761, s. 259, and Session Laws 1985, c. 479, s. 230, are severability clauses.

#### Effect of Amendments. —

Session Laws 1981, c. 672, in the first sentence of subsection (f), substituted "his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the sum of his contributions and the accumulated regular interest thereon." Session Laws 1981, c. 672, s. 5, makes the 1981 amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 689, effective July 1, 1981, added the second proviso in the first paragraph of subsection (c).

Session Laws 1981, c. 940 added the third proviso, including subdivisions (1) and (2), in the first paragraph of subsection (c) and also added the second paragraph of subsection (c).

Session Laws 1981, c. 975 rewrote subdivision (1) of subsection (e).

Session Laws 1981, c. 978 deleted "in service" following "Any member", substituted "what time" for "which time", and inserted "as of the first day of a calendar month", all near the beginning of subdivision (1) of subsection (a), and rewrote the proviso at the end of subdivision (1) of subsection (a). The amendment also deleted "regardless of his years of creditable service" following "sixty-fifth birthday" near the beginning of subdivision (1) of subsection (b6).

Session Laws 1981, c. 980, effective July 1, 1982, inserted "but prior to July 1, 1982" in the catchline and the text of subsection (d3) and added subsection (d4). The amendment also substituted "of this section" for "above" following "subsection (c)" in subsection (d3).

Session Laws 1981, c. 981, added the first sentence of subsection (l), and added subsection (y).

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1983, in subsection (b6) inserted "but prior to July 1, 1983" in two places and substituted "Allowance" for "Allowances." The amendment also added subsection (b7). In amending subsection (b6), the amendment referred to "rewriting the words prior to the first semi-colon." "The first colon" was plainly intended, and the amendment has been given effect.

Session Laws 1983, c. 467, effective June 8, 1983, substituted "not earlier than 60 days from the date of termination of service" for "not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System" in the first sentence of subsection (f).

Session Laws 1983, c. 761, effective July 1, 1983, in s. 226 of the act added subdivision (a)(4), and in s. 227 of the act substituted "had attained the age of 60 years with at least five years of creditable service" for "had attained age 55 regardless of length of service" in subdivision (m)(1).

The 1983 (Reg. Sess., 1984) amendment by c. 1019, effective October 1, 1984, deleted subdivision (a)(2), relating to members in service who attain age 70.

The 1983 (Reg. Sess., 1984) amendment by c. 1044, effective June 29, 1984, added subsection (z).

The 1983 (Reg. Sess., 1984) amendment by c. 1049, effective January 1, 1984, in the first paragraph of subsection (l), rewrote subdivision (2), deleted subdivision (3), relating to any member who had applied for and was entitled to receive a disability retirement allowance under the System, and rewrote the last sentence of that paragraph.

The 1983 (Reg. Sess., 1984) amendment by c. 1086, effective July 1, 1984, added subsection (f1).

The 1985 amendment by c. 138, effective July 1, 1985, substituted "fireman and any surviving beneficiary of a member who was a uniformed fireman, shall" for "fireman, shall" near the beginning of subsection (f1), and inserted "or surviving beneficiary" following "increase the retirement allowance of the member" near the end of subsection (f1).

The 1985 amendment by c. 348, s. 2, effective July 1, 1985, added the second paragraph of subsection (f).

The 1985 amendment by c. 479, s. 196(i)-(n), effective January 1, 1986, deleted "uniformed policeman or" preceding "fireman" near the end of subdivision (a)(1), added subdivision (a)(5), added subsection (b8), added the last paragraph of subsection (c), added the second paragraph of subdivision (e)(1), added new subsection (l1), and rewrote subdivision (m)(1), which formerly read "The member had attained age 50 with at least 20 years of creditable service, or had attained the age of 60 years with at least five years of creditable service, or had credit for at least 30 years of service regardless of age."

The 1985 amendment by c. 520, s. 2, effective July 1, 1985, added the last sentence of the first paragraph of subsection (f).

The 1985 amendment by c. 649, ss. 8 and 10, effective July 8, 1985, added subdivisions (e)(3a) and (e)(5).

The 1985 amendment by c. 751, s. 1, effective July 1, 1985, changed the catchline of subsection (b7) and inserted "but prior to July 1, 1985" in the introductory language of subsection (b7).

The 1985 amendment by c. 751, s. 2, effective July 1, 1985, as amended by Session Laws 1985, c. 791, s. 56, added subsection (b9).

The 1985 amendment by c. 751, s. 3, effective July 1, 1985, added subsection (aa).

The 1985 amendment by c. 751, s. 4, effective July 1, 1985, added subsection (z1).

The 1985 amendment by c. 751, s. 6, effective Jan. 1, 1986, substituted "one and fifty-eight one hundredths percent (1.58%)" for "one and fifty-seven one hundredths percent (1.57%)" in subdivision (b8)(1).

## § 128-28. Administration and responsibility for operation of System.

(c) **Members of Board.** — The Board shall consist of the Board of Trustees of the Teachers' and State Employees' Retirement System, and three local governmental officials designated by the Governor. One local governmental official shall be a mayor, a member of the governing body, or a full-time officer of a city or town participating in the Retirement System, and one local governmental official shall be a county commissioner or a full-time officer of a county participating in the Retirement System, and one local governmental official shall be a law-enforcement officer employed by an employer participating in the Retirement System. The Governor shall designate these three local governmental officials on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the three local governmental officials designated by the Governor shall serve on the Board in addition to the regular duties of their city, town, or county office: Provided, that if for any reason any local governmental official so designated vacates the city, town, or county office which he held at the time of this designation, the Governor shall designate some other local governmental official to serve until the next regular date for the designation of local governmental officials to serve on the Board.

(1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781, 1969, c. 442, s. 15; 1973, c. 243, s. 8; 1985, c. 479, s. 196(o).)

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

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

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

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, substituted "three" for "two" in the first sentence of subsection (c) and in two places in the third sentence of subsection (c) and added "and one local governmental official shall be a law-enforcement officer employed by an employer participating in the Retirement System" at the end of the second sentence of subsection (c).

**§ 128-30. Method of financing.**

(b) Annuity Savings Fund. — The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of member to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

- (1) Prior to July 1, 1951, each participating employer shall cause to be deducted from the salary of each member of each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member or a Class C member, and four per centum (4%) in the case of a Class B member; provided, however, that with respect to any member who is covered under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his actual compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24, such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required. In determining the amount earned by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer monthly, or at least quarterly, each year as to the amount of fees received by such member as compensation during the period, and each month, or at least quarterly, such member shall pay to his employer the proper per centum of such compensation received from fees, which shall be considered as deductions by the employer as provided in subdivisions (1) and (2) of this subsection.

Notwithstanding the foregoing, effective July 1, 1965, with respect to the period of service commencing on July 1, 1965, and ending December 31, 1965, the rates of such deductions shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars (\$4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars (\$4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deduction shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1976, the rate of such deductions shall be five per centum

(5%) of the portion of compensation not in excess of five thousand six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of five thousand six hundred dollars (\$5,600). Such rates shall apply uniformly to all members of the Retirement System, irrespective of class.

Notwithstanding the foregoing, effective July 1, 1976, with respect to compensation paid on and after July 1, 1976, the rate of such deductions shall be six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of the Retirement System, irrespective of class.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Article. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.
- (3) The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this Article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.
- (4) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer for the sole purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer. This approval shall be made prior to the purchase of the creditable service, is limited to a career total of four years for each member, and may be obtained in the following manner:
  - a. Approved leave of absence. — Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
  - b. No educational leave policy. — Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of

the compensation the member was earning immediately prior to the interrupted service.

- c. Educational program prior to July 1, 1981. — Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the board of trustees upon the advice of the consulting actuary, plus a fee to be determined by the board of trustees.

Payments required to be made by the member and/or the employer under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

- (b1) Pick Up of Employee Contributions. — Anything within this section to the contrary notwithstanding, effective July 1, 1982, an employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, may elect to pick up and pay the contributions which would be payable by the employees as members under subsection (b) of this section with respect to the service of employees after June 30, 1982.

The members' contributions picked up by an employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by an employer shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by his employer. This deduction, however, shall not reduce his compensation as defined in subdivision (7a) of G.S. 128-21. Picked-up contributions shall be transmitted to the System monthly for the preceding month by means of a warrant drawn by the employer and payable to the Local Governmental Employees' Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. In the case of a failure to fulfill these conditions the provisions of subsection (f)(3) [subsection (g)(3)] of this section shall apply.

- (d) Pension Accumulation Fund. — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all

pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the Board of Trustees, an amount equal to a certain percentage of the actual compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation for any employer whose participation commenced prior to July 1, 1951, the normal contribution shall be three percent (3%) for general employees and five percent (5%) for firemen and policemen, and the accrued liability contribution shall be three percent (3%) for general employees and six percent (6%) for firemen and policemen. Until the first valuation for any employer whose participation commenced on or after July 1, 1951, the normal contribution shall be four percent (4%) for general employees and six and two-thirds percent ( $6\frac{2}{3}\%$ ) for firemen and policemen, and the accrued liability contribution shall be four percent (4%) for general employees and eight percent (8%) for firemen and policemen.
- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board to make each valuation required by this Article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the actual compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the pro rata share of the cost of administration of the Retirement System. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum (1%) of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the Board of Trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation. A normal contribution rate shall be determined separately for general employees as a group and for law enforcement officers as a group, these rates to be applied to the respective group payrolls of each employer in determining the normal contribution required of each employer.
- (3) The "accrued liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who are entitled to prior service certificates, and shall be paid for a period of approximately 30 years, provided that the length of the period of payment for each employer after contributions begin shall be the same for all employers and shall be determined by the Board of Trustees as the result of actuarial valuations.

- (4) At the end of the first year following the date of participation for each employer, the accrued liability payable by such employer shall be set by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "accrued liability contribution rate for such employer shall be the per centum of the total annual compensation of all members employed by such employer which is equivalent to four per centum (4%) of the amount of such accrued liability. The expense of making such actuarial valuation to determine the accrued liability contribution for each employer shall be paid by such employer. The accrued liability contribution rate shall be increased on the basis of subsequent valuation if benefits are increased over those included in the valuations on the basis of which the original accrued liability contribution rate was determined.
- (5) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total earned compensation of all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.
- (6) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the Board of Trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members, as separately determined for general employees and law-enforcement officers.
- (7) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.
- (8) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.
- (9) Notwithstanding the foregoing provisions of this subsection, beginning with the December 31, 1985 valuation, the actuary shall determine an additional 'accrued liability contribution' on account of each employer's law enforcement officers. This contribution shall be that percentage of law enforcement officer compensation necessary to liquidate the 'existing unfunded accrued liability' over a period of years to be determined by the Board of Trustees. The 'existing unfunded accrued liability' for each employer shall be equal to the sum of two liabilities. The first is that portion of the unfunded accrued liability of the Law Enforcement Officers' Retirement System as of December 31, 1985, attributable to the accrued liability for each employer's law enforcement officers participating in that System, all based on actuarial assumptions and methods applicable to that System. The second is the accrued liability for additional benefits payable to each em-

ployer's law enforcement officers who are members of this Retirement System on December 31, 1985. The 'accrued liability contribution' determined on the basis of this paragraph shall be added to that determined under subdivision (3) and shall be included in the total amount payable under subdivision (5).

(1939, c. 390, s. 10; 1941, c. 357, s. 8; 1943, c. 535; 1945, c. 526, s. 6; 1951, c. 74, ss. 7-9; 1955, c. 1153, s. 7; 1959, c. 491, s. 9; 1965, c. 781; 1967, c. 978, ss. 10; 1971, c. 325, ss. 17-19; 1975, 2nd Sess., c. 983, ss. 129, 130; 1981, c. 1000, s. 1, 3; 1981 (Reg. Sess., 1982), c. 1282, s. 9; 1985, c. 479, s. 196(p)-(r); c. 539, s. 1, 2.)

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

**Editor's Note.** — "Subsection (g)(3)" has been inserted in brackets in the third paragraph of subsection (b1) to correct the erroneous reference to subsection (f)(3) in the subsection as enacted.

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

Session Laws 1985, c. 479, s. 196(u) provides: "Transfers of Assets of the Law Enforcement Officers' Retirement System to Other Retirement Systems. As of January 1, 1986, assets of the Law Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Employees' Retirement System provided for under Article 3 of Chapter 28 of the General Statutes, and the Supplemental Retirement Income Plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

"(1) The regular accumulated contributions of members of the Law Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.

"(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law Enforcement Officers' Retirement System, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.

"(3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the Local Gov-

ernmental Employees' Retirement System with the amount of such assets to be taken into account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d) (9).

"(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.

"(5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1)."

Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 81, and Session Laws 1985, c. 479, s. 230, are severability clauses.

**Effect of Amendments.** — The 1981 amendment rewrote subdivision (4) of subsection (b), and deleted the former second sentence of subdivision (1) of subsection (d), which read: "In addition, such contributions by participating employers will be required for each member on leave of absence who makes monthly contributions in accordance with (b)(4) above, and will be based on the salary or wage the member was receiving at the time the leave of absence was granted."

The 1982 (Reg. Sess., 1982) amendment, effective July 1, 1982, added subsection (b1).

The 1985 amendment by c. 479, s. 196(p)-(r), effective January 1, 1986, added the last sentence of subdivision (2), added "as separately determined for general employees and law-enforcement officers" at the end of subdivision (d)(6), and added new subdivision (d)(9).

The 1985 amendment by c. 539, ss. 1, 2, effective July 1, 1985, in subdivision (b)(4), substituted "This approval shall be made prior to the purchase of the creditable service, is limited" for "This creditable service shall be limited" in the second sentence of the introductory paragraph, and rewrote the last paragraph.

### § 128-31. Exemptions from execution.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, an optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary. (1939, c. 390, s. 1; 1985, c. 402; c. 649, s. 5.)

**Effect of Amendments.** — The 1985 amendment by c. 402, effective June 17, 1985, inserted "Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20," at the beginning of this section.

The 1985 amendment by c. 649, s. 5, effective July 8, 1985, added the last sentence.

**Legal Periodicals.** — For article analyzing North Carolina's exemptions law, see 18 Wake Forest L. Rev. 1025 (1982).

## Chapter 129.

### Public Buildings and Grounds.

#### Article 7.

#### North Carolina Capital Building Authority.

129-40. Creation of North Carolina Capital Building Authority.

#### Sec.

129-42. General powers and duties of Authority.

129-42.1. Agencies and institutions.

129-42.2. Selection of architects or engineers.

### ARTICLE 7.

#### *North Carolina Capital Building Authority.*

#### **129-40. Creation of North Carolina Capital Building Authority.**

(a) There is hereby created the North Carolina Capital Building Authority which shall consist of the following: five members to be appointed by the Governor, and four members to be appointed by the General Assembly in accordance with G.S. 120-121, two each upon the recommendation of the President of the Senate and the Speaker of the House of Representatives.

(b) The Governor shall designate the chairman from among the members to serve at his pleasure, and the authority shall elect a vice-chairman to serve at his pleasure. The Secretary of Administration shall designate an officer or employee of the Department of Administration to serve as Secretary to the authority.

(c) Members of the Commission shall be appointed for two-year terms to commence July 1, 1983, and appointments shall be made biennially thereafter.

(d) Vacancies in appointments made by the Governor shall be filled by the Governor, and vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) A quorum shall be six members of the Authority. (1967, c. 994, s. 1; 1975, c. 879, s. 46; 1979, c. 3, § 1; 1981 (Reg. Sess., 1982), c. 1191, s. 29; 1983, c. 717, s. 43.1.)

**Editor's Note.** — Session Laws 1983, c. 717, § 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

#### **Effect of Amendments.** —

The 1981 (Reg. Sess., 1982) amendment (the Separation of Powers Act of 1982), in this section as it read prior to the 1983 amendment, substituted "the General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representa-

tives, and one upon the recommendation of the President of the Senate" for "a member of the Senate to be appointed by the Lieutenant Governor; a member of the House of Representatives to be appointed by the Speaker of the House" in the first sentence and added the last three sentences.

The 1983 amendment, effective July 11, 1983, rewrote this section.

#### **129-42. General powers and duties of Authority.**

The North Carolina Capital Building Authority shall have the following powers and duties:

- (1) To select architects, engineers, and other consultants in accordance with established State policy to plan and supervise the construction

of buildings and other capital improvement projects for those projects for which the North Carolina General Assembly may make appropriations, and all other agencies which may be brought under this Article or which may come under this Article by choice;

- (2) Repealed by Session Laws 1985, c. 757, s. 168(b), effective July 1985.
- (3) To submit an annual report of its activities to the North Carolina Capital Planning Commission and to the Joint Legislative Commission on Governmental Operations;
- (4) To submit a report to the North Carolina Capital Planning Commission and to the Joint Legislative Commission on Governmental Operations on completion of all major projects; and
- (5) To establish by rule a process by which there is adequate notice in the area where such construction is to take place that the North Carolina Capital Building Authority will be selecting architects, engineers and other consultants to provide professional services for capital improvement projects. (1967, c. 994, s. 3; 1969, c. 112; 1981, c. 502, ss. 2; 1983, c. 717, ss. 43.3, 43.4; 1985, c. 757, s. 168.)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, deleted "in accordance with plans developed by the North Carolina Capital Planning Commission" preceding "for those projects for which the North Carolina General Assembly" in subdivision (1), and added the second sentence of subdivision (2).

The 1983 amendment, effective July 11, 1983, inserted "and to the Joint Legislative

Commission on Governmental Operations" subdivisions (3) and (4) and added subdivision (5).

The 1985 amendment, effective July 1, 1985, deleted "and employ" following "To select" subdivision (1), deleted subdivision (2), relating to the receipt of bids and the awarding contracts, and in subdivision (5) substituted "selecting architects, engineers, and other consultants to provide professional services for capital improvement projects" for "awarding contracts for planning, design, or construction."

## § 129-42.1. Agencies and institutions.

The North Carolina Capital Building Authority shall exercise those powers and duties set forth in G.S. 129-42 for all institutions and agencies of the State of North Carolina except constituent institutions of the University of North Carolina as defined in Chapter 116 of the General Statutes of North Carolina, community colleges, technical colleges and technical institutes, as defined in G.S. 115D-2, and public schools, as defined in G.S. 115C-75, that are under the supervision of local school administrative units as provided in Chapter 115 of the General Statutes. (1969, c. 112, s. 2; 1977, c. 750; 1979, c. 161, s. 1; 1983, c. 717, s. 43.5.)

### **Editor's Note.** —

Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

### **Effect of Amendments.** —

The 1983 amendment, effective July 11, 1983, substituted "community colleges, technical colleges and technical institutes, as defined in G.S. 115D-2, and public schools as defined in G.S. 115C-75, that are under the supervision of

local school administrative units, as provided in Chapter 115C of the General Statutes" for "community colleges, industrial education centers, and technical institutes, as defined in G.S. 115A-2, and public schools, as defined in G.S. 115-6, that are under the supervision of county or city administrative units, as provided in General Statutes Chapter 115" at the end of the section.

## 129-42.2. Selection of architects or engineers.

State agencies and institutions in the selection of architects or engineers all select not less than three persons or firms for each project to be designed for that institution. This selection of not less than three firms or individuals shall be forwarded to the Secretary of Administration, and the final selection shall be made from the group by the North Carolina Capital Building Authority; provided, that the Authority may, after receiving the list, request one or more additional names from the agency or institution, and when that supplemental list is received, may consider that along with the original list. (1969, c. 57; 1975, c. 879, s. 46; 1983, c. 717, s. 44.)

**Editor's Note.** — Session Laws 1983, c. 717, § 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, added the proviso at the end of the second sentence.

## Chapter 130. Public Health.

### Article 1.

#### General Provisions.

Sec.

130-1 to 130-3. [Repealed.]

### Article 2.

#### Administration of Public Health Law.

130-9 to 130-11. [Repealed.]

### Article 3.

#### Local Health Departments.

130-13 to 130-21. [Repealed.]

130-23. [Repealed.]

### Article 3A.

#### Board of Health in a Consolidated City-County.

130-23.1 to 130-23.4. [Repealed.]

### Article 4.

#### Incorporation of Health Codes by Reference.

130-24. [Repealed.]

130-24.1. [Repealed.]

130-25, 130-26. [Repealed.]

### Article 6.

#### State Laboratory of Public Health.

130-30 to 130-32. [Repealed.]

### Article 7.

#### Vital Statistics.

130-36 to 130-44. [Repealed.]

130-46. [Repealed.]

130-48 to 130-52. [Repealed.]

130-53 to 130-58. [Repealed.]

130-59 to 130-64. [Repealed.]

130-65 to 130-69. [Repealed.]

130-70 to 130-73. [Repealed.]

### Article 8.

#### Infectious Diseases Generally.

130-80 to 130-86. [Repealed.]

### Article 9.

#### North Carolina Immunization Law.

130-87 to 130-93.01. [Repealed.]

### Article 10.

#### Venereal Disease.

Part 1. Venereal Disease.

Sec.

130-94 to 130-96. [Repealed.]

130-99 to 130-105. [Repealed.]

Part 2. Inflammation of the Eyes  
of the Newborn.

130-106 to 130-111. [Repealed.]

130-112. [Repealed.]

### Article 11.

#### Tuberculosis.

Part 1. Prevention of Spread of  
Tuberculosis.

130-113, 130-114. [Repealed.]

### Article 12.

#### Sanitary Districts.

130-123 to 130-134. [Repealed.]

130-141. [Repealed.]

130-143 to 130-156.5. [Repealed.]

### Article 13.

#### Sanitary Sewage Disposal.

130-160. [Repealed.]

### Article 13A.

#### Sanitation of Agricultural Labor Camps.

130-166.1 to 130-166.15. [Repealed.]

### Article 13B.

#### Solid Waste Management.

130-166.16 to 130-166.21C. [Repealed.]

130-166.21D. Construction.

130-166.21E, 130-166.21F. [Repealed.]

### Article 13C.

#### Ground Absorption Sewage Disposal System Act of 1973.

130-166.22 to 130-166.38. [Repealed.]

### Article 13D.

#### North Carolina Drinking Water Act.

130-166.39 to 130-166.61. [Repealed.]

**Article 13E.**

**Ground Absorption Sewage Treatment and Disposal Act of 1981.**

ec.  
30-166.62 to 30-166.72. [Repealed.]

**Article 14.**

**Meat Markets.**

30-167. [Repealed.]  
30-168. [Repealed.]  
30-169. [Repealed.]

**Article 14A.**

**Sanitation of Shellfish and Crustacea.**

30-169.01 to 30-169.03. [Repealed.]

**Article 14B.**

**Sanitation of Scallops.**

30-169.04 to 30-169.06. [Repealed.]

**Article 14C.**

**Swimming Pools.**

30-169.1 to 30-169.6. [Repealed.]

**Article 15.**

**Private Hospitals and Public and Private Educational Institutions.**

30-170 to 30-170.02. [Repealed.]

**Article 15A.**

**Home Health Agencies.**

30-170.1, 30-170.2. [Repealed.]

**Article 16.**

**Regulation of the Manufacture of Bedding.**

30-171 to 30-179. [Repealed.]

**Article 17.**

**Cancer Control Program.**

30-180 to 30-186. [Repealed.]

**Article 17A.**

**Cancer Studies.**

30-186.2. [Repealed.]  
30-186.4 to 30-186.8. [Repealed.]

**Article 17B.**

**Arthritis Program.**

30-186.9. [Repealed.]

**Article 17C.**

**Cancer Control Program.**

30-186.15 to 30-186.24. [Repealed.]

**Article 18.**

**Midwives.**

Sec.  
130-187. [Repealed.]

**Article 19.**

**Loan Fund for Dental Students.**

130-188 to 130-190. [Repealed.]

**Article 20.**

**Surgical Operations on Inmates.**

130-191. [Transferred.]

**Article 20A.**

**Treatment of Self-Inflicted Injuries upon Prisoners.**

130-191.1. [Transferred.]

**Article 21.**

**Postmortem Medicolegal Examinations.**

130-192, 130-193. [Repealed.]  
130-196 to 130-202.7. [Repealed.]

**Article 21A.**

**Corneal Tissue Removal.**

130-202.8, 130-202.9. [Repealed.]

**Article 22**

**Remedies.**

130-203 to 130-205. [Repealed.]

**Article 23.**

**Mosquito Control in General.**

130-206 to 130-209. [Repealed.]

**Article 24.**

**Mosquito Control Districts.**

130-210 to 130-215. [Repealed.]  
130-220. [Repealed.]

**Article 25.**

**State Air Hygiene Program.**

130-227 to 130-229. [Repealed.]

**Article 26.**

**Regulation of Ambulance Services.**

130-230. [Repealed.]  
130-232 to 130-235. [Repealed.]

**Article 27.****Chronic Renal Disease Control Program.**

Sec.

130-236. [Repealed.]

130-238, 130-239. [Repealed.]

**Article 28.****Mass Gatherings.**

130-240 to 130-253. [Repealed.]

**Article 29.****Perinatal Health Care.**

130-254 to 130-263. [Repealed.]

**Article 30.****Nursing Home Patients' Bill of Rights.**

Sec.

130-264 to 130-277. [Repealed.]

130-278 to 130-282. [Repealed.]

**Article 31.****Glaucoma and Diabetes Program.**

130-283 to 130-285. [Repealed.]

**ARTICLE 1.****General Provisions.**

**§§ 130-1 to 130-3:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — Session Laws 1983, c. 891, ss. 16, 16.1, and 17 provide:

"Sec. 16. This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted."

"Sec. 16.1 If any bill ratified by the 1983 General Assembly, whether ratified before or after this bill, amends a part of Chapter 130 of the General Statutes which is repealed by this bill, the bill will be construed to amend the appropriate part of the new Chapter 130A of the General Statutes enacted by this bill.

"Sec. 17 This act shall become effective January 1, 1984, except that the provision in G.S. 130A-185 requiring the vaccination of all cats over four months of age shall become effective July 1, 1984. However, upon ratification of this act, the Commission for Health Services is authorized to adopt rules under the provisions of this act; provided, the rules shall not be effective before the effective date of the act."

The act was ratified July 20, 1983.

Subsection (a) of repealed § 130-3 was repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984. Session Laws 1983, 775, ss. 5 and 6, provide:

"Sec. 5 Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, and Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

"Sec. 6 Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapter 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131 is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains severability clause.

Repealed § 130-3 was also amended by Session Laws 1981, c. 130, s. 1, and c. 340, ss. 1-

## ARTICLE 2.

*Administration of Public Health Law.*

§ 130-9 to 130-9.4: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 30A.

**Editor's Note.** — As to the effective date, instruction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the editor's note under §§ 130-1 to 130-3.

Subsection (e) of repealed § 130-9 was repealed by Session Laws 1983, c. 775, s. 1. Session Laws 1983, c. 775, ss. 5 and 6, provide: "Sec. 5. Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

"Sec. 6. Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains a severability clause.

Repealed § 130-9 was also amended by Session Laws 1981, c. 586, s. 1; c. 614, s. 8; and c. 833.

130-9.5: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Cross References.** — As to health care facilities and services, see now Chapter 131E.

**Editor's Note.** — Session Laws 1983, c. 775, s. 5, provides: "Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 2, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983."

Session Laws 1983, c. 775, s. 6, provides: Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1,

170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains a severability clause.

Repealed § 130-9.5 was amended by Session Laws 1983, c. 143, ss. 4 to 9, effective July 1, 1983. Pursuant to Session Laws 1983, c. 775, s. 6, the amendment by c. 143 was effectuated in § 131E-128.

130-9.6: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 30A.

**Editor's Note.** — As to the effective date,

construction and effect of Session Laws 1983, c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

**§ 130-9.7:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Cross References.** — As to health care facilities and services, see now Chapter 131E.

**Editor's Note.** — Session Laws 1983, c. 775, s. 5, provides "Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of the ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983."

Session Laws 1983, c. 775, s. 6, provides: "Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General

Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131 is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains severability clause.

Repealed § 130-9.7 was enacted by Session Laws 1981, c. 667, ss. 1, 2.

**§§ 130-10, 130-11:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-11 was amended by Session Laws 1981, c. 562, s. 4.

### ARTICLE 3.

#### *Local Health Departments.*

**§§ 130-13 to 130-21:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-14 was amended by Session Laws 1981, c. 238 and c. 408. Repealed § 130-16 was amended by Session Laws 1981, c. 104. Repealed § 130-17 was amended by Session Laws 1981, c. 130, s. 2; c. 281; and c. 949, s. 4.

**§ 130-23:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 3A.

*Board of Health in a Consolidated City-County.*

§§ 130-23.1 to 130-23.4: Repealed by Session Laws 1981, c. 130, s. 3, effective July 1, 1981.

## ARTICLE 4.

*Incorporation of Health Codes by Reference.*

§ 130-24: Repealed by Session Laws 1981, c. 614, s. 11, effective July 1, 1981.

§ 130-24.1: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A. c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, Repealed § 130-24.1 was enacted by Session Laws 1981, c. 614, s. 11.

§§ 130-25, 130-26: Repealed by Session Laws 1981, c. 614, s. 11, effective July 1, 1981.

## ARTICLE 6.

*State Laboratory of Public Health.*

§§ 130-30 to 130-32: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A. construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date,

## ARTICLE 7.

*Vital Statistics.*

§§ 130-36 to 130-44: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A. construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date,

**§ 130-46:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-46 was amended by Session Laws 1981, c. 187, s. 1.

**§§ 130-48 to 130-52:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**§§ 130-53 to 130-58:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**§§ 130-59 to 130-64:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-63 was amended by Session Laws 1981, c. 554.

**§§ 130-65 to 130-69:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**§§ 130-70 to 130-73:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

construction and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date,

## ARTICLE 8.

### *Infectious Diseases Generally.*

§ 130-80 to 130-86: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

Repealed § 130-82.2 was enacted by Session Laws 1981, c. 81, s. 1.

## ARTICLE 9.

### *North Carolina Immunization Law.*

§§ 130-87 to 130-93.01: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

Repealed § 130-90 was amended by Session Laws 1981, c. 44.

## ARTICLE 10.

### *Venereal Disease.*

#### Part 1. Venereal Disease.

§§ 130-94 to 130-96: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date,

§§ 130-99 to 130-105: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date,

## Part 2. Inflammation of the Eyes of the Newborn.

§§ 130-106 to 130-111: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-108 was amended by Session Laws 1981, c. 614, s. 12. Repealed § 130-110 was amended by Session Laws 1981, c. 614, s. 13.

§ 130-112: Repealed by Session Laws 1983, c. 897, s. 2, effective October 1, 1983.

**Cross References.** — For present provisions as to the regulation of midwifery, see § 90-178.1 et seq.

**Editor's Note.** — Session Laws 1983, c. 897, s. 3, provides:

"Sec. 3. This act shall become effective October 1, 1983. Any person who on October 1, 1983, had been a practicing midwife in North Carolina for more than 10 years may continue to assist at childbirth without approval under

this Article. Any other person authorized to practice midwifery on September 30, 1983, may continue to practice midwifery without approval under this Article until April 1, 1984. No annual fee shall be collected for 1983."

Repealed § 130-112 was also repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

The repealed section was amended by Session Laws 1981, c. 614, s. 14, and c. 676, s. 4.

## ARTICLE 11.

### *Tuberculosis.*

#### Part 1. Prevention of Spread of Tuberculosis.

§§ 130-113, 130-114: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 12.

### *Sanitary Districts.*

§§ 130-123 to 130-134: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-128 was amended by Session Laws 1983, c. 130, s. 3, effective April 1, 1983. The amendment by c. 130 appears to have been incorporated in § 130A-55.

Session Laws 1983, c. 925, s. 1, effective January 1, 1984, added a new subdivision to re

pealed § 130-128. Section 2 of c. 925 recodified this subdivision as subdivision (22) of § 130A-55, effective Jan. 1, 1984.

Session Laws 1983, c. 55, effective Mar. 10, 1983, added a new § 130-128.1, which has been codified pursuant to Session Laws 1983, c. 891, s. 16.1, as § 130A-55.1.

Session Laws 1983, c. 608, effective June 24, 1983, also added a new § 130-128.1, which has apparently been incorporated in the introduction to § 130A-55.

Repealed § 130-126 was amended by Session Laws 1981, c. 186, s. 1. Repealed § 130-126.1 was enacted by Session Laws 1981, c. 201. Repealed §§ 130-126.2 and 130-126.3 were enacted by Session Laws 1981 (Reg. Sess., 1982), c. 1271, s. 1. Repealed § 130-127 was amended by Session Laws 1981, c. 186, s. 2. Repealed § 130-128 was also amended by Session Laws 1981, c. 629; c. 655; c. 820, ss. 1-3; and c. 898, ss. 1-4, and by Session Laws 1981 (Reg. Sess., 1982), c. 1237. Repealed § 130-130 was amended by Session Laws 1981, c. 919, s. 13.

**§ 130-141:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

**§§ 130-143 to 130-156.5:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-156.3 was amended by Session Laws 1983, c. 537, effective June 16, 1983. The amendment appears to have been incorporated in § 130A-81.

Repealed § 130-145 was amended by Session Laws 1981, c. 186, s. 3. Repealed §§ 130-147 to 130-149 were amended by Session Laws 1981, c. 186, ss. 4 to 6. Repealed § 130-153 was amended by Session Laws 1981, c. 20, ss. 1, 2. Repealed § 130-156.2 was amended by Session Laws 1981, c. 186, s. 7. Repealed § 130-156.5 was enacted by Session Laws 1981, c. 951.

## ARTICLE 13.

### *Sanitary Sewage Disposal.*

**§ 130-160:** Repealed by Session Laws 1981, c. 949, s. 1, effective January 1, 1982.

## ARTICLE 13A.

### *Sanitation of Agricultural Labor Camps.*

**§§ 130-166.1 to 130-166.15:** Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 13B.

*Solid Waste Management.*

§§ 130-166.16 to 130-166.21C: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Session Laws 1983, c. 795, s. 1, effective July 18, 1983, added a subdivision (23) to repealed § 130-166.16. Section 8.1 of c. 795 recodified the subdivision as subdivision (25) of § 130A-290, effective Jan. 1, 1984.

Repealed §§ 130-166.17 and 130-166.18 were amended effective July 18, 1983, by Session Laws 1983, c. 795, ss. 2 and 3. Effective Jan. 1, 1984, s. 8.1 of c. 795 made these amendments to §§ 130A-291 and 130A-294, respectively.

Repealed § 130-166.18 was also amended by Session Laws 1983, c. 546, s. 1, effective June 16, 1983, and by Session Laws 1983, c. 605, s. 1, effective June 24, 1983. These amendments appear to have been incorporated in § 130A-294.

In addition, repealed § 130-166.16 was amended by Session Laws 1981, c. 704, s. 4. Repealed §§ 130-166.17A and 130-166.17B were enacted by Session Laws 1981, c. 704, s. 5. Repealed § 130-166.18 was amended by Session Laws 1981, c. 704, s. 6. Repealed §§ 130-166.18A and 130-166.19A were enacted by Session Laws 1981, c. 704, s. 7. Repealed § 130-166.18B was enacted by Session Laws 1981, c. 704, s. 24. Repealed § 130-166.21 was amended by Session Laws 1981, c. 480, s. 3. Repealed § 130-116.21B was amended by Session Laws 1981, c. 704, s. 7.

## § 130-166.21D. Construction.

(b) The solid waste management program concerning hazardous waste maintained by the State under this Article shall be no more comprehensive than the hazardous waste program prescribed under the federal act. The rules and standards concerning hazardous waste promulgated under this Article shall be no more stringent than those rules, regulations and standards promulgated under the federal act; provided, that in establishing acceptable water table levels, location in relation to water supplies and population centers and appropriate buffer zones, the rules and standards promulgated under this Article shall be at least as comprehensive and may be more comprehensive than the hazardous waste program prescribed under the federal act. (1977, 2nd Sess., c. 1216; 1979, c. 464, s. 3; 1981, c. 704, s. 28.1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, only subsection (b) is set out.

**Cross References.** — For provision similar to subsection (a) of this section, see § 130A-305.

**Editor's Note.** —

Session Laws 1981, c. 704, ss. 1 and 2, provide:

"Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

"Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for man-

agement of hazardous and low-level radioactive waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management."

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

**Effect of Amendments.** —

The 1981 amendment added the proviso at the end of the second sentence of subsection (b).

§§ 130-166.21E, 130-166.21F: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-166.21E was amended by Session Laws 1981, c. 480, s. 4 and c. 704, s. 7.

### ARTICLE 13C.

#### *Ground Absorption Sewage Disposal System Act of 1973.*

§§ 130-166.22 to 130-166.38: Repealed by Session Laws 1981, c. 949, s. 2, effective January 1, 1982.

### ARTICLE 13D.

#### *North Carolina Drinking Water Act.*

§§ 130-166.39 to 130-166.61: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-166.47 was amended by Session Laws 1981, c. 919, s. 14. Repealed § 130-166.49 was amended by Session Laws 1981, c. 353, ss. 1, 2. Repealed § 130-166.54 was amended by Session Laws 1981, c. 226. Repealed § 130-166.55 was amended by Session Laws 1981, c. 562, s. 9.

### ARTICLE 13E.

#### *Ground Absorption Sewage Treatment and Disposal Act of 1981.*

§§ 130-166.62 to 130-166.72: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed §§ 130-166.62 through 130-166.72 were amended by Session Laws 1981, c. 949, s. 3. Repealed § 130-166.65 was amended by Session Laws 1981, c. 1127, s. 47.

ARTICLE 14.

*Meat Markets.*

§ 130-167: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

Repealed § 130-167 was amended by Session Laws 1981, c. 463, s. 1.

§ 130-168: Repealed by Session Laws 1981, c. 463, s. 2, effective July 1 1981.

§ 130-169: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

Repealed § 130-169 was amended by Session Laws 1981, c. 463, s. 3.

ARTICLE 14A.

*Sanitation of Shellfish and Crustacea.*

§§ 130-169.01 to 130-169.03: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

construction, and effect of Session Laws 1983 c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date,

ARTICLE 14B.

*Sanitation of Scallops.*

§§ 130-169.04 to 130-169.06: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

**Editor's Note.** — As to the effective date,

## ARTICLE 14C.

*Swimming Pools.*

§§ 130-169.1 to 130-169.6: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 15.

*Private Hospitals and Public and Private Educational Institutions.*

§§ 130-170 to 130-170.02: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 15A.

*Home Health Agencies.*

§§ 130-170.1, 130-170.2: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Cross References.** — As to health care facilities and services, see now Chapter 131E.

**Editor's Note.** — Session Laws 1983, c. 775, s. 5, provides: "Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983."

Session Laws 1983, c. 775, s. 6, provides: "Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General

Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains a severability clause.

Repealed § 130-170.1 was amended by Session Laws 1981, c. 586, s. 2.

## ARTICLE 16.

*Regulation of the Manufacture of Bedding.*

§§ 130-171 to 130-179: Repealed by Session Laws 1983, c. 891, s. 1 effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-177 was amended by Session Laws 1983, c. 913, s. 23 effective July 22, 1983. Pursuant to Session Laws 1983, c. 891, s. 16.1 the amendment by c. 913 was effectuated in § 130A-270.

## ARTICLE 17.

*Cancer Control Program.*

§§ 130-180 to 130-186: Repealed by Session Laws 1981, c. 345, s. 1 effective October 1, 1981.

## ARTICLE 17A.

*Cancer Studies.*

§ 130-186.2: Repealed by Session Laws 1981, c. 345, s. 1, effective October 1, 1981.

§§ 130-186.4 to 130-186.8: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these reserved sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 17B.

*Arthritis Program.*

§ 130-186.9: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 17C.

*Cancer Control Program.*

§§ 130-186.15 to 130-186.24: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed §§ 150-186.15 through 130-186.24 were enacted by Session Laws 1981, c. 345, s. 2.

## ARTICLE 18.

*Midwives.***Repeal of Article.** —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article

effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 130-187: Repealed by Session Laws 1985, c. 462, s. 13, effective June 24, 1985.

**Cross References.** — For the Midwifery Practice Act, see § 90-178.1 et seq.

**Editor's Note.** — The repealed section was amended by Session Laws 1981, c. 676, s. 2.

## ARTICLE 19.

*Loan Fund for Dental Students.*

§§ 130-188 to 130-190: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 20.

*Surgical Operations on Inmates.*

§ 130-191: Transferred to § 148-22.2 by Session Laws 1981, c. 307, s. 8

## ARTICLE 20A.

*Treatment of Self-Inflicted Injuries upon Prisoners.*

§ 130-191.1: Transferred to § 148-46.2 by Session Laws 1981, c. 307, s. 9.

## ARTICLE 21.

*Postmortem Medicolegal Examinations.*

§§ 130-192, 130-193: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

§§ 130-196 to 130-202.7: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-197 was amended by Session

Laws 1981, c. 187, ss. 2-4. Repealed § 130-199 was amended by Session Laws 1981, c. 187, ss. 5, 6. Repealed § 130-200 was amended by Session Laws 1981, c. 187, s. 7, and c. 562, s. 5. Repealed § 130-201 was amended by Session Laws 1981, c. 614, s. 15. Repealed § 130-202 was amended by Session Laws 1981, c. 187, s. 8.

## ARTICLE 21A.

*Corneal Tissue Removal.*

§§ 130-202.8, 130-202.9: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983,

c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed §§ 130-202.8 and 130-202.9 were enacted by Session Laws 1981, c. 782, s. 1.

## ARTICLE 22.

*Remedies.*

§§ 130-203 to 130-205: Repealed by Session Laws 1985, c. 462, s. 13, effective June 24, 1985.

## ARTICLE 23.

*Mosquito Control in General.*

§§ 130-206 to 130-209: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 24.

*Mosquito Control Districts.*

§§ 130-210 to 130-215: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

Repealed § 130-211 was amended by Session Laws 1981, c. 188, ss. 1, 2. Repealed § 130-213 was amended by Session Laws 1981, c. 919, s. 15.

§ 130-220: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 25.

*State Air Hygiene Program.*

§§ 130-227 to 130-229: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the effective date, construction, and effect of Session Laws 1983, c. 891, which repealed these reserved sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 26.

### *Regulation of Ambulance Services.*

#### **Repeal of Article.** —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article

effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 130-230: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Cross References.** — As to health care facilities and services, see Chapter 131E.

**Editor's Note.** — Session Laws 1983, c. 775, s. 5, provides: "Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

Session Laws 1983, c. 775, s. 6, provides: "Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws

amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains a severability clause.

§§ 130-232 to 130-235: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Cross References.** — As to health care facilities and services, see Chapter 131E.

**Editor's Note.** — Session Laws 1983, c. 775, s. 5, provides: "Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

Session Laws 1983, c. 775, s. 6, provides: "Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws

amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains a severability clause.

## ARTICLE 27.

*Chronic Renal Disease Control Program.*

§ 130-236: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed this section, see the Editor's note under §§ 130-1 to 130-3.

§§ 130-238, 130-239: Repealed by Session Laws 1983, s. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 28.

*Mass Gatherings.*

§§ 130-240 to 130-253: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 29.

*Perinatal Health Care.*

§§ 130-254 to 130-263: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 30.

*Nursing Home Patients' Bill of Rights.*

§§ 130-264 to 130-277: Repealed by Session Laws 1983, c. 775, s. 1 effective January 1, 1984.

**Cross References.** — As to health care facilities and services, see now Chapter 131E.

**Editor's Note.** — Session Laws 1983, c. 775, s. 5, provides: "Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

Session Laws 1983, c. 775, s. 6, provides: "Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are

not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984 except that Part B of Article 2 to Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, contains a severability clause.

Repealed §§ 130-264, 130-265 and 130-274 were amended by ss. 2, 1, and 3, respectively, of Session Laws 1983, c. 143, effective July 1, 1983. Pursuant to Session Laws 1983, c. 775, s. 6, the amendments by c. 143 have been effectuated in §§ 131E-115, 131E-116 and 131E-125.

Repealed § 130-275 was amended by Session Laws 1981, c. 197.

§§ 130-278 to 130-282: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

## ARTICLE 31.

*Glaucoma and Diabetes Program.*

§§ 130-283 to 130-285: Repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984.

**Cross References.** — For provisions relating to the public health, see now Chapter 130A.

**Editor's Note.** — As to the effective date,

construction, and effect of Session Laws 1983, c. 891, which repealed these sections, see the Editor's note under §§ 130-1 to 130-3.

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- 130A-417. Definitions.
- 130A-418. Deceased migrant agricultural workers and their dependents.

ARTICLE 1.

*Definitions, General Provisions and Remedies.*

Part 1. General Provisions.

§ 130A-1. Title.

This Chapter shall be known as the Public Health Law of North Carolina (1983, c. 891, s. 2.)

**Editor's Note.** — Session Laws 1983, c. 891 repealed most of Chapter 130, and enacted in its place a new Chapter 130A. Session Laws 1983, c. 775 repealed a number of sections of Chapter 130 not repealed by c. 891. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in new Chapter 130A.

Session Laws 1983, c. 891, ss. 16, 16.1, and 17 provide:

"Sec. 16. This act shall not affect any civil or criminal litigation pending on the effective

date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if the act had not been enacted.

"Sec. 16.1. If any bill ratified by the 1985 General Assembly, whether ratified before or

ter this bill, amends a part of Chapter 130 of the General Statutes which is repealed by this bill, the bill will be construed to amend the appropriate part of the new Chapter 130A of the General Statutes enacted by this bill.

"Sec. 17. This act shall become effective Jan. 1, 1984, except that the provision in G.S. 130A-185 requiring the vaccination of all cats

over four months of age shall become effective July 1, 1984. However, upon ratification of this act, the Commission for Health Services is authorized to adopt rules under the provisions of this act; provided, the rules shall not be effective before the effective date of the act."

The act was ratified July 20, 1983.

### 130A-2. Definitions.

The following definitions shall apply throughout this Chapter unless otherwise specified:

- (1) "Commission" means the Commission for Health Services.
- (2) "Department" means the Department for Human Resources.
- (3) "Imminent hazard" means a situation which is likely to cause an immediate threat to life or a serious risk of irreparable damage to the environment if no immediate action is taken.
- (4) "Local board of health" means a district board of health or a county board of health.
- (5) "Local health department" means a district health department or a county health department.
- (6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.
- (7) "Person" means an individual, corporation, company, association, partnership, unit of local government or other legal entity.
- (8) "Secretary" means the Secretary of the Department of Human Resources.
- (9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.
- (10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6; 1967, c. 343, s. 2; c. 1257, s. 1; 1973, c. 476, s. 128; 1975, c. 751, s. 1; 1981, c. 130, s. 1; c. 340, ss. 1-4; 1983, c. 891, s. 2.)

### 130A-3. Appointment of the State Health Director.

The Secretary shall appoint the State Health Director. The State Health Director shall be a physician licensed to practice medicine in this State. The State Health Director shall perform duties and exercise authority assigned by the Secretary. (1983, c. 891, s. 2.)

### 130A-4. Administration.

(a) The Secretary shall have the authority and responsibility to administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall have the authority and responsibility to administer the programs of the local health department and to enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules. However, the preceding sentence is inappli-

cable to the exercise of enforcement and permit authority under G.S. 130A-277. (1983, c. 891, s. 2.)

### § 130A-5. Duties of the Secretary.

The Secretary shall have the authority:

- (1) To enforce the State health laws and the rules of the Commission;
- (2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public health to obtain, notwithstanding the provisions of G.S. 8-53, a copy or a summary of pertinent portions of privileged patient medical records deemed necessary by joint agreement of the attending physician and a Department physician for investigating a disease or health hazard that may present a clear danger to the public health. Any physician providing copies or summaries of privileged patient medical records pursuant to this subdivision shall be immune from civil or criminal liability that might otherwise be incurred or imposed based upon invasion or privacy or breach of physician-patient confidentiality arising out of the furnishing of or agreement to furnish such records;
- (3) To develop and carry out reasonable health programs that may be necessary for the protection and promotion of the public health and the control of diseases. The Commission is authorized to adopt rules to carry out these programs;
- (4) To make sanitary and health investigations and inspections;
- (5) To investigate occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases. The Secretary shall work with the Industrial Commission and shall file sufficient reports with the Industrial Commission to enable it to carry out all of the provisions of the Workers' Compensation Act with respect to occupational disease.
- (6) To receive donations of money, securities, equipment, supplies, realty or any other property of any kind or description which shall be used by the Department for the purpose of carrying out its public health programs;
- (7) To acquire by purchase, devise or otherwise in the name of the Department equipment, supplies and other property, real or personal necessary to carry out the public health programs;
- (8) To use the official seal of the Department. Copies of documents in the possession of the Department may be authenticated with the seal of the Department, attested by the signature or a facsimile of the signature of the Secretary, and when authenticated shall have the same evidentiary value as the originals;
- (9) To disseminate information to the general public on all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of these materials shall remain in the Department to be used to replace the materials;
- (10) To be the health advisor of the State and to advise State officials in regard to the location, sanitary construction and health management of all State institutions; to direct the attention of the State to health matters which affect the industries, property, health and lives of the

people of the State; to inspect at least annually State institutions and facilities; to make a report as to the health conditions of these institutions or facilities with suggestions and recommendations to the appropriate State agencies. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;

- (11) To establish a schedule of fees based on income to be paid by a recipient for services provided by Migrant Health Clinics and Development Evaluation Centers;
- (12) To establish fees for the sale of specimen containers, vaccines and other biologicals. The fees shall not exceed the actual cost of such items, plus transportation costs; and
- (13) To establish a fee to cover costs of responding to requests by employers for industrial hygiene consultation services and occupational consultation services. The fee shall not exceed two hundred dollars (\$200.00) per on site inspection. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c. 833, s. 14; 1969, c. 982; 1973, c. 476, ss. 128, 138; 1979, c. 714, s. 2; 1981, c. 562, s. 4; 1983, c. 891, s. 2; 1985, c. 470, s. 1.)

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 20.1, provided that the Department of Human Resources should not accept applications received after July 1, 1982, before February 1, 1983, for initial licensure of a home for the aged and disabled operated in conjunction with a nursing home to be licensed under former § 130-9(e)(5) or additional facilities, including beds, for any such home. Section 20.2 provided that the Joint Legislative Commission on Governmental Operations should recommend to the General Assembly, upon its convening in 1983, legislation which would establish a permitting procedure for such homes with standards based principally on the public need. However, s. 20.2A provided that nothing in ss. 20.1 or 20.2 should apply to a facility owned or operated by an organization that was exempt from taxation under section 501 (C)(3) of the Internal Revenue Code.

Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 25, establishes a schedule of priorities for allocating funds to local area mental health programs and local education agencies to provide appropriate treatment and education programs to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a class in the case of Willie M., et al. vs. Hunt, et al. The act appropriates funds to the Division of Mental Health, Mental Retardation, and Substance Abuse, to the Division of Youth Services, and to the Department of Public Education, establishes a reserve fund, and provides for certain reporting requirements. The act further provides that the prohibitions on use of State funds prescribed by § 122-35.53(c) do not apply to any funds appropriated for the treatment of members of the above-named class.

Session Laws 1983, c. 761, s. 77, effective July 1, 1983, sets out legislative findings with regard to funds and programs serving members of the class of Wille M., et al. v. Hunt, et al., provides for the expenditure of funds on behalf of this class, and provides for certain reporting requirements.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 61, and Session Laws 1985, c. 479, s. 85, set out legislative findings with regard to the children identified as a class in the case of Willie M., et al. vs. Hunt, et al. and indicate the legislative intent with regard to expenditure of funds appropriated for the class members and provides for a supplemental reserve fund to be allocated to local education agencies to serve class members. In addition, these provisions set out reporting requirements and authorize the Department of Human Resources to ensure the provision of appropriate services to class members where a local program is not providing appropriate services.

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

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

Session Laws 1985, c. 791, ss. 18 and 18.1 provide:

"Sec. 18. The Department of Public Education shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division 30 days prior to

the convening of the 1986 Regular Session of the 1985 General Assembly on the cost of educating a Willie M. child in the public schools over the past three years. This report shall include the cost of educating a Willie M. child and the source of these funds.

"Sec. 18.1. The State Board of Education is directed to determine the most cost effective methods of educating Willie M. students and to report its findings to the Joint Legislative Commission on Governmental Operations and

to the Fiscal Research Division by March, 1986."

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

**Effect of Amendments.** — The 1985 amendment, effective June 26, 1985, added the language beginning "to obtain, notwithstanding the provisions of G.S. 8-53" at the end of the first sentence of subdivision (2) and added the second sentence of that subdivision.

### § 130A-6. Delegation of authority.

Whenever authority is granted by this Chapter upon a public official, that authority may be delegated to another person authorized by the public official. (1983, c. 891, s. 2.)

### § 130A-7. Grants-in-aid.

The State is authorized to accept, allocate and expend any grants-in-aid for public health purposes which may be made available to the State by the federal government. This Chapter is to be liberally construed in order that the State and its citizens may benefit fully from these grants-in-aid. The Commission is authorized to adopt rules, not inconsistent with the laws of this State as required by the federal government for receipt of federal funds. Any federal funds received are to be deposited with the State Treasurer and are to be appropriated by the General Assembly for the public health purposes specified. (1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

### § 130A-8. Counties to recover indirect costs on certain federal public health or mental health grants.

(a) The Department shall include in its request for federal funds applicable to public health or mental health grants from the federal government to the State or any of its agencies, indirect costs incurred by counties acting as subgrantees under the grants or otherwise providing services to the Department with regard to the grants to the full extent permitted by OMB Circular A-87 or its successor. The Department shall allow counties to claim and recover their indirect costs on these grants to the full extent permitted by the Circular.

(b) This section shall not apply to those federal public health or mental health grants which are formula grants to the State or which are otherwise limited as to the maximum amounts receivable on a statewide basis. (1977, c. 876, ss. 1, 2; 1983, c. 891, s. 2.)

### § 130A-9. Standards.

The Commission is authorized to establish reasonable standards governing the nature and scope of public health services rendered by local health departments. (1957, c. 1357, s. 1; 1973, c. 110; 1975, c. 83; 1979, c. 504, s. 15; 1983, c. 891, s. 2.)

**§ 130A-10. Advisory Committees.**

The Secretary is authorized to establish and appoint as many special advisory committees as may be necessary to advise and confer with the Department concerning the public health. Members of any special advisory committee shall serve without compensation but may be allowed travel and subsistence expenses in accordance with G.S. 138-6. (1957, c. 1357, s. 1; 1975, c. 281; 1983, c. 891, s. 2.)

**§ 130A-11. Residencies in public health.**

The Department shall establish a residency program designed to attract physicians and dentists into the field of public health and to train them in the specialty of public health practice. The program shall include practical experience in public health principles and practices. (1975, c. 945, s. 1; 1983, c. 891, s. 2.)

**§ 130A-12. Confidentiality of records.**

All privileged patient medical records in the possession of the Department of Human Resources or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. (1985, c. 470, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 470, makes this section effective upon ratification. The act was ratified June 26, 1985.

**§ 130A-13 to 130A-16:** Reserved for future codification purposes.

**Part 2. Remedies.****§ 130A-17. Right of entry.**

The Secretary and a local health director shall have the right of entry upon the premises of any place where entry is necessary to carry out the provisions of this Chapter or the rules adopted by the Commission or a local board of health. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. However, if an imminent hazard exists, no warrant is required for entry upon the premises. (1983, c. 891, s. 2.)

**§ 130A-18. Injunction.**

If a person shall violate any provision of this Chapter or the rules adopted by the Commission or rules adopted by a local board of health, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides. (1983, c. 891, s. 2.)

### § 130A-19. Abatement of public health nuisance.

If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department of Health and the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

#### CASE NOTES

**County May Not Initiate Action.** — As the power to initiate action to abate a public nuisance is vested in the local health director, a county may not proceed without him. *Warren County v. North Carolina*, 528 F. Supp. 276 (E.D.N.C. 1981), decided under former § 130-20.

**Use of property by the State may not be enjoined** by the courts as a nuisance where the use of the property is in a manner authorized by valid legislative authority. *Warren County v. North Carolina*, 528 F. Supp. 276 (E.D.N.C. 1981), decided under former § 130-20.

### § 130A-20. Abatement of an imminent hazard.

If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may, after notice to the owner, make a reasonable attempt to notify the owner, enter upon any property and take any action necessary to abate the imminent hazard. The Department or the local health department shall have a lien on the property for the cost of the abatement of the imminent hazard in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A and the lien may be enforced as provided therein. The lien may be defeated by a showing that an imminent hazard does not exist at the time the Secretary or the local health director took the action. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

### § 130A-21. Embargo.

(a) The Secretary and a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when delegated the authority by the Commissioner of Agriculture.

(b) If the Secretary or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary or a local health director may detain or embargo the milk by affixing a tag to the milk and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained.

embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 130A-275, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid.

(c) If the Secretary or a local health director has probable cause to believe that any scallops, shellfish or crustacea is adulterated or misbranded, the Secretary or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture. The Department of Human Resources and the Department of Agriculture are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130. (1983, c. 891, s. 2.)

## § 130A-22. Administrative penalties.

(a) The Secretary may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five hundred dollars (\$500.00) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ten thousand dollars (\$10,000) per day in the case of a violation involving hazardous waste.

(b) The Secretary may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars (\$5,000) for each day the violation continues.

(c) The Secretary may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a sewage collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a sewage collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(d) In determining the amount of the penalty in subsections (a), (b) and (c) the Secretary shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage.

(e) A person contesting a penalty shall be entitled to an administrative hearing and judicial review in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of the administrative penalty whenever a person:

- (1) Who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150A-36 of the Administrative Procedure Act.

(h) A local health director may impose an administrative penalty on a person who willfully violates the sewage collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a sewage collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a sewage collection, treatment and disposal system with a design daily flow of

more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection. (1983, c. 891, s. 2.)

**Editor's Note.** — Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B. Section 150A-36, referred to in this section, has been recodified as § 150B-36.

### **130A-23. Suspension and revocation of permits and program participation.**

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) If a violation of the Chapter or the rules presents an imminent hazard, a permit may be suspended or revoked immediately. The Secretary shall immediately give notice of the revocation and notice that an administrative hearing will be held in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the decision. (1983, c. 891, s. 2.)

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

### **130A-24. Appeals procedure.**

(a) Appeals concerning the interpretation and enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150A of the General Statutes, the Administrative Procedure Act, except that judicial review of the imposition of administrative penalties shall be de novo by the superior court without a jury.

(b) Appeals concerning the interpretation and enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with subsections (b), (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the ag-

grieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(c) The local board of health shall hold a hearing within 15 days of the receipt of the notice of appeal. The board shall give the person not less than five days' notice of the date, time and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse the challenged action. The local board of health shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.

(d) A person who wishes to contest a decision of the local board of health under subsection (b) of this section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the board. The district court may affirm, modify or reverse the decision of the board for the reasons stated in G.S. 150A-51. Judicial review of the imposition of administrative penalties shall be de novo by the district court without a jury. (1983, c. 891, s. 2.)

**Editor's Note.** — Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B. Section 150A-51, referred to in this section, has been recodified as § 150B-51.

### § 130A-25. Misdemeanor.

(a) A person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

(b) A person imprisoned for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter may be discharged by the Secretary of the Department of Corrections if the medical consultant of the confinement facility and the local health director of the person's county of residence determine that the discharge does not represent a danger to the public health. (1983, c. 891, s. 2.)

### § 130A-26. Violations of Article 4.

A person who commits any of the following acts shall be guilty of a general misdemeanor:

- (1) Willfully and knowingly makes any false statement in a certificate, record or report required by Article 4 of this Chapter or in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate, or amendment;
- (2) Without lawful authority and with the intent to deceive makes, counterfeits, alters, amends or mutilates a certificate, record or report required by Article 4 of this Chapter or a certified copy of the certificate, record or report;
- (3) Willfully and knowingly obtains, possesses, uses, sells or furnishes to another person, for any purpose of deception, a certificate, record or report required by Article 4 of this Chapter or a certified copy of the certificate, record or report, which is counterfeited, altered, amended or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

- (4) A person employed by the Vital Records Branch or designated under Article 4 of this Chapter who willfully and knowingly furnishes or processes a certificate of birth, or certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception; or
- (5) Without lawful authority possesses a certificate, record or report required by Article 4 of this Chapter or a certified copy of the certificate, record or report knowing that it was stolen or otherwise unlawfully obtained;
- (6) Remove or permit the removal of a dead body of a human being without authorization provided in Article 4 of this Chapter;
- (7) Refuse or fail to furnish correctly any information in the person's possession or shall furnish false information affecting a certificate or record required by Article 4 of this Chapter;
- (8) Willfully alter, except as provided by G.S. 130A-123 [G.S. 130A-118], or falsify a certificate or record required by Article 4 of this Chapter; or willfully alter, falsify or change a photocopy, certified copy, extract copy or any document containing information obtained from an original or copy of a certificate or record required by Article 4 of this Chapter or willfully make, create or use any altered, falsified or changed record, reproduction, copy or document for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown on it;
- (9) With the intention to deceive, willfully use or attempt to use a certificate of birth or certified copy of a record of birth knowing that the certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;
- (10) Willfully and knowingly furnish a certificate of birth or certified copy of a record of birth with the intention that it be used by an unauthorized person or for an unauthorized purpose; or
- (11) Fail, neglect or refuse to perform any act or duty required by Article 4 of this Chapter or by the instructions of the State Registrar prepared under authority of the Article. (1983, c. 891, s. 2.)

**Editor's note.** — The reference in subdivision (8) of this section to § 130A-123 was apparently intended to be a reference to § 130A-118.

### § 130A-27. Recovery of money.

The Secretary may institute an action in the county where the action arose or the county where the defendant resides to recover any money, other property or interest in property or the monetary value of goods or services provided or paid for by the Department which are wrongfully paid or transferred to a person under a program administered by the Department pursuant to this Chapter. (1983, c. 891, s. 2.)

### § 130A-28. Forfeiture of gain.

In the case of a violation of this Chapter or the rules adopted by the Commission, money or other property or interest in property so acquired shall be forfeited to the State unless ownership by an innocent person may be established. An action may be instituted by the Attorney General or a district attorney pursuant to G.S. 1-532. (1983, c. 891, s. 2.)

§§ 130A-29 to 130A-33: Reserved for future codification purposes.

## ARTICLE 2.

### *Local Administration.*

#### Part 1. Local Health Departments.

#### § 130A-34. Provision of local public health services.

(a) A county shall provide public health services.

(b) A county shall operate a county health department, participate in a district health department or contract with the State for the provision of public health services. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1983, c. 891, s. 2.)

#### § 130A-35. County board of health; appointment; terms.

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner and four representatives of the general public. All members shall be residents of the county. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist available for appointment, an additional representative of the general public shall be appointed. If however, one of the six designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for cause.

(h) A member may receive a per diem in an amount established by the County Board of Commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of Commissioners.

(i) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 32, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; c. 940, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1981, c. 104; 1983, c. 891, s. 2; 1985, c. 418, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 891, s. 14, provides: "The first registered nurse member of a local board of health appointed pursuant to this act shall assume office upon expiration of the term of the first public member whose term expires on or after January 1, 1984. The first licensed optometrist member of a district board of health appointed pursuant to this act shall assume office upon expiration of the term of the second public member whose term expires on or after January 1, 1984. The first licensed veterinarian member of a district

board of health appointed pursuant to this act shall assume office upon expiration of the term of the third public member whose term expires on or after January 1, 1984."

**Effect of Amendments.** — The 1985 amendment, effective June 18, 1985, rewrote subsection (h), which formerly read "A member may receive a per diem and reimbursement for subsistence and travel in an amount established by the county board of commissioners, not to exceed the amount established in G.S. 138-5."

## § 130A-36. Creation of district health department.

(a) A district health department including more than one county may be formed in lieu of county health departments upon agreement of the county boards of commissioners and local boards of health having jurisdiction over each of the counties involved. A county may join a district health department upon agreement of the boards of commissioners and local boards of health having jurisdiction over each of the counties involved. A district health department shall be a public authority as defined in G.S. 159-7(b)(10).

(b) Upon creation of or addition to a district health department, the existing rules of the former board or boards of health shall continue in effect until amended or repealed by the district board of health. (1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1; 1981, c. 238; c. 408; 1983, c. 891, s. 2.)

## § 130A-37. District board of health.

(a) A district board of health shall be the policymaking, rule-making and adjudicatory body for a district health department and shall be composed of 15 members; provided, a district board of health may be increased up to a maximum number of 18 members by agreement of the boards of county commissioners in all counties that comprise the district. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) The county board of commissioners of each county in the district shall appoint one county commissioner to the district board of health. The county commissioner members of the district board of health shall appoint the other members of the board, including at least one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse and one licensed pharmacist. The composition of the board shall reasonably reflect the population makeup of the entire district and provide equitable district-wide representation. All members shall be residents of the district. If there is not a licensed physician, a

licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist available for appointment, an additional representative of the general public shall be appointed. If however, one of the six designated professions has only one person residing in the district, the county commissioner members shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a district board of health shall serve terms of three years. Two of the original members shall serve terms of one year and two of the original members shall serve terms of two years. No member shall serve more than three consecutive three-year terms. County commissioner members shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. The county commissioner members may appoint a member for less than a three-year term to achieve a staggered term structure.

(d) Whenever a county shall join or withdraw from an existing district health department, the district board of health shall be dissolved and a new board shall be appointed as provided in subsection (c).

(e) Vacancies shall be filled for any unexpired portion of a term.

(f) A chairperson shall be elected annually by a district board of health. The local health director shall serve as secretary to the board.

(g) A majority of the members shall constitute a quorum.

(h) A member may be removed from office by the district board of health for cause.

(i) A member may receive a per diem in an amount established by the county commissioner members of the District Board of Health. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county commissioner members of the District Board of Health.

(j) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(k) A district board of health is authorized to provide liability insurance for the members of the board and the employees of the district health department. A district board of health is also authorized to contract for the services of an attorney to represent the board, the district health department and its employees, as appropriate. The purchase of liability insurance pursuant to this subsection waives both the district board of health's and the district health department's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. By entering into a liability insurance contract with the district board of health, an insurer waives any defense based upon the governmental immunity of the district board of health or the district health department. (1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; c. 940, s. 1; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1; 1981, cc. 104, 238, 408; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1077; 1985, c. 418, s. 2.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 3, 1984, added the proviso at the end of the first sentence of subsection (a) and the second sentence of that subsection.

The 1985 amendment, effective June 18, 1985, rewrote subsection (i), which formerly read "A member may receive a per diem and reimbursement for subsistence and travel in an amount established by the county board of

commissioners, not to exceed the amount established in G.S. 138-5.”

### § 130A-38. Dissolution of a district health department.

(a) Whenever the board of commissioners of each county constituting a district health department determines that the district health department is not operating in the best health interests of the respective counties, they may direct that the district health department be dissolved. In addition, whenever a board of commissioners of a county which is a member of a district health department determines that the district health department is not operating in the best health interests of that county, it may withdraw from the district health department. Dissolution of a district health department or withdrawal from the district health department by a county shall be effective only at the end of the fiscal year in which the action of dissolution or withdrawal transpired.

(b) Notwithstanding the provisions of subsection (a), no district health department shall be dissolved without prior written notification to the Department.

(c) Any budgetary surplus available to a district health department at the time of its dissolution shall be distributed to those counties comprising the district on the same pro rata basis that the counties appropriated and contributed funds to the district health department budget during the current fiscal year. Distribution to the counties shall be determined on the basis of an audit of the financial record of the district health department. The district board of health shall select a certified public accountant or an accountant who is subsequently certified by the Local Government Commission to conduct the audit. The audit shall be performed in accordance with G.S. 159-34. The same method of distribution of funds described above shall apply when one or more counties of a district health department withdraw from a district.

(d) Upon dissolution or withdrawal, all rules adopted by a district board of health shall continue in effect until amended or repealed by the new board or boards of health. (1971, c. 858; 1975, c. 396, s. 2; c. 403; 1983, c. 891, s. 2.)

### § 130A-39. Powers and duties of a local board of health.

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and a local board of health may adopt rules concerning sanitary sewage collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters and which are not public or community systems only in accordance with G.S. 130A-335(c).

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the

office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose a fee for services performed pursuant to Article 11 of this Chapter, "Sanitary Sewage Systems." Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the County Fiscal Control Act. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087; 1973, c. 476, s. 128; c. 508; 1977, c. 857, s. 2; 1981, c. 130, s. 2; c. 281; c. 949, s. 4; 1983, c. 891, s. 2; 1985, c. 175, s. 1.)

**Effect of Amendments.** — The 1985 amendment, effective May 13, 1985, deleted a former first sentence of subsection (g), which read "A local board of health may contract

with any person, including any governmental agency, for the provision or receipt of public health services."

#### OPINIONS OF ATTORNEY GENERAL

**For opinion that a local board of health may not regulate the production, processing and distribution of "Grade A" fluid milk and milk products, see opinion of Attor-**

**ney General to Stacy Covil, Head, Sanitation Branch, Division of Health Services, 50 N.C.A.G. 42 (1980), rendered under former § 130-17.**

### § 130A-40. Appointment of local health director.

A local board of health, after consulting with the appropriate county board or boards of commissioners, shall appoint a local health director. The State Personnel Commission, after consulting with the Commission for Health Services, shall establish qualifications for a local health director. The qualifications shall give equal emphasis to education and experience. However, a local health director shall not be required to be a physician. When a local board of health fails to appoint a local health director within 60 days of the creation of a vacancy, the State Health Director may appoint a local health director to serve until the local board of health appoints a local health director in accordance with this section. (1957, c. 1357, s. 1; 1973, c. 152; c. 476, s. 128; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 75.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted the present second and third sentences for a second sentence which read "A lo-

cal health director shall possess the qualifications established for the position by the Commission for Health Services under G.S. 143B-142(a) and qualifications established for the position by the State Personnel Commission in accordance with Chapter 126 of the General Statutes."

## § 130A-41. Powers and duties of local health director.

(a) A local health director shall be the administrative head of the local health department, shall perform public health duties prescribed by and under the supervision of the local board of health and the Department and shall be employed full time in the field of public health.

(b) A local health director shall have the following powers and duties:

- (1) To administer programs as directed by the local board of health;
- (2) To enforce the rules of the local board of health;
- (3) To investigate the causes of infectious, communicable and other diseases;
- (4) To exercise quarantine authority and isolation authority pursuant to G.S. 130A-145;
- (5) To disseminate public health information and to promote the benefits of good health;
- (6) To advise local officials concerning public health matters;
- (7) To enforce the immunization requirements of Part 2 of Article 7 of this Chapter;
- (8) To examine and investigate cases of venereal disease pursuant to Parts 3 and 4 of Article 6 of this Chapter;
- (9) To examine and investigate cases of tuberculosis pursuant to Part 5 of Article 6 of this Chapter;
- (10) To examine, investigate and control rabies pursuant to Part 6 of Article 6 of this Chapter;
- (11) To abate public health nuisances and imminent hazards pursuant to G.S. 130A-19 and G.S. 130A-20;
- (12) To employ and dismiss employees of the local health department in accordance with Chapter 126 of the General Statutes;
- (13) To enter contracts, in accordance with The Local Government Finance Act, G.S. Chapter 159, on behalf of the local health department. Nothing in this paragraph shall be construed to abrogate the authority of the board of county commissioners.

(c) Authority conferred upon a local health director may be exercised only within the county or counties comprising the local health department. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 175, s. 2.)

**Effect of Amendments.** — The 1985 "and" at the end of subdivision (b)(11) and amendment, effective May 13, 1985, deleted added subdivision (b)(13).

## § 130A-42. Personnel records of district health departments.

Employee personnel records of a district health department shall have the same protections from disclosure as county employee personnel records under G.S. 153A-98. For the purposes of this section, the local health director shall perform the duties assigned to the county manager pursuant to G.S. 153A-98

and the district board of health shall perform the duties assigned to the county board of commissioners pursuant to G.S. 153A-98. (1983, c. 891, s. 2.)

**§§ 130A-43 to 130A-46:** Reserved for future codification purposes.

## Part 2. Sanitary Districts.

### § 130A-47. Creation by Commission.

For the purpose of preserving and promoting the public health and welfare the Commission may create sanitary districts without regard for county, township or municipal lines. However, no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of the municipal corporation. If the municipal corporation has not levied any tax nor performed any official act nor held any elections within a period of four years preceding the date of the petition for the sanitary district, a request of the governing board shall not be required. (1927, c. 100, s. 1; 1955, c. 1307; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-48. Procedure for incorporating district.

A sanitary district shall be incorporated as follows. Either fifty-one percent (51%) or more of the resident freeholders within a proposed sanitary district or fifty-one percent (51%) or more of the freeholders within a proposed sanitary district, whether or not the freeholders are residents of the proposed sanitary district, may petition the county board of commissioners of the county in which all or the largest portion of the land of the proposed district is located. This petition shall set forth the boundaries of the proposed sanitary district and the objectives of the proposed district. For the purposes of this Part, the term "freeholder" shall mean a person holding a deed to a tract of land within the district or proposed district, and also shall mean a person who has entered into a contract to purchase a tract of land within the district or proposed district, is making payments pursuant to a contract and will receive a deed upon completion of the contractual payments. The contracting purchaser rather than the contracting seller, shall be deemed to be the freeholder. Upon receipt of the petition, the county board of commissioners, through its chairperson, shall notify the Department and the chairperson of the county board of commissioners of any other county or counties in which any portion of the proposed district lies of the receipt of the petition. The chairperson shall request that the Department hold a joint public hearing with the county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The Secretary and the chairperson of the county board of commissioners shall name a time and place within the proposed district to hold the public hearing. The chairperson of the county board of commissioners shall give prior notice of the hearing by posting a notice at the courthouse door of the county and also by publication at least once a week for four successive weeks in a newspaper published in the county. In the event the hearing is to be before a joint meeting of the county boards of commissioners of more than one county, or in the event the land to be affected lies in more than one county, publication and notice shall be made in each of the affected counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, the hearing may be continued at a time and place within the proposed district named by the Department. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1)

1959, c. 1189, s. 1; 1965, c. 135; 1967, c. 24, s. 21; 1973, c. 476, s. 128; 1975, c. 536; 1983, c. 891, s. 2.)

### **§ 130A-49. Declaration that district exists; status of industrial villages within boundaries of district.**

(a) If, after the required public hearing, the Commission and the county commissioners determine that a district shall be created for the purposes stated in the petition, the Commission shall adopt a resolution defining the boundaries of the district and declaring the territory within the boundaries to be a sanitary district. The Commission may make minor deviation in defining the boundaries from those prescribed in the petition when it determines the change to be in the interest of the public health.

(b) The owner or controller of an industrial plant may make application requesting that the plant or the plant and its contiguous village be included within or excluded from the sanitary district. The application shall be filed with the Commission on or before the date of the public hearing. If an application is properly filed, the Commission shall include or exclude the industrial plant and contiguous village in accordance with the application.

(c) Each district when created shall be identified by a name or number assigned by the Commission. (1927, c. 100, s. 5; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-50. Election and terms of office of sanitary district boards.**

(a) The Department shall send a copy of the resolution creating the sanitary district to the county board or boards of county commissioners of the county or counties in which all or part of the district is located. The board or boards of commissioners shall hold a meeting or joint meeting for the purpose of electing the members of the sanitary district board.

(b) The sanitary district board shall be composed of either three or five members as the county commissioners in their discretion shall determine. The members first appointed shall serve as the governing body of the sanitary district until the next regular election for municipal and special district officers as provided in G.S. 163-279, which occurs more than 90 days after their appointment. At that election, their successors shall be elected. The terms of the members shall be for two years or four years and may be staggered as determined by the county board of commissioners so that some members are elected at each biennial election. The members of the sanitary district board shall be residents of the district. The county board of commissioners shall notify the county board of elections of any decision made under this subsection.

(c) The election shall be nonpartisan and decided by simple plurality as provided in G.S. 163-292 and shall be held and conducted by the county board of elections in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes. If the district is in more than one county, then the county board of elections of the county including the largest part of the district shall conduct the election for the entire district with the assistance and full cooperation of the boards of elections in the other counties.

(d) The board of elections shall certify the results of the election to the clerk of superior court. The clerk of superior court shall take and file the oaths of office of the board members elected.

(e) The elected members of the board shall take the oath of office on the first Monday in December following their election and shall serve for the term

elected and until their successors are elected and qualified. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644; 1973, c. 476, s. 128; 1981, c. 186, s. 1; 1983, c. 891, s. 2.)

### **§ 130A-51. City governing body acting as sanitary district board.**

(a) When the General Assembly incorporates a city or town that includes within its territory fifty percent (50%) or more of the territory of a sanitary district, the governing body of the city or town shall become ex officio the governing board of the sanitary district if the General Assembly provides for this action in the incorporation act and if the existing sanitary district board adopts a final resolution pursuant to this section. The resolution may be adopted at any time within the period beginning on the day of ratification of the incorporation act and ending 270 days after the effective date.

(b) To begin the process leading to the city or town board becoming ex officio the sanitary district board, the board of the sanitary district shall first adopt a preliminary resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units of local government are governed by a single governing body. This resolution shall also set the time and place for a public hearing on the preliminary resolution.

(c) Upon adoption of this preliminary resolution, the chairperson of the sanitary district board shall publish a notice of the public hearing once at least 10 days before the hearing in a newspaper of general circulation within the sanitary district. This notice shall set forth the time and place of the hearing and shall briefly describe its purpose. At the hearing, the board shall hear any citizen of the sanitary district or of the city or town who wishes to speak to the subject of the preliminary resolution.

(d) Within 30 days after the day of the public hearing, the sanitary district board may adopt a final resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units are governed by a single board. This resolution shall set the date on which the terms of office of the members of the sanitary district board end and that board is dissolved and service by the ex officio board begins. This date may be the effective date of the incorporation of the city or town or any date within one year after the effective date. At that time, the sanitary district board is dissolved and the mayor and members of the governing body of the city or town become ex officio the board of the sanitary district. The mayor shall act ex officio as chairperson of the sanitary district board.

(e) The chairperson of the sanitary district board that adopts a final resolution shall within 10 days after the day the resolution is adopted, send a copy of the resolution to the mayor and each member of the city or town governing board and to the Department. (1981, c. 201; 1983, c. 891, s. 2.)

### **§ 130A-52. Special election if election not held in November of 1981.**

(a) If in a sanitary district, an election of board members was required to be held in November of 1981 under G.S. 130A-50 but was not held, the board of commissioners of the county or counties in which the district is located may by resolution order a special election of all the board members to be held at the same time as the General Election in November of 1982.

(b) The election shall be held under the procedures of Articles 23 and 24 of Chapter 163 of the General Statutes and in accordance with G.S. 130A-50, except that filing shall open at noon on Monday, August 9, 1982, and close at noon on Monday, August 23, 1982.

(c) In the election held under this section, all of the members of the board shall be elected. If the board of commissioners has provided for two- or four-year terms, the members elected in 1982 shall serve until the 1983 or 1985 election, respectively, and then their successors shall be elected for the two- or four-year terms provided by the county board or boards of commissioners.

(d) Any resolution adopted under subsection (a) of this section shall be filed with the Department. (1981 (Reg. Sess., 1982), c. 1271, s. 1; 1983, c. 891, s. 2.)

### § 130A-52.1. Action if 1983 election not held.

If any sanitary district held an election in 1982 under G.S. 130A-52, but failed to hold the 1983 election, then the persons elected in 1982 shall hold office until the terms that were to begin in 1983 have expired. (1983 (Reg. Sess., 1984), c. 1021, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1021, s. 3, makes this section effective July 1, 1984.

### § 130A-53. Actions validated.

Any action of a sanitary district taken prior to July 1, 1984, shall not be invalidated by failure to hold an election for members of the board. (1981 (Reg. Sess., 1982), c. 1271, s. 1; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1021, s. 2.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "July 1, 1984" for "June 1, 1982."

### § 130A-54. Vacancy appointments to district boards.

Any vacancy in a sanitary district board shall be filled by the county commissioners until the next election for sanitary district board members. If the district is located in more than one county, the vacancy shall be filled by the county commissioners of the county from which the vacancy occurred. (1935, c. 357, s. 2; 1957, c. 1357, s. 1; 1981, c. 186, s. 2; 1983, c. 891, s. 2.)

### § 130A-55. Corporate powers.

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e., each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

- (1) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection, treatment or disposal facilities or systems; water supply systems; water purification or treatment plants and other utilities necessary for the preservation and promotion of the

- public health and sanitary welfare within the district. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.
- (2) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems, water supply systems; water purification or treatment plants and other utilities, within and outside the corporate limits of the district, as may be necessary for the preservation of the public health and sanitary welfare outside the corporate limits of the district, within reasonable limitation. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.
    - a. The authority granted to a sanitary district by the provisions of this subsection is supplemental to the authority granted to a sanitary district by other provisions of law.
    - b. Actions taken by a sanitary district to acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types; water supply systems; water purification or treatment plants and other utilities within and outside the corporate limits to provide service outside the corporate limits are approved and validated.
    - c. This subsection shall apply only in counties with a population of 70,000 or greater, as determined by the most recent decennial federal census.
  - (3) To levy taxes on property within the district in order to carry out the powers and duties conferred and imposed on the district by law, and to pay the principal of and interest on bonds and notes of the district.
  - (4) To acquire either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.
  - (5) To employ and compensate engineers, counsel and other persons as may be necessary to carry out projects.
  - (6) To negotiate and enter into agreements with the owners of existing water supplies, sewage systems or other utilities as may be necessary to carry out the intent of this Part.
  - (7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Health Services, Environmental Management Commission, or the local board of health having jurisdiction over the area.
  - (8)
    - a. To contract with any person within or outside the corporate limits of the district to supply raw water without charge to the person in return for an agreement to allow the district to discharge sewage in the person's previous water supply. The district may so contract and construct at its expense all improvements necessary or convenient for the delivery of the water when, in the opinion of the sanitary district board and the Department, it will be for the best of the district.
    - b. To contract with any person within or outside the corporate limits of the district to supply raw or filtered water and sewer service to the person where the service is available. For service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall not be liable for damages for failure to furnish a sufficient supply of water and adequate sewer service.

- c. To contract with any person within or outside the corporate limits of the district for the treatment of the district's sewage in a sewage disposal or treatment plant owned and constructed or to be constructed by that person.
- (9) After adoption of a plan as provided in G.S. 130A-60, the sanitary district board may, in its discretion, alter or modify the plan if the Department determines that the alteration or modification does not constitute a material deviation from the objective of the plan and is in the public health interest of the district. The alteration or modification must be approved by the Department. The sanitary district board may appropriate or reappropriate money of the district for carrying out the altered or modified plan.
- (10) To take action, subject to the approval of the Department, for the prevention and eradication of diseases transmissible by vectors by instituting programs for the eradication of the mosquito.
- (11) To collect and dispose of garbage, waste and other refuse by contract or otherwise.
- (12) To establish a fire department, or to contract for firefighting apparatus and personnel for the protection of life and property within the district.
- (13) To provide or contract for rescue service, ambulance service, rescue squad or other emergency medical services for use in the district. The sanitary district shall be subject to G.S. 153A-250.
- (14) To have privileges and immunities granted to other governmental units in exercise of the governmental functions.
- (15) To use the income of the district, and if necessary, to levy and collect taxes upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection and rescue services in the district. Taxes shall be levied and collected at the same time and in the same manner as taxes for debt service as provided in G.S. 130A-62.
- (16) To adopt rules for the promotion and protection of the public health and for these purposes to possess the following powers:
- a. To require any person owning, occupying or controlling improved real property within the district to connect with either or both the water or sewage systems of the district when the local health director, having jurisdiction over the property, determines that the health of the people residing within the district will be endangered by a failure to connect.
  - b. To require any person owning, occupying or controlling improved real property within the district where the water or sewage systems of the district are not immediately available or it is impractical with the systems, to install sanitary toilets, septic tanks and other health equipment or installations in accordance with applicable statutes and rules.
  - c. To order a person to abate a public health nuisance of the district. If the person being ordered to abate the nuisance refuses to comply with the order, the sanitary district board may institute an action in the superior court of the county where the public health nuisance exists to enforce the order.
  - d. To abolish or regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless the 500 feet is within the corporate limits of a city or town.

- e. Upon the noncompliance by a person of a rule adopted by the sanitary district board, the board shall notify the person of the rule being violated and the facts constituting the violation. The person shall have a reasonable time to comply with the rule as determined by the local health director of the person's residence. Upon failure to comply within the specified time or within a time extended by the sanitary district board, the person shall be guilty of a misdemeanor.
  - f. The sanitary district board is authorized to enforce the rules adopted pursuant to this Part by criminal action or civil action, including injunctive relief.
- (17) For the purpose of promoting and protecting the public health, safety and the general welfare of the State, a sanitary district board is authorized to establish as zoning units any portions of the sanitary district not under the control of the United States or this State or any agency or instrumentality of either, in accordance with the following:
- a. No sanitary district board shall designate an area a zoning area until a petition signed by two-thirds of the qualified voters in the area, as shown by the registration books used in the last general election, and with a petition signed by two-thirds of the owners of real property in the area, as shown by the records in the office of the register of deeds for the county, is filed with the sanitary district board. The petition must be accompanied by a map of the proposed zoning area. The board shall hold a public hearing to obtain comment on the proposed creation of the zoning area. A notice of public hearing must be published in a newspaper of general circulation in the county at least two times, and a copy of the notice shall be posted at the county courthouse and in three other public places in the sanitary district.
  - b. When a zoning area is established within a sanitary district, the sanitary district board as to the zoning area shall have all rights, privileges, powers and duties granted to municipal corporations under Part 3, Article 19, Chapter 160A of the General Statutes. However, the sanitary district board shall not be required to appoint any zoning commission or board of adjustment. If neither a zoning commission nor board of adjustment is appointed, the sanitary district board shall have all rights.
  - c. A sanitary district board may enter into an agreement with any city, town or sanitary district for the establishment of a joint zoning commission.
  - d. A sanitary district board is authorized to use the income of the district and levy and collect taxes upon the taxable property within the district necessary to carry out and enforce the rules and provisions of this subsection.
  - e. This subsection shall apply only to sanitary districts which adjoin and are contiguous to an incorporated city or town and are located within three miles or less of the boundaries of two other cities or towns.
- (18) To negotiate for and acquire by contract any distribution system located outside the district when the water for the distribution system is furnished by the district. If the distribution system is acquired by a district, the district may continue the operation of the system even though it remains outside the district.
- (19) To accept gifts of real and personal property for the purpose of operating a nonprofit cemetery; to own, operate and maintain cemeteries with the donated property; and to establish perpetual care funds for the cemeteries in the manner provided by G.S. 160A-347.

- (20) To dispose of real or personal property belonging to the district according to the procedures prescribed in Article 12 of Chapter 160A of the General Statutes. For purposes of this subsection, references in Article 12 of Chapter 160A to the "city," the "council," or a specific city official refer, respectively, to the sanitary district, the sanitary district board, and the sanitary district official who most nearly performs the same duties performed by the specified city official. For purposes of this subsection, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more sanitary district officials designated by the sanitary district board.
- (21) To acquire, renovate property for or construct a medical clinic to serve the district, and to maintain real and personal property for a medical clinic to serve the district.
- (22) To make special assessments against benefitted property within the corporate limits of the sanitary district and within the area served or to be served by the sanitary district for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Article 9 of Chapter 153A of the General Statutes, except that the language appearing in G.S. 153A-185 reading as follows: "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," shall not apply to assessments levied by sanitary districts. For the purposes of this paragraph, references in Article 9 of Chapter 153A of the General Statutes, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer respectively to the sanitary district and to the official or employee of the sanitary district who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the officer designated by the sanitary district to perform the functions described in said sections of the statute. This subdivision applies only to sanitary districts with a population of 15,000 or over. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; cc. 1130, 1145; 1951, c. 17, s. 1; c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232; 1965, c. 496, s. 1; 1967, c. 632; c. 637, s. 1; c. 798, s. 2; 1969, cc. 478, 700, 944; 1971, c. 780, s. 29; 1973, c. 476, s. 128; 1979, c. 520, s. 2; c. 619, s. 7; 1981, cc. 629, 655; c. 820, ss. 1-3; c. 898, ss. 1-4; 1981 (Reg. Sess., 1982), c. 1237; 1983, c. 891, s. 2; c. 925, s. 2.)

**Editor's Note.** — Subdivision (22) of this section is former § 130-128(23), as added, effective July 22, 1983, by Session Laws 1983, c.

925, s. 1, and recodified by s. 2 of the act, effective Jan. 1, 1984.

### § 130A-55.1. Withdrawal of water.

A sanitary district is empowered to engage in litigation or to join with other parties in litigation opposing the withdrawal of water from a river or other water supply. (1983, c. 55, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 55, s. 2, makes this section effective upon ratification. The act was ratified on March 10, 1983.

Pursuant to Session Laws 1983, c. 891, s. 16.1, which provided that any bill ratified by

the 1983 General Assembly amending a part of repealed Chapter 130 will be construed to amend the appropriate part of Chapter 130A the section has been codified as § 130A-55.1

### § 130A-56. Election of officers; board staff.

(a) Upon election, a sanitary district board shall meet and elect one of its members as chairperson and another member as secretary. In sanitary districts with a population of less than 15,000, each member of the board may receive a per diem compensation and other compensation as provided for members of State boards under G.S. 138-5, payable from the funds of the district.

(b) The board may employ a clerk, stenographer or other assistants as necessary and may fix duties of and compensation for employees. A sanitary district board may remove employees and fill vacancies.

(c) The board may, by ordinance, fix the compensation of its members in an amount not to exceed one hundred fifty dollars (\$150.00) per month, payable from the funds of the district, but no increase may become effective earlier than the first meeting of the board following the next election of board members after adoption of the ordinance. Until adoption of an ordinance under this subsection, the compensation of members of sanitary district boards shall remain at the amount payable by law immediately prior to March 25, 1985. This subsection applies only to sanitary districts with a population of 15,000 or over. (1927, c. 100, s. 8; 1957, c. 1357, s. 1; 1967, c. 723; 1977, c. 183; 1983, c. 891, s. 2; 1985, c. 29, ss. 1, 2.)

**Effect of Amendments.** — The 1985 amendment, effective March 25, 1985, inserted "In sanitary districts with a population of less

than 15,000" at the beginning of the second sentence of subsection (a) and added subsection (c).

### § 130A-57. Power to condemn property.

A sanitary district board may purchase real estate, right-of-way or easement within or outside the corporate limits of the district for improvements authorized by this Part. If a purchase price cannot be agreed upon, the board may condemn the real estate, right-of-way or easement in accordance with Chapter 40A of the General Statutes. (1927, c. 100, s. 9; 1933, c. 8, s. 3; 1957, c. 1357, s. 1; 1981, c. 919, s. 13; 1983, c. 891, s. 2.)

### § 130A-58. Construction of systems by corporations or individuals.

When it is inadvisable or impractical for the sanitary district to build a water supply, sewage system or part of either to serve an area within the sanitary district, a corporation or residents within the sanitary district may build and operate a system at its or their own expense. The system shall be constructed and operated under plans and specifications approved by the district board and by the Department. The system shall also be constructed and

operated in accordance with applicable rules and statutes. (1927, c. 100, s. 10; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-59. Reports.

Upon the election of a sanitary district board, the board shall employ engineers licensed by this State to make a report on the problems of the sanitary district. The report shall be prepared and filed with the sanitary district board and shall include the following:

- (1) Comprehensive maps showing the boundaries of the sanitary district and, in a general way, the location of the various parts of the work that is proposed to be done and information as may be useful for a thorough understanding of the proposed undertaking;
- (2) A general description of existing facilities for carrying out the purposes of the district;
- (3) A general description of the various plans which might be adopted for accomplishment of the purposes of the district;
- (4) General plans and specifications for the work;
- (5) General description of property proposed to be acquired or which may be damaged in carrying out the work;
- (6) Comparative detail estimates of cost for the various construction plans; and
- (7) Recommendations. (1927, c. 100, s. 11; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

### § 130A-60. Consideration of reports and adoption of a plan.

(a) A report filed by the engineers pursuant to G.S. 130A-59 shall be given consideration by the sanitary district board and the board shall adopt a plan. Before adopting a plan the board may hold a public hearing for the purpose of considering objections to the plan. Once adopted, the sanitary district board shall submit the plan to the Department. The plan shall not become effective until it is approved by the Department.

(b) The provisions of this section and of G.S. 130A-58 shall apply when the sanitary district board determines that adoption of the plan requires the issuance of bonds. However, these provisions shall not apply to a proposed purchase of firefighting equipment and apparatus. Failure to observe or comply with these provisions shall not, however, affect the validity of the bonds of a sanitary district. (1927, c. 100, s. 12; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-61. Bonds and notes authorized.

A sanitary district is authorized to issue bonds and notes under the Local Government Finance Act. (1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; c. 846, s. 1; 1957, c. 1357, s. 1; 1963, c. 1247, s. 1; 1971, c. 780, s. 27; 1983, c. 891, s. 2.)

**§ 130A-62. Annual budget; tax levy.**

(a) A sanitary district shall operate under an annual balanced budget adopted in accordance with the Local Government Budget and Fiscal Control Act.

(b) A sanitary district has the option of either collecting its own taxes or having its taxes collected by the county or counties in which it is located. Unless a district takes affirmative action to collect its own taxes, taxes shall be collected by the county.

(c) For sanitary districts whose taxes are collected by the county, before May 1 of each year, the tax supervisor of each county in which the district is located shall certify to the district board the total assessed value of property in the county subject to taxation by the district, and the county's assessment ratio. By July 1 or upon adoption of its annual budget ordinance, the district board shall certify to the county board of commissioners the rate of ad valorem tax levied by the district on property in that county. If the assessment ratios are not identical in all counties, the district budget ordinance shall levy separate rates of ad valorem taxes for each county. These rates shall be adjusted so that the effective rate is the same for all property located in the district. The "effective rate" is the rate of tax which will produce the same tax liability on property of equal appraised value. Upon receiving the district's certification of its tax levy, the county commissioners shall compute the district tax for each taxpayer and shall separately state the district tax on the county tax receipts for the fiscal year. The county shall collect the district tax in the same manner that county taxes are collected and shall remit these collections to the district at least monthly. Partial payments shall be proportionately divided between the county and the district. The district budget ordinance may include an appropriation to the county for the cost to the county of computing, billing and collecting the district tax. The amount of the appropriation shall be agreed upon by the county and the district, but may not exceed five percent (5%) of the district levy. Any agreement shall remain effective until modified by mutual agreement. The amount due the county for collecting the district tax may be deducted by the county from its monthly remittances to the district or may be paid to the county by the district.

(d) Sanitary districts electing to collect their own taxes shall be deemed cities for the purposes of the Machinery Act. If a district is located in more than one county, the district board may adopt the assessments placed upon property located in the district by the counties in which the district is located if, in the opinion of the board, the same appraisal and assessment standards will apply uniformly throughout the district. If the board determines that adoption of the assessments fixed by the counties will not result in uniform appraisals and assessments throughout the district, the board may, by horizontal adjustments, equalize the appraisal values fixed by the counties and in accordance with the procedure prescribed in the Machinery Act, select and adopt an assessment ratio to be applied to the appraised values of property subject to district taxation as equalized by the board. Taxes levied by the district shall be levied uniformly on the assessments. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1959, c. 994; 1963, c. 1226; 1965, c. 496, s. 3; 1971, c. 780, s. 29; 1983, c. 891, s. 2.)

### **130A-63. Engineers to provide plans and supervise work; bids.**

(a) The sanitary district board shall retain engineers licensed by this State to provide detailed plans and specifications and to supervise the work undertaken by the district. The work or any portion of the work may be done by the sanitary district board by purchasing the material and letting a contract for the work or by letting a contract for furnishing all the materials and doing the work.

(b) All contracts for work performed for construction or repair and for the purchase of materials by sanitary districts shall be in accordance with the provisions of Article 8, Chapter 143 of the General Statutes which are applicable to counties and municipal corporations.

(c) All work done shall be in accordance with the plans and specifications prepared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19; 1957, c. 1357, s. 1; 1977, c. 544, s. 1; 1983, c. 891, s. 2.)

### **§ 130A-64. Service charges and rates.**

A sanitary district board shall apply service charges and rates based upon the exact benefits derived. These service charges and rates shall be sufficient to provide funds for the maintenance, adequate depreciation and operation of the work of the district. If reasonable, the service charges and rates may include an amount sufficient to pay the principal and interest maturing on the outstanding bonds and, to the extent not otherwise provided for, bond anticipation notes of the district. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on or to the retirement of bonds or bond anticipation notes. The sanitary district board may modify and adjust these service charges and rates. (1927, c. 100, s. 20; 1933, c. 8, s. 5; 1957, c. 1357, s. 1; 1965, c. 496, s. 4; 1983, c. 891, s. 2.)

### **§ 130A-65. Liens for sewer service charges in sanitary districts not operating water distribution system; collection of charges; disconnection of sewer lines.**

In sanitary districts which maintain and operate a sewage system but do not maintain and operate a water distribution system, the charges made for sewer service or for use of sewer service facilities shall be a lien upon the property served. If the charges are not paid within 15 days after they become due and payable, suit may be brought in the name of the sanitary district in the county in which the property served is located, or the property, subject to the lien, may be sold by the sanitary district under the same rules, rights of redemption and savings as are prescribed by law for the sale of land for unpaid ad valorem taxes. A sanitary district is authorized to adopt rules for the use of sewage works and the collection of charges. A sanitary district is authorized in accordance with its rules to enter upon the premises of any person using the sewage works and failing to pay the charges, and to disconnect the sewer line of that person from the district sewer line or disposal plant. A person who connects or reconnects with district sewer line or disposal plant without a permit from the sanitary district shall be guilty of a misdemeanor. (1965, c. 920, s. 1; 1983, c. 891, s. 2.)

**§ 130A-66. Removal of member of board.**

A petition with the signatures of twenty-five percent (25%) or more of the voters within a sanitary district which requests the removal from office of one or more members of a sanitary district board for malfeasance or nonfeasance in office may be filed with the board of commissioners of the county in which all or the greater portion of the voters of a sanitary district are located. Upon receipt of the petition, the county board of commissioners shall meet and adopt a resolution to hold an election on the question of removal. In the event that more than one member of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in a recall election, a majority of the vote within the sanitary district are cast for the removal of a member or members of the sanitary district board subject to recall, the member or members shall cease to be a member or members of the sanitary district board. A vacancy shall be immediately filled. The expenses of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21; 1957, c. 1357, s. 1; 1981, c. 186, s. 3; 1983, c. 891, s. 2.)

**§ 130A-67. Rights-of-way granted.**

A right-of-way in, along or across a county or State highway, street or property within a sanitary district is granted to a sanitary district in case the board finds it necessary or convenient for carrying out the work of the district. Any work done in, along or across a State highway shall be done in accordance with the rules of the Board of Transportation. (1927, c. 100, s. 22; 1933, c. 172, s. 17; 1957, c. 1357, s. 1; 1973, c. 507, s. 5; 1983, c. 891, s. 2.)

**§ 130A-68. Returns of elections.**

In all elections provided for in this Part, the board of elections shall file copies of the returns with the county boards of commissioners, sanitary district board and clerk of superior court in which the district is located. (1927, c. 100, s. 23; 1957, c. 1357, s. 1; 1981, c. 186, s. 4; 1983, c. 891, s. 2.)

**§ 130A-69. Procedure for extension of district.**

(a) If after a sanitary district has been created or the provisions of this Part have been made applicable to a sanitary district, a petition signed by not less than fifteen percent (15%) of the resident freeholders within any territory contiguous to and adjoining the sanitary district may be presented to the sanitary district board requesting annexation of territory described in the petition. The sanitary district board shall send a copy of the petition to the board of commissioners of the county or counties in which the district is located and to the Department. The sanitary district board shall request that the Department hold a joint public hearing with the sanitary district board on the question of annexation. The Secretary and the chairperson of the sanitary district board shall name a time and place for the public hearing. The chairperson of the sanitary district board shall publish a notice of public hearing once in a newspaper or newspapers published or circulating in the sanitary district and the territory proposed to be annexed. The notice shall be published not less than 15 days prior to the hearing. If after the hearing, the Commission approves the annexation of the territory described in the petition, the Department shall advise the board or boards of commissioners of the approval. The board or boards of commissioners shall order and provide for the

holding of a special election upon the question of annexation within the territory proposed to be annexed.

(b) If at or prior to the public hearing, a petition is filed with the sanitary district board signed by not less than fifteen percent (15%) of the freeholders residing in the sanitary district requesting an election be held on the annexation question, the sanitary district board shall send a copy of the petition to the board or boards of commissioners who shall order and provide for the submission of the question to the voters within the sanitary district. This election may be held on the same day as the election in the territory proposed to be annexed, and both elections and registrations may be held pursuant to a single notice. A majority of the votes cast is necessary for a territory to be annexed to a sanitary district.

(c) The election shall be held by the county board or boards of elections as soon as possible after the board or boards of commissioners orders the election. The cost of the election shall be paid by the sanitary district. Registration in the area proposed for annexation shall be under the same procedure as G.S. 63-288.2.

(d) Notice of the election shall be given as required by G.S. 163-33(8) and shall include a statement that the boundary lines of the territory to be annexed and the boundary lines of the sanitary district have been prepared by the district board and may be examined. The notice shall also state that if a majority of the those voting in the election favor annexation, then the territory annexed shall be subject to all debts of the sanitary district.

(e) The ballot shall be substantially as follows:

- FOR annexation to the . . . . . Sanitary District  
 AGAINST annexation to the . . . . . Sanitary District.”

The board or boards of elections shall certify the results of the election to the sanitary district board and the board or boards of commissioners of the county or counties in which the district is located.

(f) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by not less than fifty-one percent (51%) of the resident freeholders within the territory proposed to be annexed, it shall not be necessary to hold an election provided for by this section on the question of the extension of the boundaries of the sanitary district.

(g) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by the owners of all the real property within the territory proposed to be annexed, it shall not be necessary to hold any election or any hearings provided for by this section on the question of the extension of the boundaries of the sanitary district.

(h) No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court on any ground unless the action or proceeding is commenced within 30 days after the certification of the results by the board or boards of elections.

(i) When additional territory has been annexed to a sanitary district and the proposition of issuing bonds of the sanitary district after the annexation has been approved by the voters at an election held within one year subsequent to annexation, fifty-one percent (51%) or more of the resident freeholders within the annexed territory may petition the sanitary district board for the removal and exclusion of the territory from the sanitary district. No petition may be filed after bonds of the sanitary district have been approved in an election held at any time after annexation. If the sanitary district board approves the petition, it shall send a copy to the Department requesting that the petition be granted and shall send additional copies to the county board or boards of commissioners. A public hearing shall be conducted under the same procedure provided for the annexation of additional territory. If the Commis-

sion deems it advisable to comply with the request of the petition, the Commission shall adopt a resolution to that effect and shall redefine the boundaries of the sanitary district. (1927, c. 100, s. 24; 1943, c. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 2; 1961, c. 732; 1973, c. 476, s. 128; 1981, c. 186, s. 5; 1983, c. 891, s. 2.)

### **§ 130A-70. District and municipality extending boundaries and corporate limits simultaneously.**

(a) When the boundaries of a sanitary district lie entirely within or are coterminous with the corporate limits of a city or town and the sanitary district provides the only public water supply and sewage disposal system for the city or town, the boundaries of the sanitary district and the corporate limits of the city or town may be extended simultaneously as provided in this section.

(b) Twenty-five percent (25%) or more of the resident freeholders within the territory proposed to be annexed to the sanitary district and to the city or town may petition the sanitary district board and the governing board of the city or town setting forth the boundaries of the area proposed to be annexed and the objects of annexation is proposed to accomplish. The petition may also include any area already within the corporate limits of the city or town but not already within the boundaries of the sanitary district. Upon receipt of the petition, the sanitary district board and the governing board of the city or town shall meet jointly and shall hold a public hearing prior to approval of the petition. Notice of the hearing shall be made by posting a notice at the courthouse door of the county or counties and by publishing a notice at least once a week for four consecutive weeks in a newspaper with a circulation in the county or counties. If at or after the public hearing the sanitary district board and the governing board of the city or town, acting jointly, shall each approve the petition, the petition shall be submitted to the Commission for approval. If the Commission approves the petition, the question shall be submitted to a vote of all voters in the area or areas proposed to be annexed voting as a whole. The election shall be held on a date approved by the sanitary district board and by the governing board of the city or town.

(c) The words "For Extension" and "Against Extension" shall be printed on the ballots for the election. A majority of all the votes cast is necessary for the district and municipality to extend boundaries and corporate limits simultaneously.

(d) After declaration of the extension, the territory and its citizens and property shall be subject to all debts, ordinances and rules in force in the sanitary district and in the city or town, and shall be entitled to the same privileges and benefits as other parts of the sanitary district and the city or town. The newly annexed territory shall be subject to the sanitary district and the city or town taxes levied for the fiscal year following the date of annexation.

(e) The costs of holding and conducting the election for annexation pursuant to this section, shall be shared equally by the sanitary district and by the city or town.

(f) The sanitary district board and the governing board of the city or town, acting jointly, may order the board or boards of elections of the county or counties in which the sanitary district and the city or town are located, to call, hold, conduct and certify the result of the election, according to the provisions of Chapter 163 of the General Statutes.

(g) When the boundaries of a sanitary district and the corporate limits of a city or town are extended as provided in this section, and the proposition for issuing bonds of the sanitary district as enlarged has not been approved by the

oters at an election held within one year subsequent to the extension, the annexed territory may be removed and excluded from the sanitary district in the manner provided in G.S. 130A-69. If the petition includes areas within the present corporate limits of the city or town but not within the present boundaries of the sanitary district, these areas shall not be removed or excluded from the city or town under the provisions of this section.

(h) The powers granted by this section shall be supplemental and additional to powers conferred by any other law and shall not be regarded as in derogation to any powers now existing. (1953, c. 977; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 186, s. 6; 1983, c. 891, s. 2.)

### **130A-71. Procedure for withdrawing from district.**

Fifty-one percent (51%) or more of the resident freeholders of a portion of a sanitary district which has no outstanding indebtedness, with the approval of the sanitary district board, may petition the county board of commissioners of the county in which a major portion of the petitioners reside, that the identified portion of the district be removed and excluded from the district. If the county board of commissioners approves the petition, an election shall be held in the entire district on the question of exclusion. A majority of all the votes cast is necessary for a district to be removed and excluded from a sanitary district. The county board of commissioners shall notify the Commission who shall remove and exclude the portion of the district, and redefine the limits accordingly. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **130A-72. Dissolution of certain sanitary districts.**

Fifty-one percent (51%) or more of the resident freeholders of a sanitary district which has no outstanding indebtedness may petition the board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located to dissolve the district. Upon receipt of the petition, the county board of commissioners shall notify the Department and the chairperson of the county board of commissioners of any other county or counties in which any portion of the district lies, of the receipt of the petition, and shall request that the Department hold a joint public hearing with the county commissioners concerning the dissolution of the district. The secretary and the chairperson of the county board of commissioners shall name a time and place within the district for the public hearing. The county board of commissioners shall give prior notice of the hearing by posting a notice at the courthouse door of the county or counties and by publication in a newspaper or newspapers with circulation in the county or counties at least once a week for four consecutive weeks. If all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, the hearing may be continued to a time and place determined by the Department. If after the hearing, the Commission and the county board or boards of commissioners deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution to dissolve the sanitary district. The sanitary district board of the dissolved district is authorized to convey all assets, including cash, to any county, municipality, or other governmental unit, or to any public utility company operating or to be operated under the authority of a certificate of public convenience and necessity granted by the North Carolina Utilities Commission in return for the assumption of the obligation to provide water and sewage services to the area served by the district at the time of dissolution. (1943, c. 620; 1951, c. 178, s. 2; 1957, c. 1357, s. 1; 1967, c. 4, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§ 130A-73. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.**

When the boundaries of a sanitary district which has no outstanding indebtedness are entirely located within or coterminous with the corporate limits of a city or town, fifty-one percent (51%) or more of the resident freeholders within the district may petition the board of commissioners within the county in which all or the greater portion of the resident freeholders of the district are located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department, the chairperson of the board of commissioners of any other county or counties in which any portion of the district lies and the governing body of the city or town within which the district lies of the receipt of the petition, and shall request that the Department hold a joint public hearing with the board or boards of commissioners and the governing body of the city or town. The Secretary, the chairperson of the board of commissioners of the county in which all or the greater portion of the resident freeholders are located and the presiding officer of the governing body of the city or town shall name a time and place within the boundaries of the district and the city or town for the public hearing. The county board of commissioners shall give notice of the hearing by posting prior notice at the courthouse door of the county or counties and also by publication in a newspaper or newspapers circulating in the district at least once a week for four consecutive weeks. If all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, the hearing may be continued to a time and place determined by the Department. If, after the hearing, the Commission, the county board or boards of commissioners and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district which were levied prior to but which are not collected after the dissolution shall vest in the city or town. All property held, owned, controlled or used by the sanitary district upon the dissolution of the district which may later be vested in the sanitary district, and all judgments, liens, rights and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town. (1963, c. 512, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§ 130A-74. Validation of creation of districts.**

All actions prior to June 6, 1961, taken by the county boards of commissioners[,] by the State Board of Health, by any officer or by any other agency, board or officer of the State in the formation and creation of sanitary districts in the State, and the formation and creation, or the attempted formation and creation of any sanitary districts are in all respects validated. These sanitary districts are declared lawfully formed and created and in all respects legal and valid sanitary districts. (1953, c. 596, s. 1; 1957, c. 1357, s. 1; 1961, c. 667, s. 1; 1983, c. 891, s. 2.)

### **130A-75. Validation of extension of boundaries of districts.**

(a) All actions prior to April 1, 1957, taken by the State Board of Health, a county board of commissioners, and a sanitary district board for the purpose of extending the boundaries of a sanitary district where the territory which was annexed contained no resident freeholders, and where the owner or owners of the real property annexed requested of the sanitary district board that the territory be annexed to the sanitary district, are validated, notwithstanding any lack of power to perform these acts or proceedings, and notwithstanding any defect or irregularity in the acts or proceedings.

(b) All actions and proceedings prior to April 1, 1979, taken by the State Board of Health, the Commission, a board of county commissioners and a sanitary district board for the purpose of annexing additional territory to a sanitary district or with respect to the annexation are validated notwithstanding any lack of power to perform these acts or proceedings or any defect or irregularity in any acts or proceedings; these sanitary districts are lawfully extended to include this additional territory. (1959, c. 415, s. 2; 1975, c. 712, s. 1; 1979, 2nd Sess., c. 1079, s. 1; 1983, c. 891, s. 2.)

### **130A-76. Validation of dissolution of districts.**

All actions prior to January 1, 1981, taken by a county board of commissioners, by the State Board of Health or Commission, by an officer or by any other agency, board or officer of the State in the dissolution of a sanitary district and the dissolution or attempted dissolution of a sanitary district are validated. (1953, c. 596, s. 2; 1957, c. 1357, s. 1; 1981, c. 20, ss. 1, 2; 1983, c. 891, s. 2.)

### **130A-77. Validation of bonds of districts.**

All actions and proceedings prior to April 1, 1979, taken, and all elections held in a sanitary district or in a district purporting to be a legal sanitary district by virtue of the purported authority and acts of a county board of commissioners, State Board of Health, Commission, or any other board, officer or agency for the purpose of authorizing, selling or issuing the bonds of the sanitary district, and all bonds at any time issued by or on behalf of a sanitary district, are in all respects validated. These bonds are declared to be the legal and binding obligations of the sanitary district. (1953, c. 596, s. 3; 1957, c. 1357, s. 1; 1979, 2nd Sess., c. 1079, s. 2; 1983, c. 891, s. 2.)

### **130A-78. Tax levy for validated bonds.**

Sanitary districts are authorized to make appropriations and to levy annually a tax on property having a situs in the district under the rules and according to the procedure prescribed in the Machinery Act for the purpose of paying the principal of and interest on bonds validated in G.S. 130A-77. The tax shall be sufficient for this purpose and shall be in addition to all other taxes which may be levied upon the taxable property in the sanitary district. (1945, c. 89, s. 3; 1957, c. 1357, s. 1; 1973, c. 803, s. 17; 1983, c. 891, s. 2.)

**§ 130A-79. Validation of appointment or election of members of district boards.**

(a) All actions and proceedings prior to June 6, 1961, taken in the appointment or election of members of a sanitary district board are validated. Members of these boards shall have all the powers and may perform all the duties required or permitted of them to be pursuant to this Part.

(b) All actions and proceedings prior to May 1, 1959, taken in the appointment or election of members of a sanitary district board and the appointment or election of members are validated. Members of these boards shall have all the powers and may perform all the duties required or permitted of them pursuant to the provisions of this Part. (1953, c. 596, s. 4; 1957, c. 1357, s. 1; 1959, c. 415, s. 1; 1961, c. 667, s. 2; 1983, c. 891, s. 2.)

**§ 130A-80. Merger of district with contiguous city or town election.**

A sanitary district may merge with a contiguous city or town in the following manner:

- (1) The sanitary district board and the governing board of the city or town may resolve that it is advisable to call an election within both the sanitary district and the city or town to determine if the sanitary district and the city or town should merge;
- (2) If the sanitary district board and the governing board of the city or town resolve that it is advisable to call for an election, both boards shall adopt a resolution requesting the board of commissioners in the county or counties in which the district and the town or city or any portion is located to hold an election on a date named by the sanitary district board and the governing board of the city or town after consultation with the appropriate board or boards of elections. The election shall be held within the sanitary district and the city or town on the question of merger;
- (3) The county board or boards of commissioners shall request the appropriate board or boards of elections to hold and conduct the election. All voters of the city or town and the sanitary district shall be eligible to vote if the election is called in both areas as authorized in subsection (1);
- (4) Notice of the election shall be given as required in G.S. 163-33(8). The board or boards of elections may use either method of registration set out in G.S. 163-288.2;
- (5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:

FOR merger of the Town of . . . . . and the . . . . . Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of . . . . . and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged.

AGAINST merger.”

- (6) A majority of all the votes cast by voters of the sanitary district and a majority of all the votes cast by voters of the city or town is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast in either the sanitary district or the city or town vote against the merger, any resolution or election on similar propositions of merger may not occur until one year from the date of the last election.
- (7) Upon the merger of a sanitary district and a city or town pursuant to this section, the city or town shall assume all obligations of the sanitary district and the sanitary district shall convey all property rights to the city or town. The vote for merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. After the merger, the residents of the sanitary district enjoy all of the benefits of the municipality and shall assume their share of the obligations of the city or town. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all the territory included in the enlarged municipality; and
- (8) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewage disposal systems. The governing board shall send a certified copy of the determination to the local government commission in order that the Commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 159-55. (1961, c. 866; 1981, c. 186, s. 7; 1983, c. 891, s. 2.)

### **130A-81. Incorporation of municipality and simultaneous dissolution of sanitary district, with transfer of assets and liabilities from the district to the municipality.**

The General Assembly may incorporate a municipality, which includes within its boundaries or is coterminous with a sanitary district and provide for the simultaneous dissolution of the sanitary district and the transfer of the district's assets and liabilities to the municipality, in the following manner:

- (1) The incorporation act shall define the boundaries of the proposed municipality; shall set the date for and provide for a referendum on the incorporation of the proposed municipality and dissolution of the sanitary district; shall provide for registration of voters in the area of the proposed municipality in accordance with G.S. 163-288.2; shall set a proposed effective date for the incorporation of the municipality and the dissolution of the sanitary district; shall establish the form of government for the proposed municipality and the composition of its governing board, and provide for transitional arrangements for the sanitary district to the municipality; and may include any other matter appropriate to a municipal charter.
- (1a) As an alternate to subdivision (1) of this section, the incorporation act shall define the boundaries of the proposed municipality; shall provide that the incorporation is not subject to referendum; shall set a proposed effective date for the incorporation of the municipality and

the dissolution of the sanitary district; shall establish the form of government for the proposed municipality and the composition of its governing board, and provide for transitional arrangements for the transfer of the sanitary district to the municipality, and may include any other matter appropriate to a municipal charter. If this subdivision is followed instead of subdivision (1), then the municipality shall be incorporated and the sanitary district simultaneously dissolved at 12 noon on the date set for incorporation in the incorporation act, and the provisions of paragraphs a. through g. of subdivision (5) of this section shall apply.

(2) The referendum shall be conducted by the board of elections of the county in which the proposed municipality is located. If the proposed municipality is located in more than one county, the board of elections of the county which has the greatest number of residents of the proposed municipality shall conduct the referendum. The board of elections shall conduct the referendum in accordance with this section and the provisions of the incorporation act.

(3) The form of the ballot for a referendum under this section shall be substantially as follows:

FOR incorporation of the Town (City) of . . . . . and the simultaneous dissolution of the . . . . . Sanitary District with transfer of the District's assets and liabilities to the Town (City), and assumption of the District's indebtedness by the Town (City).

AGAINST incorporation of the Town (City) of . . . . . and the simultaneous dissolution of the . . . . . Sanitary District with transfer of the District's assets and liabilities, to the Town (City), and assumption of the District's indebtedness by the Town (City)."

(4) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the board of elections shall notify the Department and the Local Government Commission of the date on which the municipality will be incorporated and the sanitary district dissolved and shall state that all assets and liabilities of the sanitary district will be transferred to the municipality and that the municipality will assume the district's indebtedness.

(5) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the municipality shall be incorporated and the sanitary district shall be simultaneously dissolved at 12 noon on the date set for incorporation in the incorporation act. At that time:

a. The sanitary district shall cease to exist as a body politic and shall not incorporate;

b. All property, real, personal and mixed, belonging to the sanitary district vests in and is the property of the municipality;

c. All judgments, liens, rights and courses of action in favor of the sanitary district vest in favor of the municipality;

d. All rentals, taxes, assessments and other funds, charges or fees owed to the sanitary district are owed to and may be collected by the municipality;

e. Any action, suit, or proceeding pending against, or instituted by, the sanitary district shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The municipality shall be a party to these actions, suits and proceedings in the place of the sanitary district.

- district and shall pay any judgment rendered against the sanitary district in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings;
- f. All obligations of the sanitary district, including outstanding indebtedness, are assumed by the municipality, and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the municipality. The full faith and credit of the municipality is deemed to be pledged for the payment of the principal of and interest on all general obligation bonds and bond anticipation notes of the sanitary district, and all the taxable property within the municipality shall remain subject to taxation for these payments; and
- g. All rules of the sanitary district shall continue in effect until repealed or amended by the governing body of the municipality.
- (6) The transition between the sanitary district and the municipality shall be provided for in the incorporation act of the municipality. (1971, c. 737, 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 375.)

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

### 130A-82. Dissolution of sanitary districts; referendum.

- (a) A county board of commissioners in counties having a population in excess of 275,000 may dissolve a sanitary district by holding a referendum on the questions of dissolution and assumption by the county of any outstanding indebtedness of the district. The county board of commissioners may dissolve a sanitary district which has no outstanding indebtedness when the members of the district shall vote in favor of dissolution.
- (b) Before the dissolution of any district shall be approved, a plan for continued operation and provision of all services and functions being performed by the district shall be adopted and approved by the board of county commissioners.
- (c) No plan shall be adopted unless at the time of its adoption any water system or sanitary sewer system being operated by the district is in compliance with all local, State and federal rules and regulations, and if the system is to be serviced by a municipality, the municipality shall first approve the plan.
- (d) When all actions relating to dissolution of the sanitary district have been completed, the chairperson of the county board of commissioners shall notify the Department. (1973, c. 476, s. 128; c. 951; 1983, c. 891, s. 2.)

### 130A-83. Merger of two contiguous sanitary districts.

Two contiguous sanitary districts may merge in the following manner:

- (1) The sanitary district board of each sanitary district must first adopt a common proposed plan of merger. The plan shall contain the name of the new or successor sanitary district, designate the members of the merging boards who shall serve as the interim sanitary district board for the new or successor district until the next election required by G.S. 130A-50(b) and 163-279, and any other matters necessary to complete the merger.
- (2) The merger may become effective only if approved by the voters of the two sanitary districts. In order to call an election, both boards shall

adopt a resolution calling upon the board of county commissioners in the county or counties in which the districts are located to call for an election on a date named by the sanitary district boards after consultation with the appropriate boards of election. The board or boards of commissioners shall hold an election on the proposed merger of the sanitary districts.

- (3) The county board or boards of commissioners shall request the appropriate board of elections to hold and conduct the elections. All voters of the two sanitary districts shall be eligible to vote.
- (4) Notice of the elections shall be given as required in G.S. 163-33(8). The board of elections may use the method of registration set out in G.S. 163-288.2.
- (5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:

FOR the merger of the . . . . . Sanitary District and the . . . . . Sanitary District into a single district to be known as the . . . . . Sanitary District, in which all the property, assets, liabilities, obligations, and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the . . . . . Sanitary District.

AGAINST the merger of the . . . . . Sanitary District and the . . . . . Sanitary District into a single district to be known as the . . . . . Sanitary District, in which all the property, assets, liabilities, obligations, and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the . . . . . Sanitary District."

- (6) If a majority of all the votes cast in each sanitary district vote in favor of the merger, the two sanitary districts shall be merged on July 1 following the election. Should the majority of the votes cast in either sanitary district be against the proposition, the sanitary district shall not be merged. If a majority of the votes cast in either sanitary district are against the merger, any resolution or election on similar propositions of merger may not occur until one year from the date of the last election.
- (7) Upon the merger of two sanitary districts pursuant to this section and the creation of a new district, the merger becomes effective at 12 noon on the following July 1. At that time:
  - a. The two sanitary districts shall cease to exist as bodies politic and corporate, and the new sanitary district exists as a body politic and corporate.
  - b. All property, real, personal and mixed, belonging to the sanitary districts vests in and is the property of the new sanitary district.
  - c. All judgments, liens, rights of liens and causes of action in favor of either sanitary district vest in the new sanitary district.
  - d. All rentals, taxes, assessments and other funds, charges or fees owed to either of the sanitary districts are owed to and may be collected by the new sanitary district.
  - e. Any action, suit, or proceeding pending against, or having been instituted by, either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The new sanitary district shall be a party to all these actions, suits and proceedings in the place of the dissolved sanitary district and shall pay any judgment rendered against either of the sanitary districts in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.

- f. All obligations of either of the sanitary districts, including any outstanding indebtedness, are assumed by the new sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the new sanitary district. The full faith and credit of the new sanitary district is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the new sanitary district shall remain subject to taxation for these payments.
  - g. All rules of either of the sanitary districts shall continue in effect until repealed or amended by the governing body of the new sanitary district.
- (8) Upon the merger of two sanitary districts pursuant to this section when one district is to be dissolved and the other district is to be a successor covering the territory of both, the merger becomes effective at 12 noon on the following July 1. At that time:
- a. One sanitary district shall cease to exist as a body politic and corporate, and the successor sanitary district continues to exist as a body politic and corporate.
  - b. All property, real, personal and mixed, belonging to the sanitary districts vests in, and is the property of the successor sanitary district.
  - c. All judgments, liens, rights of liens and causes of action in favor of either sanitary district vest in the successor sanitary district.
  - d. All rentals, taxes, assessments and other funds, charges or fees owed either of the sanitary districts are owed to and may be collected by the successor sanitary district.
  - e. Any action, suit, or proceeding pending against, or instituted by either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The successor sanitary district shall be a party to all these actions, suits and proceedings in the place of the dissolved sanitary district and shall pay any judgment rendered against the sanitary district in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.
  - f. All obligations of either of the sanitary districts, including any outstanding indebtedness, are assumed by the successor sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the successor sanitary district. The full faith and credit of the successor sanitary district is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the successor sanitary district shall be and remain subject to taxation for these payments.
  - g. All rules of either of the sanitary districts shall continue in effect until repealed or amended by the governing body of the successor sanitary district. (1981, c. 951; 1983, c. 891, s. 2.)

### § 130A-84. **Withdrawal of water.**

A sanitary district is empowered to engage in litigation or to join with other parties in litigation opposing the withdrawal of water from a river or other water supply. (1983, c. 891, s. 2.)

§§ 130A-85 to 130A-87: Reserved for future codification purposes.

## ARTICLE 3.

### *State Laboratory of Public Health.*

### § 130A-88. **Laboratory established.**

(a) A State Laboratory of Public Health is established within the Department. The Department is authorized to make examinations, and provide consultation and technical assistance as the public health may require.

(b) The Commission shall adopt rules necessary for the operation of the State Laboratory of Public Health. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C.S., s. 7056; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 788, s. 3; 1983, c. 891, s. 2.)

§ 130A-89: Reserved for future codification purposes.

## ARTICLE 4.

### *Vital Statistics.*

### § 130A-90. **Vital statistics program.**

The Department shall maintain a Vital Statistics Program which shall operate the only system of vital records registration throughout this State. (1983, c. 891, s. 2.)

### § 130A-91. **State Registrar.**

The Secretary shall appoint a State Registrar of Vital Statistics. The State Registrar of Vital Statistics shall exercise all the authority conferred by this Article. (1913, c. 109, s. 2; C.S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 163, s. 1; 1983, c. 891, s. 2.)

### § 130A-92. **Duties of the State Registrar.**

(a) The State Registrar shall secure and maintain all vital records required under this Article and shall do all things necessary to carry out its provisions. The State Registrar shall:

- (1) Examine vital records received from local registrars to determine if these records are complete and satisfactory, and require the provision of information necessary to make the records complete and satisfactory;
- (2) Permanently preserve the vital records in a systematic manner in an adequate fireproof space which shall be provided in a State building by the Department of Administration, and maintain a comprehensive and continuous index of all vital records;

- (3) Prepare and supply all forms used in carrying out the provisions of this Article which shall be the only forms used to file vital records in this State;
- (4) Appoint local registrars as required by G.S. 130A-95 and exercise supervisory authority over local registrars, deputy local registrars and sub-registrars;
- (5) Enforce the provisions of this Article, investigate cases of irregularity or violations and report violations to law-enforcement officials for prosecution under G.S. 130A-26;
- (6) Conduct studies and research and recommend to the General Assembly any additional legislation necessary to carry out the purposes of this Article; and
- (7) Adopt rules necessary to carry out the provisions of this Article.

(b) The State Registrar may retain payments made in excess of the fees established by this Article if the overpayment is in the amount of three dollars (\$3.00) or less and the payor does not request a refund of the overpayment. The State Registrar is not required to notify the payor of any overpayment of three dollars (\$3.00) or less. (1913, c. 109, s. 1; C.S., s. 7086; 1957, c. 357, s. 1; 1969, c. 1031, s. 1; 1971, c. 444, s. 3; 1973, c. 476, s. 128; 1983, c. 91, s. 2; 1985, c. 366.)

**Effect of Amendments.** — The 1985 amendment, effective June 10, 1985, added subsection (b).

### **130A-93. Access to vital records; copies.**

- (a) Only the State Registrar shall have access to original vital records.
- (b) The State Registrar shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and (g), to any person upon request.
- (c) The State Registrar shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and (g), only to the following:
  - (1) A person requesting a copy of the person's own vital records or that of the person's spouse, child, parent, brother or sister;
  - (2) A person seeking information for a legal determination of personal or property rights; or
  - (3) An authorized agent, attorney or legal representative of a person described above.
- (d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-29.
- (e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for research purposes. The State Registrar shall adopt rules providing for the use of this information for research purposes.
- (f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshall.
- (g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar. These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) The State Registrar shall be entitled to a fee not to exceed five dollars (\$5.00) for issuing any copy of a vital record or for conducting a search of the files for the records when no copy is made. An account of all fees received shall be kept and the fees turned over to the State Treasurer for use by the Department for public health purposes.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules. (1983, c. 891, s. 2; 1985, c. 325, s. 1.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, substituted “five dollars (\$5.00)” for “three dollars (\$3.00)” in the first sentence of subsection (i).

**§ 130A-94. Local registrar.**

The local health director shall serve, ex officio, as the local registrar of each county within the jurisdiction of the local health department. (1983, c. 891, s. 2.)

**§ 130A-95. Control of local registrar.**

The State Registrar shall direct, control and supervise the activities of local registrars. (1913, c. 109, s. 4; 1915, c. 20; C. S., ss. 7089, 7090; 1955, c. 951, s. 6; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2; 1985, c. 462, s. 14.)

**Effect of Amendments.** — The 1985 amendment, effective June 24, 1985, deleted “and may remove a local registrar for cause” at the end of the section.

**§ 130A-96. Appointment of deputy and sub-registrars.**

(a) Each local registrar shall immediately upon appointment, appoint a deputy whose duty shall be to assist the local registrar and to act as local registrar in case of absence, illness, disability or removal of the local registrar. The deputy shall be designated in writing and be subject to all rules and statutes governing local registrars. The local registrar shall direct, control and supervise the activities of the deputy registrar and may remove a deputy registrar for cause.

(b) The local registrar may, when necessary and with the approval of the State Registrar, appoint one or more persons to act as sub-registrars. Sub-registrars shall be authorized to receive certificates and issue burial-transit permits in and for designated portions of the county. Each sub-registrar shall enter the date the certificate was received and shall forward all certificates to the local registrar within three days.

(c) The State Registrar shall direct, control and supervise sub-registrars and may remove a sub-registrar for cause. (1913, c. 109, s. 4; C. S., s. 7091; 1955, c. 951, s. 8; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

### **130A-97. Duties of local registrars.**

The local registrar shall:

- (1) Administer and enforce provisions of this Article and the rules, and immediately report any violation to the State Registrar;
- (2) Furnish certificate forms and instructions supplied by the State Registrar to persons who require them;
- (3) Examine each certificate when submitted to determine if it has been completed in accordance with the provisions of this Article and the rules. If a certificate is incomplete or unsatisfactory, the responsible person shall be notified and required to furnish the necessary information. All birth and death certificates shall be typed or written legibly in permanent black or blue-black ink;
- (4) Enter the date on which a certificate is received and sign as local registrar;
- (5) Transmit to the register of deeds of the county a copy of each certificate registered within seven days of receipt of a birth or death certificate. The copy transmitted shall include the race of the father and mother if that information is contained on the State copy of the certificate of live birth. Copies transmitted may be on blanks furnished by the State Registrar or may be photocopies made in a manner approved by the register of deeds. The local registrar may also keep a copy of each certificate for no more than two years;
- (6) On the fifth day of each month or more often, if requested, send to the State Registrar all original certificates registered during the preceding month; and
- (7) Maintain records, make reports and perform other duties required by the State Registrar. (1913, c. 109, s. 18; 1915, c. 85, s. 2; c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1949, c. 133; 1955, c. 951, ss. 20, 21; 1957, c. 1357, s. 1; 1963, c. 492, ss. 4, 8; 1969, c. 1031, s. 1; 1971, c. 444, s. 8; 1979, c. 95, s. 9; 1981, c. 554; 1983, c. 891, s. 2.)

### **130A-98. Pay of local registrars.**

A local health department shall provide sufficient staff, funds and other resources necessary for the proper administration of the local vital records registration program. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; C. S., s. 7110; Ex. Sess. 1920, c. 58, s. 2; 1949, c. 306; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

### **130A-99. Register of deeds to preserve copies of birth and death records.**

The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished by the local registrar under the provisions of G.S. 130A-97, and shall make and keep a proper index of the certificates. These certificates shall be open to inspection and examination. Copies or abstracts of these certificates shall be provided to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c). (1957, c. 1357, s. 1; 1969, c. 80, s. 3; c. 1031, s. 1; 1983, c. 891, s. 2.)

**§ 130A-100. Register of deeds may perform notarial acts**

(a) The register of deeds is authorized to take acknowledgments, administer oaths and affirmations and to perform all other notarial acts necessary for the registration or issuance of certificates relating to births, deaths or marriages. The register of deeds shall be entitled to a fee as prescribed in G.S. 161-10.

(b) All acknowledgments taken, affirmations or oaths administered or other notarial acts performed by the register of deeds relating to the registration of certificates of births, deaths or marriages prior to June 16, 1959, are validated. (1945, c. 100; 1957, c. 1357, s. 1; 1959, c. 986; 1969, c. 80, s. 9; c. 1031, s. 1; 1983, c. 891, s. 2.)

**§ 130A-101. Birth registration.**

(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the county in which the birth occurs within five days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this Article and the rules.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar. The physician or other person in attendance shall provide the medical information required by the certificate and shall certify the facts of birth within five days after the birth. If the physician or other person in attendance does not certify the facts of birth within the five-day period, the person in charge of the facility may complete and sign the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth, or in the absence of such a person;
- (2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;
- (3) The father, the mother or, in the absence or inability of the father and the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first removed from the conveyance in this State, the birth shall be registered in the county where the child is first removed from the conveyance, and that place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered. The surname of the child shall be the same as that of the husband, except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate without written consent, under oath, of both the father and the mother. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname

shall be the same as that of the mother. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S., s. 7010; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 4; c. 417; 1983, c. 891, s. 2.)

#### CASE NOTES

As to the unconstitutionality of former § 130-50(e) insofar as it precluded parents from recording the surnames of their

choice on the birth certificates of their children, see *O'Brien v. Tilson*, 523 F. Supp. 494 (E.D.N.C. 1981).

#### OPINIONS OF ATTORNEY GENERAL

Compliance with former § 130-50(f) was not sufficient, standing alone, to establish paternity of an illegitimate child for the purpose of qualifying for Aid to Families with De-

pendent Children. — See opinion of Attorney General to Dr. Sarah T. Morrow, Secretary, Dep't of Human Resources, 50 N.C.A.G. 5 (1980).

### § 130A-102. Contents of birth certificate.

The certificate of birth shall contain those items recommended by the federal agency responsible for national vital statistics, except as amended or changed by the State Registrar. Medical information contained in a birth certificate shall not be a public records open to inspection. (1913, c. 109, s. 14; C. S., s. 7102; 1949, c. 161, s. 2; 1955, c. 951, s. 15; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 7; 1983, c. 891, s. 2.)

### § 130A-103. Registration of birth certificates more than five days and less than one year after birth.

Any birth may be registered more than five days and less than one year after birth in the same manner as births are registered under this Article within five days of birth. The registration shall have the effect as if the registration had occurred within five days of birth. The registration however, shall not relieve any person of criminal liability for the failure to register the birth within five days of birth as required by G.S. 130A-101. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 5; 1983, c. 891, s. 2.)

### § 130A-104. Registration of birth one year or more after birth.

(a) When the birth of a person born in this State has not been registered within one year after birth, a delayed certificate may be filed with the register of deeds in the county in which the birth occurred. An applicant for a delayed certificate must submit the minimum documentation prescribed by the State Registrar.

(b) A certificate of birth registered one year or more after the date of the birth shall be marked "delayed" and show the date of the delayed registration. A summary statement of evidence submitted in support of the delayed registration shall be endorsed on the certificate. The register of deeds shall forward the original and a duplicate to the State Registrar for final approval. If the certificate complies with the rules and has not been previously registered, the State Registrar shall file the original and return the duplicate to the register of deeds for recording.

(c) When an applicant does not submit the minimum documentation required or when the State Registrar finds reason to question the validity or

adequacy of the certificate or documentary evidence, the State Registrar shall not register the delayed certificate and shall advise the applicant of the reasons for this action. If the deficiencies are not corrected, the applicant shall be advised of the right to an administrative hearing and of the availability of a judicial determination under G.S. 130A-106.

(d) Delayed certificates shall have the same evidentiary value as those registered within five days. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 80, s. 8; c. 1031, s. 1; 1973, c. 476, s. 128; 1979, c. 95, s. 6; 1983, c. 891, s. 2.)

### **§ 130A-105. Validation of irregular registration of birth certificates.**

The registration and filing with the State Registrar prior to April 1, 1941, of the birth certificate of a person whose birth was not registered within five days of birth is validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the State Registrar, shall have the same evidentiary value as those registered within five days. (1941, c. 126; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-106. Establishing fact of birth by persons without certificates.**

(a) A person born in this State not having a recorded certificate of birth, may file a verified petition with the clerk of the superior court in the county of the petitioner's legal residence or place of birth, setting forth the date, place of birth and parentage, and petitioning the clerk to hear evidence, and to find and adjudge the date, place and parentage of the birth of the petitioner. Upon the filing of a petition, the clerk shall set a hearing date, and shall conduct the proceeding in the same manner as other special proceedings. At the time set for the hearing, the petitioner shall present evidence to establish the facts of birth. If the evidence offered satisfies the court, the court shall enter judgment establishing the date, place of birth and parentage of the petitioner, and record it in the record of special proceedings. The clerk shall certify the judgment to the State Registrar who shall keep a record of the judgment. A copy shall be certified to the register of deeds of the county in which the petitioner was born.

(b) The clerk may charge a fee not to exceed two dollars (\$2.00) for services provided under this section.

(c) The record of birth established under this section, when recorded, shall have the same evidentiary value as other records covered by this Article. (1941, c. 122; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-107. Establishing facts relating to a birth of unknown parentage; certificate of identification.**

(a) A person of unknown parentage whose place and date of birth are unknown may file a verified petition with the clerk of the superior court in the county where the petitioner was abandoned. The petition shall set forth the facts concerning abandonment, the name, date and place of birth of petitioner and the names of any persons acting in loco parentis to the petitioner.

(b) The clerk shall find facts and, if there is insufficient evidence to establish the place of birth, it shall be conclusively presumed that the person was

born in the county of abandonment. The clerk shall enter and record judgment in the record of special proceedings. The clerk shall certify the judgment to the State Registrar who shall keep a record of the judgment. A copy shall be certified to the register of deeds of the county of abandonment.

(c) A certificate of identification for a person of unknown parentage shall be filed by the clerk with the local registrar of vital statistics of the district in which the person was found.

(d) The clerk may charge a fee not to exceed two dollars (\$2.00) for services provided under this section. (1959, c. 492; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-108. Certificate of identification for child of foreign birth.**

In the case of an adopted child born in a foreign country and having legal settlement in this State, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the child. The certificate shall contain the same information required by G.S. 48-29(a) for children adopted in this State, except that the country of birth shall be specified in lieu of the state of birth. (1949, c. 160, s. 2; 1955, c. 951, s. 16; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

### **§ 130A-109. Birth certificate as evidence.**

Certified copies of birth certificates shall be accepted by public school authorities in this State as prima facie evidence of the age of children registering for school attendance, and no other proof shall be required. In addition, certified copies of birth certificates shall be required by all factory inspectors and employers of youthful labor, as prima facie proof of age, and no other proof shall be required. However, when it is not possible to secure a certified copy of a birth certificate, school authorities, factory inspectors and employers may accept as secondary proof of age any competent evidence by which the age of persons is usually established. (1913, c. 109, s. 17; C. S., s. 7107; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

### **§ 130A-110. Registration of marriage certificates.**

(a) On or before the fifteenth day of the month, the register of deeds shall transmit to the State Registrar a record of each marriage ceremony performed in the county during the preceding calendar month. The State Registrar shall prescribe a form containing the information required by G.S. 50-16 and additional information to conform with the requirements of the federal agency responsible for national vital statistics. The form shall be the official form of a marriage license, certificate of marriage and application for marriage license.

(b) Each form signed and issued by the register of deeds, assistant register of deeds or deputy register of deeds shall constitute an original or a duplicate original. Upon request, the State Registrar shall furnish a true copy of the marriage registration. The copy shall have the same evidentiary value as the original.

(c) The register of deeds shall provide copies or abstracts of marriage certificates to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(d) Marriage certificates maintained by the local register of deeds shall be open to inspection and examination. (1961, c. 862; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 1110, s. 3; 1983, c. 891, s. 2; 1985, c. 325, s. 2.)

**Editor's Note.** — The reference in subsection (a) of this section to § 50-16 was probably intended to be a reference to § 51-16.

**Effect of Amendments.** — The 1985

amendment, effective October 1, 1985, deleted the last sentence of subsection (b), which read "A fee not to exceed three dollars (\$3.00) may be charged for this service."

## § 130A-111. Registration of divorces and annulments.

For each divorce and annulment of marriage granted by a court of competent jurisdiction in this State, a report shall be prepared and filed by the clerk of court with the State Registrar. On or before the fifteenth day of each month, the clerk shall forward to the State Registrar the report of each divorce and annulment granted during the preceding calendar month. (1957, c. 983; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1977, c. 1110, s. 2; 1983, c. 891, s. 2; 1985, c. 325, s. 3.)

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, deleted the former second, third and fourth sentences of this section, which read "The information necessary to prepare the report shall be furnished to the clerk by the parties or their legal repre-

sentatives. The report shall contain as a minimum those items specified on the standard certificate of divorce and annulment as prepared by the federal agency responsible for national vital statistics. The State Registrar may require additional information."

## § 130A-112. Notification of death.

A funeral director or person acting as such who first assumes custody of a dead body or fetus of 20 completed weeks gestation or more shall submit a notification of death to the local registrar in the county where death occurred, within 24 hours of taking custody of the body or fetus. The notification of death shall identify the attending physician responsible for medical certification, except that for deaths under the jurisdiction of the medical examiner, the notification shall identify the medical examiner and certify that the medical examiner has released the body to a funeral director or person acting as such for final disposition. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S., s. 7092; 1955, c. 951, s. 9; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 873, s. 1; 1983, c. 891, s. 2.)

## § 130A-113. Permits for burial-transit, authorization for cremation and disinterment-reinterment.

(a) The funeral director or person acting as such who first assumes custody of a dead body or fetus which is under the jurisdiction of the medical examiner shall obtain a burial-transit permit signed by the medical examiner prior to final disposition or removal from the State and within five days after death.

(b) A dead body shall not be cremated or buried at sea unless the provisions of G.S. 130A-388 are met.

(c) A permit for disinterment-reinterment shall be required prior to disinterment of a dead body or fetus except as otherwise authorized by law or rule. The permit shall be issued by the local registrar to a funeral director, embalmer or other person acting as such upon proper application.

(d) No dead body or fetus shall be brought into this State unless accompanied by a burial-transit or disposal permit issued under the law of the state in

which death or disinterment occurred. The permit shall be final authority for final disposition of the body or fetus in this State.

(e) The local registrar shall issue a burial-transit permit for the removal of a dead body or fetus from this State if the requirements of G.S. 130A-112 are met and that the death is not under the jurisdiction of the medical examiner. (1973, c. 873, s. 2; 1977, c. 163, s. 2; 1983, c. 891, s. 2.)

### § 130A-114. Fetal death registration.

(a) Each spontaneous fetal death occurring in the State of 20 completed weeks gestation or more, as calculated from the first day of the last normal menstrual period until the day of delivery, shall be reported within five days after delivery to the local registrar of the county in which the delivery occurred. The report shall be made on a form prescribed and furnished by the State Registrar.

(b) When fetal death occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the cause of fetal death and other required medical information over the signature of the attending physician, and shall prepare and file the report with the local registrar.

(c) When a fetal death occurs outside of a hospital or other medical facility, the physician in attendance at or immediately after the delivery shall prepare and file the report. When a fetal death is attended by a person authorized to attend childbirth, the supervising physician shall prepare and file the report. Fetal deaths attended by lay midwives and all other persons shall be treated as deaths without medical attendance as provided for in G.S. 130A-115 and the medical examiner shall prepare and file the report. (1913, c. 109, s. 6; C.S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; 1955, c. 951, s. 10; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 873, s. 3; 1979, c. 95, s. 1; 1983, c. 891, s. 2.)

### § 130A-115. Death registration.

(a) A death certificate for each death which occurs in this State shall be filed with the local registrar of the county in which the death occurred within five days after the death. If the place of death is unknown, a death certificate shall be filed within five days in the county where the dead body is found. If the death occurs in a moving conveyance, a death certificate shall be filed in the county in which the dead body was first removed from the conveyance.

(b) The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate with the local registrar. The personal data shall be obtained from the next of kin or the best qualified person or source available. The funeral director or person acting as such is responsible for obtaining the medical certification of the cause of death, stating facts relative to the date and place of burial, and filing the death certificate with the local registrar within five days of the death.

(c) The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death, except when the death falls within the circumstances described in G.S. 130A-383. In the absence of the physician or with the physician's approval, the certificate may be completed and signed by an associate physician, the chief medical officer of the hospital or facility in which the death occurred or a physician who performed an autopsy upon the decedent under the following circumstances: the individual has access to the medical history of the deceased; the individual has viewed the deceased at or after death; and the death is due to natural causes. The physician shall state the cause of death on the certificate in definite and precise terms. A certificate containing any in-

definite terms or denoting only symptoms of disease or conditions resulting from disease as defined by the State Registrar, shall be returned to the person making the medical certification for correction and more definite statement.

(d) The physician or medical examiner making the medical certification as to the cause of death shall complete the medical certification no more than three days after death. The physician or medical examiner may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but shall send the supplementary information to the local registrar as soon as it is obtained.

(e) In the case of death or fetal death without medical attendance, it shall be the duty of the funeral director or person acting as such and any other person having knowledge of the death to notify the local medical examiner of the death. The body shall not be disposed of or removed without the permission of the medical examiner. If there is no county medical examiner, the Chief Medical Examiner shall be notified. (1913, c. 109, ss. 7, 9; C.S., ss. 7094, 7096; 1949, c. 161, s. 1; 1955, c. 951, ss. 11, 12; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 2, 4; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; c. 873, s. 5; 1979, c. 95, ss. 2, 3; 1981, c. 187, s. 1; 1983, c. 891, s. 2.)

### § 130A-116. Contents of death certificate.

The certificate of death shall contain those items prescribed and specified on the standard certificate of death as prepared by the federal agency responsible for national vital statistics. The State Registrar may require additional information. (1913, c. 109, s. 7; C.S., s. 7094; 1949, c. 161, s. 1; 1955, c. 951, s. 11; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 4; 1969, c. 1031, s. 1; 1983, c. 891, s. 2.)

### § 130A-117. Persons required to keep records and provide information.

(a) All persons in charge of hospitals or other institutions, public or private, to which persons resort for confinement or treatment of diseases or to which persons are committed by process of law, shall make a record of personal data concerning each person admitted or confined to the institution. The record shall include information required for the certificates of birth and death and the reports of spontaneous fetal death required by this Article. The record shall be made at the time of admission from information provided by the person being admitted or confined. When this information cannot be obtained from this person, it shall be obtained from relatives or other knowledgeable persons.

(b) When a dead body or dead fetus of 20 weeks gestation or more is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be recorded.

(c) A funeral director, embalmer, or other person who removes from the place of death, transports or makes final disposition of a dead body or fetus, shall keep a record which shall identify the body, and information pertaining to the receipt, removal, delivery, burial, or cremation of the body, as may be required by the State Registrar. In addition, that person shall file a certificate or other report required by this Article or the rules of the Commission.

(d) Records maintained under this section shall be retained for a period of not less than three years and shall be made available for inspection by the State Registrar upon request. (1913, c. 109, s. 16; C.S., s. 7104; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 8; 1983, c. 891, s. 2.)

**§ 130A-118. Amendment of birth and death certificates.**

(a) After acceptance for registration by the State Registrar, no record made in accordance with this Article shall be altered or changed, except by a request for amendment. The State Registrar may adopt rules governing the form of these requests and the type and amount of proof required.

(b) A new certificate of birth shall be made by the State Registrar when:

- (1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of the person;
- (2) Notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order or decree disclosing different or additional information relating to the parentage of a person;
- (3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order or decree disclosing different or additional information relating to the parentage of a person; or
- (4) A written request from an individual is received by the State Registrar to change the sex on that individual's birth record because of sex reassignment surgery, if the request is accompanied by a notarized statement from the physician who performed the sex reassignment surgery or from a physician licensed to practice medicine who has examined the individual and can certify that the person has undergone sex reassignment surgery.

(c) A new birth certificate issued under subsection (b) may reflect a change in surname when:

- (1) A child is legitimated by subsequent marriage and the parents agree and request that the child's surname be changed; or
- (2) A child is legitimated under G.S. 49-10 and the parents agree and request that the child's surname be changed, or the court orders a change in surname after determination that the change is in the best interests of the child.

(d) For the amendment of a certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this Article, the State Registrar shall be entitled to a fee not to exceed seven dollars and fifty cents (\$7.50) to be paid by the applicant.

(e) When a new certificate of birth is made, the State Registrar shall substitute the new certificate for the certificate of birth then on file, and shall forward a copy of the new certificate to the register of deeds of the county of birth. The copy of the certificate of birth on file with the register of deeds, if any, shall be forwarded to the State Registrar within five days. The State Registrar shall place under seal the original certificate of birth, the copy forwarded by the register of deeds and all papers relating to the original certificate of birth. The seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of the person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth. (1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1975, c. 556; 1977, c. 1110, s. 4; 1983, c. 891, s. 2.)

**§ 130A-119. Clerk of Court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.**

Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of court of the county in which the judgment is entered shall notify the State Registrar in writing of the name of the person against whom the judgment has been entered, together with the other facts disclosed by the record as may assist in identifying the record of the birth of the child as it appears in the office of the State Registrar. If the judgment is modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner. Upon receipt of the notification, the State Registrar shall record the information upon the birth certificate of the illegitimate child. (1941, c. 297, s. 1; 1955, c. 951, s. 19; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1971, c. 444, s. 5; 1983, c. 891, s. 2.)

**§ 130A-120. Certification of birth dates furnished to veterans' organizations.**

Upon application by any veterans' organization in this State in connection with junior or youth baseball, the State Registrar shall furnish certification of dates of birth without the payment of the fees prescribed in this Article. (1931, c. 318; 1939, c. 353; 1945, c. 996; 1955, c. 951, s. 24; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§§ 130A-121 to 130A-123:** Reserved for future codification purposes.

ARTICLE 5.

*Maternal and Child Health.*

Part 1. In General.

**§ 130A-124. Department to establish maternal and child health program.**

(a) The Department shall establish and administer a maternal and child health program for the delivery of preventive, diagnostic, therapeutic and habilitative health services to women of childbearing years, children and other persons who require these services. The program may include, but shall not be limited to, providing professional education and consultation, community coordination and direct care and counseling.

(b) The Commission shall adopt rules necessary to implement the program. (1983, c. 891, s. 2.)

**§§ 130A-125 to 130A-126:** Reserved for future codification purposes.

## Part 2. Perinatal Health Care.

### § 130A-127. Department to establish program.

(a) The Department shall establish and administer a perinatal health care program. The program may include, but shall not be limited to:

- (1) Prenatal health care services including health education and identification of high-risk pregnancies;
- (2) Prenatal, delivery and newborn health care services provided at hospitals participating at graduated levels of complexity; and
- (3) Regionalized perinatal health care services including a plan for effective communication, consultation, referral and transportation links among hospitals, health departments, physicians, schools and other relevant community resources for mothers and infants at high risk for mortality and morbidity.

(b) The Commission shall adopt rules necessary to implement the program. (1973, c. 1240, s. 1; 1983, c. 891, s. 2.)

### § 130A-128. Statewide advisory council.

The Secretary shall appoint a Perinatal Health Care Program Advisory Council composed of 10 members with representation as follows: obstetrics, pediatrics, public health, nursing, social services, hospital administration, consumers and other members. Members shall serve terms of three years except that members may be appointed for terms of less than three years to achieve a staggered term structure. The Council shall advise the Secretary in the planning, organization, administration and evaluation of the program. The Council shall annually elect a chairperson from among its members and shall meet at least quarterly and upon the request of the Secretary. (1973, c. 1240, s. 1; 1983, c. 891, s. 2.)

§§ 130A-129 to 130A-132: Reserved for future codification purposes.

## ARTICLE 6.

### *Communicable Diseases.*

#### Part 1. In General.

### § 130A-133. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host or vector, or through the inanimate environment.
- (2) "Isolation authority" means the authority to separate for the period of communicability, infected persons or animals in places and under conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to other persons who are susceptible or who may spread the agent to others.

- (3) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.
- (4) "Quarantine authority" means the authority to limit the freedom of movement of persons or animals which have been exposed to or are reasonably suspected of having been exposed to communicable disease for a period of time as may be necessary to prevent the spread of that disease. The term also means the authority to limit the freedom of movement of persons who have not received immunization against a communicable disease listed in G.S. 130A-152 when the local health director determines that such immunizations are required to control an outbreak of that disease. (1979, c. 192, s. 1; 1983 c. 891, s. 2.)

### § 130A-134. Reportable diseases.

The Commission shall establish by rule a list of communicable diseases to be reported. (1983, c. 891, s. 2.)

### § 130A-135. Physician to report.

A physician licensed to practice medicine who has reason to suspect that a person about whom the physician has been consulted professionally has a disease declared by the Commission to be reported, shall within 24 hours report the name and address of the person to the local health director of the county or district in which the person is living at the time of consultation. If the person is a minor, the physician shall also notify the local health director of the name and address of the parent or guardian of the minor. (1893, c. 214, s. 11; Rev., s. 3448; 1917, c. 263, s. 7; C.S., s. 7151; 1921, c. 223, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-136. School principals and day-care operators to report.

A principal of a school and an operator of a day-care facility, as defined in G.S. 110-86(3), shall notify the local health director of the county or district in which the school or facility is located of the name and address of any person within the school or day-care facility whom the principal, the operator or the staff has reason to suspect of having a disease declared by the Commission to be reported. (1979, c. 192, s. 2; 1983, c. 891, s. 2.)

### § 130A-137. Medical facilities may report.

A medical facility, in which there is a patient reasonably suspected of having a disease declared by the Commission to be reported, may report the name and address of the patient to the local health director of the county or district in which the patient is living. (1983, c. 891, s. 2.)

### § 130A-138. Local health directors to report to the Department.

A local health director shall report to the Department all cases of diseases reported to the local health director pursuant to this Article within 24 hours of the receipt of the report. (1917, c. 263, s. 9; C.S., s. 7153; 1921, c. 223, s. 3; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 192, s. 3; 1983, c. 891, s. 2.)

### **130A-139. Person in charge of laboratories to report positive tuberculosis tests.**

(a) The person in charge of a bacteriological or pathological laboratory providing diagnostic service in this State shall report to the Department within even days after diagnosis, the full name and other required information relating to the person whose sputa, gastric content or other specimens submitted for examination are smear positive for acid-fast bacilli or culture positive for mycobacterium tuberculosis. The report shall include the name and address of the physician or any person or agency referring the positive specimen or clinical diagnosis.

(b) The information contained in the reports required by subsection (a) shall be provided by the Department to local health departments for public health purposes. (1981, c. 81, s. 1; 1983, c. 891, s. 2.)

### **§ 130A-140. Physicians and others to report venereal disease cases and positive laboratory tests.**

(a) The following persons shall report cases of venereal disease and positive laboratory tests for venereal disease to the local health director and they shall cooperate with the Department and local health departments in preventing the spread of venereal disease:

- (1) Any physician responsible for diagnosis or treatment or other person responsible for treatment of a patient with venereal disease.
- (2) An administrator of a hospital, dispensary or institution in which there is a patient or inmate with a venereal disease; and
- (3) The director of a laboratory performing a positive test for venereal disease.

(b) The local health director shall report to the Department all cases and positive laboratory tests for venereal disease reported pursuant to subsection (a) within 24 hours of the receipt of the report. (1919, c. 206, s. 2; C.S., s. 7192; 1957, c. 1357, s. 1; 1961, c. 753; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-141. Form and content of reports.**

The Commission is authorized to adopt rules prescribing the form and content of reports required by this Article, and establishing the manner of making the reports. (1983, c. 891, s. 2.)

### **§ 130A-142. Immunity of persons who report.**

A person who makes a report pursuant to the provisions of this Article shall be immune from any civil or criminal liability that might otherwise be incurred or imposed. (1983, c. 891, s. 2.)

### **§ 130A-143. Confidentiality of records.**

(a) The reports made to a local health director or the Department pursuant to the provisions of this Article shall be confidential and shall not be public records open to inspection. The Commission shall provide by rule for the use of the reports for medical research. The local health director and the Department may release statistical information based upon the reports.

(b) No employee or officer of any State or local agency shall make an unauthorized release of the information contained in reports made pursuant to the provisions of this Article. (1983, c. 891, s. 2.)

### § 130A-144. Control measures.

(a) A person who has a disease declared by the Commission to be reportable and any householder in whose family or home there is a person who has reportable disease, shall comply with instructions given by an attending physician or, if there is no attending physician, by the local health director, as to proper control measures for the disease as established by the rules of the Commission. It shall be the duty of the attending physician or local health director to give the required instructions.

(b) The Commission shall adopt rules regarding proper control measures for the reportable diseases. (1893, c. 214, s. 16; Rev., s. 4459; 1909, c. 793, s. 8 C.S, s. 7158; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-145. Local health director has quarantine and isolation authority.

The local health director is empowered to exercise quarantine authority and isolation authority within the jurisdiction of the local health department (1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

### § 130A-146. Transportation of bodies of persons who have died of reportable diseases.

No person shall transport in this State the remains of any person who has died of a disease declared by the Commission to be reported until the body has been encased in a manner as prescribed by rule by the Commission. Only persons who have complied with the rules of the Commission concerning the removal of dead bodies shall be issued a burial-transit permit. (1893, c. 214, s. 16; Rev., s. 4459; C.S., s. 7161; 1953, c. 675, s. 16; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-147. Rules of the Commission.

For the protection of the public health, the Commission is authorized to adopt rules for the detection, control and prevention of communicable diseases. (1983, c. 891, s. 2.)

§§ 130A-148 to 130A-151: Reserved for future codification purposes.

## Part 2. Immunization.

### § 130A-152. Immunization required.

(a) Every child present in this State shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola) and rubella. In addition, every child present in this State shall be immunized against any other disease upon a determination by the Commission that the immunization is in the interest of the public health. Every parent, guardian, person in loco parentis and person or agency, whether governmental or private, with legal custody of a child shall have the responsibility to ensure that the child has received the required immunization at the age required by the Commission. If a child has not received the required immunizations by the specified age, the responsible person shall obtain the required immunization for the child as soon as possible after the lack of the required immunization is determined.

(b) A child who has been immunized for measles prior to attaining 12 months of age shall be required to obtain a second measles immunization after the child has attained 12 months of age in order to satisfy the requirement of subsection (a).

(c) The Commission shall adopt and the Department shall enforce rules concerning the implementation of the immunization program. The rules shall provide for:

- (1) The child's age at administration of each vaccine;
- (2) The number of doses of each vaccine;
- (3) Exemptions from the immunization requirements where medical practice suggests that immunization would not be in the best health interests of a specific category of children;
- (4) The procedures and practices for administering the vaccine; and
- (5) Redistribution of vaccines provided to local health departments.

(d) Only vaccine preparations which meet the standards of the United States Food and Drug Administration or its successor in licensing vaccines and are approved for use by the Commission may be used.

(e) When the Commission requires immunization against a disease not listed in paragraph (a) of this section, or requires an additional dose of a vaccine, the Commission is authorized to exempt from the new requirement children who are or who have been enrolled in school (K-12) on or before the effective date of the new requirement. (1957, c. 1357, s. 1; 1971, c. 191; 1973, c. 476, s. 128; c. 632, s. 1; 1975, c. 84; 1977, c. 160; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 158.)

**Effect of Amendments.** — The 1985 amendment, effective May 6, 1985, added subsection (e).

### § 130A-153. (Effective until July 1, 1986) Obtaining immunization; reporting by local health departments.

(a) The required immunization may be obtained from a physician licensed to practice medicine or from a local health department. Upon determination by the Secretary of Human Resources that imposition of a fee is necessary to maintain the immunization program at a local health department, that local health department may charge patients able to pay a fee equal to the cost of the vaccine when administering required immunizations. The amount collected shall be transmitted to the Department of Human Resources as reimbursement for the cost of the vaccine. In the absence of the aforementioned determination local health departments shall administer the required immunizations obtained from the Department of Human Resources at no cost to the patient. A local health department may redistribute these vaccines only in accordance with the rules of the Commission.

(b) Local health departments shall file monthly immunization reports with the Department. The report shall be filed on forms prepared by the Department and shall state each patient's age and the number of doses of each type of vaccine administered. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 476, s. 128; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 743, s. 1.)

**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered § 130A-153.

**Effect of Amendments.** — The 1985 amendment by c. 743, s. 1, effective June 1, 1985, substituted the present second, third,

and fourth sentences of subsection (a) for the former second and third sentences thereof which provided for administration by local health departments of required immunization at no cost to the patients and provision by the Department of vaccines for use by local health departments.

### § 130A-153. (Effective July 1, 1986) Obtaining immunization; reporting by local health departments.

(a) The required immunization may be obtained from a physician licensed to practice medicine or from a local health department. Local health departments shall administer the required immunizations at no cost to the patient. The Department shall provide the vaccines for use by the local health departments. A local health department may redistribute these vaccines only in accordance with the rules of the Commission.

(b) Local health departments shall file monthly immunization reports with the Department. The report shall be filed on forms prepared by the Department and shall state each patient's age and the number of doses of each type of vaccine administered. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 476, s. 128; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 743, ss. 1, 2.)

**Section Set Out Twice.** — The section above is effective July 1, 1986. For this section as in effect until July 1, 1986, see the preceding section, also numbered § 130A-153.

**Effect of Amendments.** —

The 1985 amendment by c. 743, s. 1, effective June 1, 1985, substituted the present second, third, and fourth sentences of subsection (a) for the former second and third sentences thereof, which provided for administration by local health departments of required immunizations

at no cost to the patients and provision by the Department of vaccines for use by local health departments.

The 1985 amendment by c. 743, s. 2, effective June 1, 1986, substituted the present second and third sentences for the former second, third, and fourth sentences, relating to imposition of a fee when necessary to maintain the immunization program at a local health department and disposition of fees collected.

### § 130A-154. Certificate of immunization.

A physician or local health department administering a required vaccine shall give a certificate of immunization to the person who presented the child for immunization. The certificate shall state the name of the child, the name of the child's parent, guardian, or person responsible for the child obtaining the required immunization, the address of the child and the parent, guardian or responsible person, the date of birth of the child, the sex of the child, the number of doses of the vaccine given, the date the doses were given, the name and address of the physician or local health department administering the required immunization and other relevant information required by the Commission. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2.)

### **130A-155. Submission of certificate to day-care facility and school authorities; record maintenance; reporting.**

(a) No child shall attend a school (K-12), whether public, private or religious, or a day-care facility as defined in G.S. 110-86(3), unless a certificate of immunization indicating that the child has received the immunizations required by G.S. 130A-152 is presented to the school or facility. The parent, guardian, or responsible person must present a certificate of immunization on the child's first day of attendance to the principal of the school or operator of the facility, as defined in G.S. 110-86(7). If a certificate of immunization is not presented on the first day, the principal or operator shall present a notice of deficiency to the parent, guardian or responsible person. The parent, guardian or responsible person shall have 30 calendar days from the first day of attendance to obtain the required immunization for the child. If the administration of vaccine in a series of doses given at medically approved intervals requires a period in excess of 30 calendar days, additional days upon certification by a physician may be allowed to obtain the required immunization. Upon termination of 30 calendar days or the extended period, the principal or operator shall not permit the child to attend the school or facility unless the required immunization has been obtained.

(b) The school or day-care facility shall maintain on file immunization records for all children attending the school or facility which contain the information required for a certificate of immunization as specified in G.S. 130A-154. These certificates shall be open to inspection by the Department and the local health department during normal business hours. When a child transfers to another school or facility, the school or facility which the child previously attended shall, upon request, send a copy of the child's immunization record at no charge to the school or facility to which the child has transferred.

(c) Within 60 calendar days after the commencement of a new school year, the school shall file an immunization report with the Department. The day-care facility shall file an immunization report annually with the Department. The report shall be filed on forms prepared by the Department and shall state the number of children attending the school or facility, the number of children who had not obtained the required immunization within 30 days of their first attendance, the number of children who received a medical exemption and the number of children who received a religious exemption.

(d) Any adult who attends school (K-12), whether public, private or religious, shall obtain the immunizations required in G.S. 130A-152 and shall present to the school a certificate in accordance with this section. The physician or local health department administering a required vaccine to the adult shall give a certificate of immunization to the person. The certificate shall state the person's name, address, date of birth and sex; the number of doses of the vaccine given; the date the doses were given; the name and addresses of the physician or local health department administering the required immunization; and other relevant information required by the Commission. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 632, s. 2; 1979, c. 56, s. 1; 1981, c. 44; 1983, c. 891, s. 2.)

### § 130A-155.1. (Effective July 1, 1986) Submission of certificate to college or universities.

(a) No person shall attend a college or university, whether public, private or religious, excluding educational institutions established under Chapter 115D of the General Statutes, excluding students attending night classes only, and excluding students matriculating in off-campus courses at either public or private institutions, unless a certificate of immunization indicating that the person has received immunizations required by G.S. 130A-152 is presented to the college or university. The person shall present a certificate of immunization on or before the first day of matriculation to the registrar of the college or university, provided, however, that if a college or university obtains the certificate of immunization from a high school located in North Carolina, the requirements of this section are satisfied. If a certificate of immunization is not in the possession of the college or university on the first day of matriculation, the college or university shall present a notice of deficiency to the person. The person shall have 30 calendar days from the first day of attendance to obtain the required immunization. If the administration of vaccine in a series of doses given at medically approved intervals requires a period in excess of 30 calendar days, additional days upon certification by a physician may be allowed to obtain the required immunization. Upon termination of 30 calendar days or the extended period, the college or university shall not permit the person to attend the school unless the required immunization has been obtained.

(b) The college or university shall maintain on file immunization records for all persons attending the school which contain the information required for a certificate of immunization as specified in G.S. 130A-154. These certificates shall be open to inspection by the Department and the local health department during normal business hours. When a person transfers to another college or university, the college or university which the person previously attended shall, upon request, send a copy of the person's immunization record at no charge to the college or university to which the person has transferred.

(c) Within 60 calendar days after the commencement of a new school year the college or university shall file an immunization report with the Department. The report shall be filed on forms prepared by the Department and shall state the number of persons attending the school or facility, the number of persons who had not obtained the required immunization within 30 days of their first attendance, the number of persons who received a medical exemption and the number of persons who received a religious exemption.

(d) The provisions of this section shall not apply to persons enrolled in a college or university on or before July 1, 1986. (1985, c. 692, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 692, s. 3 makes this section effective July 1, 1986.

### § 130A-156. Medical exemption.

If a physician licensed to practice medicine in this State certifies that an immunization required by G.S. 130A-152 is or may be detrimental to a person's health, the person is not required to receive the specified immunization until the physician certifies that the immunization will not be detrimental to the person's health. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2.)

### § 130A-157. (Effective until July 1, 1986) Religious exemption.

If the bona fide religious beliefs of an adult or the parent, guardian or person in loco parentis of a child are contrary to the immunization requirements contained in this Part, the adult or the child shall be exempt from the requirements. Upon submission of a written statement of the bona fide religious beliefs and opposition to the immunization requirements, the person may attend the school or facility without presenting a certificate of immunization. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2.)

**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered § 130A-157.

### § 130A-157. (Effective July 1, 1986) Religious exemption.

If the bona fide religious beliefs of an adult or the parent, guardian or person in loco parentis of a child are contrary to the immunization requirements contained in this Part, the adult or the child shall be exempt from the requirements. Upon submission of a written statement of the bona fide religious beliefs and opposition to the immunization requirements, the person may attend the college, university, school or facility without presenting a certificate of immunization. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 692, s. 2.)

**Section Set Out Twice.** — The section above is effective July 1, 1986. For this section in effect until July 1, 1986, see the preceding section, also numbered § 130A-157.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1986, inserted "college, university," in the second sentence.

§ 130A-158 to 130A-159: Reserved for future codification purposes.

## Part 3. Venereal Disease.

### 130A-160. Commission to adopt rules.

For the protection of the public health, the Commission shall adopt rules for the purpose of preventing, controlling, treating and eradicating venereal disease. (1919, c. 206, s. 5; C.S., s. 7195; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### 130A-161. Venereal disease definition.

For the purposes of this Part, venereal disease includes syphilis, gonorrhea, chancroid, granuloma inguinale, lymphogranuloma venereum and any other sexually transmitted disease that the Commission determines is or may be controllable and for which the Commission requires reporting. (1919, c. 206, s. 5; C.S., s. 7191; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

### § 130A-162. Venereal disease examination, treatment and investigation.

The Secretary or the local health director shall require a person reasonably suspected of being infected with venereal disease to be examined immediately. The Secretary or the local health director may detain these persons until results of the examination are known, and isolate any person infected with venereal disease when it is necessary to protect the public health. A person infected or reasonably suspected of being infected with venereal disease shall report for treatment to a physician licensed to practice medicine or to the local health department until the disease is cured. The local health department shall provide the examination and treatment at no cost to the patient. The Secretary or the local health director shall interview all persons infected or reasonably suspected of being infected with venereal disease and shall investigate the sources of infection and the spread of venereal disease. (1919, c. 20, s. 3; C.S., s. 7193; 1925, c. 217, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 1; 1983, c. 891, s. 2.)

### § 130A-163. Confidentiality of venereal disease information and records.

Except as necessary to enforce the provisions of this Part and its rules concerning the control and treatment of venereal disease, all personally identifiable information or records held by the Department, local health departments or licensed physicians relating to known or suspected cases of venereal disease shall be confidential and shall not be public records. However, suspected cases of abused juveniles shall be reported in accordance with Article 44 of Chapter 7A of the General Statutes and information or records held by the Department, local health departments or licensed physicians shall be admissible in any judicial proceeding in which a juvenile's abuse or neglect is in issue or in any judicial proceeding resulting from a report submitted under Article 44 of Chapter 7A of the General Statutes if the material is disclosed in camera. (1983, c. 891, s. 2.)

§ 130A-164: Repealed by Session Laws 1985, c. 168, s. 1, effective May 1, 1985.

**Editor's Note.** — The repealed section was derived from Session Laws 1983, c. 891, s. 2.

### § 130A-165. Pregnant women to have test for syphilis.

Every pregnant woman shall have a blood sample taken during pregnancy in order for a serological test for syphilis to be performed. The physician attending a pregnant woman shall ensure that the required blood sample is taken and submitted to a laboratory for analysis. (1939, c. 313, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 168, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective May 10, 1985, substituted "in order for a serological test for syphilis to be performed" for "and submitted to a laboratory certified by the Department for performing serological or other tests for syphilis" at the end of the first sentence and added "to a laboratory for analysis" at the end of the second sentence.

**§130A-166. Birth and fetal death certificates to contain information as to tests.**

A person required by G.S. 130A-101 and 130A-114 to report a birth or a fetal death shall state on the birth or fetal death certificate whether the mother of the child was given a blood test for syphilis during pregnancy or at delivery. (1939, c. 313, s. 4; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

**§ 130A-167 to 130A-170:** Reserved for future codification purposes.

**Part 4. Inflammation of Eyes of Newborn.****§130A-171. Inflammation of eyes of newborn defined.**

For the purposes of this Part, "inflammation of the eyes of the newborn" (ophthalmia neonatorum) means any swelling or unusual redness in either or both eyes occurring in a newborn infant within three weeks after birth. (1917, c. 257, s. 1; C.S., s. 7180; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

**§130A-172. Inflammation of eyes of newborn to be reported.**

A person attending or assisting in any way a newborn infant or its mother at childbirth or within three weeks after birth shall report immediately to the local health director of the county in which the newborn resides the name of any newborn with inflammation of the eyes. The local health director shall ensure that the infant receives appropriate treatment by a physician licensed to practice medicine. (1917, c. 257, s. 2; C.S., s. 7181; 1957, c. 1357, s. 1; 1983, c. 891, s. 2.)

**§130A-173. Eyes of all newborn infants to be treated; records.**

A person in attendance at a childbirth shall immediately instill or have instilled in the eyes of the newborn a medication approved by the Commission for prevention of infection of the eyes of the newborn. A person in attendance at a childbirth or an administrator of the institution in which a birth occurs shall prepare records concerning treatment or inflammation of the eyes of the newborn as the Department shall direct. (1917, c. 257, s. 3; C.S., s. 7182; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 12; 1983, c. 891, s. 2.)

**§130A-174. Duties of the Commission and local health directors for treatment of the eyes of the newborn.**

The Commission shall adopt rules for the treatment of the eyes of the newborn. A local health director shall investigate reported cases of inflammation, make all contacts necessary to trace the source of the infection and other suspected cases. A local health director shall report all confirmed cases of inflammation of eyes of the newborn and the results of investigations as directed by the Department and shall enforce the rules of the Commission. (1917, c. 257, s. 5; C.S., s. 7184; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 13; 1983, c. 891, s. 2.)

§§ 130A-175 to 130A-176: Reserved for future codification purposes.

## Part 5. Tuberculosis.

### § 130A-177. Department to establish program.

(a) The Department shall establish and administer a program for the detection and prevention of tuberculosis and the treatment of persons with tuberculosis. The program may include:

- (1) Contracts with medical facilities to provide for the care and treatment of tuberculosis patients who meet the eligibility requirements established by the Commission;
- (2) Contracts with medical facilities for the purpose of renovating facilities to meet airflow requirements necessary for the treatment of tuberculosis patients;
- (3) Contracts with local health departments for the purpose of improving the treatment and care of tuberculosis patients, suspects and contacts;
- (4) Provision of anti-tuberculosis drugs, skin test antigens and other pharmaceutical agents to local health departments; and
- (5) Provision of clinician, nursing and radiologic technology consultation services to local health departments, hospitals and physicians for the purpose of improving the detection and prevention of tuberculosis and the treatment of persons with tuberculosis.
- (6) Operation of medical facilities for the diagnosis and treatment of tuberculosis.

(b) The Commission shall adopt rules necessary to implement the program (1983, c. 891, s. 2.)

### § 130A-178. Examination, treatment and investigation.

(a) A local health director shall require a person reasonably suspected of being infected with tuberculosis to be examined immediately. The local health director may detain the person until the results of the examination are known, and isolate any person who is reasonably suspected of being infected with tuberculosis in a communicable stage when it is necessary to protect the public health. Persons with tuberculosis shall report for treatment to a physician licensed to practice medicine or to the local health department and shall continue treatment until the disease is cured. The local health director shall also instruct the person concerning the precautions necessary to protect other persons from becoming infected, assist the person in obtaining the required treatment and monitor progress. The local health department shall provide the examination and treatment at no cost to the patient.

(b) A local health director shall interview persons infected or reasonably suspected of being infected with tuberculosis in order to identify other persons likely to be infected.

(c) A person found to have tuberculosis shall follow the instructions of the local health director, shall obtain the required treatment and shall minimize the risk of infecting others with tuberculosis. (1943, c. 357; 1945, c. 583; 1957, c. 448; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### §130A-179. Authority of local health directors to examine medical records.

(a) Physicians and persons in charge of medical facilities shall, upon request, permit a local health director to examine, review and obtain a copy of medical records in their possession or under their control which pertain to the diagnosis or treatment of a person infected or reasonably suspected of being infected with tuberculosis.

(b) A physician or a person in charge of a medical facility who permits examination, review or copying of medical records pursuant to subsection (a) shall be immune from any civil or criminal liability that otherwise might be incurred or imposed.

(c) The information provided to a local health director pursuant to subsection (a) shall be confidential and shall not be public records open to inspection. (1983, c. 891, s. 2.)

§ 130A-180 to 130A-183: Reserved for future codification purposes.

## Part 6. Rabies.

### §130A-184. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Animal Control Officer" means a city or county employee designated as dog warden, animal control officer, animal control official or other designations that may be used whose responsibility includes animal control.
- (2) "Cat" means a domestic feline.
- (3) "Certified rabies vaccinator" means a person appointed and certified to administer rabies vaccine to animals in accordance with this Part.
- (4) "Dog" means a domestic canine.
- (5) "Rabies vaccine" means an animal rabies vaccine licensed by the United States Department of Agriculture and approved for use in this State by the Commission.
- (6) "State Public Health Veterinarian" means a person appointed by the Secretary to direct the State public health veterinary program.
- (7) "Vaccination" means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator. (1935, c. 122, s. 1; 1949, c. 645, s. 1; 1953, c. 876, s. 1; 1957, c. 1357, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### §130A-185. Vaccination of all dogs and cats.

(a) The owner of every dog and cat over four months of age shall have the animal vaccinated against rabies. The time or times of vaccination shall be established by the Commission. Rabies vaccine shall be administered only by a licensed veterinarian or by a certified rabies vaccinator.

(b) Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the Commission shall be used on animals in this State. (1935, c. 122, s. 1; 1941, c. 259, s. 2; 1953, c. 876, s. 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**Editor's Note.** — Session Laws 1983, c. 891, s. 17, makes the act effective Jan. 1, 1984, except that the provision in this section requiring the vaccination of all cats over four months of age is made effective July 1, 1984.

### **§ 130A-186. Appointment and certification of certified rabies vaccinators.**

In those counties where licensed veterinarians are not available to participate in all scheduled county rabies control clinics, the local health director shall appoint one or more persons for the purpose of administering rabies vaccine to animals in that county. Whether or not licensed veterinarians are available, the local health director may appoint one or more persons for the purpose of administering rabies vaccine to animals in their county and the persons will make themselves available to participate in the county rabies control program. The State Public Health Veterinarian shall provide at least four hours of training to those persons appointed by the local health director to administer rabies vaccine. Upon satisfactory completion of the training, the State Public Health Veterinarian shall certify in writing that the appointee has demonstrated a knowledge and procedure acceptable for the administration of rabies vaccine to animals. A certified rabies vaccinator shall be authorized to administer rabies vaccine to animals in the county until the appointment by the local health director has been terminated. (1935, c. 122, s. 1941, c. 259, s. 3; 1953, c. 876, s. 3; 1957, c. 1357, s. 4; 1983, c. 891, s. 2.)

### **§ 130A-187. County rabies vaccination clinics.**

The local health director shall organize or assist other county departments to organize quarterly countywide rabies vaccination clinics for the purpose of vaccinating dogs and cats. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area. (1983, c. 891, s. 2.)

### **§ 130A-188. Fee for vaccination at county rabies vaccination clinics.**

The county board of commissioners is authorized to establish a fee to be charged at the county rabies vaccination clinics. The fee shall include an administrative charge not to exceed four dollars (\$4.00) per vaccination, and a charge for the actual cost of the vaccine, the vaccination certificate, and the rabies vaccination tag. (1935, c. 122, s. 9; 1941, c. 259, s. 7; 1949, c. 645, s. 1953, c. 876, s. 5; 1959, c. 139; 1983, c. 891, s. 2.)

### **§ 130A-189. Rabies vaccination certificates.**

A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall complete a three-copy rabies vaccination certificate. The original rabies vaccination certificate shall be given to the owner of each dog or cat that receives rabies vaccine. One copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. The other copy shall be given to the county agent responsible for animal control. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352; 1983, c. 891, s. 2.)

**§130A-190. Rabies vaccination tags.**

A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs and cats shall wear rabies vaccination tags at all times. However, cats may be exempted from wearing the tags by local ordinance. Rabies vaccination tags, links and rivets may be obtained from the Department. The Secretary is authorized to establish by rule a fee for the rabies tags, links and rivets. The fee shall not exceed the actual cost of the rabies tags, links and rivets, plus transportation costs. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352; 1983, c. 891, s. 2.)

**§130A-191:** Reserved for future codification purposes.

**§130A-192. Dogs and cats not wearing required rabies vaccination tags.**

The Animal Control Officer shall canvass the county to determine if there are any dogs or cats not wearing the required rabies vaccination tag. If a dog or cat is found not wearing the required tag, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended; or put to death by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association. The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released. (1935, c. 122, s. 8; 1983, c. 891, s. 2.)

**§130A-193. Vaccination and confinement of dogs and cats brought into this State.**

(a) A dog or cat brought into this State shall immediately be securely confined and shall be vaccinated against rabies within one week after entry. The animal shall remain confined for two weeks after vaccination.

(b) The provisions of subsection (a) shall not apply to:

- (1) A dog or cat brought into this State for exhibition purposes if the animal is confined and not permitted to run at large; or
- (2) A dog or cat brought into this State accompanied by a certificate issued by a licensed veterinarian showing that the dog or cat is apparently free from and has not been exposed to rabies and that the dog or cat has received rabies vaccine within the past year. (1935, c. 122, s. 11; 1983, c. 891, s. 2.)

### § 130A-194. Quarantine of districts infected with rabies.

An area may be declared under quarantine against rabies by the local health director when the disease exists to the extent that the lives of persons are endangered. When quarantine is declared, each dog and cat in the area shall be confined on the premises of the owner or in a veterinary hospital. However, dogs or cats on a leash or under the control and in the sight of a responsible adult may be permitted to leave the premises of the owner or the veterinary hospital. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3; 1953, c. 876, s. 8; 1957, c. 1357, s. 8; 1983, c. 891, s. 2.)

### § 130A-195. Destroying stray dogs and cats in quarantined districts.

When quarantine has been declared and dogs and cats continue to remain uncontrolled in the area, any peace officer or Animal Control Officer shall have the right, after reasonable effort has been made to apprehend the animals, to destroy the uncontrolled dogs and cats and properly dispose of their bodies. (1935, c. 122, s. 13; 1953, c. 876, s. 9; 1983, c. 891, s. 2.)

### § 130A-196. Confinement of all biting dogs and cats; notice to local health director; reports by physicians.

When a person has been bitten by a dog or cat, the person or parent, guardian or person standing in loco parentis of the person, and the person owning the animal or in control or possession of the animal shall notify the local health director immediately and give the name and address of the person bitten and the owner of the animal. All dogs and cats that bite a person shall be immediately confined for 10 days in a place designated by the local health director. After reviewing the circumstances of the particular case, the local health director may allow the owner to confine the animal on the owner's property. An owner who fails to confine his animal in accordance with the instructions of the local health director shall be guilty of a misdemeanor and shall be punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for six months, or both. If the owner or the person who controls or possesses a dog or cat that has bitten a person refuses to confine the animal as required by this section, the local health director may order seizure of the animal and its confinement for 10 days at the expense of the owner. A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report within 24 hours to the local health director the name, age and sex of that person. (1935, c. 122, s. 17; 1941, c. 259, s. 11; 1953, c. 876, s. 13; 1957, c. 1357, s. 9; 1977, c. 628; 1983, c. 891, s. 2; 1985, c. 674.)

**Effect of Amendments.** — The 1985 amendment, effective July 10, 1985, inserted the present third and fourth sentences.

### **130A-197. Infected dogs and cats to be destroyed; protection of vaccinated dogs and cats.**

A dog or cat bitten by a proven rabid animal or animal suspected of having rabies that is not available for laboratory diagnosis shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the dog or cat has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than three weeks prior to being bitten, and is given a booster dose of rabies vaccine within three days of the bite. (1935, c. 122, s. 14; 1953, c. 876, s. 10; 1983, c. 891, s. 2.)

### **130A-198. Confinement.**

A person who owns or has possession of an animal which is suspected of having rabies shall immediately notify the local health director or county Animal Control Officer and shall securely confine the animal in a place designated by the local health director. Dogs and cats shall be confined for a period of 10 days. Other animals may be destroyed at the discretion of the State Public Health Veterinarian. (1935, c. 122, s. 15; c. 344; 1941, c. 259, s. 10; 1953, c. 876, s. 11; 1983, c. 891, s. 2.)

### **130A-199. Rabid animals to be destroyed; heads to be sent to State Laboratory of Public Health.**

An animal diagnosed as having rabies by a licensed veterinarian shall be destroyed and its head sent to the State Laboratory of Public Health. The heads of all dogs and cats that die during the 10-day confinement period required by G.S. 130A-196, shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis. (1935, c. 122, s. 16; 1953, c. 876, s. 12; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **130A-200. Confinement or leashing of vicious animals.**

A local health director may declare an animal to be vicious and a menace to the public health when the animal has attacked a person causing bodily harm without being teased, molested, provoked, beaten, tortured or otherwise harmed. When an animal has been declared to be vicious and a menace to the public health, the local health director shall order the animal to be confined to its owner's property. However, the animal may be permitted to leave its owner's property when accompanied by a responsible adult and restrained on leash. (1935, c. 122, s. 18; 1953, c. 876, s. 14; 1983, c. 891, s. 2.)

§ **130A-201 to 130A-204:** Reserved for future codification purposes.

## ARTICLE 7.

*Chronic Disease.*

## Part 1. Cancer.

**§ 130A-205. Administration of program; rules.**

(a) The Department shall establish and administer a program for the prevention and detection of cancer and the care and treatment of persons with cancer.

(b) The Commission shall adopt rules necessary to implement the program (1945, c. 1050, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 1983, c. 891, s. 2.)

**§ 130A-206. Financial aid for diagnosis and treatment.**

The Department shall provide financial aid for diagnosis and treatment of cancer to indigent citizens of this State having or suspected of having cancer. The Department may make facilities for diagnosis and treatment of cancer available to all citizens. Reimbursement shall only be provided for diagnosis and treatment performed in a medical facility which meets the minimum requirements for cancer control established by the Commission. The Commission shall adopt rules specifying the terms and conditions by which the patients may receive financial aid. (1945, c. 1050, s. 2; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**§ 130A-207. Cancer clinics.**

The Department is authorized to provide financial aid to sponsored cancer clinics in medical facilities and local health departments. The Commission shall adopt rules to establish minimum standards for the staffing, equipment and operation of the clinics sponsored by the Department. (1945, c. 1050, s. 1949, c. 1071; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**§ 130A-208. Central cancer registry.**

A central cancer registry is established within the Department. The central cancer registry shall compile, tabulate and preserve statistical, clinical and other reports and records relating to the incidence, treatment and cure of cancer received pursuant to this Part. The central cancer registry shall provide assistance and consultation for public health work. (1945, c. 1050, s. 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**§ 130A-209. Incidence reporting of cancer.**

A physician shall report to the central cancer registry each diagnosis of cancer in any person for whom the physician is professionally consulted. The reports shall be made within 60 days of diagnosis. Diagnostic, demographic and other information as prescribed by the rules of the Commission shall be included in the report. (1949, c. 499; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**130A-210. Medical facilities may report.**

A medical facility may submit to the central cancer registry clinical, statistical and other records relating to the treatment and cure of cancer. (1981, c. 45, s. 2; 1983, c. 891, s. 2.)

**130A-211. Immunity of persons who report cancer.**

A person who makes a report pursuant to G.S. 130A-209 or 130A-210 to the central cancer registry shall be immune from any civil or criminal liability that might otherwise be incurred or imposed. (1967, c. 859; 1969, c. 5; 1973, c. 76, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**130A-212. Confidentiality of records.**

The clinical records or reports of individual patients shall be confidential and shall not be public records open to inspection. The Commission shall provide by rule for the use of the records and reports for medical research. (1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**130A-213. Cancer Committee of the North Carolina Medical Society.**

In implementing this Part, the Department shall consult with the Cancer Committee of the North Carolina Medical Society. The Committee shall consist of at least one physician from each congressional district. Any proposed rules or reports affecting the operation of the cancer control program shall be reviewed by the Committee for comment prior to adoption. (1945, c. 1050, s. 9; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**130A-214. Duties of Department.**

The Department shall study the entire problem of cancer including its causes, including environmental factors; prevention; detection; diagnosis and treatment. The Department shall provide or assure the availability of cancer educational resources to health professionals, interested private or public organizations and the public. (1967, c. 186, s. 2; 1973, c. 476, s. 128; 1981, c. 345, s. 2; 1983, c. 891, s. 2.)

**130A-215. Reports.**

The Secretary shall make a report to the Governor and the General Assembly specifying the activities of the cancer control program and its budget. The report shall be made to the Governor annually and to the General Assembly biennially. (1981, c. 345, s. 2; 1983, c. 891, s. 2.)

§ 130A-216 to 130A-219: Reserved for future codification purposes.

## Part 2. Chronic Renal Disease.

### § 130A-220. Department to establish program.

(a) The Department shall establish and administer a program for the detection and prevention of chronic renal disease and the care and treatment of persons with chronic renal disease. The program may include:

- (1) Development of services for the prevention of chronic renal disease;
- (2) Development and expansion of services for the care and treatment of persons with chronic renal disease, including techniques which will have a lifesaving effect in the care and treatment of those persons;
- (3) Provision of financial assistance on the basis of need for diagnosis and treatment of persons with chronic renal disease;
- (4) Equipping dialysis and transplantation centers; and
- (5) Development of an education program for physicians, hospitals, local health departments and the public concerning chronic renal disease.

(b) The Commission is authorized to adopt rules necessary to implement the program. (1971, c. 1027, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2)

## Part 3. Glaucoma and Diabetes.

### § 130A-221. Department to establish program.

(a) The Department shall establish and administer a program for the detection and prevention of glaucoma and diabetes and the care and treatment of persons with glaucoma and diabetes. The program may include:

- (1) Education of patients, health care personnel and the public;
- (2) Development and expansion of services to persons with glaucoma and diabetes; and
- (3) Provision of supplies, equipment and medication for detection and control of glaucoma and diabetes.

(b) The Commission is authorized to adopt rules necessary to implement the program. (1977, 2nd Sess., c. 1257, s. 1; 1983, c. 891, s. 2.)

## Part 4. Arthritis.

### § 130A-222. Department to establish program.

(a) The Department shall establish and administer a program for the detection and prevention of arthritis and the care and treatment of persons with arthritis. The purpose of the program shall be:

- (1) To improve professional education for physicians and allied health professionals including nurses, physical and occupational therapists and social workers;
- (2) To conduct programs of public education and information;
- (3) To provide detection and treatment programs and services for the at risk population of this State;
- (4) To utilize the services available at the State medical schools, existing arthritis rehabilitation centers and existing local arthritis clinics and agencies;
- (5) To develop an arthritis outreach clinical system;
- (6) To develop and train personnel at clinical facilities for diagnostic work-up, laboratory analysis and consultations with primary physicians regarding patient management; and

(7) To develop the epidemiologic studies to determine frequency and distribution of the disease.

b) The Commission is authorized to adopt rules necessary to implement the program. (1979, c. 996, s. 2; 1983, c. 891, s. 2.)

## Part 5. Adult Health.

### §130A-223. Department to establish program.

a) The Department shall establish and administer a program for the prevention of diseases, disabilities and accidents that contribute significantly to mortality and morbidity among adults. The program may also provide for the care and treatment of persons with these diseases or disabilities.

b) The Commission is authorized to adopt rules necessary to implement the program. (1983, c. 891, s. 2.)

§ 130A-224 to 130A-226: Reserved for future codification purposes.

## ARTICLE 8.

### *Sanitation.*

#### Part 1. General.

### §130A-227. Department to establish program.

For the purpose of promoting a safe and healthful environment and developing corrective measures required to minimize environmental health hazards, the Department shall establish a sanitation program. The Department shall employ environmental engineers, sanitarians, soil scientists and other scientific personnel necessary to carry out the sanitation provisions of this Chapter and the rules of the Commission. (1983, c. 891, s. 2.)

#### Part 2. Meat Markets.

### §130A-228. Regulation of places selling meat.

For the protection of the public health, the Commission shall adopt rules governing the sanitation of markets where meat food products (as defined in (S. 106-549.15(14)) or poultry products (as defined in G.S. 106-549.51(26)) are prepared and sold. The rules shall also provide a system of grading the markets. A market shall satisfy the minimum sanitation requirements prescribed by the rules in order to operate. The rules shall include, but not be limited to, the establishment of sanitation requirements concerning the preparation and storage of all food at the markets; construction and cleanliness of the building, equipment and utensils; water supply; toilet and handwashing facilities; sewage collection, treatment and disposal facilities; disposal of waste; lighting and ventilation; vermin control; and health of employees. (1937, c. 244, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 463, s. 1; 1983, c. 891, s. 2.)

**§ 130A-229. Application of Part.**

The provisions of this Part shall not apply to markets where meat food products or poultry products are prepared and sold and which are under continuous inspection by the North Carolina Department of Agriculture or the United States Department of Agriculture. (1937, c. 244, s. 4; 1957, c. 1357, s. 1; 1977, c. 706; 1981, c. 463, s. 3; 1983, c. 891, s. 2.)

**Part 3. Sanitation of Scallops, Shellfish and Crustacea.****§ 130A-230. Commission to adopt rules; enforcement of rules.**

For the protection of the public health, the Commission shall adopt rules establishing sanitation requirements for the harvesting, processing and handling of scallops, shellfish and crustacea of in-State origin. The rules of the Commission may also regulate scallops, shellfish and crustacea shipped into North Carolina. The Department is authorized to enforce the rules and may issue and revoke permits according to the rules. (1965, c. 783, s. 1; 1967, c. 1005, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§ 130A-231. Agreements between Department of Human Resources and Department of Natural Resources and Community Development.**

Nothing in this Part is intended to limit the authority of the Department of Natural Resources and Community Development to regulate aspects of the harvesting, processing and handling of scallops, shellfish and crustacea relating to conservation of the fisheries resources of the State. The Department of Human Resources and the Department of Natural Resources and Community Development are authorized to enter into agreements respecting the duties and responsibilities of each agency as to the harvesting, processing and handling of scallops, shellfish and crustacea. (1965, c. 783, s. 1; 1967, c. 1005, s. 1; 1973, c. 476, s. 128; c. 1262, s. 86; 1977, c. 771, s. 4; 1983, c. 891, s. 2.)

**§§ 130A-232 to 130A-234:** Reserved for future codification purposes.

**Part 4. Institutions and Schools.****§ 130A-235. Regulation of sanitation in institutions.**

For the protection of the public health, the Commission shall adopt rules to establish sanitation requirements for hospitals, psychiatric hospitals, nursing homes, domiciliary homes, residential care facilities, educational institutions and other facilities where patients, residents or students are provided room or board. This section shall not apply to State institutions and facilities subject to inspection under G.S. 130A-5(10). (1945, c. 829, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### 130A-236. Regulation of sanitation in schools.

For the protection of the public health, the Commission shall adopt rules to establish sanitation requirements for public, private and religious schools. The rules shall address, but not be limited to, the cleanliness of floors, walls, ceilings, storage spaces and other areas; adequacy of lighting, ventilation, water supply, toilet and lavatory facilities; sewage collection, treatment and disposal facilities; and solid waste disposal. The Department shall inspect schools at least annually. The Department shall submit written inspection reports of public schools to the Department of Public Education and written inspection reports of private and religious schools to the Department of Administration. (1973, c. 1239, s. 1; 1983, c. 891, s. 2.)

### 130A-237. Inspections, reports, corrective action.

A principal or administrative head of a public, private or religious school shall inspect the facility every month to monitor the level of sanitation and to assure compliance with the sanitation rules. A principal or administrative head shall immediately take action to correct conditions which do not satisfy the sanitation rules. Sample inspection report forms may be obtained from the department upon request. (1973, c. 1239, s. 2; 1983, c. 891, s. 2.)

## Part 5. Migrant Housing.

### 130A-238. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Crew leader" means the individual who negotiates or manages the contract for employment of migrants or is recognized by the migrants as the leader.
- (2) "Migrant" means an agricultural worker, including a person who works in food processing operations, and a worker's dependents who travel and stay overnight in response to the demand for seasonal agricultural labor.
- (3) "Migrant housing" means one or more buildings or structures, tents, trailers or vehicles, together with the appurtenant land, that are established, operated or used as living quarters for 13 or more migrants. (1963, c. 809, s. 1; 1983, c. 891, s. 2.)

**Legal Periodicals.** — For survey of 1984 criminal law, see 62 N.C.L. Rev. 1186 (1984).

### § 130A-239. Commission to regulate sanitary conditions of migrant housing.

For the protection of the public health, the Commission shall adopt rules concerning the sanitation and safety of migrant housing. The rules shall include, but not be limited to:

- (1) The issuance of a permit by the Department before migrant housing may be occupied or caused to be occupied;
- (2) The establishment of an inspection system for migrant housing. No less than one inspection per year during occupancy of the migrant housing shall be required;

- (3) The establishment of requirements for the sanitation and safety of migrant housing including, but not limited to, the site; structures water supply; sewage collection, treatment and disposal facilities toilet facilities; laundry facilities; handwashing and bathing facilities; lighting; solid waste disposal facilities; and kitchen and dining facilities. The rules shall also provide for insect and rodent control provision of first aid; reporting of communicable disease and any other items as are necessary in the interest of public health. (1983, c. 891, s. 2.)

### **§ 130A-240. Permit for migrant housing; posting.**

No person shall cause migrant housing to be occupied unless a valid permit has been obtained from the Department and is posted at the site of the migrant housing. (1963, c. 809, s. 1; 1983, c. 891, s. 2.)

### **§ 130A-241. Inspection and reports.**

The Department is authorized to enter and inspect any migrant housing which is, will be or has been occupied. Every person responsible for the management or control of migrant housing shall render all assistance necessary to enable the Department to make a full, thorough and complete inspection of the housing. The Department shall leave a copy of the inspection report with the responsible person. (1983, c. 891, s. 2.)

### **§ 130A-242. Application for permit; issuance; duration; assignability; denial or revocation.**

A written application for a permit for migrant housing shall be made at the local health department having jurisdiction over the area in which the proposed housing is to be located. The permits shall be issued without charge. The permits shall be valid for a period of one year, unless revoked for failure to comply with this Part or the rules of the Commission. The permits are applicable to the migrant housing and thus shall not be transferable from one migrant housing to another. In the event the migrant housing is transferred to an owner or operator other than the owner or operator who made application for the permit, the permit shall remain in full force and effect, provided that the new owner or migrant housing operator notifies the local health department within 15 days of said change in ownership or migrant housing operator. (1963, c. 809, s. 1; 1983, c. 891, s. 2; 1985, c. 462, s. 19.)

**Effect of Amendments.** — The 1985 amendment, effective June 24, 1985, substituted the last two sentences for a former last sentence, which read "The permits shall not be transferable."

### **§ 130A-243. Responsibility for sanitary standards and maintenance.**

The person causing migrant housing to be occupied, including the owner, operator and crew leader, shall be responsible for complying with the provisions of this Part and the rules of the Commission. After the owner has been given reasonable notice of damage done or occurring while the house is occupied by migrants, the owner shall be responsible for the damage and shall have reasonable time to repair the damage. The owner may charge the occu-

pants and the crew leader for repairs which were necessary due to damage caused by the occupants. (1963, c. 809, s. 1; 1983, c. 891, s. 2.)

### § 130A-244. Duties of occupants of migrant housing.

An occupant of migrant housing shall use the sanitary facilities and maintain them in a sanitary manner. Occupants shall be responsible for damages to the housing caused by them. (1963, c. 809, s. 1; 1983, c. 891, s. 2.)

§§ 130A-245 to 130A-246: Reserved for future codification purposes.

## Part 6. Regulation of Food and Lodging Facilities.

### § 130A-247. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Permanent house guest" means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.
- (2) "Private club" means an establishment which maintains selective members, is operated by the membership and is not profit oriented.
- (3) "Regular boarder" means a person who receives food for periods of a week or longer.
- (4) "Where drink is prepared or served" means a place where drink is put together, portioned, set out or handed out in unpackaged portions using containers which are reused on the premises rather than single-service containers.
- (5) "Where food is prepared or served" means a place where food is cooked, put together, portioned, set out or handed out in unpackaged portions for human consumption. (1983, c. 891, s. 2.)

### § 130A-248. Regulation of restaurants and hotels.

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of restaurants, hotels, motels, tourist homes, school cafeterias, summer camps, food or drink stands, sandwich manufacturing operations, mobile food units, pushcarts and other facilities where food or drink is prepared or served for pay or where lodging is provided for pay. The rules shall address, but not be limited to, the establishment of sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils and other areas and items; adequacy of lighting, ventilation, water supply, sewage collection, treatment and disposal facilities, lavatory facilities, food protection facilities and waste disposal; the cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces; methods of food preparation, transportation, catering, storage and serving; health of employees; and animal and vermin control. The rules shall contain a system for grading facilities, such as Grade A, Grade B and Grade C.

(b) No facility shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued to the owner or operator of the facility and shall not be transferable. A permit shall be issued only when the facility satisfies all of the requirements of the rules. A permit shall be revoked for failure of the facility to maintain a minimum grade of C, and a permit may be revoked for failure to comply with the other provisions of

the rules where an imminent health hazard may exist. (1941, c. 309, s. 1; 1955, c. 1030, s. 1; 1957, c. 1214, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-249. Inspections; report and grade card.

The Secretary may enter any facility where food or drink is prepared or served for pay or where lodging is provided for pay for the purpose of making inspections. The person responsible for the management or control of a facility shall permit the Secretary to inspect every part of the facility and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card showing the grade of the facility with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the facility. The grade card shall not be removed by anyone, except by or upon the instruction of the Secretary. (1941, c. 309, s. 2; 1955, c. 1030, s. 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-250. Exemptions; rules regulating bed and breakfast establishments.

This Part shall not apply to: (i) facilities which provide food or lodging to regular boarders or permanent house guests only; (ii) private clubs; and (iii) occasional fund-raising events conducted by the same person no more frequently than two consecutive days every three months. A food or drink stand operated for two weeks or less shall comply with the rules but shall not be subject to grading. A mobile food unit or pushcart shall comply with the rules and shall be operated in conjunction with a permitted restaurant but shall not be subject to grading.

This Part shall not apply to private homes offering bed and breakfast accommodations to eight or less persons per night until such time as the Health Services Commission adopts rules regulating them in accordance with this Part. The Commission is authorized and directed to adopt reasonable rules pursuant hereto to become effective no later than July 1, 1984. (1955, c. 1030, s. 4; 1957, c. 1214, s. 3; 1983, c. 884, ss. 1, 2; c. 891, s. 2.)

**Editor's Note.** — Session Laws 1983, c. 884, effective January 1, 1984, added the second paragraph. Section 1 of the act, effective July 20, 1983, amended former § 72-46, which section was repealed by Chapter 891, s. 7, effective Jan. 1, 1984. Pursuant to s. 2 of Chapter

884, which authorized the Codifier of Statutes, pursuant to § 164-10(f), to codify s. 1 wherever appropriate in the Public Health Laws, the amendment by s. 1 has been codified in § 130A-250.

## Part 7. Mass Gatherings.

### § 130A-251. Legislative intent and purpose.

The intent and purpose of this Part is to provide for the protection of the public health, safety and welfare of those persons in attendance at mass gatherings and of those persons who reside near or are located in proximity to the sites of mass gatherings or are directly affected by them. (1971, c. 712, s. 1; 1983, c. 891, s. 2.)

**§ 130A-252. Definition of mass gathering.**

For the purposes of this Part, "mass gathering" means a congregation or assembly of more than 5,000 people in an open space or open air for a period of more than 24 hours. A mass gathering shall include all congregations and assemblies organized or held for any purpose, but shall not include assemblies in permanent buildings or permanent structures designed or intended for use by a large number of people. To determine whether a congregation or assembly extends for more than 24 hours, the period shall begin when the people expected to attend are first permitted on the land where the congregation or assembly will be held and shall end when the people in attendance are expected to depart. To determine whether a congregation or assembly shall consist of more than 5,000 people, the number reasonably expected to attend, as determined from the promotion, advertisement and preparation for the congregation or assembly and from the attendance at prior congregations or assemblies of the same type, shall be considered. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§ 130A-253. Permit required; information report; revocation of permit.**

(a) No person shall organize, sponsor or hold any mass gathering unless a permit has been issued to the person by the Secretary under the provisions of this Part. A permit shall be required for each mass gathering and is not transferable.

(b) A permit may be revoked by the Secretary at any time if the Secretary finds that the mass gathering is being or has been maintained or operated in violation of this Part. A permit may be revoked upon the request of the permittee or upon abandonment of the operation. A permit will otherwise expire upon satisfactory completion of the post-gathering cleanup following the close of the mass gathering.

(c) The Secretary, upon information that a congregation or assembly of people which may constitute a mass gathering is being organized or promoted, may direct the organizer or promoter to submit within five calendar days an information report to the Department. The report shall contain the information required for an application for permit under G.S. 130A-254(b) and other information concerning the promotion, advertisement and preparation for the congregation or assembly and prior congregations or assemblies, as the Secretary deems necessary. The Secretary shall consider all available information including any report received and shall determine if the proposed congregation or assembly is a mass gathering. If the Secretary determines that a proposed congregation or assembly is a mass gathering, the Secretary shall notify the organizer or promoter to submit an application for permit at least 30 days prior to the commencement of the mass gathering. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§ 130A-254. Application for permit.**

(a) Application for a permit for a mass gathering shall be made to the Secretary on a form and in a manner prescribed by the Secretary. The application shall be filed with the Secretary at least 30 days prior to the commencement of the mass gathering. A fee as prescribed by the Secretary, not to exceed one hundred dollars (\$100.00), shall accompany the application.

(b) The application shall contain the following information: identification of the applicant; identification of any other person or persons responsible for organizing, sponsoring or holding the mass gathering; the location of the proposed mass gathering; the estimated maximum number of persons reasonably expected to be in attendance at any time; the date or dates and the hours during which the mass gathering is to be conducted; and a statement as to the total time period involved.

(c) The application shall be accompanied by an outline map of the area to be used, to approximate scale, showing the location of all proposed and existing privies or toilets; lavatory and bathing facilities; all water supply sources including lakes, ponds, streams, wells and storage tanks; all areas of assemblage; all camping areas; all food service areas; all garbage and refuse storage and disposal areas; all entrances and exits to public highways; and emergency ingress and egress roads.

(d) The application shall be accompanied by additional plans, reports and information required by the Secretary as necessary to carry out the provisions of this Part.

(e) A charge shall be levied by the Secretary to cover the cost of additional services, including police, fire and medical services, provided by the State or units of local government on account of the mass gathering. The Secretary shall reimburse the State or the units of local government for the additional services upon receipt of payment. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-255. Provisional permit; performance bond; liability insurance.**

(a) Within 15 days after the receipt of the application, the Secretary shall review the application and inspect the proposed site for the mass gathering. If it is likely that the requirements of this Part and the rules of the Commission can be met by the applicant, a provisional permit shall be issued.

(b) The Secretary shall require the permittee within five days after issuance of the provisional permit to file with the Secretary a performance bond or other surety to be executed to the State in the amount of five thousand dollars (\$5,000) for up to 10,000 persons and an additional one thousand dollars (\$1,000) for each additional 5,000 persons or fraction reasonably estimated to attend the mass gathering. The bond shall be conditioned on full compliance with this Part and the rules of the Commission and shall be forfeitable upon noncompliance and a showing by the Secretary of injury, damage or other loss to the State or local governmental agencies caused by the noncompliance.

(c) The permittee shall in addition file satisfactory evidence of public liability and property damage insurance in an amount determined by the Secretary to be reasonable, not to exceed one million dollars (\$1,000,000) in amount, in relation to the risks and hazards involved in the proposed mass gathering. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-256. Issuance of permit; revocation; forfeiture of bond; cancellation.**

(a) If, upon inspection by the Secretary five days prior to the starting date of the mass gathering, or earlier upon request of the permittee, the required facilities are found to be in place, satisfactory arrangements are found to have been made for required services, the charge for additional services levied in

accordance with G.S. 130A-254(e) has been paid and other applicable provisions of this Part and the rules of the Commission are found to have been met, the Secretary shall issue a permit for the mass gathering. If, upon inspection, the facilities, arrangements or other provisions are not satisfactory, the provisional permit shall be revoked and no permit shall be issued.

(b) Upon revocation of either the provisional permit or the permit, the permittee shall immediately announce cancellation of the mass gathering in as effective a manner as is reasonably possible including, but not limited to, the use or whatever methods were used for advertising or promoting the mass gathering.

(c) If the provisional permit or the permit is revoked prior to or during the mass gathering, the Secretary may order the permittee to install facilities and make arrangements necessary to accommodate persons who may nevertheless attend or be present at the mass gathering despite its cancellation and to restore the site to a safe and sanitary condition. In the event the permittee fails to comply with the order of the Secretary, the Secretary may immediately proceed to install facilities and make other arrangements and provisions for cleanup as may be minimally required in the interest of public health and safety, utilizing any State and local funds and resources as may be available.

(d) If the Secretary installs facilities or makes arrangements or provisions for cleanup pursuant to subsection (c), the Secretary may apply to a court of competent jurisdiction prior to or within 60 days after the action to order forfeiture of the permittee's performance bond or surety for violation of this Part or the rules of the Commission. The court may order that the proceeds shall be applied to the extent necessary to reimburse State and local governmental agencies for expenditures made pursuant to the action taken by the Secretary upon the permittee's failure to comply with the order. Any excess proceeds shall be returned to the insurer of the bond or to the surety after deducting court costs. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

## § 130A-257. Rules of the Commission.

For the protection of the public health, safety and welfare of those attending mass gatherings and of other persons who may be affected by mass gatherings, the Commission shall adopt rules to carry out the provisions of this Part and to establish requirements for the provision of facilities and services at mass gatherings. The rules shall include, but not be limited to, the establishment of requirements as follows:

- (1) General requirements relating to minimum size of activity area including camping and parking space, distance of activity area from dwellings, distance from public water supplies and watersheds and an adequate command post for use by personnel of health, law-enforcement and other governmental agencies;
- (2) Adequate ingress and egress roads, parking facilities and entrances and exits to public highways;
- (3) Plans for limiting attendance and crowd control, dust control and rapid emergency evacuation;
- (4) Medical care, including facilities, services and personnel;
- (5) Sanitary water supply, source and distribution; toilet facilities; sewage disposal; solid waste collection and disposal; food dispensing; insect and rodent control; and post-gathering cleanup; and
- (6) Noise level at perimeter; lighting and signs. (1971, c. 712, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-258. Local ordinances not abrogated.

Nothing in this Part shall be construed to limit the authority of units of local government to adopt ordinances regulating, but not prohibiting, congregations and assemblies not covered by this Part. (1971, c. 712, s. 1; 1983, c. 891, s. 2.)

§§ 130A-259 to 130A-260: Reserved for future codification purposes.

## Part 8. Bedding.

### § 130A-261. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Bedding" means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow and any other item used principally for sleeping. This definition includes only those items which have a thickness of more than one inch. This definition also includes dual purpose furniture such as studio couches and sofa beds. The term "mattress" does not include water bed liners, bladders or cylinders but does include padding or cushioning material which has a thickness of more than one inch.
- (2) "Itinerant vendor" means a person who sells bedding from a movable conveyance.
- (3) "Manufacture" means the making of bedding out of new materials.
- (4) "New material" means any material or article that has not been used for any other purpose and by-products of industry that have not been in human use.
- (5) "Previously used material" means any material of which previous use has been made, but manufacturing processes shall not be considered previous use.
- (6) "Renovate" means the reworking or remaking of used bedding or the making of bedding from previously used materials, except for the renovator's own personal use or the use of the renovator's immediate family.
- (7) "Sanitize" means treatment of secondhand bedding or previously used materials to be used in renovating for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.
- (8) "Secondhand bedding" means any bedding of which prior use has been made.
- (9) "Sell" or "sold" means sell, have to sell, give away in connection with a sale, delivery or consignment; or possess with intent to sell, deliver or consign in sale. (1937, c. 298, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 1; 1983, c. 891, s. 2.)

### § 130A-262. Sanitizing.

(a) No person shall sell any renovated bedding or secondhand bedding unless it is sanitized in accordance with rules adopted by the Commission.

(b) A sanitizing apparatus or process shall not be used for sanitizing bedding or material required to be sanitized under this Part until the apparatus is approved by the Department.

(c) A person who sanitizes bedding shall attach to the bedding a yellow tag containing information required by the rules of the Commission and shall affix to the bedding the adhesive stamp required by G.S. 130A-269.

(d) A person who sanitizes material or bedding for another person shall keep a complete record of the kind of material and bedding which has been sanitized. The record shall be subject to inspection by the Department.

(e) A person who receives used bedding for renovation or storage shall attach to the bedding a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-263. Manufacture regulated.

All materials used in the manufacture of bedding in this State or used in manufactured bedding to be sold in this State shall be free of toxic materials and shall be made from new materials. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-264. Storage of used materials.

No establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by the rules of the Commission. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-265. Tagging requirements.

(a) A tag of durable material approved by the Commission shall be sewed securely to all bedding. The tag shall be at least two inches by three inches in size and shall have affixed to it the adhesive stamp or have a printed stamp exemption permit number provided for in G.S. 130A-269. The stamp shall be affixed so as not to interfere with the wording on the tag.

(b) The following shall be plainly stamped or printed upon the tag with ink in English:

- (1) The name and kind of material or materials used to fill the bedding which are listed in the order of their predominance;
- (2) A registration number obtained from the Department;
- (3) In letters at least one-eighth inch high the words "made of new material", if the bedding contains no previously used material; or the words "made of previously used materials", if the bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade; and
- (4) A stamp exemption permit number when requirements of G.S. 130A-269 are met.

(c) A white tag shall be used for manufactured bedding and a yellow tag for renovated or sanitized bedding.

(d) The tag must be sewed to the outside covering before the filling material has been inserted. No trade name, advertisement nor any other wording shall appear on the tag. (1937, c. 298, ss. 2, 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-266. Altering tags prohibited.

No person, other than one purchasing bedding for personal use or a representative of the Department shall remove, deface or alter the tag required by this Part. (1937, c. 298, s. 4; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-267. Selling regulated.

(a) No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, labeled and stamped in the manner required by this Part and which does not otherwise comply with the provisions of this Part.

(b) This Part shall not apply to bedding sold by the owner and previous user from the owner's home directly to a purchaser for the purchaser's own personal use unless the bedding has been exposed to an infectious or communicable disease.

(c) Possession of any bedding in any store, warehouse, itinerant vendor's conveyance or place of business, other than a private home, hotel or other place where these articles are ordinarily used, shall constitute prima facie evidence that the item is possessed with intent to sell. No secondhand bedding shall be possessed with intent to sell for a period exceeding 60 days unless it has been sanitized. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-268. Registration numbers; licenses.

(a) All persons manufacturing or sanitizing bedding in this State or manufacturing bedding to be sold in this State shall apply for a registration number on a form prescribed by the Secretary. Upon receipt of the application, the Department shall issue to the applicant a certificate of registration showing the person's name and address, registration number and other pertinent information required by the rules of the Commission.

(b) For the purpose of defraying expenses incurred in the enforcement of the provisions of this Part, the following license fees are to be paid to the Department, deposited in the "bedding law fund" and expended in accordance with the provisions of G.S. 130A-270. Unless exempted, no person shall sanitize any bedding until the person has received a "sanitizer's license" upon the payment of twenty-five dollars (\$25.00) for the calendar year to the Department. Unless exempted, no person shall manufacture any bedding in this State or manufacture bedding to be sold in this State until that person has secured a "manufacturer's license" upon the payment of twenty-five dollars (\$25.00) for the calendar year to the Department.

(c) If a bedding manufacturing or sanitizing business is established after June 30, the license shall be furnished at half the annual fee and shall be valid for the remainder of the calendar year. The license may be transferred upon the sale of the business in accordance with the rules of the Commission.

(d) Licenses shall be kept conspicuously posted in the place of business of the licensee at all times.

(e) The Secretary may suspend a license of a person for up to six months for two or more serious violations of this Part or the rules of the Commission within any 12-month period. (1937, c. 298, s. 7; 1951, c. 929, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1971, c. 371, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-269. Enforcement funds; stamps; stamp exemption permit.

(a) The Department shall administer and enforce this Part. The Department shall provide specially designated adhesive stamps for use under the provisions of this Part. Upon request and payment the Department shall furnish stamps at a rate of eighteen dollars (\$18.00) per 500 stamps.

(b) A person manufacturing bedding in North Carolina or manufacturing bedding to be sold in this State may, in lieu of purchasing and affixing the adhesive stamps, annually secure from the Department a stamp exemption permit and print the stamp exemption number on the label.

(c) A stamp exemption permit may be issued to a person who has done business in this State throughout the preceding calendar year at a cost determined annually by the total number of bedding units manufactured or sold in this State by the applicant during the calendar year immediately preceding the issuance of the permit at the rate of eighteen dollars (\$18.00) for each 500 bedding units or fraction of 500 units.

(d) A stamp exemption permit may be issued to a person who has not done business in this State throughout the preceding calendar year upon an initial payment of seven hundred twenty dollars (\$720.00) per year, prorated in accordance with the quarter of the calendar year in which the person makes application for the permit. After submission of proof of business volume amounts in accordance with subsection (h) for that part of the preceding calendar year in which the person used a stamp exemption permit issued under this subsection, the Department shall determine the cost of the permit for that time period by using a rate of eighteen dollars (\$18.00) for each 500 bedding units or fraction of 500 units. If the person's initial payment is more than the cost of the permit, the Department shall make a refund or an adjustment to the cost of the next permit in the amount of the difference. If the initial payment is less than the cost of the permit, the person shall pay the difference to the Department. Payments, refunds and adjustments shall be made in accordance with rules adopted by the Commission.

(e) A maximum charge of seven hundred fifty dollars (\$750.00) shall be made for units of bedding manufactured in this State but not sold in this State.

(f) For the purpose of computing the cost of stamp exemption permits only, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; one pad is defined as one bedding unit; one sleeping bag is defined as one bedding unit; five comforters or pillows are defined as one bedding unit; and any other item is defined as one bedding unit.

(g) An application for a stamp exemption permit must be submitted on a form prescribed by the Secretary. No stamp exemption permit may be issued to a person unless the person complies with the rules of the Commission governing the granting of stamp exemption permits.

(h) The Commission shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department in order to establish the number of bedding units that were, during the preceding calendar year:

- (1) Manufactured and sold in this State;
- (2) Manufactured outside of this State and sold in this State; and
- (3) Manufactured in this State but not sold in this State.

(i) The Commission may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete,

misleading or incorrect. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771; 1971, c. 371, ss. 4-7; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-270. Bedding law fund.

(a) All money collected under this Part shall be paid to the Secretary who shall place all money in a special "bedding law fund" which is created and specifically appropriated to the Department solely for expenses in furtherance of the enforcement of this Part.

(b) All money in the "bedding law fund" shall be expended solely for:

- (1) Salaries and expenses of inspectors and other employees who enforce this Part; or
- (2) Expenses directly connected with the enforcement of this Part, including attorney's fees, which are expressly authorized to be incurred by the Secretary without authority from any other source when in the Secretary's opinion it is advisable to employ an attorney to prosecute any persons. A sum not exceeding twenty percent (20%) of the salaries and expenses above enumerated may be used for supervision and general expenses of the Department. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771; 1971, c. 371, ss. 4-7; 1973, c. 476, s. 128; 1983, c. 891, s. 2; c. 913, s. 23.)

**Editor's Note.** — Pursuant to Session Laws 1983, c. 913, s. 23, which amended repealed § 130-177, and to Session Laws 1983, c. 891, s. 16.1, which provided that any bill ratified by the 1983 General Assembly amending part of repealed Chapter 130 would be construed to amend the appropriate part of Chapter 130A, a second sentence of subsection (a), relating to a semiannual report to the State Auditor, has been deleted.

### § 130A-271. Enforcement by the Department.

(a) The Department shall enforce the provisions of this Part and the rules adopted by the Commission.

(b) The Secretary may prohibit sale and place an "off sale" tag on any bedding which is not made, sanitized, tagged or stamped as required by this Part and the rules of the Commission. The bedding shall not be sold or otherwise removed until the violation is remedied and the Secretary has reinspected it and removed the "off sale" tag.

(c) A person supplying material to a bedding manufacturer shall furnish an itemized invoice of all furnished material. Each material entering into willowed or other mixtures shall be shown on the invoice. The bedding manufacturer shall keep the invoice on file for one year subject to inspection by the Department.

(d) When the Secretary has reason to believe that bedding is not tagged or filled as required by this Part, the Secretary shall have authority to open a seam of the bedding to examine the filling, and, if unable after this examination to determine if the filling is of the kind stated on the tag, shall have the authority to examine purchase or other records necessary to determine definitely the kind of material used in the bedding. The Secretary shall have authority to seize and hold for evidence any records and any bedding or bedding material which in the Secretary's opinion is made, possessed or offered for sale in violation of this Part or the rules of the Commission. The Secretary shall have authority to take a sample of any bedding or bedding material for the purpose of examination or for evidence. (1937, c. 298, s. 6; 1957, c. 1357, s. 1; 1971, c. 371, s. 8; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

## § 130A-272. Exemptions for blind persons and State institutions.

(a) In cases where bedding is manufactured, sanitized or renovated in a plant or place of business which has qualified as a nonprofit agency for the blind or severely handicapped under P.L. 92-28, as amended, the responsible person shall satisfy the provisions of this Part and the rules of the Commission. However, the responsible persons at these plants or places of business shall not be required to affix stamps or pay a license tax. Bedding made at these plants or places of business may be sold by any dealer without the stamps being affixed.

(b) State institutions engaged in the manufacture, renovation or sanitizing of bedding for their own use or that of another State institution are exempted from all provisions of this Part. (1937, c. 298, s. 11; 1957, c. 1357, s. 1; 1971, c. 371 s. 9; 1983, c. 891, s. 2.)

## § 130A-273. Rules.

The Commission shall adopt rules required by this Part in order to protect the public health. (1983, c. 891, s. 2.)

### Part 9. Milk Sanitation.

## § 130A-274. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Grade 'A' milk" means fluid milk and milk products which have been produced, transported, handled, processed and distributed in accordance with the provisions of the rules adopted by the Commission.
- (2) "Milk" means the lacteal secretion practically free from colostrum obtained by the complete milking of one or more cows or goats. (1983, c. 891, s. 2.)

## § 130A-275. Commission to adopt rules.

Notwithstanding the provisions of G.S. 106-267 et seq., the Commission is authorized and directed to adopt rules relating to the sanitary production, transportation, processing and distribution of Grade "A" milk. The rules, in order to protect and promote the public health, shall provide definitions and requirements for: (i) the sanitary production and handling of milk on Grade "A" dairy farms; (ii) the sanitary transportation of Grade "A" raw milk for processing; (iii) the sanitary processing of Grade "A" milk; (iv) the sanitary handling and distribution of Grade "A" milk; (v) the requirements for the issuance, suspension and revocation of permits; and (vi) the establishment of quality standards for Grade "A" milk. The rules shall be no less stringent than the 1978 Pasteurized Milk Ordinance recommended by the U.S. Public Health Service/Food and Drug Administration as amended effective January 1, 1982. The Commission may adopt by reference the U.S. Public Health Service/Food and Drug Administration 1978 Pasteurized Milk Ordinance and any amendment thereto. (1983, c. 891, s. 2; 1985, c. 462, s. 15.)

**Effect of Amendments.** — The 1985 amendment, effective June 24, 1985, added the last sentence.

### § 130A-276. Permits required.

No person shall produce, transport, process, or distribute Grade "A" milk without first having obtained a valid permit from the Department. (1983, c. 891, s. 2.)

### § 130A-277. Duties of the Department.

The Department shall enforce the rules of the Commission governing Grade "A" milk by making sanitary inspections of Grade "A" dairy farms, Grade "A" processing plants, Grade "A" milk haulers and Grade "A" distributors; by determining the quality of Grade "A" milk; and by evaluating methods of handling Grade "A" milk to insure compliance with the provisions of the rules of the Commission. The Department shall issue permits for the operation of Grade "A" dairy farms, processing plants and haulers in accordance with the provisions of the rules of the Commission and shall suspend or revoke permits for violations in accordance with the rules. Upon request by a local board of health the Department shall delegate enforcement and permit authority to the local health department. (1983, c. 891, s. 2.)

### § 130A-278. Certain authorities of Department of Agriculture not replaced.

This Part shall not repeal or limit the Department of Agriculture's authority to carry out labeling requirements, required butterfat testing, aflatoxin testing, pesticide testing, other testing performed by the Department of Agriculture and any other function of the Department of Agriculture concerning Grade "A" milk which is not inconsistent with this Article. (1983, c. 891, s. 2.)

### § 130A-279. Sale of milk.

Only milk which is Grade "A" pasteurized milk may be sold directly to consumers for human consumption. (1983, c. 891, s. 2.)

§§ 130A-280 to 130A-289: Reserved for future codification purposes.

## ARTICLE 9.

### *Solid Waste Management.*

### § 130A-290. Definitions.

The following definitions shall apply throughout this Article:

The following definitions shall apply throughout this Article:

(1) "Comprehensive hazardous waste treatment facility" means a facility designated as such by the Governor's Waste Management Board, meeting the following criteria:

a. It is a commercial facility that accepts hazardous waste from the general public for treatment;

- b. It has the capacity and capability to treat and dispose of hazardous waste on at least an intrastate regional basis; and
- c. Its location will substantially facilitate treatment of hazardous waste for the State of North Carolina.
- (1a) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
- (2) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended.
- (3) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.
- (4) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:
- Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
  - Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- (5) "Hazardous waste facility" means a facility for the storage, collection, processing, treatment, recycling, recovery or disposal of hazardous waste.
- (6) "Hazardous waste generation" means the act or process of producing hazardous waste.
- (7) "Hazardous waste landfill facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.
- (7a) "Hazardous waste long-term storage facility" means a facility as defined in G.S. 143B-470.2(5).
- (8) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.
- (8a) "Hazardous waste treatment facility" means a facility as defined in G.S. 143B-470.2(3).
- (8b) "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.
- (8c) "Long-term retrievable storage" means storage in closed containers in facilities (either above or below ground) with (i) adequate lights, (ii) impervious cement floors, (iii) strong visible shelves or platforms, (iv) passageways to allow inspection at any time, (v) adequate ventilation if underground or in closed buildings, (vi) protection from the weather, (vii) accessible to monitoring with signs on both individual containers and sections of storage facilities, and (viii) adequate safety and security precautions for facility personnel, inspectors and invited or permitted members of the community.
- (9) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

- (10) "Natural resources" means all materials which have useful physical or chemical properties which exist, unused, in nature.
- (11) "Open dump" means a solid waste disposal site which is not a sanitary landfill.
- (12) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- (13) "Recycling" means the process by which recovered resources are transformed into new products so that the original products lose their identity.
- (14) "Refuse" means all nonputrescible waste.
- (15) "Resource recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has an useful life in its present form and preparing the solid waste for recycling.
- (15a) "Reuse" means a process by which resources are reused or rendered usable.
- (16) "Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.
- (17) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.
- (18) "Solid waste" means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:
  - a. Fecal waste from fowls and animals other than humans;
  - b. Solid or dissolved material in:
    - 1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;
    - 2. Irrigation return flows; and
    - 3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580), as amended, shall also be a solid waste for the purposes of this Article;
  - c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580), as amended, shall also be a solid waste for the purposes of this Article;

- d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).
- e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580), as amended, shall also be a solid waste for the purposes of this Article.
- (19) "Solid waste disposal site" means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.
- (20) "Solid waste generation" means the act or process of producing solid waste.
- (21) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.
- (22) "Solid waste management facility" means land, personnel and equipment used in the management of solid waste.
- (23) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
- (24) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any solid waste to neutralize the waste or to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of solid waste to render it nonhazardous.
- (25) "Unit of local government" means a county, city, town or incorporated village. (1969, c. 899; 1975, c. 311, s. 2; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 1; 1981, c. 704, s. 4; 1983, c. 795, ss. 1, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 2; 1985, c. 738, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 795, s. 8.1, provides that repealed § 130-166.16(23), as enacted by s. 1 of the act effective July 18, 1983, is recodified as § 130A-290(25) effective Jan. 1, 1984.

Session Laws 1983, c. 795, s. 8, contains a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 26, 1984, added subdivisions (1), (7a), (8a), (8b), (8c) and (15a).

At the direction of the Revisor of Statutes, the definition of "Disposal," formerly designated as subdivision (1), has been redesignated (1a).

The 1985 amendment, effective July 12, 1985, rewrote paragraph (18)d, which read "Any radioactive material as defined by the North Carolina Radiation Protection Act, G.S. 104E-1 through 104E-23; or."

**Legal Periodicals.** — For comment on North Carolina's 1981 Waste Management Act, see 5 Camp. L. Rev. 337 (1983).

## § 130A-291. Solid Waste Unit in Department of Human Resources.

(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department of Human Resources shall maintain an appropriate administrative unit to promote sanitary processing, treatment, disposal, and statewide management of solid

waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain such qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish the statewide solid waste management program, but also of its responsibility to monitor and supervise, through the Department of Human Resources, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of said purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within said area, and a unit of local government may, by ordinance, require that all solid waste generated within said area and placed in the waste stream for disposal, shall be delivered to the permitted solid waste management facility or facilities serving such geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within said geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules or regulations adopted pursuant to the authority granted herein. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 3; 1977, 2nd Sess., c. 1216; 1983, c. 795, ss. 2, 8.1; c. 891, s. 2.)

**Editor's Note.** — Session Laws 1983, c. 795, s. 8.1, provides that the amendments made by s. 2 of the act to repealed § 130-166.17 effective July 18, 1983, are made to § 130A-291 effective January 1, 1984. Section 2 of c. 795

rewrote the section as enacted by Session Law 1983, c. 891, s. 2. The section is set out as rewritten by c. 795.

Session Laws 1983, c. 795, s. 8, contains severability clause.

## § 130A-292. Conveyance of land used for hazardous waste landfill facility to the State.

(a) No land may be used for a commercial hazardous waste landfill facility until fee simple title to the land has been conveyed to this State. In consideration for the conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. The lease agreement shall specify that for an annual rent of fifty dollars (\$50.00), the lessee shall be allowed to use the land for the development and operation of a hazardous waste landfill facility. The lease agreement shall provide that the lessor or any person authorized by the lessor shall at all times have the right to enter without a search warrant or permission of the lessee upon any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of this Article. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory requirements concerning insurance, bonding for closure and post-closure costs, monitoring and other financial or health and safety requirements as required by applicable law and rules. The State, as lessor, shall be immune from liability except as otherwise provided by statute. The lease shall

transferable with the written consent of the lessor and the consent will not be unreasonably withheld. In the case of a transfer of the lease, the transferee shall be subject to all terms and conditions that the State deems necessary to ensure compliance with applicable laws and rules. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, rule or permit condition, or with any term or condition of the lease, the State may terminate the lease after giving the lessee written notice specifically describing the failure to comply and upon providing the lessee a reasonable time to comply. If the lessee does not effect compliance within the reasonable time allowed, the State may reenter and take possession of the premises.

(b) Notwithstanding the termination of the lease by either the lessee or the lessor for any reason, the lessee shall remain liable for, and be obligated to perform, all acts necessary or required by law, rule, permit condition or the lease for the permanent closure of the site until the site has either been permanently closed or until a substituted operator has been secured and has assumed the obligations of the lessee.

(c) In the event of changes in laws or rules applicable to the facility which make continued operation by the lessee impossible or economically infeasible, the lessee shall have the right to terminate the lease upon giving the State reasonable notice of not less than six months, in which case the lessor shall have the right to secure a substitute lessee and operator.

(d) In the event of termination of the lease by the lessor as provided in subsection (a) of this section, or by the lessee as provided in subsection (c) of this section, the lessee shall be paid the fair market value of any improvements made to the leased premises less the costs to the lessor resulting from termination of the lease and securing a substitute lessee and operator. However, the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility. (1981, c. 704, § 5; 1983, c. 891, s. 2.)

### **130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to establish facility.**

(a) Notwithstanding any authority granted to counties, municipalities or other local authorities to adopt local ordinances, including those regulating land use, any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility or a hazardous waste landfill facility which the Governor's Waste Management Board has approved pursuant to subsections (b) and (c) of this section, shall be invalid only to the extent necessary to effectuate the purposes of this Article. For the purpose of this section, the Governor's Waste Management Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the local governing body: (1) of the city in which the proposed site is located; or (2) of the county in which the proposed site is located (if the proposed site is outside city limits). The terms of the members appointed by the local governing body shall end upon the final determination made by the Governor under this section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal or other local ordinance(s), the developer or operator of the facility or the Hazardous Waste Treatment Commission may petition the Governor's Waste Management Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall either approve or disapprove the establishment and operation of the facility. If the Board makes

the four findings set forth below, the Board shall approve the establishment of the facility. If the Board does not make all of the four findings set forth below, the Board shall disapprove the establishment or operation of the facility. The decision of the Board shall be final unless a party to the action shall, pursuant to G.S. 7A-29, file a written appeal within 30 days of the date of the decision. The record on appeal shall include all materials and information submitted to or considered by the Board in accordance with subsection (c) of this section. The scope of judicial review shall be limited to questions of abuse of discretion. Before approving the facility, the Board must make the following findings:

- (1) That the proposed facility is needed in order to establish adequate capacity for the management of hazardous waste generated in this State and serves the interest of the citizens of the State as a whole;
- (2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);
- (3) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and
- (4) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility developer or operator has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable ordinances(s).

The record for appeal shall include the Board's written decision, a complete transcript of the hearing, all written material presented to the Board regarding the site location and the specific findings required in this subsection and any minority positions on the recommendation and the specific findings required in this subsection. The Board's decision shall be in writing and shall identify the material submitted to the Board plus any additional material used in arriving at the decision.

(c) When a petition as described in subsection (b) of this section has been filed with the Governor's Waste Management Board, the Board shall hold a public hearing to consider the petition. The hearing shall be held in the affected locality in accordance with Article 2 of Chapter 150A of the General Statutes within a reasonable time after receipt of the petition by the Board. The Board shall publish notice of the hearing twice a week for two successive weeks in a newspaper of general circulation in the county where the proposed site is located. The final notice shall appear at least 15 days, but not more than 25 days, before the hearing date. Any interested persons may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, an interested person may submit written material to the Board for its consideration. No later than 60 days after the hearing, the Board shall approve or disapprove the facility.

(1981, c. 704, s. 5; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 3-5)

(d) The provisions of this section shall not apply to the siting of a hazardous waste landfill facility until the rules for the operation of the facilities have been adopted by the appropriate State agencies. (1981, c. 704, s. 5; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 3-5.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 26, 1984, substituted "has" for "and the Governor have" preceding "approved pursuant to" near

the end of the first sentence of subsection (a), rewrote subsection (b), and in subsection (c) deleted "present its written recommendation to the Governor to" preceding "approve or disapprove the facility" at the end of the present last sentence of the first paragraph and deleted the remainder of the subsection, relating to the Board's findings and written recommendation and the decision of the Governor.

#### OPINIONS OF ATTORNEY GENERAL

**A city or county cannot enact an ordinance which prohibits the establishment of a hazardous waste facility within its city or county limits.** — See opinion of Attorney General to O.W. Strickland, Head, Solid &

Hazardous Waste Management Branch, Environmental Health Section, 49 N.C.A.G. 178 (1980), rendered under former § 130-166.16 et seq.

### 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

- (1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;
- (2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;
- (3) Develop and adopt rules to establish standards for qualification as a waste "recycling, reduction or resource recovering facility" or as waste "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;
- (4) Develop a permit system governing the establishment and operation of solid waste management facilities. No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit.

The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide

- environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;
- (5) Repealed by Session Laws 1983, c. 795, s. 3.
- (5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:
- The existing and projected population for such area;
  - The quantities of solid waste generated and estimated to be generated in such area;
  - The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
  - The method of solid waste disposal to be utilized and the energy material which shall be recovered from the waste; and
  - Such other data that the Department may reasonably require.
- (5b) Authorize units of local government to require by ordinance, that solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, nor prohibit collectors of solid waste from recycling materials or limiting access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.
- (5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.
- (5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.
- (6) The Department is authorized to charge and collect fees from operators of hazardous waste landfill facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

- (7) Establish and collect annual fees from generators and transporters of hazardous waste and hazardous waste storage, treatment and disposal facilities regulated by this Article. The fees collected shall support the funding of the Department's hazardous waste management program. The maximum annual fee for each category shall be:

|                      |           |
|----------------------|-----------|
| Generators           | \$600.00  |
| Transporters         | \$600.00  |
| Storage Facilities   | \$1200.00 |
| Treatment Facilities | \$1200.00 |
| Disposal Facilities  | \$1200.00 |

b) The Commission shall adopt and the Department shall enforce rules for establishment, location, operation, maintenance, use and discontinuance of solid waste management sites and facilities. These rules shall be designed to accomplish the maintenance of safe and sanitary conditions in and around solid waste management sites and facilities, and shall be based on recognized public health practices and procedures, sanitary engineering research and studies, and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

c) The Commission shall adopt and the Department shall enforce rules concerning the management of hazardous waste. These rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management and shall provide for:

- (1) Establishing criteria for hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous waste;
- (1a) Establishing criteria for hazardous constituents, identifying the characteristics of hazardous constituents and listing particular hazardous constituents;
- (2) Record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;
- (3) Proper labeling of hazardous waste containers;
- (4) Use of appropriate containers for hazardous waste;
- (5) A manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;
- (6) Proper transportation of hazardous waste;
- (7) Treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;
- (8) Location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste landfill facility or polychlorinated biphenyl landfill facility shall be located within 25 miles of any other hazardous waste landfill facility or polychlorinated biphenyl landfill facility;
- (9) Plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;
- (10) Proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, financial responsibility (including requirements for sufficient availability of funds for facility closure and post-closure monitoring and corrective measures through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee), training of personnel, continuity of operation and procedures for establishing and maintaining hazardous waste facilities;

- (11) Monitoring by owners or operators of hazardous waste facilities;
- (12) Inspection or copying of records required to be kept;
- (13) Obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities;
- (14) A permit system governing the establishment and operation of hazardous waste facilities; and
- (15) Additional requirements as necessary for the effective management of hazardous waste.
- (16) The operator of the hazardous waste landfill facility shall maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Board shall determine what constitutes an adequate amount of insurance.
- (17) The bottom of a hazardous waste landfill facility shall be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment.
- (18) The operator of a hazardous waste landfill facility shall make monthly reports to the Governor's Waste Management Board and the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article. Such rules shall not limit in any way the rights of aggrieved parties to judicial review of decisions regarding permits as provided for by Article 4 of Chapter 150A of the General Statutes. For the purposes of such judicial review of permit decisions, "aggrieved persons" shall include, but not be limited to, organizations with members residing in the county where the permitted activity is to take place, and organizations whose members regularly use the area of the permitted activity for recreational purposes.

(e) The rules adopted under this section shall be no less stringent than the most recent regulations adopted under the federal act and may be amended.

(f) Within five days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk to the county board of commissioners or, if the facility is located within a city, the city clerk where the facility is proposed to be located. Prior to the issuance of a permit or an amendment of an existing permit for a hazardous waste facility, the Department shall issue public notice and conduct a public hearing in any county in which a hazardous waste facility is to be located. Notice and public hearings shall be in accordance with the appropriate federal regulations adopted pursuant to the federal act and with Chapter 150A of the General Statutes. Where the provisions of the federal regulations and Chapter 150A of the General Statutes are inconsistent, the federal regulations shall apply.

Within 180 days after receiving a complete application for a permit or for an amendment to an existing permit for a comprehensive hazardous waste treatment facility, the Department shall approve or disapprove the application. In acting upon the application, the Department shall consider land use, zoning, buffer zones, utility availability, proximity to sources of waste, civil defense, fire safety, transportation and access, existing road network, general considerations of the public's health and safety, and any other objective factors reasonably related and relevant to the proper siting and operation of the comprehensive hazardous waste treatment facility. The Department may impose action responding to these factors as a condition in the permit. If the

Department disapproves the application, the disapproval shall set forth specifically the reasons for the denial and the applicant shall have the right to appeal the disapproval.

g) The Commission shall develop and adopt criteria and standards to be considered in location and permitting of a hazardous waste facility by January 31, 1985. The standards and criteria shall be developed through public participation, shall be enforced by the Department and shall include, in addition to all applicable State and federal rules and regulations, consideration of:

- (1) Acceptability within the community where the facility is to be located or steps which should be taken if community acceptance is not forthcoming;
- (2) Hydrological and geological factors such as flood plains, depth to water table, groundwater travel time, proximity to public water supply watersheds, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines and climate;
- (3) Natural resources such as wetlands, endangered species habitats, proximity to parks, forests, wilderness areas and historical sites, and air quality;
- (4) Local land use whether residential, industrial, commercial, recreational, agricultural, and proximity to incompatible structures such as schools and airports;
- (5) Transportation factors, such as proximity to waste generators and to population, route safety and method of transportation; and
- (6) Aesthetic factors such as the visibility, appearance and noise level of the facility.

h) Rules adopted by the Commission shall be subject to the following requirements:

- (1) No hazardous waste landfill shall be established until at least one comprehensive hazardous waste treatment facility is fully operational in North Carolina.
- (2) Hazardous waste shall be treated prior to disposal in North Carolina. Long-term storage or disposal shall be used for the storage or disposal of the residual or ashes of hazardous waste which has been treated so the toxicity is low enough to present no significant health or safety hazard in the event of leakage from the facility. Hazardous waste that cannot be reduced, stabilized or destroyed to the extent which renders it sufficiently low in toxicity as to present no significant health or safety hazard in the event of leakage shall be stored in long-term retrievable storage until such methods are found. Hazardous waste in long-term retrievable storage shall be detoxified as soon as the Commission for Health Services determines based upon a preponderance of the evidence that the technology is available at a reasonable cost. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste landfill facility.
- (3) Any hazardous waste landfill facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the Federal Act at the time the permit is issued.
- (4) No hazardous waste landfill facility or polychlorinated biphenyl landfill facility shall be located within 25 miles of any other hazardous waste landfill facility or polychlorinated biphenyl landfill facility.
- (5) No hazardous waste landfill facility or polychlorinated biphenyl landfill facility shall be permitted within 25 miles of a comprehensive hazardous waste treatment facility as defined in G.S. 130A-290(1).

- (6) The following will not be disposed of in a hazardous waste landfill or long-term retrievable storage: ignitables as defined in the Federal Act, polyhalogenated biphenyls of 50 ppm or greater concentration and free liquids whether or not containerized.
  - (7) The underground storage of either a hazardous waste landfill or long-term storage facility shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of  $1.0 \times 10^{-7}$  centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.
  - (8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.
  - (9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission.
- (i) The Department shall submit to the General Assembly by February 1, 1985, plans:
- (1) To monitor and regulate all generators of more than 100 kilograms per month of hazardous waste; and
  - (2) To locate, catalogue and monitor all existing hazardous waste impoundments and surface impoundments, including inactive hazardous waste disposal sites and "orphan dumps", including those owned or operated by units of State and local government, and shall submit to the General Assembly by February 1, 1985, a plan to bring all of these under legal requirements in effect on February 1, 1985, including a timetable for compliance. This plan shall include recordation of each of these sites in the office of the Register of Deeds in the county where it is located. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; 694, s. 2; 1981, c. 704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1984 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, s. 2, 3.)

**Editor's Note.** — Session Laws 1983, c. 795, s. 8.1, provides that the amendments made by s. 3 of the act to repealed § 130-166.18 effective July 18, 1983, are made to § 130A-294 effective January 1, 1984. Section 3 of the act deleted subdivision (5) of subsection (a) and inserted subdivisions (5a), (5b), (5c), and (5d).

Session Laws 1983, c. 795, s. 8, contains a severability clause.

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

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

**Effect of Amendments.** — The 1983 (Reg.

Sess., 1984) amendment by c. 973, effective June 26, 1984, added the second paragraph subsection (f) and added new subsections through (i).

The 1983 (Reg. Sess., 1984) amendment by 1034, effective July 1, 1984, added the second paragraph of subdivision (a)(4).

The 1985 amendment by c. 582, effective July 3, 1985, added subdivision (a)(7).

The 1985 amendment by c. 738, ss. 2 and effective July 12, 1985, added subdivision (c)(1a) and inserted "through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee" in the parenthetical language subdivision (c)(10).

## §130A-295. Additional requirements for hazardous waste facilities.

a) An applicant for a permit for a hazardous waste facility shall satisfy the Department that:

- (1) Any hazardous waste facility constructed or operated by the applicant, or any parent or subsidiary corporation if the applicant is a corporation, has been operated in accordance, with sound waste management practices and in substantial compliance with federal and State laws, regulations and rules; and
- (2) The applicant, or any parent or subsidiary corporation if the applicant is a corporation, is financially qualified to operate the proposed hazardous waste facility.

b) The operator shall deposit in trust with the city or county government one half of one percent (0.05%) of the income of the comprehensive hazardous waste treatment facility, payable within 30 days of each calendar quarter, until the total shall equal an amount of two hundred fifty thousand dollars (\$250,000). As used herein, income means gross operating revenues less refunds, rebates and allowances. This fund shall be available to the city or county in which the comprehensive hazardous waste treatment facility is located for the purpose of defraying the cost of any cleanup which might be required at the comprehensive hazardous waste treatment facility. The city or county may, in its discretion, use up to fifty thousand dollars (\$50,000) of this total to establish an Emergency Response Team, trained and equipped to handle hazardous waste spills and to respond to accidents at hazardous waste treatment facilities. Financial records shall be subject to the audit of the local government for two years after any fee is paid. Any errors in the payment shall be corrected by credit or debit in the next payment or payments by the operator of the hazardous waste facility. If the North Carolina Hazardous Waste Treatment Commission owns and operates the facility, the North Carolina Hazardous Waste Treatment Commission, consistent with the resources available, shall compensate the local government for expenses incurred due to location of the facility. This compensation shall not exceed the amount of ad valorem tax revenues the local government would have received if the facility were privately owned. Nothing herein shall be construed to limit in any way funds which might be available to local government from other sources.

(c) Although no one is required to use a comprehensive hazardous waste treatment facility, use by North Carolina industry shall be encouraged. Nothing in this act shall be construed to prevent any hazardous waste or other waste generated or located in North Carolina from being removed from the State for disposal, treatment or storage. (1981, c. 704, s. 7; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 8.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 26, 1984, designated the first paragraph as subsection (a) and added subsections (b) and (c).

### §130A-295.1. Limitations on permits for sanitary landfills.

(a) The Department of Human Resources may not issue a permit for a sanitary landfill, as defined in G.S. 130A-290(16), to be located within a county with a population of four hundred thousand or more if the landfill is to be located within one mile of an incorporated city, town, or village with a population of two thousand five hundred or more in that county, without the approval of the governing board of the city, town or village.

(b) The Department of Human Resources may not issue a permit for a sanitary landfill, as defined in G.S. 130A-290(16), to or for a county with a population of four hundred thousand or more, or to or for any incorporated city, town or village in that county, if the landfill is to be located within another county, without the approval of the board of county commissioners of the county where the landfill is to be located. (1985, c. 757, s. 157.)

**Editor's Note.** — Session Laws 1985, c. 757, s. 157(c), makes this section effective upon ratification. The act was ratified July 15, 1985.

Session Laws 1985, c. 757, s. 210 provides: "Except for statutory changes and other provi-

sions that are clearly intended to have an effect beyond the 1985-87 fiscal biennium, the textual provisions of this act apply only to funds appropriated for and activities occurring during the 1985-87 fiscal biennium."

**§ 130A-296. Limitations on powers of local governments.**

It is the intent of the General Assembly to prescribe a uniform system for the management of hazardous waste and to place limitations upon the exercise by all units of local government in the State of the power to regulate the management of hazardous waste by means of special, local, or private acts, resolutions, ordinances, property restrictions, zoning regulations, or otherwise, as provided in G.S. 143B-216.10(b). (1981, c. 704, s. 24; 1983, c. 891, s. 2.)

**§ 130A-297. Receipt and distribution of funds.**

The Department may accept loans and grants from the federal government and other sources for carrying out the purposes of this Article, and shall adopt reasonable policies governing the administration and distribution of funds to units of local government, other State agencies, and private agencies, institutions or individuals for studies, investigations, demonstrations, surveys, planning, training, and construction or establishment of solid waste management facilities. (1969, c. 899; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1216; 1983, c. 1891, s. 2.)

**§ 130A-298. Hazardous waste fund.**

A nonreverting hazardous waste fund is established within the Department which shall be available to defray the cost to the State for monitoring and care of hazardous waste landfill facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes, rules or regulations to remain responsible for post-closure monitoring and care. The establishment of this fund shall in no way be construed to relieve or reduce the liability of facility operators or any persons for damages caused by the facility. The fund shall be maintained by fees collected pursuant to the provisions of G.S. 130A-294(a)(6). (1981, c. 704, s. 7; 1983, c. 891, s. 2.)

**§ 130A-299. Single agency designation.**

The Department is designated as the single State agency for purposes of this federal act or any State or federal legislation enacted to promote the proper management of solid waste. (1969, c. 899; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2.)

### §130A-300. Effect on laws applicable to water pollution control.

This Article shall not be construed as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the Environmental Management Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the Environmental Management Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 22A, Chapter 143 of the General Statutes. (1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2.)

### §130A-301. Recordation of permits for disposal of waste on land.

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the register of deeds' office in the county or counties in which the land is located.

(c) The register of deeds shall record the certified copy of the permit and index it in the grantor index under the name of the owner of the land.

(d) The permit shall not be effective unless the certified copy is filed as required under subsection (b).

(e) When a sanitary landfill or a facility for the disposal of hazardous waste on land is sold, leased, conveyed or transferred, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a sanitary landfill or a disposal site for hazardous waste and a reference by book and page to the recordation of the permit. (1973, c. 444; c. 446, s. 128; 1977, 2nd Sess., c. 1216; 1981, c. 480, s. 3; 1983, c. 891, s. 2.)

### §130A-302. Sludge deposits at sanitary landfills.

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500), or permits generated under G. S. 143-215.1 by the Environmental Management Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article. (1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2.)

### §130A-303. Imminent hazard.

(a) The judgement of the Secretary that an imminent hazard exists concerning solid waste shall be supported by findings of fact made by the Secretary.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring that immediate action be taken to protect the public health or the environment. This order may be directed to the generator or transporter of solid waste or to the owner or operator of a solid waste management facility. (1977, 2nd Sess., c. 1216; 1981, c. 704, s. 7; 1983, c. 891, s. 2.)

### § 130A-304. Information received pursuant to this Article.

(a) For the purposes of this Article, upon a showing satisfactory to the Department by a person that all or any part of records, reports or information to which the Department has access under G.S. 130A-16, would divulge information entitled to protection under subsection (b), the Department shall consider the information confidential in accordance with the purposes of this subsection, except that the record, report or information may be disclosed to other officers, employees or authorized representatives of the Department concerned with carrying out this Article or when relevant in any proceeding under this Article.

(b) For the purposes of this Article, if an officer or employee of the Department publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information revealed in the course of employment or official duties or by reason of examination or investigation made by, or return, report or record made to or filed with the Department which information concerns or relates to the trade secrets, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy or any book containing any abstract or particulars to be seen or examined by any person except as provided in subsection (a) shall be guilty of a misdemeanor and fined not more than five hundred dollars (\$500.00) or imprisoned not more than two years or both; and shall be removed from office or employment. (1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2; 1985, c. 738, s. 5.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, deleted "processes, operations, style of work, or apparatus" following "concerns or relates to trade secrets" near the middle of subdivision (b).

### § 130A-305. Construction.

This Article shall be interpreted as enabling the State to obtain federal financial assistance in carrying out its solid waste management program and to obtain the authority needed to assume primary enforcement responsibility for that portion of the solid waste management program concerning the management of hazardous waste. (1983, c. 891, s. 2.)

**Cross References.** — For similar provision, see § 130-166.21D.

### § 130A-306. Hazardous Waste Site Remedial Fund.

There is established under the control and direction of the Department, an Emergency Hazardous Site Remedial Fund which shall be a nonreverting fund consisting of any money appropriated for such purpose by the General Assembly or available to it from grants, fees, charges, and other money paid

or recovered by or on behalf of the Department pursuant to this Article, except fees specifically designated by this Article for some other use or purpose. The Fund shall be used to defray expenses incurred by the Department in developing and implementing an emergency hazardous waste remedial program and to reimburse any federal, State or local agency and any agent or contractor for expenses incurred in developing and implementing such a program that has been approved by the Department. These funds shall be used upon a determination that no funds or corrective action can be obtained from other sources without incurring a delay that would significantly increase the threat to life or risk of irreparable damage to the environment. In no event shall this Fund exceed two hundred thousand dollars (\$200,000). The Secretary is authorized to take the necessary action to recover the abatement costs incurred by the State from the responsible party or parties. (1983 (Reg. Sess., 1984), c. 1034, s. 74.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this section effective July 1, 1984. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**130A-307:** Reserved for future codification purposes.

### **130A-308. Continuing releases at permitted facilities.**

Standards adopted under G.S. 130A-294(c) shall require, and a permit issued after November 8, 1984, shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of the Federal Act (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(u) of the Federal Act (42 U.S.C. Section 6924) (u). Notwithstanding the foregoing, corrective action authorized elsewhere in this chapter shall not be limited by this section. (1985, c. 738, s. 4.)

**Editor's Note.** — Session Laws 1985, c. 738, makes this section effective upon ratification. The act was ratified July 12, 1985.

### **130A-309. Corrective actions beyond facility boundary.**

Standards adopted under G.S. 130A-294(c) shall require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Department that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such standards shall take effect upon adoption and shall apply to:

- a. All facilities operating under permits issued under 130A-294(c); and
- b. All landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending adoption of such rules, the Department shall issue corrective action orders for facilities referred to in a. and b., on a case-by-case basis, consistent with the purposes of this section. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(v) of the Federal Act (42 U.S.C. Section 6924(v)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section. (1985, c. 738, s. 4.)

**Editor's Note.** — Session Laws 1985, c. 738, s. 6 makes this section effective upon ratification. The act was ratified July 12, 1985.

§§ 130A-309, 130A-310: Reserved for future codification purposes.

## ARTICLE 10.

### *North Carolina Drinking Water Act.*

#### § 130A-311. Short title.

This Article shall be cited as the "North Carolina Drinking Water Act" (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

#### § 130A-312. Purpose.

The purpose of this Article is to regulate water systems within the State which supply drinking water that may affect the public health. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

#### § 130A-313. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Administrator" means the Administrator of the United States Environmental Protection Agency.
- (2) "Certified laboratory" means a facility for performing bacteriological, chemical or other analyses on water which has received interim or final certification by either the Environmental Protection Agency or the Department.
- (3) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.
- (4) "Drinking water rules" means rules adopted pursuant to this Article.
- (5) "Federal act" means the Safe Drinking Water Act of 1974, P.L. 93-523, as amended.
- (6) "Federal agency" means any department, agency or instrumentality of the United States.
- (7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
- (8) "National primary drinking water regulations" means primary drinking water regulations promulgated by the Administrator pursuant to the federal act.
- (9) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity.

- (10) "Public water system" means a system for the provision to the public of piped water for human consumption if the system serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:
- a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and
  - b. Any collection or pretreatment storage facility not under the control of the operator of the system which is used primarily in connection with the system.
- A public water system is either a "community water system" or a "noncommunity water system" as follows:
- a. "Community water system" means a public water system which serves 15 or more service connections or which regularly serves at least 25 year-round residents.
  - b. "Noncommunity water system" means a public water system which is not a community water system.
- (11) "Supplier of water" means a person who owns, operates or controls a public water system.
- (12) "Treatment technique requirement" means a requirement of the drinking water rules which specifies a specific treatment technique for a contaminant which leads to reduction in the level of the contaminant sufficient to comply with the drinking water rules. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### § 130A-314. Scope of the Article.

- (a) The provisions of this Article shall apply to each public water system in the State unless the public water system meets all of the following conditions:
- (1) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;
  - (2) Obtains all of its water from, but is not owned or operated by, a public water system to which the drinking water rules apply;
  - (3) Does not sell water to any person; and
  - (4) Is not a carrier which conveys passengers in interstate commerce.
- (b) A provision of any charter granted to a public water system in conflict with the provisions of this Article is repealed. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### § 130A-315. Drinking water rules.

- (a) The Commission shall adopt and the Secretary shall enforce drinking water rules to regulate public water systems. The rules may distinguish between community water systems and noncommunity water systems.
- (b) The rules shall:
- (1) Specify contaminants which may have an adverse effect on the public health;
  - (2) Specify for each contaminant either:
    - a. A maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of the contaminant in water in public water systems; or
    - b. One or more treatment techniques which lead to a reduction in the level of contaminants sufficient to protect the public health, if it is not feasible to establish the level of the contaminants in water in a public water system; and

- (3) Establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment techniques as determined in paragraph (2) of this subsection. These rules may provide for:
- a. The minimum quality of raw water which may be taken into public water system;
  - b. A program of laboratory certification;
  - c. Monitoring and analysis;
  - d. Record-keeping and reporting;
  - e. Notice of noncompliance, failure to perform monitoring, variance and exemptions;
  - f. Inspection of public water systems; inspection of records required to be kept; and the taking of samples;
  - g. Criteria for design and construction of new or modified public water systems;
  - h. Review and approval of design and construction of new or modified public water systems;
  - i. Siting of new public water system facilities;
  - j. Variances and exemptions from the drinking water rules; and
  - k. Additional criteria and procedures as may be required to carry out the purpose of this Article.

(b1) The rules may also, in conformity with the purpose of this Article as stated in G.S. 130A-312, provide criteria and procedures to insure an adequate supply of drinking water, in the following areas:

- (1) Record-keeping and reporting;
- (2) Inspection of public water systems and required records;
- (3) Criteria for design and construction of new or modified public water systems;
- (4) Review and approval of design and construction of new or modified public water systems;
- (5) Siting of new public water systems;
- (6) Variances and exemptions from these rules; and
- (7) Notice of non-compliance.

(c) The drinking water rules may be amended as necessary in accordance with required federal regulations. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 417, ss. 1, 2.)

**Effect of Amendments.** — The 1985 amendment, effective June 18, 1985, added subsection (b1).

### § 130A-316. Department to examine waters.

The Department shall examine all waters and their sources and surroundings which are used as, or proposed to be used as, sources of public water supply to determine whether the waters and their sources are suitable for use as public water supply sources. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### § 130A-317. Department to provide advice; submission and approval of public water system plans.

(a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter or operate a public water system of the most appropriate source of water

supply and the best practical method of purifying water from that source having regard to the present and prospective needs and interests of other persons and units of local government which may be affected. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration and operation of public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice and submit plans, specifications and other information to the Department. The Commission shall adopt rules providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications and other information. The Department shall review the plans, specifications and other information, and notify the person, Utilities Commission and unit of local government of compliance or lack of compliance with applicable statutes and rules of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration unless:

- (1) The plans for construction or alteration have been prepared by an engineer licensed by this State;
- (2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules;
- (3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county or regional system;
- (4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system; and
- (5) The Department has approved the plans and specifications.

(d) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own approval program in lieu of State approval of water system plans required in subsection (c) of this section for construction or alteration of the distribution system of a proposed or existing public water system, subject to the prior certification of the Department. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where water service is already being provided to the permit applicant by the municipality or connection to the municipal water system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where water service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of an approval program and statement submitted by any local government, commission, authority, or board, the Department shall certify any local program that:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by this Article, and the standards and rules adopted pursuant to this Article;
- (2) Provides that the Department receives notice and a copy of each application for approval and that the Department receives copies of approved plans;

- (3) Provides that plans and specifications for all construction and alterations be prepared by or under the direct supervision of an engineer licensed to practice in this State;
- (4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process;
- (5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program;
- (6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system;
- (7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the public water system;
- (8) Provides that an approved system, as constructed or altered, will be capable of compliance with the drinking water rules; and
- (9) Is approved by the Department as adequate to meet the requirements of this Article and any applicable rules adopted pursuant to this Article.

The Department may deny, suspend, or revoke the certification of a local program upon a finding that a violation of the provisions in subsection (d) of this section has occurred. A local government administering an approval program shall be given notice that there has been a tentative decision to deny, suspend, or revoke certification and that an administrative hearing will be held in accordance with Chapter 150A of the General Statutes where the decision may be challenged. If a violation of the provisions in subsection (d) of this section presents an imminent hazard, certification may be suspended or revoked immediately. The Department shall give notice of the immediate suspension or revocation and notice that an administrative hearing will be held in accordance with Chapter 150A of the General Statutes where the decision may be challenged.

Notwithstanding any other provisions of this subsection, if the Department determines that a public water system is violating plan approval requirements of a local program and that the local government has not acted to enforce those approval requirements, the Department may, after written notice to the local government, take enforcement action in accordance with the provisions of this Article. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 697, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 697, s. 3 provides that the Health Services Commission and the Environmental Management Commission shall adopt rules, standards, and regulations to implement the act no later than January 1, 1986.

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

## § 130A-318. Disinfection of public water systems.

- (a) The Department is authorized to require disinfection of:
  - (1) Public water systems introduced on or after January 1, 1972; and
  - (2) All public water systems, regardless of the date introduced, whenever:
    - a. The maximum microbiological contaminant level is exceeded; or
    - b. Conditions exist which make continued use of the water potentially hazardous to public health.
- (b) Public water systems shall employ disinfection methods and procedures approved by the Department. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### **130A-319. Condemnation of lands for public water systems.**

All units of local government operating public water systems and all water companies operating under franchise from the State or units of local government, may acquire by condemnation lands and rights in lands and water necessary for the successful operation and protection of their systems. Condemnation proceedings under this section shall be the same as prescribed by law under Chapter 40A of the General Statutes. (1979, c. 788, s. 1; 1981, c. 19, s. 14; 1983, c. 891, s. 2.)

### **130A-320. Sanitation of watersheds; rules; inspections.**

(a) The Commission shall adopt rules governing the sanitation of watersheds from which public drinking water supplies are obtained. In adopting these rules the Commission is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population and need for frequency of sampling of raw water. The rules shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply.

(b) Any person operating a public water system and furnishing water from unfiltered surface supplies shall inspect the watershed area at least quarterly, and more often when the Department determines that more frequent inspections are necessary. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### **130A-321. Variances and exemptions; considerations; duration; condition; notice and hearing.**

(a) The Secretary may authorize variances from the drinking water rules.

(1) The Secretary may grant one or more variances to a public water system from any requirement respecting a maximum contaminant level of an applicable drinking water rule upon a finding that:

a. Because of characteristics of the raw water sources reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of the drinking water rules despite application of the best technology, treatment techniques or other means which the Secretary finds are generally available (taking costs into consideration); and

b. The granting of a variance will not result in an unreasonable risk to public health when considering the population exposed, the projected duration of the requested variance and the degree to which the maximum contaminant level is being or will be exceeded.

(2) The Secretary may grant one or more variances to a public water system from any requirement of a specified treatment technique of an applicable drinking water rule upon a finding that the public water system applying for the variance has demonstrated that the treatment technique is not necessary to protect the public health because of the nature of the raw water source of the system.

(3) In consideration of whether the public water system is unable to comply with a contaminant level required by the drinking water rules because of the nature of the raw water sources, the Secretary shall consider factors such as:

- a. The availability and effectiveness of treatment methods for the contaminant for which the variance is requested; and
  - b. Costs of implementing the best treatment(s), improving the quality of the raw water by the best means or using an alternate source.
- (4) In consideration of whether a public water system should be granted a variance from a required treatment technique because the treatment is unnecessary to protect the public health, the Secretary shall consider factors such as:
- a. Quality of the water source including water quality data and pertinent sources of pollution; and
  - b. Source protection measures employed by the public water system
- (b) The Secretary may authorize exemptions from the drinking water rules
- (1) The Secretary may exempt a public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable drinking water rule upon a finding that:
- a. Due to compelling factors, including economic factors, the public water system is unable to comply with the contaminant level or treatment technique requirement;
  - b. The public water system was in operation on the effective date of the contaminant level or treatment technique requirement or for a system that was not in operation on that date, only if no reasonable alternative source of drinking water is available to the new system; and
  - c. The granting of the exemption will not result in an unreasonable risk to public health when considering the population exposed, the projected duration of the requested exemption and the degree to which the maximum contaminant level is being or will be exceeded.
- (2) In consideration of whether the public water system is unable to comply due to compelling factors, the Secretary shall consider factors such as:
- a. Construction, installation or modification of treatment equipment or systems;
  - b. The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and
  - c. Economic feasibility of immediate compliance.
- (c) As a condition of issuance of either a variance or an exemption, the Secretary shall require that the public water system adhere to a schedule of compliance, including increments of progress with each drinking water rule for which the variance or exemption was issued. As a further condition of the variance or exemption, the Secretary shall require implementation by the public water system of any necessary control measures prescribed by the Secretary during the period ending on the date of compliance with the requirement. The schedules of compliance must be prescribed within one year of the date the variance or exemption has been granted. The compliance schedule for an exemption shall require compliance as expeditiously as practical but no later than January 1, 1984, for the initial drinking water rules, and no later than seven years after the date of revised drinking water regulations setting new maximum contaminant levels or treatment techniques. Compliance dates can be extended two years if the public water supply has entered into an enforceable agreement to become part of a regional water system.
- (d) The Secretary shall provide notice and opportunity for public hearing on proposed variances and proposed variance and exemption schedules. (1979, c. 788, s. 1; 1981, c. 353, ss. 1, 2; 1983, c. 891, s. 2.)

### § 130A-322. Imminent hazard; power of the Secretary.

(a) The Secretary shall judge whether an imminent hazard exists concerning a present or potential condition in a public water system.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring the person or persons involved to immediately take action necessary to protect the public health. A copy of the order shall be delivered by certified mail or personal service. The order shall become effective immediately and shall remain in effect until modified or rescinded by the Secretary or by a court of competent jurisdiction. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### § 130A-323. Emergency plan for drinking water; emergency circumstances defined.

(a) The Secretary shall develop and implement an adequate plan for the provision of drinking water under emergency circumstances. When the Secretary determines that emergency circumstances exist with respect to a need for drinking water, the Secretary may take action in accordance with the plan as necessary in order to provide drinking water.

(b) Emergency circumstances shall exist whenever the available supply of drinking water is inadequate. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### § 130A-324. Notice of noncompliance; failure to perform monitoring; variances and exemptions.

Whenever a public water system:

- (1) Is not in compliance with the drinking water rules;
- (2) Fails to perform an applicable testing procedure or monitoring required by the drinking water rules;
- (3) Is subject to a variance granted for inability to meet a maximum contaminant level requirement;
- (4) Is subject to an exemption; or
- (5) Fails to comply with the requirements prescribed by a variance or exemption,

the supplier shall as soon as possible, but not later than 48 hours after discovery, notify the Department and give public notification as prescribed by the drinking water rules. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

### § 130A-325. Prohibited acts.

The following acts are prohibited:

- (1) Failure by a supplier of water to comply with this Article, an order issued under this Article, or the drinking water rules;
- (2) Failure by a supplier of water to comply with the requirements of G.S. 130A-324 or the dissemination by a supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with the drinking water rules;
- (3) Refusal by a supplier of water to allow the Department or local health department to inspect a public water system as provided for in G.S. 130A-17;
- (4) The willful defiling by any person of any water supply of a public water system or the willful damaging of any pipe or other part of a public water system;

- (5) The discharge by any person of sewage or other waste above the intake of a public water system, unless the sewage or waste has been passed through a system of purification approved by the Department and the Department of Natural Resources and Community Development; and
- (6) The failure by a person to maintain a system approved by the Department for collecting and disposing of all accumulations of human excrement located on the watershed of a public water system. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 462, 2.)

**Effect of Amendments.** — The 1985 amendment, effective June 24, 1985, substituted "G.S. 130A-17" for "G.S. 130A-16" at the end of subdivision (3).

### § 130A-326. Powers of the Secretary.

To carry out the provisions of this Article, the Secretary is authorized to

- (1) Administer and enforce the provisions of this Article, the drinking water rules and orders issued under this Article;
- (2) Enter into agreements or cooperative arrangements with, or participate in related programs of other states, other state agencies, federal or interstate agencies, units of local government, educational institutions, local health departments or other organizations or individuals;
- (3) Receive financial and technical assistance from the federal government and other public or private agencies;
- (4) Require public water systems to take actions or make modifications as necessary to comply with the requirements of this Article or the drinking water rules;
- (5) Prescribe policies and procedures necessary or appropriate to carry out the Secretary's function under this Article; and
- (6) Establish and collect fees to recover the costs of laboratory analyses performed for compliance with this Article. The fees shall not exceed two hundred dollars (\$200.00) for each analysis. (1979, c. 788, s. 1; 1981, c. 562, s. 9; 1983, c. 891, s. 2.)

### § 130A-327. Construction.

This Article shall be interpreted as giving the State the authority needed to assume primary enforcement responsibility under the federal act. (1979, c. 788, s. 1; 1983, c. 891, s. 2.)

§§ 130A-328 to 130A-332: Reserved for future codification purposes.

## ARTICLE 11.

### *Sanitary Sewage Systems.*

### § 130A-333. Purpose.

The General Assembly finds and declares that continued installation, at a rapidly and constantly accelerating rate, of septic tank systems and other types of sanitary sewage systems in a faulty or improper manner and in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health

and environment through contamination of land, groundwater and surface waters. Recognizing, however, that sewage can be rendered ecologically safe and the public health protected if methods of sewage collection, treatment and disposal are properly regulated and recognizing that sanitary sewage collection, treatment and disposal will continue to be necessary to meet the needs of an expanding population, the General Assembly intends to ensure the regulation of sewage collection, treatment and disposal systems so that these systems may continue to be used, where appropriate, without jeopardizing the public health. (1973, c. 452, s. 3; 1981, c. 949, s. 3; 1983, c. 891, s. 2.)

### § 130A-334. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Construction" means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.
- (2) Repealed by Session Laws 1985, c. 462, s. 18, effective June 24, 1985.
- (3) "Location" means the initial placement for occupancy of a residence, place of business or place of public assembly.
- (4), (5) Repealed by Session Laws 1985, c. 462, s. 18, effective June 24, 1985.
- (6) "Place of business" means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.
- (7) "Place of public assembly" means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.
- (8) "Public or community sewage system" means a single system of sewage collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.
- (9) "Relocation" means the displacement of a residence or place of business from one site to another.
- (10) "Residence" means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.
- (11) "Sanitary sewage system" means a complete system of sewage collection, treatment and disposal including approved privies, septic tank systems, connection to public or community sewage systems, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.
- (12) "Septic tank system" means a subsurface sanitary sewage system consisting of a settling tank and a subsurface disposal field.
- (13) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater. (1973, c. 452, s. 4; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 462, s. 18; c. 487, s. 9.)

**Effect of Amendments.** — The 1985 amendment c. 462, s. 18, effective June 24, 1985, deleted subdivision (2), defining "Land sales business," subdivision (4), defining "Mobile home dealer," and subdivision (5), defining "Mobile home sales lot."

The 1985 amendment by c. 487, s. 9, effective June 27, 1985, substituted a reference to "manufactured home" for a reference to "mobile home" in subdivision (10).

## § 130A-335. Sanitary sewage collection, treatment and disposal; rules.

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide a sanitary sewage system. A sanitary sewage system may include components for collection, treatment and disposal of sewage.

(b) Any public or community sanitary sewage system and any sanitary sewage system which is designed to discharge effluent to the land surface or surface waters shall be approved by the Department of Natural Resources and Community Development under rules adopted by the Environmental Management Commission. All other sanitary sewage systems shall be approved by the Department of Human Resources under rules adopted by the Commission for Health Services.

(c) A sanitary sewage system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning sanitary sewage systems; and

(2) The Department has found that the rules of the local board of health concerning sanitary sewage collection, treatment and disposal systems are at least as stringent as the Commission's rules, and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Sewage characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of sanitary sewage collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of sanitary sewage collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of sanitary sewage collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for sanitary sewage systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(f) The rules of the Commission and the rules of the local board of health shall classify sanitary systems of sewage collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, standards for operation and ownership requirements for each classification of sanitary systems of sewage collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The

partment and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. The permits shall be valid for a period prescribed by the rules and may be renewed upon a showing satisfactory to the Department or the local health department that the system is in compliance with the current rules and this Article. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c. 857, s. 1; 1979, c. 788, s. 2; 1981, c. 949, s. 3; c. 127, s. 47; 1983, c. 891, s. 2.)

#### OPINIONS OF ATTORNEY GENERAL

**Effect of Commission Rules on Local Rules.** — The rules and regulations of a local board of health may permit the installation of a septic tank system or an alternative ground absorption sewage disposal system in soil classified as "unsuitable" if such installation will not have a detrimental effect on the public

health. However, after the effective date of the rules and regulations of the Commission for Health Services governing sewage disposal, the provisions of such rules may apply. See opinion of Attorney General to Mr. Howard B. Campbell, 23 July 1975, rendered under former § 130-166.25.

### 130A-336. Improvement permit required.

(a) No person shall commence or assist in the construction, location or relocation of a residence, place of business or place of public assembly in an area not served by an approved sanitary sewage system unless an improvement permit is obtained from the local health department. This requirement shall not apply to a residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(b) The local health department shall issue an improvement permit authorizing work to proceed and the installation or repair of a sanitary sewage system when it has determined after a field investigation that the system can be installed and operated in compliance with the rules and this Article. No person shall commence or assist in the installation, construction, or repair of a sanitary sewage system, other than a connection to an approved public or community sewage system, or a repair of a sanitary sewage system, which repair is not an expansion or improvement of the system and which is made entirely within the property of the person making or contracting for the repair, unless the improvement permit has been obtained from the local health department. The Department and the local health department may impose conditions on the issuance of an improvement permit. (1973, c. 452, s. 5; c. 476, s. 128; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 273.)

**Effect of Amendments.** — The 1985 amendment, effective May 29, 1985, added the present second sentence of subsection (b).

#### OPINIONS OF ATTORNEY GENERAL

**Mobile Home Placed on Lot for Storage or Sale or Occupied for Business Purposes.** — Former § 130-166.25 required any person who located, relocated or caused to be located or relocated any mobile home to first obtain an improvements permit and required a certificate of completion to be obtained before any person occupied a mobile home. The section did not require an improvements permit

and a certificate of completion before a mobile home was placed on a lot for storage and for sale or before a mobile home was occupied for business purposes. See opinion of Attorney General to Mr. Ben Eaton, Division of Health Services, Department of Human Resources, 43 N.C.A.G. 410 (1974), opinion rendered under former § 130-166.25.

### § 130A-337. Inspection; operation permit or certificate of completion required.

(a) No sanitary system of sewage collection, treatment and disposal shall be covered or placed into use by any person until an inspection by the local health department has determined that the system has been installed or repaired in accordance with any conditions of the improvement permit, the rules and this Article.

(b) Upon determining that the system is properly installed or repaired and that the system is capable of being operated in accordance with the conditions of the improvement permit, the rules, this Article and any conditions to be imposed in the operation permit, the local health department shall issue an operation permit authorizing the residence, place of business or place of public assembly to be occupied and for the system to be placed into use. However, if the system is limited to a single septic tank system without a pump or other appurtenances serving a single one-family dwelling, then a certificate of completion shall be issued instead of an operation permit; also, if the system is limited to a single septic tank system without a pump or other appurtenances serving a single residence other than a one-family dwelling, or serving a place of business or a place of public assembly and having a design daily flow of not more than 480 gallons, then a certificate of completion shall be issued instead of an operation permit. A certificate of completion shall be issued when the septic tank system is properly installed or repaired and is capable of being operated in accordance with the conditions of the improvement permit, the rules and this Article.

(c) Upon determination that an existing sanitary sewage system has a valid operation permit or a valid certificate of completion and is operating properly in a manufactured home park, the local health department shall issue authorization in writing for a manufactured home to be connected to the existing system and to be occupied. Notwithstanding G.S. 130A-336, an improvement permit is not required for the connection of a manufactured home to an existing system with a valid operation permit or a valid certificate of completion in a manufactured home park.

(d) No person shall occupy a residence, place of business or place of public assembly, or place a sanitary sewage system into use or reuse for a residence, place of business or place of public assembly until an operation permit or certificate of completion has been issued or authorization has been obtained pursuant to G.S. 130A-337(c). (1973, c. 452, s. 6; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 487, s. 9.)

**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted references to manufactured homes for references to mobile homes in subsection (c).

### § 130A-338. Improvement permit or authorization required before other permits to be issued.

Where construction, location or relocation is proposed to be done upon a residence, place of business or place of public assembly, no permit required for electrical, plumbing, heating, air conditioning or other construction, location or relocation activity under any provision of general or special law shall be issued until an improvement permit has been issued under G.S. 130A-336 or authorization has been obtained under G.S. 130A-337(c). (1973, c. 452, s. 7; 1981, c. 949, s. 3; 1983, c. 891, s. 2.)

### **130A-339. Limitation on electrical service.**

No person shall allow permanent electrical service to a residence, place of business or place of public assembly upon construction, location or relocation until the official electrical inspector with jurisdiction as provided in G.S. 43-143.2 certifies to the electrical supplier that the required improvement permit and an operation permit, a certificate of completion or authorization under G.S. 130A-337(c) has been obtained. Temporary electrical service necessary for constructing a residence, place of business or place of public assembly can be provided upon compliance with G.S. 130A-338. (1973, c. 452, s. 8; 1981, c. 949, s. 3; 1983, c. 891, s. 2.)

§ 130A-340 to 130A-345: Reserved for future codification purposes.

## ARTICLE 12.

### *Mosquito and Vector Control.*

#### Part 1. Mosquito and Vector Control Program.

### § 130A-346. Mosquito and vector control program.

(a) The Department shall establish and administer a vector control program to protect the public health and to promote an environment suitable for habitation. A vector is a living transporter and transmitter of the causative agent of a disease. The program shall address the problems presented by vectors and other arthropods and rodents of public health significance in this State, including, but not limited to, mosquitoes, ticks, rodents, fleas and flies. The Department is authorized to engage in research, conduct investigations and surveillance, implement a vector control program and take other actions necessary to control vectors.

(b) The Commission shall adopt rules necessary to implement the program including rules for the control of vectors and other arthropods and rodents. (1957, c. 832, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-347. Mosquito control funds.

Funds received by the Department for mosquito control may be used to aid mosquito control districts and other units of local government engaged in mosquito control. The Commission shall adopt rules concerning the allocation of the funds. The rules may include provisions to withhold part of the mosquito control funds for the suppression of potential or documented mosquito-borne disease outbreaks. State aid for local physical control methods such as, but not limited to, cleaning, reopening or construction of ditches, restoration of streams and construction of impoundments shall not exceed the amount of funds and the value of services and facilities provided locally except State aid may be provided up to twice the locally provided amount for physical control methods in salt marsh areas. State aid for local chemical and biological control methods such as, but not limited to, control of immature and adult mosquitoes by use of chemicals, bacteria, fungi and mosquito fish shall not exceed the amount of funds and the value of services and facilities provided locally. State aid shall not be granted with respect to each individual project until the Department finds and certifies in writing for each project that: (i) the required

local share is available; (ii) there is a documented mosquito problem which requires abatement; (iii) a work plan describing the method and procedures to be used for abatement is appropriate; and (iv) the rules of the Commission have been met. (1957, c. 832, s. 4; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-348. Control of impounded water.

For the protection of the public health, the Commission shall adopt rules concerning the impoundment of water. The rules shall address proper preparation of the land for inundation, maintenance of the shoreline after inundation and any other factors necessary to control mosquitoes. Persons shall obtain permits from the Department before constructing impoundments and impounding water. (1983, c. 891, s. 2.)

### § 130A-349. Control of outbreaks.

In the event of potential or documented outbreaks of vector-borne disease as determined by the Secretary, the Secretary is authorized to use all appropriate means, including the expenditure of unallocated mosquito control funds to prevent or suppress the outbreaks. (1983, c. 891, s. 2.)

§§ 130A-350 to 130A-351: Reserved for future codification purposes.

## Part 2. Mosquito Control Districts.

### § 130A-352. Creation and purpose of mosquito control districts.

For the purpose of protecting and promoting the public health and welfare by providing for the control of mosquitoes and other arthropods of public health significance, mosquito control districts may be created in accordance with the provisions of this Part. A mosquito control district may be comprised of one or more contiguous counties or contiguous parts of one or more counties. (1957, c. 1247, s. 1; 1983, c. 891, s. 2.)

### § 130A-353. Nature of district; procedure for forming districts.

(a) A mosquito control district shall be a body politic and corporate and a political subdivision of the State. A mosquito control district may sue and be sued in its corporate name.

(b) If the proposed district lies wholly within a county, ten percent (10%) or more of the resident freeholders within the proposed district may petition the board of commissioners of the county in which the proposed district lies setting forth the boundaries of the district and a suggested name for the district. For the purposes of this Part, the term "freeholders" shall mean persons holding a deed to a tract of land within the district or proposed district, and also shall mean a person who has entered into a contract to purchase a tract of land within the district or proposed district, is making payments pursuant to a contract, and will receive a deed upon completion of the contractual payments. If the county board of commissioners considers the formation of the district to be in the interest of the public health, the board shall forward the petition to the Department. If the Department considers the formation of the

istrict to be in the interest of the public health, the Department shall notify the county board of commissioners. Upon notification, the board shall give notice of a public hearing on the question of the formation of the district by advertising the time, place and purpose of the hearing once a week for four successive weeks prior to the hearing in a newspaper either published in the county or having a general circulation in the county. The public hearing shall be presided over by the chairman of the county board of commissioners and shall be attended by a representative of the Department. The hearing may be continued as may be necessary to hear the proponents and opponents of the formation of the district. If after the hearing, the county board of commissioners deem it advisable that the district be created, the board shall submit the question of whether or not the district shall be created to the voters residing within the proposed district at an election called for that purpose. Upon determining that the district should be created and established, and prior to the submission of the question of the formation of the district to the voters of the proposed district, the county board of commissioners may determine the maximum amount of special tax to be levied for mosquito control purposes should the formation of the district be approved by the voters. In no event shall the maximum authorized levy exceed thirty-five cents (35¢) upon the one hundred dollar (\$100.00) assessed valuation. If the county board of commissioners determines that the maximum amount of special tax to be levied for mosquito control purposes is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) valuation, the maximum amount must appear on the ballot to be used by the voters on the question of the creation of the district.

(c) Prior to the election, the county board of commissioners may make minor deviations in defining the boundaries of the proposed district if: (1) the board determines that minor deviation from the boundaries described in the petition is in the interest of public health; and (2) ten percent (10%) of the resident freeholders within the revised boundaries have signed the petition proposing the creation of the district or additional resident freeholders within the revised boundaries of the proposed district sign the petition to bring the total number of petitioners within the proposed revised boundaries to not less than ten percent (10%) of the voters therein.

(d) The county board of commissioners shall request the county board of elections to hold the election and shall pay the expense of the election. The election shall be held in accordance with the applicable provisions of Chapter 163 of the General Statutes. Notice shall be given as provided in G.S. 163-33(8).

(e) The form of the question to be stated on the ballot shall be in substantially the following words:

- FOR creation of the (here insert name) Mosquito Control District and the levy of a special tax (here insert the words "not to exceed" and the maximum amount of special tax to be levied for mosquito control purposes if the county board of commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation) for mosquito control purposes.
- AGAINST creation of the (here insert name) Mosquito Control District and the levy of a special tax (here insert the words "not to exceed" and the maximum amount of special tax to be levied for mosquito control purposes if the county board of commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation) for mosquito control purposes."

The affirmative and negative forms shall be printed on one ballot and the voters shall make a mark of an "X" in one of the squares preceding the form.

(f) If a majority of the voters voting at the election vote in favor of creation of the district and the levy of the special tax, the county board of commissioners shall declare the district created and shall adopt a resolution to that effect.

(g) In the event the proposed mosquito control district shall embrace land lying in two or more counties, the petition signed by the requisite number of resident freeholders within the proposed district shall be addressed to the Department. If the Department deems the formation of the proposed district to be in the interest of the public health, the Department shall hold public hearings within the proposed district after first giving notice of the time and place of the hearings by publication once a week for four successive weeks in a newspaper published or circulated in the proposed district. A public hearing shall be held in the courthouse of each of the counties in which any part of the proposed district is situated. After the hearing, if the Department deems the formation of the district to be in the interest of the public health, the Department shall order an election to be held upon the question of the formation of the district after first advertising the time of the election in the manner provided in subsection (d). At the request of the Commission, the county commissioners of the counties in which the proposed district lies shall request the county board of elections to hold an election on the question with substantially the same form of ballot set forth in subsection (e). Each county shall bear the expense of the election held in that county. The board of elections shall certify the results to the county commissioners and the Commission. If a majority of the votes cast favor creation of the district and the levy of the special tax, the Commission shall declare the district created and the county commissioners shall enter the certification upon the minutes of the board. Registration shall be in accordance with G.S. 163-288.2. (1957, c. 1247, s. 2; 1959, c. 622, s. 1; 1973, c. 476, s. 128; 1981, c. 188, ss. 1, 2; 1983, c. 891, s. 2.)

### **§ 130A-354. Governing bodies for mosquito control districts.**

(a) A mosquito control district shall be governed by a board of commissioners. In the case of a district lying wholly within a single county, the board shall be composed of five members, all of whom shall be residents of the district. Three of the members shall be appointed by the county board of commissioners, one for an initial term of one year, one for an initial term of two years and one for an initial term of three years. All subsequent appointments made by the county board of commissioners shall be for terms of three years. One member shall be appointed by the Secretary and one member by the Director of the Wildlife Resources Commission. These two appointees shall serve at the pleasure of the appointing authority. A vacancy shall be filled by the authority which appointed the member creating the vacancy.

(b) In the case of a district lying in two or more counties, the Secretary shall appoint one member and the Director of the Wildlife Commission shall appoint one member. The board of commissioners of each county in which any part of the district lies shall appoint one member. In the event the district lies in only two counties, the board of commissioners of the county in which a majority of the acreage of the district lies shall appoint two members, one for an initial term of one year and the other for an initial term of two years. The other county shall appoint one member for an initial term of three years. All succeeding terms of county appointees shall be for three years. A vacancy

shall be filled by the authority which appointed the member creating the vacancy, and the appointees of the Secretary and the Director of the Wildlife Resources Commission shall hold office at the pleasure of the appointing authority.

(c) At its first meeting, the board shall elect a chairman, a vice-chairman, a secretary and a treasurer. The office of secretary and treasurer may be held by the same member. All official acts done by the board shall be entered in a book of minutes to be kept by the secretary. The board shall meet at least quarterly and may meet in a special meeting at any time upon call of the chairman or any two members, and upon notice of the time, place and purpose of the meeting of not less than three days. Before entering upon the discharge of their duties, each member shall take and subscribe an oath of office as follows and the oath shall be entered in the minute book:

"I, . . . . ., do solemnly swear that I will well and truly perform my duties as a Commissioner of the . . . . . Mosquito Control District.

. . . . .  
Signature

Affirmed and subscribed before me this . . . . . day of . . . . . 19. . . .

. . . . .  
Signature of Officer Administering Oath."

(1957, c. 1247, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§ 130A-355. Corporate powers.**

A mosquito control district created in accordance with the provisions of this Part shall have and exercise through its board of commissioners the following corporate powers in addition to any incidental powers as may be necessary in order to discharge its corporate functions:

(1) To levy ad valorem taxes upon all the taxable property within the district at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation, except as provided in subdivision (a) of this subsection.

a. Where a mosquito control district lies solely within a single county and includes the entire county, the county board of commissioners may levy and determine the rate of ad valorem tax to be levied at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation. Where a mosquito control district lies wholly within a single county and the maximum authorized special tax approved by the voters at the time of voting on the creation of the district was less than thirty-five cents (35¢) on the one hundred dollar assessed valuation, the ad valorem tax levy shall not exceed the lesser amount.

b. In the case of a district lying wholly within a single county, the valuations assessed by the county tax authorities shall be used by the mosquito control district or the county board of commissioners as the basis for its tax assessment. The mosquito control district or the county board of commissioners shall certify its tax rate to the county tax collector or supervisor in time to have the rate and the amount of tax due upon the valuation entered upon the official county tax receipts and stubs or duplicates. The county tax collector shall collect the taxes at the same time as county taxes are collected and shall deposit the receipts to the credit of the mosquito control district in a depository or depositories designated by the governing board of the district.

- c. In the case of a district lying in two or more counties, the commissioners of the mosquito control district shall horizontally equalize the assessed valuations of the property in all counties in which the district lies by adjusting the ratio of assessed valuation in the counties to the true values of the taxable property in the counties. From the adjusted and equalized valuations, any county board of commissioners may appeal to the Department of Revenue using the procedures set forth in Subchapter II of Chapter 105 of the General Statutes.
  - d. The board of commissioners of the mosquito control district shall levy a tax based upon the equalized assessed valuations and shall certify the amount of the levy against each taxpayer to the appropriate county tax collector or supervisor in time for the amount of the mosquito control district tax to be entered upon the county tax receipts and stubs or duplicates. The county tax collectors shall collect the tax and deposit the receipts to the credit of the mosquito control district in a depository or depositories designated by the commissioners of the district.
  - e. The taxes levied according to this Part shall become due; shall be subject to the same discounts, penalties and interest; and shall have the same remedies for the collection and refund of the taxes as provided for county and municipal ad valorem taxation by Chapter 310 of the Session Laws of 1939 as amended. These taxes shall constitute a lien to the same extent and with the same force and effect as county and municipal ad valorem taxes and shall have equal priority with those taxes;
- (2) To accept gifts or endowments and to receive federal and State grants in-aid. All money or property acquired under this section or any other source, shall be deposited in a separate fund to be used solely for the purpose of carrying out the provisions of this Part. The deposited funds shall be withdrawn by warrants signed by the chairperson of the governing board of the district and countersigned by the secretary;
  - (3) To take all necessary and proper steps to prevent the breeding of mosquitoes and other arthropods of public health significance within the district, and to destroy adult mosquitoes and other arthropods of public health significance found within the district;
  - (4) To conduct arthropod control measures in cooperation with individuals, firms and corporations, and federal, State and local governmental agencies;
  - (5) To enter all places both publicly and privately owned within the district to inspect, survey and treat with proper means all places where mosquitoes or other arthropods of public health significance are breeding and to take other actions as may be necessary;
  - (6) To acquire by purchase, condemnation or otherwise, and to hold real and personal property, easements, rights-of-way or other property necessary or convenient for accomplishing the purpose of this Part. Any land which has been acquired by the board and improved by drainage, filling, diking or other treatment, and other real property held by the board may be sold or leased through competitive bidding. All condemnation proceedings are to be in accordance with the provisions of Chapter 40A of the General Statutes;
  - (7) To employ necessary personnel; fix salaries; purchase equipment, supplies and materials; make contracts; rent office or storage space; and perform other administrative functions necessary for the purpose of carrying out this Part;

- (8) To borrow money in anticipation of tax collection and to execute and deliver its notes or bonds. Money shall be borrowed in gross amounts not to exceed the anticipated tax receipts for the fiscal year;
- (9) To reimburse members and employees of the board for actual expenditures incurred in authorized travel; and
- (10) To employ a district superintendent who is an engineer, entomologist or otherwise qualified as an arthropod control specialist. The professional qualifications of the superintendent must be approved by the Secretary. (1957, c. 1247, s. 4; 1959, c. 622, s. 2; 1973, c. 476, ss. 128, 193; 1981, c. 919, s. 15; 1983, c. 891, s. 2.)

### § 130A-356. Adoption of plan of operation.

- a) At least 60 days prior to the initiation of operations, the governing board of each mosquito control district must submit to the Secretary, a plan of procedure and operation in a form and manner prescribed by the Secretary. The Secretary shall have authority to approve, modify or take other appropriate action in regard to the plans. No contract may be entered into, program commenced or work begun prior to the approval of the plan by the Secretary.
- b) At least 60 days prior to the expiration of each fiscal year, the governing board of each mosquito control district must submit to the Secretary a plan of procedure and operation for the next fiscal year in a form and manner prescribed by the Secretary. The Secretary shall have authority to approve, modify or take other appropriate action in regard to the plans. No contract may be entered into, program commenced or work begun or continued prior to the approval of the plan by the Secretary. (1957, c. 1247, s. 5; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### § 130A-357. Bond issues.

A mosquito control district shall have power to issue bonds and notes under the Local Government Bond Act. (1957, c. 1247, s. 6; 1971, c. 780, s. 25; 1983, c. 891, s. 2.)

### § 130A-358. Dissolution of certain mosquito control districts.

Fifty-one percent (51%) or more of the resident freeholders of a mosquito control district which has no outstanding indebtedness may submit a petition for dissolution to the county board of commissioners in which all or the greater portion of the resident freeholders of the district are located. The county board of commissioners shall notify the Department and the county board of commissioners of any other county or counties in which any portion of the district lies, of the receipt of the petition, and shall request the Department to hold a joint public hearing with the county commissioners concerning the dissolution of the district. The Department and the chairperson of the county board of commissioners shall name a time and place within the district for the public hearing. The chairperson of the county board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located shall give prior notice of the hearing by posting a notice at the courthouse door of each county and also by publication in a newspaper or newspapers published in the county or counties at least once a week for four successive weeks. In the event that all matters pertaining to the dissolution of the mosquito control district cannot be concluded at the hearing,

the hearing may be continued to a time and place determined by the Department. If after the hearing, the Commission and the county commissioner shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. (1959, c. 622, s. 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§§ 130A-359 to 130A-360: Reserved for future codification purposes

## ARTICLE 13.

### *Nutrition.*

#### § 130A-361. Department to establish nutrition program.

(a) The Department shall establish and administer a nutrition program to promote the public health by achieving and maintaining optimal nutritional status in the population through activities such as nutrition screening and assessment; dietary counseling and treatment; nutrition education; follow-up and referral; and the direct provision of food. The program shall also include, not be limited to, establishing policies and standards for nutritional practice; monitoring and surveillance of nutritional status; promoting interagency cooperation, professional education and consultation; providing technical assistance; conducting and supporting field research; providing direct care; and advising State and private institutions and other State agencies and departments in the establishment of food, nutrition and food service management standards.

(b) The Department shall adopt rules necessary to implement the program. (Resolution 112, 1973, p. 1413; 1983, c. 891, s. 2.)

§§ 130A-362 to 130A-365: Reserved for future codification purposes

## ARTICLE 14.

### *Dental Health.*

#### § 130A-366. Department to establish dental health program.

(a) The Department shall establish and administer a dental health program for the delivery of preventive, educational and dental care services to preschool children, school-age children, and adults. The program shall include, but not be limited to, providing teacher training, adult and child education, consultation, screening and referral, technical assistance, community coordination, field research and direct patient care.

(b) The Commission shall adopt rules necessary to implement the program. (1983, c. 891, s. 2.)

§§ 130A-367 to 130A-370: Reserved for future codification purposes

## ARTICLE 15.

*State Center for Health Statistics.***130A-371. State Center for Health Statistics established.**

A State Center for Health Statistics is established within the Department. (1983, c. 891, s. 2.).

**130A-372. Definitions.**

The following definitions shall apply throughout this Article:

- (1) "Health data" means information relating to the health status of individuals, the availability of health resources and services, and the use and cost of these resources and services. The term shall not include vital records registered under the provisions of Article 4 of this Chapter.
- (2) "Medical records" means health data relating to the diagnosis or treatment of physical or mental ailments of individuals. (1983, c. 891, s. 2.)

**130A-373. Authority and duties.**

- (a) The State Center for Health Statistics is authorized to:
  - (1) Collect, maintain and analyze health data on:
    - a. The extent, nature and impact of illness and disability on the population of the State;
    - b. The determinants of health and health hazards;
    - c. Health resources, including the extent of available work power and resources;
    - d. Utilization of health care;
    - e. Health care costs and financing; and
    - f. Other health or health-related matters; and
  - (2) Undertake and support research, demonstrations and evaluations respecting new or improved methods for obtaining data.
- (b) The State Center for Health Statistics may collect health data on behalf of other governmental or nonprofit organizations.
- (c) The State Center for Health Statistics shall collect data only on a voluntary basis except when there is specific legal authority to compel mandatory reporting of the health data. In collecting health data on a voluntary basis, the State Center for Health Statistics shall give the person a statement in writing:
  - (1) That the data is being collected on a voluntary basis and that the person is not required to respond; and
  - (2) The purposes for which the health data is being collected.
- (d) Subject to the provisions of G.S. 130A-374, the State Center for Health Statistics may share health data with other persons, agencies and organizations.
- (e) The State Center for Health Statistics shall:
  - (1) Take necessary action to assure that statistics developed under this Article are of high quality, timely and comprehensive, as well as specific and adequately analyzed and indexed; and
  - (2) Publish, make available and disseminate statistics on as wide a basis as practical.

(f) The State Center for Health Statistics shall coordinate health data activities within the State in order to eliminate unnecessary duplication of data collection and to maximize the usefulness of data collected by:

- (1) Participating with State and local agencies in the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the State and local levels and
- (2) Undertaking and supporting research, development, demonstration and evaluation respecting the cooperative system. (1983, c. 891, s. 2.)

### § 130A-374. Security of health data.

(a) Medical records of individual patients shall be confidential and shall not be public records open to inspection. The State Center for Health Statistics may disclose medical records of individual patients which identify the individual described in the record only if:

- (1) The individual described in the medical record has authorized the disclosure; or
- (2) The disclosure is for bona fide research purposes. The Commission shall adopt rules providing for the use of the medical records for research purposes.

(b) The State Center for Health Statistics shall take appropriate measures to protect the security of health data collected by the Center, including:

- (1) Limiting the access to health data to authorized individuals who have received training in the handling of this data;
- (2) Designating a person to be responsible for physical security; and
- (3) Developing and implementing a system for monitoring security. (1983, c. 891, s. 2.)

§§ 130A-375 to 130A-376: Reserved for future codification purposes.

## ARTICLE 16.

### *Postmortem Investigation and Disposition.*

#### Part 1. Postmortem Medicolegal Examinations and Services

### § 130A-377. Establishment and maintenance of central and district offices.

The Department shall establish and maintain a central office with appropriate facilities and personnel for postmortem medicolegal examinations. District offices, with appropriate facilities and personnel, may also be established and maintained if considered necessary by the Department for the proper management of postmortem examinations. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-378. Qualifications and appointment of the Chief Medical Examiner.**

The Chief Medical Examiner shall be a forensic pathologist certified by the American Board of Pathology and licensed to practice medicine. The Chief Medical Examiner shall be appointed by the Secretary. (1983, c. 891, s. 2.)

### **§ 130A-379. Duties of the Chief Medical Examiner.**

The Chief Medical Examiner shall perform postmortem medicolegal examinations as provided in this Part. The Chief Medical Examiner may, upon request, provide instruction in health science, legal medicine and other subjects related to his duties at The University of North Carolina, the North Carolina Justice Academy and other institutions of higher learning. (1983, c. 891, s. 2.)

### **§ 130A-380. The Chief Medical Examiner's staff.**

The Chief Medical Examiner may employ qualified pathologists to serve as Associate and Assistant Medical Examiners in the central and district offices. The Associate and Assistant Medical Examiners shall perform duties assigned by the Chief Medical Examiner. Forensic chemists may be employed by the Chief Medical Examiner to provide toxicological and related support. (1983, c. 891, s. 2.)

### **§ 130A-381. Additional services and facilities.**

In order to provide proper facilities for investigating deaths as authorized in this Part, the Chief Medical Examiner may arrange for the use of existing public or private laboratory facilities. The Chief Medical Examiner may contact with qualified persons to perform or to provide support services for autopsies and other studies and investigations. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

### **§ 130A-382. County medical examiners; appointment; term of office; vacancies.**

One or more county medical examiners for each county shall be appointed by the Chief Medical Examiner for a three-year term. County medical examiners shall be appointed from a list of physicians licensed to practice medicine in this State submitted by the medical society of the county in which the appointment is to be made. If no names are submitted by the society, the Chief Medical Examiner shall appoint one or more medical examiners from physicians in the county licensed to practice medicine in this State. In the event no licensed physician in a county accepts an appointment, the Chief Medical Examiner may appoint one or more physicians licensed to practice medicine in this State from other counties or the local registrar, deputy registrar, subregistrar or coroner. In the event a medical examiner is unable to serve in a particular case or for a temporary period of time, the Chief Medical Examiner shall designate a physician licensed to practice medicine in this State, the local registrar, deputy registrar, subregistrar or coroner. A medical examiner may serve more than one county. The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner to do so. (1955, c. 892, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, ss. 2-4; 1983, c. 891, s. 2.)

**§ 130A-383. Medical examiner jurisdiction.**

(a) Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health or when unattended by a physician; occurring in a jail, prison, correctional institution or in police custody; or occurring under a suspicious, unusual or unnatural circumstance, the medical examiner of the county in which the body of the deceased is found shall be notified by a physician in attendance, hospital employee, law-enforcement officer, funeral home employee, emergency medical technician, relative or by any other person having suspicion of such a death. No person shall disturb the body at the scene of such a death until authorized by the medical examiner unless in the unavailability of the medical examiner it is determined by the appropriate law enforcement agency that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited purposes of this Part, expression of opinion that death has occurred may be made by a nurse, an emergency medical technician or any other competent person in the absence of a physician.

(b) The discovery of anatomical material suspected of being part of the human body shall be reported to the medical examiner of the county in which the material is found. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 1; 1967, c. 1154, s. 1; 1983, c. 891, s. 2.)

**CASE NOTES**

**Applied** in *Grad v. Kaasa*, 312 N.C. App. 310, 321 S.E.2d 888 (1984).

**§ 130A-384. Notification concerning out-of-state body.**

When a body is brought into this State for disposal and there is reason to believe either that the death was not investigated properly or that there is no adequate certificate of death, the body shall be reported to a medical examiner in the county where the body resides or to the Chief Medical Examiner. These deaths may be investigated by the same procedure as deaths occurring in this State under G.S. 130A-383. (1983, c. 891, s. 2.)

**§ 130A-385. Duties of medical examiner upon receipt of notification; reports; copies.**

(a) Upon receipt of a notification under G.S. 130A-383, the medical examiner shall take charge of the body, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a final report to the Chief Medical Examiner on forms prescribed for that purpose. The Chief Medical Examiner or the county medical examiner is authorized to inspect and copy the medical records of the decedent whose death is under investigation. The Chief Medical Examiner shall provide directions as to the nature, character and extent of an investigation and appropriate forms for the required reports. The facilities of the central and district offices and their staff services shall be available to the medical examiners and designated pathologists in their investigations.

(b) The medical examiner shall complete a certificate of death, stating the name of the disease which in his opinion caused death. If the death was from external causes, the medical examiner shall state on the certificate of death

means of death, and whether, in the medical examiner's opinion, the manner of death was accident, suicide, homicide or undetermined. The medical examiner shall also furnish any information as may be required by the State Registrar of Vital Statistics in order to properly classify the death.

) The Chief Medical Examiner shall have authority to amend a medical examiner death certificate.

) A copy of the report of the medical examiner investigation may be forwarded to the appropriate district attorney. (1955, c. 972, s. 1; 1957, c. 1357, s. 967, c. 1154, s. 1; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1145; 1983, c. 891, s. 2.)

### **30A-386. Subpoena authority.**

The Chief Medical Examiner and the county medical examiners are authorized to issue subpoenas for the attendance of persons and for the production of documents as may be required by their investigation. (1983, c. 891, s. 2.)

### **30A-387. Fees.**

For each investigation and prompt filing of the required report, the medical examiner shall receive a fee paid by the State. However, if the deceased is a resident of the county in which the death occurred, that county shall pay the fee. The fee shall be in an amount determined reasonable and appropriate by the Secretary, but shall not exceed fifty dollars (\$50.00). (1983, c. 891, s. 2.)

### **30A-388. Medical examiner's permission necessary before embalming, burial and cremation.**

) No person knowing or having reason to know that a death may be under the jurisdiction of the medical examiner pursuant to G.S. 130A-383 or 130A-384, shall embalm, bury or cremate the body without the permission of the medical examiner.

) A dead body shall not be cremated or buried at sea unless a medical examiner certifies that he has inquired into the cause and the manner of death and has the opinion that no further examination is necessary. This subsection shall not apply to deaths occurring less than 24 hours after birth or to deaths of patients resulting only from natural disease and occurring in a licensed hospital unless the death falls within the jurisdiction of the medical examiner under G.S. 130A-383 or 130A-384. The Commission is authorized to adopt rules creating additional exceptions to this subsection. For making this certification, the medical examiner shall be entitled to a fee in an amount determined reasonable and appropriate by the Secretary, not to exceed fifty dollars (\$50.00), to be paid by the applicant. (1955, c. 972, s. 1; 1957, c. 1357, s. 963, c. 492, s. 4; 1967, c. 1154, s. 1; 1971, c. 444, s. 7; 1973, c. 873, s. 7; 1983, c. 891, s. 2.)

### **30A-389. Autopsies.**

) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete

autopsy report of findings and interpretations, prepared on forms designed for the purpose, shall be submitted promptly to the Chief Medical Examiner. Copies of the report shall be furnished to the authorizing medical examiner, the district attorney or superior court judge. A copy of the report shall be furnished to other persons upon request. A fee for the autopsy or other services shall be paid by the State. However, if the deceased is a resident of the county in which the death occurred, that county shall pay the fee. The fee shall be an amount determined reasonable and appropriate by the Secretary, but shall not exceed four hundred dollars (§0.00).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under § 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1357, s. 1; 1973, c. 47, s. 2; c. 476, s. 128; 1975, c. 9; 1981, c. 187, s. 7; c. 562, 1983, c. 891, s. 2.)

#### OPINIONS OF ATTORNEY GENERAL

**Chief Medical Examiner, after performing duties required by law, may release the body** of the deceased to the spouse or next of kin who claims the body for final disposition even though he or she may be suspected of,

arrested for, or indicted for a criminal offense in connection with the death of the deceased. See opinion of Attorney General to Page Huelskamp, M.D., Chief Medical Examiner, 50 N.C.A. 100 (1980), rendered under former § 130-200.

### § 130A-390. Exhumations.

(a) In any case of death described in G.S. 130A-383 or 130A-384 where the body is buried without investigation by a medical examiner as to the cause and manner of death or where sufficient cause develops for further investigation after a body is buried as determined by a county medical examiner or Chief Medical Examiner, the Chief Medical Examiner shall authorize an investigation and send a report of the investigation with recommendation to the appropriate district attorney. The district attorney may forward the report to the superior court judge and petition for disinterment. The judge may order that the body be exhumed and that an autopsy be performed by the Chief Medical Examiner. A report of the autopsy and other pathological studies shall be delivered to the judge. The cost of the exhumation, autopsy, transportation and disposition of the body shall be paid by the State. However, if the deceased is a resident of the county in which death occurred, that county shall pay the cost.

(b) Any person may petition a judge of the superior court for an order of exhumation. Upon showing of sufficient cause, the judge may order the body exhumed. The cost incurred shall be assigned to the petitioner.

(c) Without applying for a judicial exhumation order, the next-of-kin of a deceased person may have the remains exhumed, examined by the Chief Medical Examiner and reinterred. The cost shall be paid by the next-of-kin. (1983, c. 891, s. 2.)

### 130A-391. Corneal tissue removal.

(a) A medical examiner or a regional pathologist may provide corneal tissue from a decedent under the jurisdiction of the medical examiner or the regional pathologist to the North Carolina Eye and Human Tissue Bank or her donee specified in G.S. 130A-405 under the following conditions:

- (1) a. Consent from next-of-kin is obtained in accordance with G.S. 130A-404; or
- b. and c. Repealed by Session Laws 1983 (Regular Session, 1984), c. 992, s. 1.
- d. No objections are known to the medical examiner or regional pathologist; and
- (2) The removal of the corneal tissue for transplant will not interfere with any subsequent course of investigation or autopsy or alter the postmortem facial appearance.

(b) If the requirements of subsection (a) have been met, neither the medical examiner, the regional pathologist, nor the donee shall be liable in any civil action brought by the next-of-kin on the contention that authorization of next-of-kin was required to remove the corneal tissue. (1981, c. 782, s. 1; 1983, c. 91, s. 2; 1983 (Reg. Sess., 1984), c. 992, s. 1.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 27, 1984, deleted paragraphs b and c of subdivision (a)(1) and added paragraph d of that subdivision.

### 130A-392. Reports and records as evidence.

Reports of investigations made by a county medical examiner or by the Chief Medical Examiner and toxicology and autopsy reports made pursuant to this Part may be received as evidence in any court or other proceeding. Copies of records, photographs, laboratory findings and records in the Office of the Chief Medical Examiner, any county medical examiner or designated pathologist, when duly certified, shall have the same evidentiary value as the original. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, s. 8; 1983, c. 891, s. 2.)

### 130A-393. Rules.

The Commission shall adopt rules to carry out the intent and purpose of this part. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 15; 1983, c. 891, s. 2.)

### 130A-394. Coroner to hold inquests.

In every case requiring the medical examiner to be notified, as provided by G.S. 130A-383, the coroner shall be notified by the medical examiner, and the coroner shall hold an inquest and preliminary hearing in those instances as required in G.S. 152-7. The coroner shall file a written report of his investigation with the district attorney of the superior court and the medical examiner. The body shall remain in the custody and control of the medical examiner. However, if a county has abolished the office of coroner pursuant to the provisions of Chapter 152A at a time when Chapter 152A was in effect in the county: (i) The provisions of this Article relating to coroner shall not be applicable to the county, (ii) the provisions of G.S. 152A-9 shall remain in full force and effect in the county, and (iii) Chapter 152 of the General Statutes shall not be applicable in the county. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 154, s. 1; 1969, c. 299; 1973, c. 47, s. 2; 1983, c. 891, s. 2; 1985, c. 462, s. 1.)

**Editor's Note.** — Chapter 152A, referred to in this section, was repealed by Session Laws 1967, c. 1154, s. 8.

**Effect of Amendments.** — The 1985

amendment, effective June 24, 1985, substituted "G.S. 130A-383" for "G.S. 130A-198" the first sentence.

§§ 130A-395 to 130A-397: Reserved for future codification purposes

## Part 2. Autopsies.

### § 130A-398. Limitation on right to perform autopsy.

The right to perform an autopsy shall be limited to those cases in which

- (1) The Chief Medical Examiner or a county medical examiner, acting pursuant to G.S. 130A-389, directs that an autopsy be performed;
- (2) The Commission of Anatomy, acting pursuant to G.S. 130A-415, has given written consent for an autopsy to be performed on an unclaimed body;
- (3) A prosecuting officer or district attorney, acting pursuant to G.S. 15A-215, in case of homicide, directs that an autopsy be performed;
- (4) The decedent directs in writing prior to death that an autopsy be performed upon the occurrence of the decedent's death;
- (5) The personal representative of the estate of the decedent requests that an autopsy be performed upon the decedent; or
- (6) Any of the following persons, in order of priority, when persons in the prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual opposition by a member of the same or prior class, authorizes an autopsy to be performed:
  - a. The spouse;
  - b. Any adult child or stepchild;
  - c. Any parent or stepparents;
  - d. Any adult sibling;
  - e. A guardian of the person of the decedent at the time of the decedent's death;
  - f. Any relative or person who accepts responsibility for final disposition of the body by other customary and lawful procedures;
  - g. Any person under obligation to dispose of the body. (1931, c. 15; 1933, c. 209; 1967, c. 1154, s. 4; 1969, c. 444; 1973, c. 47, s. 1; 1983, c. 891, s. 2.)

#### CASE NOTES

**A cause of action exists in this State for wrongful autopsy.** The cause of action arises from a quasi-property right of the surviving next-of-kin to bury the dead without wrongful interference. *Grad v. Kaasa*, 68 N.C. App. 128, 314 S.E.2d 755, rev'd on other grounds, 312 N.C. 310, 321 S.E.2d 888 (1984), decided under former §§ 130-198, 130-200.

**But a Violation Will Not Automatically Result in Liability.** — Although the regulations and statutes limit a medical examiner's authority to order autopsies, a violation will

not inevitably result in liability. A public official will be held liable only if it is shown that he acted entirely outside the scope of his authority or that his act, while inside his authority, was malicious or corrupt. *Grad v. Kaasa*, 68 N.C. App. 128, 314 S.E.2d 755, rev'd on other grounds, 312 N.C. 310, 321 S.E.2d 888 (1984), decided under former §§ 130-198, 130-200.

**When Medical Examiner Is Immune from Liability.** — A medical examiner acting outside his authority if he subjectively dete

...nes that an autopsy is not authorized by statute, yet proceeds anyway, or if he fails to make any subjective determination at all concerning whether an autopsy would serve the public interest before proceeding. Conversely, where a medical examiner receives a death report under § 130-198 (see now § 130A-383) or N.C. Administrative Code § 11.0203, and then makes a subjective determination that an

autopsy is advisable and in the public interest, his actions are within the scope of his authority and he is immune from liability unless his actions are motivated by malice or corruption. *Grad v. Kaasa*, 68 N.C. App. 128, 314 S.E.2d 755, rev'd on other grounds, 312 N.C. 310, 321 S.E.2d 888 (1984), decided under former §§ 130-198, 130-200.

### **130A-399. Postmortem examination of inmates of certain public institutions.**

Upon the death of any inmate of an institution maintained by the State, or city, county or other political subdivision of the State, for the care of the sick, mentally ill or mentally retarded, the administrator of the institution in which the death occurs is empowered to authorize a postmortem examination of the deceased person. The examination shall be of a scope and nature necessary to promote knowledge of the human organism and its disorders. (1943, c. 7, s. 1; 1983, c. 891, s. 2.)

### **130A-400. Written consent for postmortem examinations required.**

An administrator of an institution shall not authorize a postmortem examination described in G.S. 130A-399 without first securing the written consent of the deceased person's spouse, one of the next-of-kin or nearest known relative, or other person charged by law with the duty of burial, in the order named and as known. A copy of the written consent shall be filed in the office of the administrator of the institution where the inmate died. (1943, c. 87, s. 3; 1983, c. 891, s. 2.)

### **130A-401. Postmortem examinations in certain medical schools.**

The postmortem examinations and studies authorized by G.S. 130A-399 may be made in the laboratories of medical schools of colleges and universities on conditions established by the administrator. (1943, c. 87, s. 2; 1983, c. 891, s. 2.)

## **Part 3. Uniform Anatomical Gift Act.**

### **130A-402. Short title.**

This Part may be cited as the Uniform Anatomical Gift Act. (1969, c. 84, s. 1; 1983, c. 891, s. 2.)

**Legal Periodicals.** — For article, "Legal Applications of Human in Vitro Fertilization for the Practicing Physician in North Carolina," see 6 Campbell L. Rev. 5 (1984).

### § 130A-403. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage or distribution of human body or its parts.
- (2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.
- (3) "Donor" means an individual who makes a gift of all or part of the individual's body.
- (4) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and a hospital operated by the United States government, a state or its subdivision, although not required to be licensed under state laws.
- (5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluid and any other portions of a human body.
- (6) "Physician" or "surgeon" means a physician or surgeon licensed to practice medicine under the laws of any state.
- (7) "State" includes any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.
- (8) "Qualified individual" means any of the following individuals who has completed a course in eye enucleation and has been certified as competent to enucleate eyes by an accredited school of medicine in this State:
  - a. An embalmer licensed to practice in this State;
  - b. A physician's assistant approved by the Board of Medical Examiners pursuant to G.S. 90-18(13);
  - c. A registered or a licensed practical nurse licensed by the Board of Nursing pursuant to Article 9 of Chapter 90 of the General Statutes;
  - d. A student who is enrolled in an accredited school of medicine operating within this State and who has completed two or more years of a course of study leading to the awarding of a degree of doctor of medicine;
  - e. A technician who has successfully completed a written examination by the North Carolina Eye and Human Tissue Bank, Inc. certified by the Eye Bank Association of America. (1969, c. 84, s. 1; 1971, c. 873, s. 1; 1975, c. 32, ss. 1, 2; 1983, c. 891, s. 2; 1985, c. 524.)

**Editor's Note.** — Article 9 of Chapter 90, referred to in paragraph (8)c of this section, has been recodified as Article 9A of Chapter 90.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, added paragraph (8)e.

### § 130A-404. Persons who may make an anatomical gift.

(a) An individual of sound mind and 18 years of age or more may give all or any part of that individual's body for any purpose specified in G.S. 130A-405. The gift shall take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in G.S. 130A-405.

- (1) The spouse;
- (2) An adult child;
- (3) Either parent;
- (4) An adult sibling;
- (5) A guardian of the person of the decedent at the time of decedent's death;
- (6) Any other person authorized or under obligation to dispose of the body.

(c) The persons authorized by subsection (b) may make the gift after or immediately before death. However, the guardian of the person of a ward may make the gift at any time during the guardianship and the gift shall become effective upon the death of the ward unless the guardianship terminated before death.

(d) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

(e) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(f) The rights of the donee created by the gift are paramount to the rights of others except as provided by G.S. 130A-409(d). (1969, c. 84, s. 1; 1977, c. 166, s. 1; 1983, c. 891, s. 2.)

### § 130A-405. Persons who may become donees; purposes for which anatomical gifts may be made.

The following persons may become donees of gifts of a human body or its parts for the purposes stated:

- (1) A hospital, surgeon or physician for medical or dental education, research, advancement of medical or dental science, therapy or transplantation;
- (2) An accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy;
- (3) A bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation;
- (4) A specified individual for therapy or transplantation needed by that individual; or
- (5) The Commission of Anatomy for the distribution of a human body or its parts for the purpose of promoting the study of anatomy in this State. (1969, c. 84, s. 1; 1975, c. 694, ss. 4, 5; 1983, c. 891, s. 2.)

### § 130A-406. Manner of making anatomical gifts.

(a) A gift of all or part of the body under G.S. 130A-404(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is valid and effective.

(b) A gift of all or part of the body under G.S. 130A-404(a) may also be made by a document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the individual, must be signed by the donor in the presence of two witnesses who must sign the document in the donor's presence. If the donor

cannot sign, the document may be signed for the donor at the direction and in the presence of the donor and in the presence of two witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee.

(d) The donor may designate by will, card or other document of gift the surgeon or physician to carry out the appropriate procedures, subject to the provisions of G.S. 130A-409(b). In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for that purpose.

(e) In respect to a gift of an eye, a qualified individual may enucleate eyes for the gift after proper certification of death by a physician and upon the express direction of a physician other than the one who certified the death of the donor.

(f) A gift by a person designated in G.S. 130A-404(b) shall be made by a document signed by the donor or made by the donor's telegraphic, recorded, telephonic, or other recorded message. However, a guardian of the person of a ward who makes a gift of all or any part of the ward's body prior to the ward's death shall make the gift by a document signed by the guardian and filed with the clerk of court having jurisdiction over the guardian.

(g) The making of a gift shall be deemed to include an authorization to the donee to review any medical records of the donor after the death of the donor (1969, c. 84, s. 1; 1971, c. 873, s. 2; 1975, c. 32, s. 3; 1977, c. 166, s. 2; 1979, c. 525, s. 11; 1983, c. 891, s. 2.)

#### CASE NOTES

Cited in *Dumouchelle v. Duke Univ.*, 69 N.C. App. 471, 317 S.E.2d 100 (1984).

### § 130A-407. Delivery of document of gift.

If the gift is made by the donor or the guardian to a specified donee, the will, card or other document or executed copy may be delivered to the donee at any time to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card or other document or executed copy may be deposited in a hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's or ward's death, the person in possession shall produce the document for examination. (1969, c. 84, s. 1; 1977, c. 166, s. 3; 1983, c. 891, s. 2.)

### § 130A-408. Amendment or revocation of the gift.

(a) If the will, card or other document or executed copy has been delivered to a specified donee, the donor may amend or revoke the gift by:

- (1) The execution and delivery to the donee of a signed statement;
- (2) An oral statement made in the presence of two persons and communicated to the donee;

(3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(4) A signed card or document found on the individual or in the individual's effects, and made known to the donee.

(b) A guardian may amend or revoke the gift by the execution and delivery to the donee of a signed statement.

(c) Any document of gift which has not been delivered to the donee may be revoked by the donor or guardian in the manner set out in subsection (a) or by destruction, cancellation or mutilation of the document and all executed copies.

(d) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a). (1969, c. 84, s. 1; 1977, c. 166, ss. 4, 5; 1983, c. 891, s. 2.)

### § 130A-409. Rights and duties at death.

(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, the donee shall, subject to the terms of the gift, authorize embalming and the use of the body in funeral services, upon request of the surviving spouse or other person listed in the order stated in G.S. 130A-404(b). If the gift is of a part of the body, the donee, upon the death of the donor or ward and prior to embalming, shall, within 24 hours, cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next-of-kin or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor or ward at death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts with due care in accord with the terms of this Part or the anatomical gift laws of another state is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for the act.

(d) The provisions of this Part are subject to the laws of this State prescribing powers and duties with respect to autopsies. (1969, c. 84, s. 1; 1977, c. 166, s. 6; 1983, c. 891, s. 2.)

### § 130A-410. Use of tissue declared a service; standard of care; burden of proof.

The procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes, the rendition of a service by every participating person or institution. Whether or not any remuneration is paid, the service is declared not to be a sale of whole blood, plasma, blood products, blood derivatives or other human tissues, for any purpose. No person or institution shall be liable in warranty, express or implied, for the procurement, processing, distribution or use of these items but nothing in this section shall alter or restrict the liability of a person or institution in negligence or tort in consequence of these services. (1971, c. 836; 1983, c. 891, s. 2.)

**§ 130A-411. Giving of blood by persons 17 years of age or more.**

A person who is 17 years of age or more may give or donate blood to an individual, hospital, blood bank or blood collection center without the consent of the parent or parents or guardian of the donor. It shall be unlawful for a person under the age of 18 years to sell blood. (1971, c. 10; c. 1093, s. 16; 1977, c. 373; 1983, c. 891, s. 2.)

**§ 130A-412. Uniformity of interpretation.**

This Part shall be so construed to effectuate its general purpose to make uniform the law of those states which enact it. (1969, c. 84, s. 1; 1983, c. 891, s. 2.)

Part 4. Human Tissue Donation Program.

**§ 130A-413. Coordinated human tissue donation program; legislative findings and purpose; program established.**

(a) The General Assembly finds that there is an increasing need for human tissues for transplantation purposes; that there is a continuing need for human tissues for the purposes of medical education and research; and that these needs are not being sufficiently filled at the present because of a shortage of human tissue donors. The General Assembly establishes a coordinated human tissue donation program to facilitate the acquisition and distribution of human tissues to promote the public health. For the purposes of this Part, the term "human tissue" includes cadavers.

(b) The Department shall establish and administer a coordinated program among departments and agencies of the State and all groups, both public and private, involved in the acquisition and distribution of human tissue to:

- (1) Increase awareness of the need for human tissue donations and of the methods by which these donations are made;
- (2) Increase awareness of the existing programs of human tissue transplantation and of medical research and education which employs human tissue and share information with the public;
- (3) Study the problems surrounding the acquisition and distribution of human tissue and make suggestions for their solution;
- (4) Disseminate information to health and other professionals concerning the techniques of human tissue retrieval and transplantation, the legalities involved in making anatomical gifts; and
- (5) Arrange for the quick and precise transportation of donated human tissue in emergency transplant situations.

(c) All departments and agencies of the State and county and municipal law-enforcement agencies shall cooperate with the coordinated human tissue donation program instituted by the Department. (1983, c. 891, s. 2.)

### § 130A-414. Human Tissue Advisory Council.

(a) A Human Tissue Advisory Council is established to advise the Secretary in the planning, organization, administration and evaluation of the coordinated Human Tissue Donation Program. Members of the Council shall be appointed as follows:

- (1) The Secretary shall appoint a representative from each of the following institutions:
  - a. The Bowman Gray School of Medicine of Wake Forest University,
  - b. The Duke University School of Medicine,
  - c. The North Carolina Association of the Blind,
  - d. The North Carolina Eye and Human Tissue Bank,
  - e. The North Carolina Funeral Directors' Association,
  - f. The North Carolina Hospital Association,
  - g. The National Kidney Foundation of North Carolina, Inc.,
  - h. The North Carolina Medical Society,
  - i. The University of North Carolina at Chapel Hill School of Medicine,
  - j. The East Carolina University School of Medicine; and
- (2) A representative of the Secretary;
- (3) A representative of the Chief Medical Examiner;
- (4) One member appointed by the Speaker of the House of Representatives; and
- (5) One member appointed by the President of the Senate.

(b) Members shall serve terms of three years except that members may be appointed for terms of less than three years to achieve a staggered-term structure. The Council shall elect a chairperson from among its membership and shall meet at least two times a year and upon the request of the Secretary. Members shall serve without compensation but shall be reimbursed for travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1975, c. 974; 1983, c. 891, s. 2.)

## Part 5. Disposition of Unclaimed Bodies.

### § 130A-415. Unclaimed bodies; disposition.

(a) All officers, employees and agents of the State or of any unit of local government in the State; all undertakers doing business within the State; or any person having charge or control of an unclaimed body shall immediately notify and, upon the request of the Commission of Anatomy, deliver the dead body to the Commission of Anatomy. The Commission of Anatomy may take and remove the dead body. No reward or fee shall be paid for notifying the Commission of Anatomy. The person having charge or control of an unclaimed body shall make reasonable efforts to notify any interested person of the decedent's death. The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for the embalming and delivery of the body, and for the reasonable efforts made to notify the persons.

(b) For the purposes of this Part, an unclaimed body means a dead body which is not claimed for final disposition and which, as determined by the person having charge or control of the dead body, probably will not be claimed for final disposition within 10 days of the deceased's death. The unclaimed body shall remain in the charge or control of the person for a period of 10 days unless the period is shortened by the county director of social services upon determination that the dead body will not be claimed for final disposition

within 10 days of the decedent's death. Upon expiration of the period, the person having charge or control of the unclaimed body will deliver it to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or permit the Commission of Anatomy to take and remove the body.

(c) All dead bodies not claimed for final disposition within 10 days of the decedent's death may be received and delivered by the Commission of Anatomy pursuant to the authority contained in G.S. 143B-204 and this Part and in accordance with its rules. All interests in and rights to dead bodies unclaimed for final disposition within 10 days of the decedent's death and received by the Commission of Anatomy shall vest in the Commission of Anatomy.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that written consent is not required for an autopsy performed pursuant to Part 2 of this Article.

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding anything contained in this section, an unclaimed body shall not mean a dead body for which the deceased has made a gift pursuant to Part 3 of this Article.

(g) Nothing in this Part shall require the officers, employees or agents of a county to notify the Commission of Anatomy regarding the bodies of minors who were in the custody of the county at the time of death and whose final disposition will be arranged by the county. In the absence of notification, the expenses of the final disposition shall be a charge upon the county having custody.

(h) The provisions of this Part shall not apply to bodies within the jurisdiction of the medical examiner under G.S. 130A-383 or 130A-384. (1975, c. 694, s. 3; 1977, c. 458; 1983, c. 891, s. 2.)

### **§ 130A-416. Commission of Anatomy rules.**

The Commission of Anatomy is authorized to adopt rules necessary to implement the provisions of this Part. (1983, c. 891, s. 2.)

## **Part 6. Final Disposition or Transportation of Deceased Migrant Agricultural Workers and Their Dependents.**

### **§ 130A-417. Definitions.**

The following definitions shall apply throughout this Part:

- (1) "Dependent" means child, grandchild, spouse or parent of a migrant agricultural worker who moves with the migrant agricultural worker in response to the demand for seasonal agricultural labor.
- (2) "Migrant agricultural worker" means a worker who moves in response to the demand for seasonal agricultural labor. (1983, c. 891, s. 2.)

### **§ 130A-418. Deceased migrant agricultural workers and their dependents.**

(a) Notwithstanding any other provisions of law, a person having knowledge of the death of a migrant agricultural worker or a worker's dependent shall without delay report the death to the department of social services in the

county in which the body is located together with any information regarding the deceased including identity, place of employment, permanent residence, and the name, address and telephone number of any relative and any interested person. The county department of social services shall, within a reasonable time of receiving this report, transmit to the Department notice of the death and information received upon notification. The Department shall make reasonable effort to inform the next-of-kin and any interested person of the death.

(b) If the identity of the person cannot be determined within a reasonable period of time, or if the body is unclaimed 10 days after death, the body shall be offered to the Commission of Anatomy and, upon its request, shall be delivered to the Commission of Anatomy. If the Commission of Anatomy does not request an unclaimed body offered it or the estate, and if the relatives or other interested persons claiming the body are unable to provide for the final disposition of the migrant agricultural worker or dependent, the Department is authorized and directed to arrange for the final disposition of the decedent.

(c) If the estate, relatives or interested persons are able to provide for final disposition but are unable to effect the transportation of the decedent to the decedent's legal residence or the legal residence of the relatives or interested persons, the Department is authorized and directed to allocate a sum of not more than two hundred dollars (\$200.00) to defray the transportation expenses.

(d) The Secretary is authorized to adopt rules necessary to implement this section. (1975, c. 891; 1977, c. 648; 1983, c. 891, s. 2.)

## Chapter 131. Public Hospitals.

### Article 1.

#### Orthopedic Hospital.

Sec.

131-2, 131-3. [Repealed.]

### Article 2.

#### Hospitals in Counties, Townships, and Towns.

131-4 to 131-13. [Repealed.]

131-15 to 131-28. [Repealed.]

### Article 2A.

#### The County Hospital Act.

131-28.1 to 131-28.5. [Repealed.]

131-28.8 to 131-28.22A. [Repealed.]

### Article 2B.

#### County-City Hospital Facilities for the Poor.

131-28.23 to 131-28.28. [Repealed.]

### Article 3.

#### County Tuberculosis Hospitals.

131-29. [Repealed.]

131-31 to 131-33.7. [Repealed.]

### Article 4.

#### Joint County Tuberculosis Hospitals.

131-34. [Repealed.]

131-36 to 131-38. [Repealed.]

### Article 5.

#### County Tuberculosis Hospitals; Additional Method of Establishment.

131-39 to 131-41. [Repealed.]

131-43 to 131-45. [Repealed.]

### Article 6.

#### Joint County and Municipal Tuberculosis Hospitals.

131-46 to 131-51. [Repealed.]

### Article 7.

#### McCain Hospital.

131-60.1 to 131-60.5. [Repealed.]

### Article 7A.

#### North Carolina Specialty Hospitals.

131-60.6. [Repealed.]

### Article 10.

#### Funds of Deceased Inmates.

Sec.

131-83. [Repealed.]

### Article 12.

#### Hospital Authorities Law.

131-90 to 131-101. [Repealed.]

131-108. [Repealed.]

131-110 to 131-112. [Repealed.]

131-114 to 131-116.1. [Repealed.]

### Article 13.

#### Department of Human Resources and Program of Hospital Care.

131-120. [Repealed.]

131-121. [Repealed.]

131-121.3. [Repealed.]

131-124. [Repealed.]

131-124.1. [Repealed.]

131-125. [Repealed.]

131-126. [Repealed.]

### Article 13A.

#### Hospital Licensing Act.

131-126.1 to 131-126.9. [Repealed.]

131-126.11A to 131-126.12. [Repealed.]

131-126.14 to 131-126.16. [Repealed.]

### Article 13B.

#### Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

131-126.18 to 131-126.22. [Repealed.]

131-126.24, 131-126.25. [Repealed.]

131-126.27 to 131-126.30. [Repealed.]

### Article 13C.

#### Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

131-126.31, 131-126.32. [Repealed.]

131-126.33A. [Repealed.]

131-126.34A. [Repealed.]

131-126.38. [Repealed.]

131-126.38B, 131-126.39. [Repealed.]

131-126.40A, 131-126.40B. [Repealed.]

### Article 13D.

#### Further Authority of Subdivisions of Government to Finance Hospital Facilities.

131-126.41. [Repealed.]

Sec.  
131-126.44. [Repealed.]

**Article 14.**

**Lenox Baker Children's Hospital.**

131-127. [Repealed.]  
131-129. [Repealed.]  
131-131 to 131-135. [Repealed.]

**Article 15.**

**Discharge from Hospital.**

131-137. [Repealed.]

**Article 16.**

**Department of Human Resources  
Hospital Facilities Finance  
Act.**

Sec.  
131-138 to 131-167. [Repealed.]

**Article 17.**

**Medical Review Committee.**

131-168 to 131-174. [Repealed.]

**Article 18.**

**Certificate of Need Law.**

131-175 to 131-188. [Repealed.]

**ARTICLE 1.**

*Orthopedic Hospital.*

§§ 131-2, 131-3: Repealed by Session Laws 1981, c. 50, s. 3.

**ARTICLE 2.**

*Hospitals in Counties, Townships, and Towns.*

§§ 131-4 to 131-13: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Cross References.** — As to health care facilities and services, see now Chapter 131E.

**Editor's Note.** — Session Laws 1983, c. 775, ss. 3, 5 and 6, provide:

"Sec. 3. Notwithstanding the foregoing, any unit of government, or units of government acting jointly, that as of December 31, 1983, is operating a hospital or hospitals pursuant to Articles 2 or 2A of Chapter 131 of the General Statutes may continue to operate pursuant to the provisions of those Articles as they existed on December 31, 1983, to the extent that those Articles are inconsistent with this Chapter. However, a unit of government that has been operating a hospital pursuant to those Articles may choose to continue operations under the provisions of one of the Parts of Article 2 of this Chapter by adopting an appropriate resolution and by satisfying all other requirements of the relevant Part of Article 2 of this Chapter.

"Sec. 5. Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratifica-

tion of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

"Sec. 6. Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 of Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, is a severability clause.

Repealed § 131-4 was amended by Session Laws 1981, c. 189, s. 1. Repealed § 131-5 was amended by Session Laws 1981, c. 189, s. 2. Repealed § 131-7 was amended by Session Laws 1981, c. 189, s. 3.

**§§ 131-15 to 131-28:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed § 131-15 was amended by Session Laws 1981, c. 919, s. 16.

## ARTICLE 2A.

### *The County Hospital Act.*

**§§ 131-28.1 to 131-28.5:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§§ 131-28.8 to 131-28.22A:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed § 131-28.14 was amended by Session Laws 1981, c. 919, s. 17. Repealed § 131-28.22A was enacted by Session Laws 1983, c. 578.

## ARTICLE 2B.

### *County-City Hospital Facilities for the Poor.*

**§§ 131-28.23 to 131-28.28:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 3.

### *County Tuberculosis Hospitals.*

**§ 131-29:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§§ 131-31 to 131-33.7:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

#### ARTICLE 4.

##### *Joint County Tuberculosis Hospitals.*

**§ 131-34:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§§ 131-36 to 131-38:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

#### ARTICLE 5.

##### *County Tuberculosis Hospitals; Additional Method of Establishment.*

**§§ 131-39 to 131-41:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13. Repealed § 131-39 was amended by Session Laws 1981, c. 189, s. 4.

**§§ 131-43 to 131-45:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

#### ARTICLE 6.

##### *Joint County and Municipal Tuberculosis Hospitals.*

**§§ 131-46 to 131-51:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 7.

*McCain Hospital.*

§§ 131-60.1 to 131-60.5: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 7A.

*North Carolina Specialty Hospitals.*

§ 131-60.6: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13. Repealed § 131-60.6 was amended by Session Laws 1983, c. 761, s. 55.

## ARTICLE 10.

*Funds of Deceased Inmates.*

§ 131-83: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 12.

*Hospital Authorities Law.*

§§ 131-90 to 131-101: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13. Repealed § 131-94 was amended by Session Laws 1981, c. 525, s. 1. Repealed § 131-94.1 was enacted by Session Laws 1981, c. 525, s. 2. Repealed § 131-99 was amended by Session Laws 1981, c. 919, s. 18.

§ 131-108: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

§§ 131-110 to 131-112: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

§§ 131-114 to 131-116.1: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

### ARTICLE 13.

#### *Department of Human Resources and Program of Hospital Care.*

§ 131-120: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

§ 131-121: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1388, s. 1, effective July 1, 1982.

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1388, s. 6, provides that the repeal of §§ 131-121, 131-121.3, 131-124 and 131-125 shall not be construed as affecting the status of any loan or scholarship already granted, and that any loan or scholarship already granted under Article 13 of Chapter 131 shall be administered by the North Carolina Board for Need-Based Medical Student Loans.

§ 131-121.3: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1388, s. 1, effective July 1, 1982.

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1388, s. 6, provides that the repeal of §§ 131-121, 131-121.3, 131-124 and 131-125 shall not be construed as affecting the status of any loan or scholarship already granted, and that any loan or scholarship already granted under Article 13 of Chapter 131 shall be administered by the North Carolina Board for Need-Based Medical Student Loans.

§ 131-124: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1388, s. 1, effective July 1, 1982.

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1388, s. 6, provides that the repeal of §§ 131-121, 131-121.3, 131-124 and 131-125 shall not be construed as affecting the status of any loan or scholarship already granted, and that any loan or scholarship already granted under Article 13 of Chapter 131 shall be administered by the North Carolina Board for Need-Based Medical Student Loans.

§ **131-124.1:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed § 131-124.1 was enacted by Session Laws 1981 (Reg. Sess., 1982), c. 1388, s. 6.

§ **131-125:** Repealed by Session Laws 1981 (Regular Session, 1982), c. 1388, s. 1, effective July 1, 1982.

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1388, s. 6, provides that the repeal of §§ 131-121, 131-121.3, 131-124 and 131-125 shall not be construed as affecting the status of any loan or scholarship already

granted, and that any loan or scholarship already granted under Article 13 of Chapter 13 shall be administered by the North Carolina Board for Need-Based Medical Student Loan

§ **131-126:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c.

775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 13A.

### *Hospital Licensing Act.*

**Repeal of Article.** —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article

effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

§§ **131-126.1 to 131-126.9:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed § 131-126.6 was amended by Session Laws 1981, c. 614, s. 16. Repealed § 131-126.9 was amended by Session Laws 1981, c. 586, s. 3.

§§ **131-126.11A to 131-126.12:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed §§ 131-126.11A and 131-126.11B were enacted by Session Laws 1981, c. 659, s. 10. Repealed § 131-126.12 was amended by Session Laws 1981, c. 586, s. 4.

§§ 131-126.14 to 131-126.16: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed § 131-126.14 was amended by Session Laws 1981, c. 614, s. 17.

ARTICLE 13B.

*Additional Authority of Subdivisions of Government to Finance Hospital Facilities.*

§§ 131-126.18 to 131-126.22: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c.

775, see the Editor's note under §§ 131-4 to 131-13.

§§ 131-126.24, 131-126.25: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c.

775, see the Editor's note under §§ 131-4 to 131-13.

§§ 131-126.27 to 131-126.30: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c.

775, see the Editor's note under §§ 131-4 to 131-13.

ARTICLE 13C.

*Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.*

§§ 131-126.31, 131-126.32: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c.

775, see the Editor's note under §§ 131-4 to 131-13.

§ 131-126.33A: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§ 131-126.34A:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§ 131-126.38:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§§ 131-126.38B, 131-126.39:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13. Repealed § 131-126.38B was enacted by Session Laws 1981, c. 243.

**§§ 131-126.40A, 131-126.40B:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 13D.

### *Further Authority of Subdivisions of Government to Finance Hospital Facilities.*

**§ 131-126.41:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§ 131-126.44:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 14.

*Lenox Baker Children's Hospital.*

**131-127:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**131-129:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

**§ 131-131 to 131-135:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 15.

*Discharge from Hospital.*

**§ 131-137:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 16.

*Department of Human Resources Hospital  
Facilities Finance Act.*

**§§ 131-138 to 131-167:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

## ARTICLE 17.

*Medical Review Committee.*

§§ 131-168 to 131-174: Repealed by Session Laws 1983, c. 775, s. effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed § 131-170 was enacted by Session Laws 1981, c. 725.

## ARTICLE 18.

*Certificate of Need Law.*

§§ 131-175 to 131-188: Repealed by Session Laws 1983, c. 775, s. effective January 1, 1984.

**Editor's Note.** — As to the construction, effect, and effective date of Session Laws 1983, c. 775, see the Editor's note under §§ 131-4 to 131-13.

Repealed § 131-177 was amended by Session Laws 1983, c. 713, s. 96. Pursuant to Session Laws 1983, c. 775, s. 6, the amendment has been effectuated in § 131E-177.

Repealed § 131-180 was amended by Session Laws 1983, c. 713, s. 97. Pursuant to Session Laws 1983, c. 775, s. 6, the amendment has been effectuated in § 131E-182.

Repealed § 131-181 was amended by Session Laws 1983, c. 920, s. 2. Pursuant to Session Laws 1983, c. 775, s. 6, the amendment has been effectuated in § 131E-183.

Repealed § 131-175 was amended by Session Laws 1981, c. 651, s. 1. Repealed § 131-176 was amended by Session Laws 1981, c. 651, ss.

1, 2; c. 1127, ss. 24-29. Repealed § 131-177 was also amended by Session Laws 1981, c. 651, s. 1. Repealed § 131-178 was amended by Session Laws 1981, c. 651, s. 3. Repealed §§ 131-178.1 and 131-178.2 were enacted by Session Laws 1981, c. 651, s. 4. Repealed § 131-179 was amended by Session Laws 1981, c. 651, s. 5. Repealed § 131-180 was amended by Session Laws 1981, c. 651, s. 6. Repealed § 131-181 was also amended by Session Laws 1981, c. 651, s. 7. Repealed § 131-181.1 was enacted by Session Laws 1981, c. 651, s. 8. Repealed § 131-182 was also amended by Session Laws 1981, c. 651, ss. 9, 10. Repealed § 131-185 was amended by Session Laws 1981, c. 651, s. 11. Repealed § 131-186 was amended by Session Laws 1981, c. 651, s. 12. Repealed § 131-187 was amended by Session Laws 1981, c. 651, s. 13.

## Chapter 131A.

### Health Care Facilities Finance Act.

c.

131A-3. Definitions.

131A-4. Additional powers.

#### 131A-1. Short title.

#### CASE NOTES

Cited in News & Observer Publishing Co. v.  
Wake County Hosp. Sys., 55 N.C. App. 1, 284  
E.2d 542 (1981).

#### 131A-3. Definitions.

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (4) "Health care facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation: general hospitals, chronic diseases, maternity, mental, tuberculosis and other specialized hospitals; facilities for intensive care and self-care; nursing homes, including skilled nursing facilities and intermediate care facilities; facilities for continuing care of the elderly and infirm; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer; and other electronic facilities, fire-fighting facilities, pharmaceutical facilities and recreational facilities; storage space, X-ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for health care facilities staff members and physicians; and such other health care facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities;
- (8) "Federally guaranteed security" means any security, investment or evidence of indebtedness issued pursuant to any provision of federal law for the purpose of financing or refinancing the cost of any health care facilities which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of principal or interest by the United States of America or any instrumentality thereof;
- (9) "Federally insured mortgage note" means any loan secured by a mortgage or deed of trust on any health care facilities owned by any public or nonprofit agency which is insured or guaranteed, directly or indirectly, in whole or in part as to the repayment of principal and interest by the United States of America or any instrumentality thereof, or any commitment by the United States of America or any instru-

mentality thereof to so insure or guarantee such a loan secured by mortgage or a deed of trust.

- (10) "Continuing care" means the furnishing, pursuant to a continuing care agreement, of shelter, food, and nursing care to an individual not related by consanguinity or affinity to the provider furnishing such care. Other personal services provided shall be designated in the continuing care agreement. Continuing care shall include only life care, care for life, or care for a term of years;
- (11) "Life care" or "care for life" means a life lease, life membership, life estate, or similar agreement between an individual and a provider by which the individual pays a fee for the right to occupy a space in the continuing care facility and to receive continuing care for life; and
- (12) "Care for a term of years" means an agreement between an individual and a provider whereby the individual pays a fee for the right to occupy space in a continuing care facility, and to receive continuing care, for at least one year, but for less than the life of the member. (1975, c. 766, s. 1; 1979, c. 54, s. 1; 1981, c. 64; c. 867, ss. 1, 2)

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

**Effect of Amendments.** —

The first 1981 amendment inserted "nursing homes, including skilled nursing facilities and intermediate care facilities;" near the beginning of subdivision (4).

The second 1981 amendment incorporated the change made by the first, and also inserted "facilities for continuing care of the elderly and infirm" in subdivision (4), deleted "and" from the end of subdivision (8), substituted a semicolon for a period at the end of subdivision (9), and added subdivisions (10), (11) and (12).

Session Laws 1981, c. 867, ss. 3-5, provide:

"Sec. 3. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

"Sec. 4. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 5. The provisions of this act are severable and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of this act or of Chapter 131A, amended, of the General Statutes of North Carolina."

## § 131A-4. Additional powers.

The Commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

- (1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including loan agreements and agreements of sale or leases with and mortgages and conveyances to public and nonprofit agencies, persons, firms, corporations, governmental agencies and others;
- (2) To acquire by purchase, the exercise of the power of eminent domain but only in connection with a financing for a public agency, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any health care facilities, upon such terms and at such cost as shall be agreed upon by the owner and the Commission;
- (3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any health care facilities;

- (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed security and moneys received therefrom whether such securities are initially acquired by the Commission or a public or nonprofit agency, and any proceeds derived by the Commission from sales of property, insurance, condemnation awards or other sources;
- (6) To pledge or assign the revenues and receipts from any health care facilities and any agreement of sale or lease or the purchase price payments, rent and income received thereunder;
- (7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any health care facilities, to lend money to any public or nonprofit agency to pay all or any part of the cost of health care facilities, to acquire any federally guaranteed security or any federally insured mortgage note, to lend money to any public or nonprofit agency for the acquisition of any federally guaranteed security and to issue revenue refunding bonds;
- (8) To finance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any health care facilities and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the Commission for such purpose;
- (9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, professional contracts and charges for the use of, or services rendered by, any health care facilities;
- (10) To employ fiscal consultants, consulting engineers, architects, attorneys, health care consultants, appraisers and such other consultants and employees as may be required in the judgment of the Commission and to fix and pay their compensation from funds available to the Commission therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed;
- (11) To conduct studies and surveys respecting the need for health care facilities and their location, financing and construction;
- (12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to health care facilities from federal and State agencies or instrumentalities and to accept, receive and agree to and comply with the terms and conditions governing payments under any health insurance programs;
- (13) To sue and be sued in its own name, plead and be impleaded;
- (14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the Commission deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any public or nonprofit agency to finance or refinance the cost of any health care facilities.

Any power granted to the Commission under the provisions of this Chapter may be exercised by the executive committee of the Commission when the Commission is not in session, except that the executive committee may overrule, reverse or disregard any action of the full Commission. The chairman of the Commission may call meetings of the executive committee at any time. (1975, c. 766, s. 1; 1977, c. 267; 1979, c. 54, ss. 2-6; 1985, c. 723, s. 1.)

**Effect of Amendments.** —

The 1985 amendment, effective July 12, 1985, inserted the language beginning "and to

select and retain subject to approval of the local Government Commission" at the end of subdivision (10).

## Chapter 131B.

### Licensing of Ambulatory Surgical Facilities.

pc.

131B-1 to 131B-9. [Repealed.]

#### Repeal of Chapter. —

The provision of Session Laws 1977, c. 712, amended, tentatively repealing this Chapter

effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

**§ 131B-1 to 131B-9:** Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

**Editor's Note.** — Session Laws 1983, c. 775, s. 5 and 6, provide:

"Sec. 5. Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

"Sec. 6. Chapter 743 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of

the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except Part B of Article 2 of Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, is a severability clause.

## Chapter 131C.

### Charitable Solicitation Licensure Act.

Sec.

- 131C-1. Short title.
- 131C-2. Purpose.
- 131C-3. Definitions.
- 131C-4. Licensure required for charitable solicitation.
- 131C-5. Exemptions.
- 131C-6. Licensure required for professional fund-raising counsel and professional solicitor.
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- 131C-13. Fiscal records.
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- 131C-16. Disclosures upon request.
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- 131C-17.1. Employment of agents regulated
- 131C-17.2. Excessive and unreasonable fund-raising fees prohibited.
- 131C-18. Duty of Secretary of Human sources to investigate.
- 131C-19. Power to compel examination.
- 131C-20. Person examined exempt from production.
- 131C-21. Injunction.
- 131C-21.1. Other remedies.
- 131C-22. Misdemeanor.

#### § 131C-1. Short title.

This Chapter shall be known and may be cited as the "Charitable Solicitations Act." (1981, c. 886, s. 1; 1985, c. 497, s. 1.)

**Editor's Note.** — This Chapter is Part 1A of Article 3 of Chapter 108, as recodified by Session Laws 1981, c. 275, s. 2, effective October 1, 1981, and rewritten by Session Laws 1981, c. 886, s. 1, effective January 1, 1982.

Session Laws 1981, c. 886, s. 2, contains a severability clause.

Session Laws 1985, c. 497, s. 14 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective 60 days after ratification, substituted "Charitable Solicitations Act" for "Charitable Solicitation Licensure Act." The act was ratified June 28, 1985.

#### CASE NOTES

**Constitutionality.** — See *Optimist Club v. Riley*, 563 F. Supp. 847 (E.D.N.C. 1982).

The **Charitable Solicitation Licensure Act** was enacted to protect the general public

and to establish and enforce standards for the use and solicitation of charitable funds. *Optimist Club v. Riley*, 563 F. Supp. 847 (E.D.N.C. 1982).

#### § 131C-2. Purpose.

It is the purpose of this Chapter to protect the general public and public charity in the State of North Carolina and to provide for the establishment and enforcement of basic standards for the soliciting and use of charitable funds in North Carolina. (1981, c. 886, s. 1.)

#### § 131C-3. Definitions.

Unless a different meaning is required by the context, the following terms as used in this Chapter have the meanings hereinafter respectively ascribed to them:

- (1) "Charitable" means for a benevolent purpose, such as environmental, advocacy, health, educational, social welfare, art and humanities or civic purpose.
- (2) "Charitable sales promotion" means an advertising campaign sponsored by a for-profit entity which offers for sale a tangible item or provides a service upon the representation that all or a portion of the purchase price will be donated to a person established for a charitable purpose.
- (3) "Commission" means the Social Services Commission.
- (4) "Contribution" means any promise, gift, bequest, devise or other grant for consideration or otherwise, of any money or property of any kind or value, including the promise to pay, which is wholly or partly induced by a solicitation. The term does not include the fair market value of any merchandise or rights given in return for the contribution. The term does not include the portion of fees, dues and assessments for services or benefits received by the contributor.
- (5) "Department" means the Department of Human Resources.
- (5a) "Fund-raising fees" means the difference determined by subtracting from all moneys raised pursuant to all solicitations on behalf of a particular person established for a charitable purpose the amount actually paid to the person established for a charitable purpose.
- (6) "Fund-raising expenses" means the expenses of all activities that constitute a part of soliciting charitable contributions.
- (7) "Person" means individual, organization, trust, foundation association, partnership, corporation, society, or any other group or combination acting as a unit.
- (8) "Professional fund-raising counsel" means any person who for a fee under a written agreement plans, conducts, manages, carries on or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions, but who actually solicits no contributions as a part of such services. Such counsel does not include any person who only conducts a study to determine the feasibility of undertaking the solicitation of contributions. A salaried employee of the person for whom the contributions are solicited or of its tax exempt parent organization is not included within the term.
- (9) "Professional solicitor" means any person who, for a financial or other consideration, solicits or employs another to solicit contributions. A salaried employee of the person for whom the contributions are solicited or of its tax exempt parent organization and the person for whom the contributions are solicited are not included within the term. An attorney, investment counselor or banker, who advises any person to make a contribution to a person established for a charitable purpose, is not, as the result of such advice, a professional fund-raising counsel or a professional solicitor.
- (10) "Secretary" means the Secretary of the Department of Human Resources.
- (11) "Solicit" and "Solicitation" means the request or appeal, directly or indirectly, for any charitable contribution, including without limitation, the following methods of requesting such contribution:
  - a. Any oral or written request;
  - b. Any announcement to the press, over the radio or television or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;
  - c. The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication, including any

advertisement or listing in a telephone directory, which direct or by implication seeks to obtain public support;

- d. The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose; or where the name of any person established for a charitable purpose is used or referred to in any such appeal as an inducement or reason for making any such sale; or when, where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose. Solicitation occurs when the request is made and at the place the request is received, whether or not the person making the same actually receives any contribution.

(12) "Total support and revenue" means the total of all income received from all sources, including governmental grants. (1981, c. 886, s. 1985, c. 497, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 497, s. 14 is a severability clause. amendment, effective 60 days after ratification, inserted subdivision (5a). The act was ratified June 28, 1985.

**Effect of Amendments.** — The 1985

amendment, effective 60 days after ratification, inserted subdivision (5a). The act was ratified June 28, 1985.

### § 131C-4. Licensure required for charitable solicitation.

(a) Any person who solicits charitable contributions shall apply for and obtain an annual license from the Department of Human Resources. A person who is authorized to solicit on behalf of a licensed or exempt person is not required to obtain a license under this section.

(b) A person other than a professional solicitor or professional fund-raising counsel may solicit charitable contributions after filing the application until the Department notifies him that the application has been denied and he waives or exhausts his administrative remedies under Article 3 of Chapter 150A.

(c) A person who has been denied a license and has waived or exhausted his administrative remedies under Article 3 of Chapter 150A shall not solicit charitable contributions until another application has been filed with the Department and a license issued by the Department. (1981, c. 886, s. 1; 1985, c. 497, s. 3.)

**Editor's Note.** — Session Laws 1985, c. 497, s. 14 is a severability clause.

Article 3 of Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Article 3 of Chapter 150B.

**Effect of Amendments.** — The 1985 amendment, effective 60 days after ratifica-

tion, rewrote subsection (b), which read "A person may solicit charitable contributions after filing the application until the Department notifies him that the application has been denied and he waives or exhausts his administrative remedies under Article 3 of Chapter 150A. The act was ratified June 28, 1985.

### § 131C-5. Exemptions.

(a) Any person who solicits charitable contributions for a religious purpose or on behalf of a person established for a religious purpose shall not be required to apply for a license.

(b) Solicitation of charitable contributions by the federal, State or local government, or any agency thereof, shall not be subject to this Article [Chapter

For purposes of this subsection any volunteer fire department or rescue squad which receives any funds from federal, State, or local government shall be considered an agency thereof.

(d) Any person who receives less than ten thousand dollars (\$10,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser or professional solicitor shall not be required to apply for a license.

(e) Any educational institution, the curriculum of which in whole or in part is registered, approved or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body; any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes; and any foundation or department having an established identity with any of the aforementioned educational institutions shall not be required to apply for a license.

(f) Any hospital licensed pursuant to Article 13A of Chapter 131 of the General Statutes and any foundation or department having an established identity with the aforementioned hospital shall not be required to apply for a license; Provided, however, that the governing board of the hospital authorizes the solicitation and receives an accounting of the funds collected and expended.

(g) Any noncommercial radio or television station shall not be required to apply for a license.

(h) Any public supported community foundation or public supported community trust as defined by G.S. 105-147(16) shall not be required to apply for a license. (1981, c. 886, s. 1; 1983, c. 320, ss. 1, 2.)

**Editor's Note.** — Article 13A of Chapter 131 referred to in subsection (e) of this section, repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984. For the Hospital Licensure Act, see now § 131E-75 et seq.

**Effect of Amendments.** — The 1983 amendment, effective May 17, 1983, deleted "person established solely to operate a" follow-

ing "Any" and inserted "and any foundation or department having an established identity with the aforementioned hospital" in subsection (e) and added subsection (g).

**Legal Periodicals.** — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1088 (1981).

## 131C-6. Licensure required for professional fund-raising counsel and professional solicitor.

Any person who acts as a professional fund-raising counsel or professional solicitor shall apply for and obtain an annual license from the Department, and shall not act as a professional fund-raising counsel or professional solicitor until after obtaining such license. A person who is authorized to act on behalf of a licensed professional fund-raising counsel or a licensed professional solicitor is not required to obtain a license under this section. (1981, c. 886, s. 1; 1985, c. 497, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 497, contains a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective 60 days after ratification, deleted "a" preceding "professional fund-

raising" near the beginning of the first sentence and inserted "and shall not act as a professional fund-raising counsel or professional solicitor until after obtaining such license." The act was ratified June 28, 1985.

### § 131C-7. Contents of application for charitable solicitation licensure.

(a) An application for licensure shall be in writing, verified under oath or affirmation and shall contain:

- (1) The name of the person.
- (2) The address of the person.
- (3) The names and addresses of any chapters, branches or affiliates and other persons which will share in the charitable contributions received from persons in this State.
- (4) The place and date the person was legally established, if applicable, and a reference to any determination of its tax-exempt status under the Internal Revenue Code. In the initial application, true copies shall be submitted of any articles of incorporation or constitution, any bylaws, any tax-exempt status letter from the Internal Revenue Service including any Letter of Determination Status and any Agreements of Affiliation. Subsequent applications shall contain only a change or revocation of these documents.
- (5) The names, addresses and occupations of the officers, directors, trustees, persons who are directly in charge of the fund-raising activities and persons who have custody of the financial records or custody of the contributions and a statement whether any such person has been convicted of a felony.
- (6) A copy of a financial statement in a consolidated report audited by an independent public accountant for the person's immediately preceding fiscal year or, if none, for the present fiscal year or part thereof, provided that if total support and revenue exceeds two hundred fifty thousand dollars (\$250,000) for the fiscal year or part thereof, the report shall be audited by a certified public accountant. Information as to the total support and revenue and all of the fund-raising activities including the balance sheet, kind and amounts of funds raised, costs and expenses incidental thereto, allocation or disbursement of funds raised, changes in fund balances, notes to the audit and the opinion as to the fairness of the presentation by the accountant shall be included. This report shall conform to the accounting and reporting procedures established by the Commission. The Commission shall adopt rules for simplified reporting by persons whose total support and revenue is one hundred thousand dollars (\$100,000) or less.
- (7) A statement indicating whether the person is authorized by any other governmental authority to solicit contributions and whether it or any officer, professional fund-raising counsel or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction.
- (8) A statement indicating whether the person solicits contributions from the public directly or have such done on its behalf by others.
- (9) The location of the person's financial records.
- (10) Method by which solicitation is made, including a statement as to whether such solicitation is conducted by voluntary unpaid solicitors, by professional solicitors, or both; and a narrative description of a promotional plan together with copies of all advertising material which has been prepared for public distribution by any means of communication and the location of all telephone solicitation facilities.
- (11) The names and addresses of any professional fund-raising counsel and professional solicitors who are acting or who have agreed to act on behalf of the organization together with a statement setting forth the terms of the arrangements for salaries, bonuses, commissions

other remuneration with the professional fund-raising counsel and professional solicitors.

- (12) The period of time during which the solicitations are made and, if less than statewide, the area, or areas, in which such solicitation generally takes place.
  - (13) The purposes for which contributions to be solicited are used, the total amount of funds proposed to be raised thereby, and the use or disposition made of the charitable contributions received.
  - (14) The name or names under which the person solicits contributions.
  - (15) A sample copy of the authorization issued to individuals soliciting by means of personal contact in its behalf.
  - (16) The name and address of an agent authorized to accept service of process in this State.
  - (17) A statement indicating whether an agreement exists which permits another to use its name in a charitable sales promotion and a copy of any accounting of the charitable sales promotion.
  - (18) Such other information as may be reasonably required by the Commission for the public interest or for the protection of contributors.
- b) The Department shall be notified in writing of any change in the information contained in the application within 30 days after the change occurs. (1981, c. 886, s. 1.)

### **§131C-8. Contents of application for professional fund-raising counsel or professional solicitor.**

- a) An application for licensure shall be in writing, verified under oath or affirmation and shall contain such information as specified in G.S. 131C-7 as the Commission shall require. In addition, the application shall contain:
- (1) The name and address of all officers, employees and agents;
  - (2) The name and address of all persons who own a ten percent (10%) or more interest in the applicant; and
  - (3) A description of any other business conducted by the applicant or any person who owns a ten percent (10%) or more interest in the applicant.
- b) The Department shall be notified in writing of any change in the information contained in the application within seven days after the change occurs. (1981, c. 886, s. 1.)

### **§131C-9. Fees.**

- (a) An application for licensure under G.S. 131C-4 or 131C-6 shall be accompanied by a fee not to exceed one hundred dollars (\$100.00) in accordance with a fee schedule established by the Commission.
- (b) The fees collected shall be used, in addition to funds appropriated by the General Assembly, for the administration of this Chapter. (1981, c. 886, s. 1.)

### **§131C-10. Bond.**

An applicant under G.S. 131C-6 shall, at the time of making application, file with and have approved by the Department a bond in which the applicant shall be the principal obligor in the sum of twenty thousand dollars (\$20,000) with one or more sureties satisfactory to the Department, whose liability in the aggregate as such sureties will at least equal the said sum; and the applicant shall maintain said bond in effect so long as the license is in effect. The

bond shall run to the State for the use of said bond for any penalties and any person who may have a cause of action against the obligor of the bond or any losses resulting from the obligor's conduct of any and all activities subject to this Chapter or arising out of a violation of this Chapter or any rule of the Commission. (1981, c. 886, s. 1; 1985, c. 497, s. 5.)

**Editor's Note.** — Session Laws 1985, c. 497, s. 14 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective 60 days after ratification, substituted "twenty thousand dollars (\$20,000)" for "ten thousand dollars (\$10,000)" in the first sentence. The act was ratified June 28, 1985.

### § 131C-11. Denial and revocation of license.

(a) The Department shall deny a license applied for under G.S. 131C-4 or 131C-6 or revoke a license after issuance for the following reasons:

- (1) The application is incomplete.
- (2) The application fee has not been paid.
- (3) The application contains one or more false statements.
- (4) The charitable contributions have or are not being applied for the purpose or purposes stated in the application.
- (5) The applicant or licensee has failed to comply with any provisions [of] this Chapter or any rule adopted pursuant to the Chapter.

(b) The Department shall notify the applicant or licensee of its intent to deny or revoke a license. The notification shall contain the reasons for the denial or revocation and shall inform him of his right to correct the matter or to request an administrative hearing within 10 days of the receipt of the notification. The denial or revocation shall become effective 10 days after receipt of the notification unless the matter is corrected or a request for an administrative hearing is received by the Department before the expiration of the 10 days. If a hearing is requested and the denial or revocation is upheld, the denial or revocation shall become effective upon the service of the final administrative decision on the applicant or licensee. (1981, c. 886, s. 1.)

**Legal Periodicals.** — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1088 (1981).

### § 131C-12. Rule-making authority.

The Social Services Commission shall have the authority to adopt rules necessary for the implementation of this Chapter and to prevent false and deceptive statements and conduct in the solicitation of charitable contributions. (1981, c. 886, s. 1.)

### § 131C-13. Fiscal records.

Any person subject to licensure under this Chapter shall maintain accurate fiscal records in accordance with rules adopted by the Commission. (1981, c. 886, s. 1.)

### 31C-14. Written contracts; accounting.

a) Any contract between a professional fund-raising counsel or professional solicitor and a person established for a charitable purpose shall be in writing and shall be filed with the Department within 10 days after the contract is entered into.

b) A professional solicitor shall file with the Department, within 20 days from the conclusion of any solicitation, an accounting of all funds received, pledged and disbursed. The accounting shall be signed and verified under oath or affirmation by the professional solicitor and an authorized representative of the person established for a charitable purpose.

c) If under any contract between a professional fund-raising counsel or professional solicitor and a person established for a charitable purpose there is possibility that such person might ultimately receive less than fifty percent (50%) of the gross receipts of a solicitation, then that fact must be specifically and prominently disclosed to such person in the written contract and orally before execution of the contract, by the professional fund-raising counsel or professional solicitor. (1981, c. 886, s. 1; 1985, c. 497, s. 6.)

**Solicitor's Note.** — Session Laws 1985, c. 497, amendment, effective 60 days after ratification, added subsection (c). The act was ratified is a severability clause.

**Effect of Amendments.** — The 1985 June 28, 1985.

### 31C-15. Reciprocal agreements.

The Department may enter into reciprocal agreements with other states or the federal government in order to fulfill its duties under this Chapter. (1981, c. 886, s. 1.)

### 31C-16. Disclosures upon request.

Any person subject to licensure under this Chapter, or his agent for service of process if the person subject to licensure is not a resident of North Carolina, shall disclose in writing his percentage of fund-raising expenses and the purpose of the organization, upon receipt of a written or oral request from the Department or any citizen of North Carolina. (1981, c. 886, s. 1; 1981 (Reg. Sess., 1982), c. 1268; 1985 c. 497, s. 7.)

**Solicitor's Note.** — Session Laws 1985, c. 497, amendment, effective 60 days after ratification, rewrote the catchline, which formerly read "Disclosure." The act was ratified is a severability clause.

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment rewrote this section to the extent that a detailed comparison is not critical.

The 1985 amendment, effective 60 days after ratification, rewrote the catchline, which formerly read "Disclosure." The act was ratified June 28, 1985.

#### 31C-16.1. Mandatory disclosures.

During any solicitation and before requesting or appealing either directly or indirectly for any charitable contribution a professional solicitor shall disclose to the person solicited:

- (1) His name; and
- (2) The name of the professional solicitor or professional fund-raising counsel by whom he is employed and the address of his employer; and
- (3) The average of the percentage of gross receipts actually paid to the persons established for a charitable purpose by the professional fund-raising counsel or professional solicitor conducting the solicitation for

all charitable sales promotions conducted in this State by that professional fund-raising counsel or professional solicitor for the past 12 months, or for all completed charitable sales promotions where the professional fund-raising counsel or professional solicitor has been soliciting funds for less than 12 months. (1985, c. 497, s. 8.)

**Editor's Note.** — Session Laws 1985, c. 497, s. 13 makes this section effective 60 days after ratification. The act was ratified June 28, 1985.

Session Laws 1985, c. 497, s. 14 is a severability clause.

**§ 131C-17. Prohibited acts.**

No person who solicits charitable contributions shall:

- (1) Use the fact of licensure as an endorsement by the State;
- (2) Use the name "police," "law enforcement," "rescue squad," "firemer" or "firefighter" unless a bona fide police, law-enforcement, rescue squad or fire department authorized its use in writing;
- (3) Misrepresent or mislead anyone to believe that the contribution will be used for a charitable purpose if he has reason to believe such is not the fact;
- (4) Misrepresent or mislead anyone to believe that another person sponsors or endorses the solicitation unless such person has consented in writing to the use of his name for such purpose;
- (5) Misrepresent or mislead anyone to believe that the contribution is solicited on the behalf of anyone other than the person for whose benefit the contribution is solicited; or
- (6) Spend the contributions solicited for purposes other than those stated in the application under G.S. 131C-4 or if not subject to licensure, for purposes other than those stated at the time of the solicitation. (1985, c. 886, s. 1.)

**§ 131C-17.1. Employment of agents regulated.**

(a) No professional solicitor or professional fund-raising counsel shall solicit charitable contributions through the efforts, either direct or indirect, of an independent contractor or any other person who is not the employee of the professional solicitor or professional fund-raising counsel.

(b) A professional solicitor or professional fund-raising counsel is responsible and liable for the acts of his employees in the solicitation, either direct or indirect, of charitable contributions. For purposes of this subsection, a professional solicitor or professional fund-raising counsel is deemed to be the employer of all persons acting under his license. (1985, c. 497, s. 9.)

**Editor's Note.** — Session Laws 1985, c. 497, s. 13 makes this section effective 60 days after ratification. The act was ratified June 28, 1985.

Session Laws 1985, c. 497, s. 14 is a severability clause.

**§ 131C-17.2. Excessive and unreasonable fund-raising fees prohibited.**

(a) No professional fund-raising counsel or professional solicitor who contracts to raise funds for a person established for a charitable purpose may charge such person established for a charitable purpose an excessive and unreasonable fund-raising fee for raising such funds.

(b) For purposes of this section a fund-raising fee of twenty percent (20%) or less of the gross receipts of all solicitations on behalf of a particular person established for a charitable purpose is deemed to be reasonable and not excessive.

(c) For purposes of this section a fund-raising fee greater than twenty percent (20%) but less than thirty-five percent (35%) of the gross receipts of all solicitations on behalf of a particular person established for a charitable purpose is excessive and unreasonable if the party challenging the fund-raising fee also proves that the solicitation does not involve the dissemination of information, discussion, or advocacy relating to public issues as directed by the person established for a charitable purpose which is to benefit from the solicitation.

(d) For purposes of this section only, a fund-raising fee of thirty-five percent (35%) or more of the gross receipts of all solicitations on behalf of a particular person established for a charitable purpose may be excessive and unreasonable without further evidence of any other fact by the party challenging the fund-raising fee. The professional fund-raising counsel or professional solicitor may successfully defend the fund-raising fee by proving that the level of the fee charged was necessary:

- (1) Because of the dissemination of information, discussion, or advocacy relating to public issues as directed by the person established for a charitable purpose which is to benefit from the solicitation; or
- (2) Because otherwise ability of the person established for a charitable purpose which is to benefit from the solicitations to raise money or communicate its ideas, opinions, and positions to the public would be significantly diminished.

(e) Where the fund-raising fee charged by a professional fund-raising counsel or a professional solicitor is determined to be excessive and unreasonable, the fact finder making that determination shall then determine a reasonable fee under the circumstances. The difference between the fee charged and the reasonable fee as determined by the fact finder shall be paid by professional fund-raising counsel or professional solicitor to the person established for a charitable purpose which initially was charged the excessive and unreasonable fee. (1985, c. 497, s. 10.)

**Editor's Note.** — Session Laws 1985, c. 497, §13 makes this section effective 60 days after publication. The act was ratified June 28, 1985.

Session Laws 1985, c. 497, s. 14 is a severability clause.

### **§ 131C-18. Duty of Secretary of Human Resources to investigate.**

The Secretary of Human Resources shall have the power, and it shall be his duty, to investigate, from time to time, the activities of all persons soliciting charitable contributions in this State, which are or may in his opinion be subject to this Chapter, or which have or may have violated the provisions of this Chapter. Such investigation shall be with a view of ascertaining whether this Chapter is being or has been violated by any such person, and if so, in that respect, with the purpose of acquiring such information as may be necessary to enable him to grant or deny an application for licensure, to revoke a license, to seek an injunction against any person, or to take any other action pursuant to this Chapter. (1981, c. 886, s. 1; 1985, c. 497, s. 11.)

**Editor's Note.** — Session Laws 1985, c. 497, s. 14 is a severability clause. amendment, effective 60 days after ratification, rewrote this section. The act was ratified June 28, 1985.

**Effect of Amendments.** — The 1985 June 28, 1985.

### § 131C-19. Power to compel examination.

In performing the duty required in G.S. 131C-18, the Secretary shall have the power, at all times, to require the officers, agents or employees of a person soliciting charitable contributions in this State and all other persons having knowledge with respect to the matters and activities of such person to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such persons, or which are in any way connected with the business thereof; and the Secretary is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have the right to apply to any justice or judge of the appellate or superior court divisions, after five days notice of such application, for an order on any such person he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge. (1981, c. 886, s. 1.)

### § 131C-20. Person examined exempt from prosecution.

No individual examined, as provided in G.S. 131C-19, shall be subject to indictment, criminal prosecution, criminal punishment or criminal penalty on account of or on account of anything disclosed by him upon examination, and full immunity from criminal prosecution and criminal punishment by reason of or on account of anything so disclosed is hereby extended to all individuals so examined. The immunity herein granted shall not apply to civil actions. (1981, c. 886, s. 1.)

### § 131C-21. Injunction.

If any person shall violate or threaten to violate any provision of this Chapter, the Secretary of Human Resources may institute an action in the Superior Court of Wake County for injunctive relief against such violation or threatened violation. (1981, c. 886, s. 1.)

#### § 131C-21.1. Other remedies.

(a) The solicitation of charitable contributions by a professional solicitor or professional fund-raising counsel or by an agent, employee, or servant thereof without making the disclosures required by G.S. 131C-16, and G.S. 131C-16 shall be considered an unfair or deceptive trade practice, as prohibited by G.S. 75-1.1, and any person solicited, to whom these disclosures were not made and who made a charitable contribution in response to such solicitation shall have a right of action on account of such injury done under G.S. 75-16 and G.S. 75-16.1 against the offending professional solicitor or professional fund-raising counsel. There is no right of action under this section against a person established for a charitable purpose. In any action under this subsection, the measure of damages shall be the amount of the contribution made by the person solicited.

(b) The Attorney General may bring a civil action as provided in Article 7 of Chapter 75 in order to protect the public from the unfair trade practice or practices described in subsection (a). In prosecuting this civil action, the A

Attorney General may make use of any and all powers, remedies, and civil penalties provided under Article 1 of Chapter 75.

(c) The Secretary of Human Resources may on his own motion commence a hearing to determine whether a professional solicitor or professional fund-raising counsel has charged a person established for a charitable purpose a fund-raising fee which is excessive and unreasonable. If the Secretary or his designated hearing officer determines the fund-raising fee to be unreasonable and excessive, then it shall determine the extent of a reasonable and nonexcessive fee, and shall order the professional solicitor or professional fund-raising counsel to pay the difference to the person established for a charitable purpose who was charged the excessive and unreasonable fund-raising fee. The Secretary is hereby empowered to issue such orders in connection with these hearings. These hearings shall be governed by the Administrative Procedure Act, Chapter 150A of the General Statutes.

(d) The Secretary of Human Resources may commence the proceedings provided for in subsection (c) where he is requested to do so in writing by the chief executive officer of any person established for a charitable purpose within 60 days after the last payment of money to the person established for a charitable purpose by the professional fund-raising counsel or professional solicitor. (1985, c. 497, s. 12.)

**Editor's Note.** — Session Laws 1985, c. 497, § 13 makes this section effective 60 days after ratification. The act was ratified June 28, 1985.

Session Laws 1985, c. 497, s. 14 is a severability clause.

## § 131C-22. Misdemeanor.

Any person who willfully violates any provision of this Chapter shall be guilty of a misdemeanor. (1981, c. 886, s. 1.)

**Chapter 131D.**  
**Inspection and Licensing of Facilities.**

**Article 1.**

**Licensing of Facilities.**

- Sec.  
131D-1. Licensing of maternity homes.  
131D-2. Licensing of domiciliary homes for the aged and disabled.  
131D-3. Domiciliary care facilities; reporting requirements.  
131D-4. Domiciliary care facilities; uniform chart of accounts.  
131D-5. [Repealed.]  
131D-6. Certification of adult day care programs; purpose; definition; penalty.  
131D-7 to 131D-10. [Reserved.]

**Article 1A.**

**Control Over Child Placing and Child Care.**

- 131D-10.1. Purpose.  
131D-10.2. Definitions.  
131D-10.3. Licensure required.  
131D-10.4. Exemptions.  
131D-10.5. Powers and duties of the Commission.  
131D-10.6. Powers and duties of the Department.  
131D-10.7. Penalties.  
131D-10.8. Injunction.  
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**Article 2.**

**Local Confinement Facilities.**

- Sec.  
131D-11. Inspection.  
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**Article 3.**

**Domiciliary Home Residents' Bill of Rights.**

- 131D-19. Legislative intent.  
131D-20. Definitions.  
131D-21. Declaration of residents' rights.  
131D-21.1. Peer review.  
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131D-28. Civil action.  
131D-29. Revocation of license.  
131D-30. Penalties; remedies.  
131D-31. Domiciliary home community advisory committees.  
131D-32. Functions of domiciliary home community advisory committees.  
131D-33. [Repealed.]

**ARTICLE 1.**

*Licensing of Facilities.*

**§ 131D-1. Licensing of maternity homes.**

(a) The Department of Human Resources shall inspect and license all maternity homes established in the State under such rules and regulations as the Social Services Commission may adopt.

(b) Facilities subject to the provisions of this section shall include:

- (1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and
- (2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 233, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S. s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 68; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, 138; 1981, c. 275, s. 2.)

**Editor's Note.** — This Article is Part 2 of Article 3 of Chapter 108, as recodified pursuant to Session Laws 1981, c. 275, s. 2, effective Oct. 1, 1981. Session Laws 1981, c. 275, s. 10, provides: "The provisions of Chapter 108 shall remain in full force and effect from the date of

ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108."

Session Laws 1981, c. 275, s. 9, contains a severability clause.

## 131D-2. Licensing of domiciliary homes for the aged and disabled.

(a) The following definitions will apply in the interpretation of this section:

- (1) "Abuse" means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of a domiciliary home of services which are necessary to maintain mental and physical health.
- (2) "Developmentally disabled adult" means a person who has attained the age of 18 years and who has a developmental disability defined as a severe, chronic disability of a person which:
  - a. Is attributed 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.
- (3) "Domiciliary home" means any facility, by whatever name it is called, which provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age or disability. Medical care at a domiciliary home is only occasional or incidental, such as may be given in the home of any individual or family, but medication is administered by designated staff of the home. Personal care given in a domiciliary home includes direct assistance, by designated staff, to residents in personal grooming, bathing, dressing, feeding, shopping, laundering clothes, handling personal finances, arranging transportation, scheduling medical or business appointments, as well as attending to any personal needs residents may be incapable of or unable to attend for themselves. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 131E-102. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.
- (4) "Exploitation" means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.
- (5) "Family care home" means a domiciliary home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.

- (6) "Group home for developmentally disabled adults" means a domiciliary home which has two to nine developmentally disabled adult residents.
- (7) "Home for the aged and disabled" means a domiciliary home which has seven or more residents.
- (8) "Neglect" means the failure to provide the services necessary to maintain a resident's physical or mental health.

(b) Licensure; inspections. —

- (1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all domiciliary homes for persons who are aged or mentally or physically disabled except those exempt in subsection (d) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder.
- (2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a misdemeanor, and upon conviction shall be punishable by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.
- (3) In addition, the Department may summarily suspend a license pursuant to G.S. 150A-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home.
- (4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):
  - a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and
  - b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives; unless the resident objects in writing to review of his records or disclosure of such information.

The facility, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

The Department shall not disclose:

- a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or
- b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

(c) The following facilities are exempt from this section and shall not be required to obtain a license hereunder:

- (1) Those which care for one person only;

- (2) Those which care for two or more persons, all of whom are related or connected by blood or by marriage to the operator of the facility;
  - (3) Those which make no charges for care, either directly or indirectly;
  - (4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.
- (d) This section does not apply to any institution which is established, maintained or operated by any unit of government, by any commercial inn or hotel, or to any facility licensed by the Medical Care Commission under the provisions of G.S. 131E-102, entitled "Licensure requirements." If any nursing home licensed under G.S. 131E-102 also functions as a domiciliary home, then the domiciliary home component must comply with regulations adopted by the Medical Care Commission.
- (e) The Department of Human Resources shall provide the method of evaluation of residents in domiciliary homes in order to determine when any of those residents are in need of the professional medical and nursing care provided in licensed nursing homes.
- (f) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.
- (g) In order for a domiciliary home to maintain its license, it shall not hinder or interfere with the proper performance of duty of a lawfully appointed community advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

(h) Suspension of admissions to domiciliary home:

- (1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to a domiciliary home, where the conditions of the domiciliary home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.
- (2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:
  - a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and
  - b. The character and degree of impact of the conditions at the home on the health or safety of its residents.
- (3) The Secretary of Human Resources shall adopt rules to implement this subsection.

(i) Notwithstanding the existence or pursuit of any other remedy, the Department of Human Resources may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a domiciliary home without a license. Such action shall be instituted in the superior court of the county in which any unlicensed activity has occurred or is occurring.

If any person shall hinder the proper performance of duty of the Secretary or his representative in carrying out this section, the Secretary may institute an action in the superior court of the county in which the hindrance has occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

Actions under this subsection shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. 1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c.

175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1958, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 128, 138; 1975, c. 729; 1981, c. 275, s. 2; c. 544, s. 1; 1983, c. 824, ss. 1-12.

**Editor's Note.** — Section 150A-3(c), referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as § 150B-3(c).

**Effect of Amendments.** — Session Laws 1981, c. 544, s. 1, effective Jan. 1, 1982, rewrote this section.

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, substituted "six" for "five" in the first sentence of subdivision (a)(5).

Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 20.1, provides that the Department of Human Resources shall not accept applications received after July 1, 1982, or before February

1, 1983, for initial licensure of a home for the aged and disabled as defined by G.S. 131D-2(a)(7) or additional facilities, including beds for any such home. Section 20.2A provides, however, that nothing in s. 20.1 shall apply to a facility owned or operated by an organization that is exempt from taxation under section 501(C)(3) of the Internal Revenue Code. Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 81, contains a severability clause.

The 1983 amendment, effective Jan. 1, 1983, rewrote this section, adding subsections (a)(h), and (i). The act also amended the section catchline.

### § 131D-3. Domiciliary care facilities; reporting requirements.

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a cost and revenue reporting form for use by all domiciliary care facilities. This form shall be based on the uniform chart of accounts required in G.S. 131D-4. All facilities that receive funds under the State-County Special Assistance for Adults Program shall report total costs and revenues to the Department of Human Resources by March 1 of each year. Facilities licensed under the provisions of G.S. 131D-2(a)(5), facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority, and combination facilities providing either intermediate or skilled care in addition to domiciliary care shall not be required to comply with the reporting requirements in this section. All other facilities shall be required to permit access to any requested financial records by representatives of the Department of Human Resources for audit purposes, effective July 1, 1981.

The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

- (1) Seek a court order to enforce compliance;
- (2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150A, the Administrative Procedure Act. (1981, c. 859, s. 23.2; 1983, c. 611, s. 1; c. 761, s. 35; 1985, c. 479, s. 108.)

**Editor's Note.** — Session Laws 1981, c. 859, s. 98, makes this section effective July 1, 1981.

Session Laws 1981, c. 859, s. 97 contains a severability clause.

Session Laws 1983, c. 761, s. 259, is a severability clause.

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

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

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s.

1, effective January 1, 1986, and has been recodified as Chapter 150B.

**Effect of Amendments.** — The first 1983 amendment, effective June 24, 1983, inserted "facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority" in the fourth sentence of the first paragraph.

The second 1983 amendment, effective July 15, 1983, substituted "Facilities licensed under the provisions of G.S. 131D-2(a)(5)" for "Facilities licensed for five beds or less" at the beginning of the fourth sentence of the first paragraph.

The 1985 amendment, effective July 1, 1985, substituted "March 1 of each year" for "February 1, 1984, for the 1983 calendar year and

annually thereafter" at the end of the third sentence of the first paragraph.

### **131D-4. Domiciliary care facilities; uniform chart of accounts.**

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a uniform chart of accounts for use by all domiciliary care facilities funded totally or in part through the State-County Special Assistance for Adults Program. The Division shall consult with representatives from the domiciliary care industry in developing the new accounting system. The Division shall require that domiciliary care facilities covered by this section to implement this chart of accounts by January 1, 1983. Facilities licensed under the provisions of G.S. 131D-2(a)(5), facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority, and combination facilities providing either intermediate or skilled care in addition to domiciliary care, shall not be required to comply with this section.

The Department may take either or both of the following actions to enforce compliance by a facility with this section or to punish noncompliance:

- (1) Seek a court order to enforce compliance;
- (2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150A, the Administrative Procedure Act. (1981, c. 859, s. 23.3; 1983, c. 611, s. 2; c. 761, s. 35.)

**Editor's Note.** — Session Laws 1981, c. 859, § 98, makes this section effective July 1, 1981. Session Laws 1981, c. 859, s. 97 contains a severability clause.

Session Laws 1983, c. 761, s. 259, is a severability clause.

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

**Effect of Amendments.** — The first 1983

amendment, effective June 24, 1983, inserted "facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority" in the fourth sentence of the first paragraph.

The second 1983 amendment, effective July 15, 1983, substituted "Facilities licensed under the provisions of G.S. 131D-2(a)(5)" for "Facilities licensed for five beds or less" at the beginning of the fourth sentence of the first paragraph.

**131D-5:** Repealed by Session Laws 1983, c. 637, s. 1, effective October 1, 1983.

### **131D-6. Certification of adult day care programs; purpose; definition; penalty.**

(a) It is the policy of this State to enable people who would otherwise need full-time care away from their own residences to remain in their residences as long as possible and to enjoy as much independence as possible. One of the programs that permits adults to remain in their residences and with their families is adult day care.

(b) As used in this section "adult day care program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled. The Department of Human Resources shall annually inspect and certify all adult day care programs, under rules adopted by the Social Services Commission. The Social Services Commission shall adopt rules to protect the

health, safety, and welfare of persons in adult day care programs. These rules shall include minimum standards relating to management of the program, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities.

The Department of Human Resources shall enforce the rules of the Social Services Commission.

(c) The Secretary may impose a civil penalty not to exceed one hundred dollars (\$100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

(c1) Any person, firm, agency, or corporation that harms or willfully neglects a person under its care is guilty of a misdemeanor.

(d) The following programs are exempted from the provisions of this section:

- (1) Those that care for three people or less;
- (2) Those that care for two or more persons, all of whom are related by blood or marriage to the operator of the facility;
- (3) Those that are required by other statutes to be licensed by the Department of Human Resources. (1985, c. 349, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 349, s. 2 makes this section effective January 1, 1986.

§§ 131D-7 to 131D-10: Reserved for future codification purposes.

## ARTICLE 1A.

### *Control Over Child Placing and Child Care.*

#### § 131D-10.1. Purpose.

It is the policy of this State to strengthen and preserve the family as a unit. When a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family.

The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families. (1983, c. 637, s. 2.)

**Editor's Note.** — Session Laws 1983, c. 637, s. 4, makes this Article effective Oct. 1, 1983.

### OPINIONS OF ATTORNEY GENERAL

This section applies to a facility giving full-time care to neglected, dependent, abandoned, destitute, orphaned or delinquent children and operating as a school. See opinion of

Attorney General to Sarah T. Morrow, M.D., M.P.H., Secretary, Department of Human Resources, 53 N.C.A.G. 48 (1985).

### § 131D-10.2. Definitions.

For purposes of this Article, unless the context clearly implies otherwise:

- (1) "Adoption" means the act of creating a legal relationship between parent and child where it did not exist genetically.
- (2) "Adoptive Home" means a family home approved by a child placing agency to accept a child for adoption.
- (3) "Child" means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.
- (4) "Child Placing Agency" means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.
- (5) "Children's Camp" means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.
- (6) "Commission" means the Commission for Social Services.
- (7) "Department" means the Department of Human Resources.
- (8) "Family Foster Home" means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.
- (9) "Foster Care" means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.
- (10) "Person" means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other organization or enterprise doing business in this State, whether or not for profit.
- (11) "Primarily Educational Institution" means any institution which operates one or more scholastic or vocational education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.
- (12) "Provisional License" means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.
- (13) "Residential Child-Care Facility" means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions,

group homes, and children's camps which provide foster care. (1983 c. 637, s. 2.)

### § 131D-10.3. Licensure required.

(a) No person shall operate, establish or provide foster care for children or receive and place children in residential care facilities, family foster homes, or adoptive homes without first applying for a license to the Department and submitting the required information on application forms provided by the Department.

(b) Persons licensed or seeking a license under this Article shall permit the Department access to premises and information required to determine whether the person is in compliance with licensing rules of the Commission.

(c) Persons licensed pursuant to this Article shall be periodically reviewed by the Department to determine whether they comply with Commission rules and whether licensure shall continue.

(d) This Article shall apply to all persons intending to organize, develop or provide foster care for children or receive and place children in residential child-care facilities, family foster homes or adoptive homes irrespective of such persons having applied for or obtained a certification, registration or permit to carry on work not controlled by this Article except persons exempted in G.S. 131D-10.4.

(e) Unless revoked or modified to a provisional or suspended status, the terms of a license issued by the Department shall be in force for a period not to exceed 24 months from the date of issuance under rules adopted by the Commission.

(f) Persons licensed or seeking a license who are temporarily unable to comply with a rule or rules may be granted a provisional license. The provisional license can be issued for a period not to exceed six months. The noncompliance with a rule or rules shall not present an immediate threat to the health and safety of the children, and the person shall have a plan approved by the Department to correct the area(s) of noncompliance within the provisional period. A provisional license for an additional period of time to meet the same area(s) of noncompliance shall not be issued.

(g) In accordance with Commission rules, a person may submit to the Department documentation of compliance with the standards of a nationally recognized accrediting body, and the Department on the basis of such accreditation may deem the person in compliance with one or more Commission licensing rules. (1983, c. 637, s. 2.)

### § 131D-10.4. Exemptions.

This Article shall not apply to:

- (1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars (\$60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;
- (2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;
- (3) Secure detention facilities as specified in Article 5 of Chapter 134A of the General Statutes;

- (4) Licensable facilities subject to the rules of the Commission for Mental Health, Mental Retardation and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;
- (5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;
- (6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or
- (7) Individuals who are related by blood, marriage, or adoption to the child. (1983, c. 637, s. 2; 1985, c. 589, s. 39.)

**Editor's Note.** — Session Laws 1985, c. 589, § 35 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, substi-

tuted "Licensable facilities" for "Treatment programs" and "Article 2 of Chapter 122C" for "Article 1A of Chapter 122" in subdivision (4).

### § 131D-10.5. Powers and duties of the Commission.

In addition to other powers and duties prescribed by law, the Commission shall exercise the following powers and duties:

- (1) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (2) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article;
- (3) Adopt rules governing procedures to appeal Department decisions pursuant to this Article granting, denying, suspending or revoking licenses; and
- (4) Adopt criteria for waiver of licensing rules adopted pursuant to this Article. (1983, c. 637, s. 2.)

### § 131D-10.6. Powers and duties of the Department.

In addition to other powers and duties prescribed by law, the Department shall exercise the following powers and duties:

- (1) Investigate applicants for licensure to determine whether they are in compliance with licensing rules adopted by the Commission and the provisions of this Article.
- (2) Grant a license when an investigation shows compliance with this Article and Commission rules. The license shall be valid for a period not to exceed 24 months as specified by Commission rules and may be revoked or placed in suspended or provisional status sooner if the Department finds that licensure rules are not being met or upon a finding that the health, safety or welfare of children is threatened.
- (3) Administer and enforce the provisions of this Article and the rules of the Commission.
- (4) Appoint hearing officers to conduct appeals pursuant to this Article.
- (5) Prescribe the form in which application for licensure shall be submitted.
- (6) Inspect facilities and obtain records, documents and other information necessary to determine compliance with the provisions of this Article and Commission rules.
- (7) Grant, deny, suspend or revoke a license or a provisional license, in accordance with Commission rules.
- (8) Grant a waiver for good cause to Commission rules that do not affect the health, safety, or welfare of children in facilities subject to licen-

sure under this Article, in accordance with Commission rules. (1983, c. 637, s. 2.)

### § 131D-10.7. Penalties.

Any person who establishes or provides foster care for children or who receives and places children in residential child-care facilities, family foster homes or adoptive homes without a license shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense. (1983, c. 637, s. 2.)

### § 131D-10.8. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a facility operating without a license or in a manner that threatens the health, safety or welfare of the individuals in the facility.

(b) If any person shall interfere with the proper performance or duty of the Department in carrying out this Article, the Department may institute an action in the superior court of the county in which the interference occurred for injunctive relief against the continued interference, irrespective of any other remedies at law. (1983, c. 637, s. 2.)

### § 131D-10.9. Appeals.

All procedures arising out of this Article, including all notification, hearing and appeal procedures, shall be governed by the appropriate provisions of Chapter 150A of the Administrative Procedure Act. (1983, c. 637, s. 2.)

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

## ARTICLE 2.

### *Local Confinement Facilities.*

### § 131D-11. Inspection.

The Department of Human Resources shall, as authorized by G.S. 153-51, inspect regularly all local confinement facilities as defined by G.S. 153-50(4) to determine compliance with the minimum standards for local confinement facilities adopted by the Social Services Commission. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2.)

**Cross References.** — As to detention of juveniles in holdover facilities inspected pursuant to this Part and § 153A-222 where no juvenile detention home is available, see § 7A-576.

**Editor's Note.** — This Article is Part 3 of Article 3 of Chapter 108, as recodified pursuant to Session Laws 1981, c. 275, s. 2, effective October 1, 1981. Session Laws 1981, c. 275, s. 10 provides: "The provisions of Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any

igation pending under the existing provisions of Chapter 108.

Session Laws 1981, c. 275, s. 9, contains a severability clause.

Sections 153-50 and 153-51, referred to in this section, were repealed by Session Laws 1973, c. 822.

### § 131D-12. Approval of new facilities.

The Department of Human Resources shall, as authorized by G.S. 153-51, approve the plans for the construction or major modification of any local confinement facility. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 70, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2.)

**Editor's Note.** — Section 153-51, referred to in this section, was repealed by Session Laws 1973, c. 822.

### § 131D-13. Failure to provide information.

If the board of commissioners of any county, the chief of police of any municipality, or any officer or employee of any local confinement facility shall fail or refuse to furnish to the Department of Human Resources any information about any local confinement facility which is required by law to be furnished, or shall fail to allow the inspection of any such facility, such board or individual shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1917, c. 391, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2.)

§ 131D-14 to 131D-18: Reserved for future codification purposes.

## ARTICLE 3.

### *Domiciliary Home Residents' Bill of Rights.*

#### § 131D-19. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the residents in domiciliary homes to include family care homes, homes for the aged and disabled, and group homes for developmentally disabled adults licensed pursuant to G.S. 131D-2. It is the intent of the General Assembly that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the resident in the fullest possible exercise of these rights. (1981, c. 923, s. 1.)

**Editor's Note.** — Session Laws 1981, c. 923, § 3, makes this Article effective Oct. 1, 1981, except for §§ 131D-31 through 131D-33, which became effective January 1, 1982.

#### § 131D-20. Definitions.

As used in this Article, the following terms have the meanings specified:

(1) "Abuse" means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff

of a domiciliary home of services which are necessary to maintain mental and physical health.

- (2) "Domiciliary home" means any facility, by whatever name it is called which provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age or disability. Medical care at a domiciliary home is only occasional or incidental, such as may be given in the home of any individual or family, but medication is administered by designated staff of the home. Personal care given in a domiciliary home includes direct assistance, by designated staff, to residents' personal grooming, bathing, dressing, feeding, shopping, laundering clothes, handling personal finances, arranging transportation, scheduling medical or business appointments, as well as attending to any personal needs residents may be incapable of or unable to attend for themselves. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 131E-102. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.
- (3) "Exploitation" means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.
- (4) "Facility" means a domiciliary home licensed pursuant to G.S. 131D-2.
- (5) "Family care home" means a domiciliary home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.
- (6) "Group home for developmentally disabled adults" means a domiciliary home which has two to nine developmentally disabled adult residents.
- (7) "Home for the aged and disabled" means a domiciliary home which has seven or more residents.
- (8) "Neglect" means the failure to provide the services necessary to maintain the physical or mental health of a resident.
- (9) "Resident" means an aged or disabled person who has been admitted to a facility. (1981, c. 923, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2C; 1983, c. 824, ss. 2, 3, 5, 7, 8.)

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, substituted "six" for "five" in the first sentence of subdivision (5).

Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 81, contains a severability clause.

The 1983 amendment, effective Jan. 1, 1984, rewrote subdivisions (1), (2), and (3), deleted the comma between "direct" and "exterior" in the second sentence of subdivision (5), and substituted "seven" for "six" in subdivision (7).

## § 131D-21. Declaration of residents' rights.

Each facility shall treat its residents in accordance with the provisions of this Article. Every resident shall have the following rights:

- (1) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.
- (2) To receive care and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.

- (3) To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.
- (4) To be free of mental and physical abuse, neglect, and exploitation.
- (5) Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical need.
- (6) To have his or her personal and medical records kept confidential and not disclosed without the written consent of the individual or guardian, which consent shall specify to whom the disclosure may be made, except as required by applicable State or federal statute or regulation or by third party contract. It is not the intent of this section to prohibit access to medical records by the treating physician except when the individual objects in writing. Records may also be disclosed without the written consent of the individual to agencies, institutions or individuals which are providing emergency medical services to the individual. Disclosure of information shall be limited to that which is necessary to meet the emergency.
- (7) To receive a reasonable response to his or her requests from the facility administrator and staff.
- (8) To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own or their initiative at any reasonable hour.
- (9) To have access at any reasonable hour to a telephone where he or she may speak privately.
- (10) To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery, and postage.
- (11) To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.
- (12) To have and use his or her own possessions where reasonable and have an accessible, lockable space provided for security of personal valuables. This space shall be accessible only to the resident, the administrator, or supervisor-in-charge.
- (13) To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.
- (14) To be notified when the facility is issued a provisional license or notice of revocation of license by the North Carolina Department of Human Resources and the basis on which the provisional license or notice of revocation of license was issued. The resident's responsible family member or guardian shall also be notified.
- (15) To have freedom to participate by choice in accessible community activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.
- (16) To receive upon admission to the facility a copy of this section. (1981, c. 923, s. 1; 1983, c. 824, s. 13; 1983 (Reg. Sess., 1984), c. 1076.)

**Effect of Amendments.** — The 1983 amendment, effective Jan. 1, 1984, inserted "or notice of revocation of license" in two places in the first sentence of subdivision (14).

The 1983 (Reg. Sess., 1984) amendment, effective July 3, 1984, rewrote subdivision (6), which read "To have his or her personal and medical records kept confidential and not dis-

closed if he or she objects in writing unless required by State or federal law or regulation.”

### § 131D-21.1. Peer review.

It is not a violation of G.S. 131D-21(6) for medical records to be disclosed to a private peer review committee if:

- (1) The peer review committee has been approved by the Department;
- (2) The purposes of the peer review committee are to:
  - a. Survey facilities to verify a high level of quality care through evaluation and peer assistance;
  - b. Resolve written complaints in a responsible and professional manner; and
  - c. Develop a basic knowledge of care and standards useful in establishing a means of measuring quality of care; and
- (3) The peer review committee keeps such records confidential. (1983, c. 816, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 816, s. 2, makes this section effective October 1, 1983.

### § 131D-22. Transfer of management responsibilities.

Any representative authorized in writing by a resident to manage his financial affairs, any resident's legal guardian as appointed by a court, or any resident's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by this Article, perform any other act, and receive or furnish any information required by this Article. (1981, c. 923, s. 1; 1983, c. 824, s. 14.)

**Effect of Amendments.** — The 1983 amendment, effective Jan. 1, 1984, rewrote this section. The act also amended the section catchline.

### § 131D-23. No waiver of rights.

No facility may require a resident to waive the rights specified in G.S. 131D-21. (1981, c. 923, s. 1.)

### § 131D-24. Notice to resident.

(a) A copy of the declaration of the residents' rights shall be posted conspicuously in a public place in all facilities. A copy of the declaration of residents' rights shall be furnished to the resident upon admittance to the facility, to all residents currently residing in the facility, to a representative payee of the resident, or to any person designated in G.S. 131D-22, and if requested to the resident's responsible family member or guardian. Receipts for the declaration of rights signed by these persons shall be retained in the facility's files. The declaration of rights shall be included as part of the facility's admission policies and procedures.

(b) The address and telephone number of the section in the Department of Human Resources responsible for the enforcement of the provisions of this Article shall be posted and distributed with copies of G.S. 131D-21. The address and telephone number of the county Social Services Department, and the appropriate person or office of the Department of Human Resources shall also be posted and distributed. (1981, c. 923, s. 1.)

### 131D-25. Implementation.

Responsibility for implementing the provisions of this Article shall rest with the administrator of the facility. Each facility shall provide appropriate training to staff to implement the declaration of residents' rights included in G.S. 131D-21. (1981, c. 923, s. 1.)

### 131D-26. Enforcement and investigation.

(a) The Department of Human Resources shall be responsible for the enforcement of the provisions of this Article. Specifically, the Department of Social Services in the county in which the facility is located and the Department of Human Resources, shall be responsible for enforcing the provisions of the declaration of the residents' rights. The director of the county Department of Social Services shall monitor the implementation of the declaration of the residents' rights and shall also investigate any complaints or grievances pertaining to violations of the declaration of rights.

(b) If upon investigation, it is found that any of the provisions of the declaration of rights has been violated, the director of the county department of social services or a designee must orally inform the administrator immediately of the specific violations, what must be done to correct them, and set a date by which the violations must be corrected. This same information must be confirmed in writing to the administrator by the county director or a designee within 10 working days following the investigation. A copy of the letter shall be sent to the Department of Human Resources.

(c) Upon receiving requests for assistance in resolving complaints from the county Department of Social Services, the Department of Human Resources shall ensure compliance with the provisions of this Article.

(d) The county director of social services shall annually make a report to the Department of Human Resources about the number of substantiated violations of G.S. 131D-21, the nature of the violations, and the number of violations referred to the Department of Human Resources for resolution. (1981, c. 923, s. 1; 1983, c. 824, ss. 15, 16.)

**Effect of Amendments.** — The 1983 amendment, effective Jan. 1, 1984, substituted "and" for "along with" following "facility is located" in the first sentence of subsection (a), inserted "or a designee," "orally," and "immediately" in the first sentence of subsection (b), and in the second sentence of subsection (b)

inserted "same," inserted "or a designee within 10 working days following the investigation," and deleted "who shall specify the identified violation(s), what must be done to correct the violation(s) and dates by which they must be corrected" following "county director."

### § 131D-27. Confidentiality.

The Department of Human Resources is authorized to inspect residents' records maintained at the facility when necessary to investigate any alleged violation of the declaration of the residents' rights. The Department of Human Resources shall maintain the confidentiality of all persons who register complaints with the Department of Human Resources and of all records inspected by the Department of Human Resources. (1981, c. 923, s. 1.)

### § 131D-28. Civil action.

Every resident shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Article. The Department of Human Resources, a general guardian, or any person appointed ad litem pursuant to law, may institute an action pursuant to this section on behalf of the resident or residents. Any agency or person above named may enforce the rights of the resident specified in G.S. 131D-21 which the resident himself is unable to enforce. (1981, c. 923, s. 1.)

### § 131D-29. Revocation of license.

The Department of Human Resources shall have the authority to revoke a license issued pursuant to G.S. 131D-2 in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Human Resources requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Human Resources may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed. (1981, c. 923, s. 1.)

### § 131D-30. Penalties; remedies.

(a) The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility:

- (1) Which fails to comply with either the entire section of residents' rights listed in G.S. 131D-21 or with any of these rights, the failure to comply with which endangers the health, safety or welfare of a resident, or
- (2) Which refuses to allow an authorized representative of the Department of Human Resources to inspect the premises and records of the facility.

Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department under this section shall commence on the day the violation began.

(b) Each day of a continued violation shall constitute a separate violation. The penalty for each violation shall be ten dollars (\$10.00) per day per resident affected by the violation.

(c) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act.

(d) The Secretary of Human Resources may bring a civil action in the Superior Court of Wake County to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150A-36. (1981, c. 923, s. 1; 1983, c. 824, ss. 17, 18.)

**Editor's Note.** — Section 150A-36, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as § 150B-36.

**Effect of Amendments.** — The 1983

amendment, effective Jan. 1, 1984, added the last paragraph of subsection (a) and substituted "receipt" for "service" in subdivision (2) of subsection (d).

### § 131D-31. Domiciliary home community advisory committees.

a) **Statement of Purpose.** — It is the intention of the General Assembly that community advisory committees work to maintain the intent of the Domiciliary Home Residents' Bill of Rights within the licensed domiciliary homes in this State. It is the further intent of the General Assembly that the committees promote community involvement and cooperation with domiciliary homes to ensure quality care for the elderly and disabled adults.

b) **Establishment and Appointment of Committees.** —

- (1) A community advisory committee shall be established in each county which has at least one licensed domiciliary home, shall serve all the homes in the county, and shall work with each of these homes for the best interests of the residents. In a county which has one, two, or three homes for the aged and disabled, the committee shall have five members.
- (2) In a county with four or more homes for the aged and disabled, the committee shall have one additional member for each home for the aged and disabled in excess of three, up to a maximum of 20 members. In each county with four or more homes for the aged and disabled, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each domiciliary home in the county. Each member must serve on at least one subcommittee.
- (3) In counties with no homes for the aged and disabled, the committee shall have five members. Regardless of how many members a particular community advisory committee must have, at least one member of each committee shall be a person involved in the area of mental retardation.
- (4) The boards of county commissioners are encouraged to appoint the Domiciliary Home Community Advisory Committees. Of the members, a minority (not less than one-third, but as close to one-third as possible) must be chosen from among persons nominated by a majority of the chief administrators of domiciliary homes in the county. If the domiciliary home administrators fail to make a nomination within 45 days after written notification has been sent to them requesting a nomination, such appointments may be made without nominations. If the county commissioners fail to appoint members to a committee by July 1, 1983, the appointments shall be made by the Assistant Secretary on Aging, Department of Human Resources, no sooner than 45 days after nominations have been requested from the domiciliary home administrators, but no later than October 1, 1983. In making his appointments, the Assistant Secretary shall follow the same appointment process as that specified for the County Commissioners.

(c) **Joint nursing and Domiciliary Home Community Advisory Committees.** — Appointment to the Nursing Home Community Advisory Committees shall include appointment to the Domiciliary Home Community Advisory Committees except where written approval to combine these committees is obtained from the Assistant Secretary on Aging, Department of Human Resources. Where such approval is obtained, the Joint Nursing and Domiciliary

Home Community Advisory Committee shall have the membership required of Nursing Home Community Advisory Committees and one additional member for each home for the aged and disabled present in the county. In counties with no homes for the aged and disabled, there shall be one additional member for every four domiciliary homes in the county. In no case shall the number of members on the Joint Nursing and Domiciliary Home Community Advisory Committee exceed 25. Each member shall exercise the statutory rights and responsibilities of both Nursing Home Committees and Domiciliary Home Committees. In making appointments to this joint committee, the county commissioners shall solicit nominations from both nursing and domiciliary home administrators for the appointment of approximately (but not more than) one-third of the members.

(d) **Terms of Office.** — Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a two- or three-year term at the county commissioners' discretion to ensure staggered terms of office.

(e) **Vacancies.** — Any vacancy shall be filled by appointment of a person for a one-year term. If this vacancy is in a position filled by an appointee nominated by the chief administrators of domiciliary homes within the county, then the county commissioners shall fill the vacancy from persons nominated by a majority of the chief administrators. If the domiciliary home administrators fail to make a nomination by registered mail within 45 days after written notification has been sent to them requesting a nomination, such appointment may be made without nominations. If the county commissioners fail to fill the vacancy, the vacancy may be filled by the Assistant Secretary on Aging, Department of Human Resources no sooner than 45 days after the commissioners have been notified of the appointment or vacancy.

(f) **Officers.** — The committee shall elect from its members a chair, to serve a one-year term.

(g) **Minimum Qualifications for Appointment.** — Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by the committee, or employee or governing board member of a home served by the committee, or immediate family member of a resident in a home served by the committee may be a member of that committee. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, Department of Human Resources.

(h) **Training.** — The Division of Aging, Department of Human Resources shall develop training materials, which shall be distributed to each committee member. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under G.S. 131D-32. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties. (1981, c. 923, s. 1; 1983, c. 88, s. 3.)

**Editor's Note.** — Session Laws 1981, c. 923, s. 3, makes this section effective Jan. 1, 1982.

Session Laws 1983, c. 88, s. 3, provides: "Sec. 3. Those facilities licensed pursuant to G.S. 130-9(e)(5) [now repealed] are not covered by

this act but are covered by G.S. 130-9.5 [now repealed]." For present provisions relating to the licensure of nursing homes and the nursing home patients' bill of rights, see Parts A and B of Article 6 of Chapter 131E (§ 131E-100 seq.)

**Effect of Amendments.** — The 1983 amendment, effective March 22, 1983, rewrote this section.

### §131D-32. Functions of domiciliary home community advisory committees.

(a) The committee shall serve as the nucleus for increased community involvement with domiciliary homes and their residents.

(b) The committee shall promote community education and awareness of the needs of aging and disabled persons who reside in domiciliary homes, and shall work towards keeping the public informed about aspects of long-term care and the operation of domiciliary homes in North Carolina.

(c) The committee shall develop and recruit volunteer resources to enhance the quality of life for domiciliary home residents.

(d) The committee shall establish linkages with the domiciliary home administrators and the county Department of Social Services for the purpose of maintaining the intent of the domiciliary home residents' Bill of Rights.

(e) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level. The names of all complaining persons and the names of residents involved in the complaint shall remain confidential unless written permission is given for disclosure. The committee shall notify the enforcement agency of all verified violations of the Domiciliary Home Residents' Bill of Rights.

(f) The committee or subcommittee may communicate through the committee chair with the Department of Human Resources, the county Department of Social Services, or any other agency in relation to the interest of any resident.

(g) Each committee shall quarterly visit the homes for the aged and disabled it serves. For each official quarterly visit, a majority of the committee members shall be present. A minimum of three members of the committee shall make at least one visit annually to each family care home and group home for developmentally disabled adults present in the county. In addition, each committee may visit the domiciliary homes it serves whenever it deems necessary to carry out its duties. In counties with subcommittees, the subcommittee assigned to a home shall perform the duties of the committee under this subsection, and a majority of the subcommittee members must be present for any visit. When visits are made to group homes for developmentally disabled adults, rules concerning confidentiality as adopted by the Commission for Mental Health, Mental Retardation and Substance Abuse Services shall apply.

(h) The individual members of the committee shall have the right between 8:00 a.m. and 8:00 p.m. to enter the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to members of the subcommittee which serves that home. A majority of the committee or subcommittee members must be present to enter the facility at other hours. Before entering any domiciliary home, the committee or members of the committee shall identify themselves to the person present at the facility who is in charge of the facility at that time.

(i) The committee shall prepare reports as required by the Department of Human Resources containing an appraisal of the problems of domiciliary care facilities as well as issues affecting long-term care in general. Copies of the

report shall be sent to the board of county commissioners, county Department of Social Services and the Division of Aging.

(j) Nothing contained in this section shall be construed to require the expenditure of any county funds to carry out the provisions herein. (1981, c. 923, s. 1; 1983, c. 88, s. 2.)

**Editor's Note.** — Session Laws 1981, c. 923, s. 3, makes this section effective Jan. 1, 1982.

Session Laws 1983, c. 88, s. 3, provides: "Sec. 3. Those facilities licensed pursuant to G.S. 130-9(e)(5) [now repealed] are not covered by this act but are covered by G.S. 130-9.5 [now repealed]." For present provisions relating to

the licensure of nursing homes and the nursing home patients' bill of rights, see Parts A and of Article 6 of Chapter 131E (§ 131E-100 et seq.)

**Effect of Amendments.** — The 1983 amendment, effective March 22, 1983, rewrote this section.

**§ 131D-33:** Repealed by Session Laws 1983, c. 824, s. 19, effective January 1, 1984.

**Editor's Note.** — Repealed § 131D-33 was enacted by Session Laws 1981, c. 923, s. 1.

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## ARTICLE 1.

### *General Provisions.*

#### 131E-1. Definitions.

As used in this Chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the Department of Human Resources.
- (2) "Person" means an individual, trust, estate, partnership, or corporation including associations, joint-stock companies, and insurance companies. (1983, c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 775, repealed Chapters 131 and 131B and certain sections of Chapter 130, and enacted in their place a new Chapter 131E. Where appropriate, historical citations to the repealed sections have been added to corresponding sections in Chapter 131E.

Session Laws 1983, c. 775, ss. 5 and 6, provide:  
 Sec. 5. Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending unadvisedly of those provisions on or before December 31, 1983.

"Sec. 6. Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes."

Session Laws 1983, c. 775, s. 7, provides that the act shall become effective January 1, 1984, except that Part B of Article 2 to Chapter 131E is effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 4, is a severability clause.

**131E-2 to 131E-4:** Reserved for future codification purposes.

## ARTICLE 2.

*Public Hospitals.*

## Part A. Municipal Hospitals.

## § 131E-5. Title and purpose.

(a) This Part shall be known and may be cited as the "Municipal Hospital Act."

(b) The purpose of this Part is to authorize municipalities to construct, operate and maintain hospitals and other facilities which furnish hospital, clinical and similar services to the people of this State. It is also the purpose of this Part to authorize municipalities to cooperate with other public and private agencies and with each other. Additionally, it is the purpose of this Part to authorize municipalities to accept assistance from State and federal agencies and from other sources.

(c) This Part provides an additional and alternative method for municipalities to establish facilities that furnish hospital, clinical and similar services. This Part shall not be regarded as repealing any powers now existing under any other law, either general, special or local.

(d) This Part shall be construed liberally to effect its purposes. (1983, c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 775, s. 3, provides:

"Sec. 3. Notwithstanding the foregoing, any unit of government, or units of government acting jointly, that as of December 31, 1983, is operating a hospital or hospitals pursuant to Articles 2 or 2A of Chapter 131 of the General Statutes may continue to operate pursuant to the provisions of those Articles as they existed on December 31, 1983, to the extent that those Articles are inconsistent with this Chapter. However, a unit of government that has been

operating a hospital pursuant to those Articles may choose to continue operations under the provisions of one of the Parts of Article 2 of this Chapter by adopting an appropriate resolution and by satisfying all other requirements of the relevant Part of Article 2 of this Chapter."

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities to Provide Uncompensated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1985).

## § 131E-6. Definitions.

As used in this Part, unless otherwise specified:

- (1) "City," as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term "city" does not include counties or municipal corporations organized for a special purpose under any statute or law. The word "city" is interchangeable with the words "town" and "village" and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.
- (2) "Community general hospital" means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

- (3) "Corporation, foreign or domestic, authorized to do business in North Carolina" means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.
- (4) "Hospital facility" means any type of hospital; facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term "hospital facility" also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.
- (5) "Municipality" means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.
- (6) "Nonprofit association" or "nonprofit corporation" means any association or corporation from which no part of the net earnings inures or may lawfully inure to the benefit of a private shareholder or individual. (1983, c. 775, s. 1.)

### 131E-7. General powers.

- (a) A municipality shall have all the powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to the powers granted elsewhere in this Part:
  - (1) To construct, equip, operate, and maintain hospital facilities;
  - (2) To levy property taxes pursuant to G.S. 153A-149 or G.S. 160A-209 and to allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities; a hospital district may levy annually a tax on property having a situs in the district under the rules and according to the procedures prescribed in the Machinery Act, Chapter 105 of the General Statutes, Subchapter II, and a hospital district may allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities;
  - (3) To issue bonds and notes pursuant to the Local Government Finance Act, Chapter 159 of the General Statutes, for the financing of hospital facilities;
  - (4) To use property owned or controlled by the municipality;
  - (5) To acquire real or personal property, including existing hospital facilities, by purchase, grant, gift, devise, lease, condemnation, or otherwise;
  - (6) To establish a fee schedule for services received from hospital facilities and to make services available regardless of ability to pay;
- (b) A municipality may contract with or otherwise arrange with other municipalities of this or other states, federal or public agencies or with any person, private organization or nonprofit association for the provision of hospital, clinical, or similar services. The municipality may pay for these services from appropriations or other moneys available for these purposes.
- (c) Any two or more municipalities may enter into agreements to jointly exercise the powers, privileges, and authorities granted by this Part. These agreements may provide for:

- (1) The appointment of a board, composed of representatives of the parties to the agreement, to supervise and manage a hospital facility
- (2) The authority and duties of the board and the compensation of its members;
- (3) The proportional share of the costs of acquisition, construction, improvement, maintenance, or operation of hospital facilities;
- (4) The duration, amendment, and termination of the agreement and the disposition of property on termination of the agreement; and
- (5) Any other matters as necessary.

(d) A municipality may lease any hospital facility, or part, to a nonprofit association on terms and conditions consistent with the purposes of this Part. The municipality will determine the length of the lease. No lease executed under this subsection shall be deemed to convey a freehold interest.

(e) A municipality shall not sell nor convey any rights of ownership that the municipality has in any hospital facility, including the buildings, land and equipment associated with the hospital, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, surplus land or surplus equipment by a municipality to an corporation or other business entity operated for profit.

A municipality may lease any hospital facility, or part, to any corporation, foreign or domestic, authorized to do business in North Carolina on terms and conditions consistent with the purposes of this Part and with G.S. 160A-272. The municipality shall determine the length of the lease; however, no lease under this subsection shall be longer than 10 years, including options to renew or extend the original term of the lease, except that leases of surplus buildings, surplus land or surplus equipment may be for any length of time determined by the municipality. The lease shall provide that the hospital facility will be operated as a community general hospital open to the general public and that the lessee will accept Medicare and Medicaid patients. No lease executed under this subsection shall be deemed to convey a freehold interest. No bonds, notes nor other evidences of indebtedness shall be issued by a municipality to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

For purposes of this subsection, "surplus" means any building, land or equipment which is not required for use in the delivery of necessary health care services by a hospital facility at the time of the sale, conveyance of ownership rights, or lease.

This subsection shall not be construed to affect any pending litigation nor to reflect any legislative intent as to any prior authorized or executed agreements. This subsection shall be effective from January 1, 1984 until June 30, 1984.

(f) In addition to the general and special powers conferred by this Part, a municipality is authorized to exercise powers necessary to implement the powers under this Part. (1983, c. 775, s. 1.)

## § 131E-8. Sale of hospital facilities to nonprofit corporations.

(a) A municipality as defined in G.S. 131E-6(5) or hospital authority as defined in G.S. 131E-16(14), upon such terms and conditions as it deems wise with or without monetary consideration, may sell or convey to a nonprofit

corporation organized under Chapter 55A of the General Statutes any rights of ownership the municipality or hospital authority has in a hospital facility including the building, land and equipment associated with the hospital, if the nonprofit corporation is legally committed to continue to operate the facility as a community general hospital open to the general public, free of discrimination based upon race, creed, color, sex or national origin. The nonprofit corporation shall also agree, as a condition of the municipality or hospital authority's conveying ownership, to provide such services to indigent patients as the municipality or hospital authority and the nonprofit corporation shall agree. The nonprofit corporation shall further agree that should it fail to operate the facility as a community general hospital open to the general public or should the nonprofit corporation dissolve without a successor nonprofit corporation to carry out the terms and conditions of the agreement of conveyance, all ownership rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital.

(b) When either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the nonprofit corporation must agree to the following:

By the effective date of sale or conveyance, the nonprofit corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The nonprofit corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

(c) Any sale or conveyance under this section must be approved by the municipality or hospital authority by a resolution adopted at a regular meeting of the governing body on 10 days' public notice. Notice shall be given by publication describing the hospital facility to be conveyed, the proposed monetary consideration or lack thereof, and the governing body's intent to authorize the sale or conveyance.

(d) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to sales or conveyances pursuant to this section. (1983, c. 105, s. 1.)

### **§ 131E-8.1. Maintenance of Health Education Facilities.**

(a) This section shall apply to all sales and leases of a hospital facility by a municipality or hospital authority where any portion of the facility was constructed with a capital grant from the Area Health Education Centers Program (AHEC).

(b) The municipality or hospital authority shall give specific notice of intent to sell or lease and of any public hearing to the Director of the local

AHEC program and the Director of the AHEC Program at the University of North Carolina School of Medicine at Chapel Hill.

(c) The municipality or hospital authority may provide continued access to the identical or equivalent facilities suitable for continuation of AHEC activities, including all services being provided under the existing operating contract. In the case of a freestanding portion of the hospital facility, the municipality or hospital authority may convey all ownership rights in the facility to the local AHEC program without monetary consideration.

(d) No portion of this section shall be construed to alter rights or obligations of the operating contracts between the hospital facility and AHEC. (1983 Re Sess., 1984), c. 1056, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1056, s. 2, makes this section effective July 1, 1984.

### § 131E-9. Governing authority of hospital facilities.

(a) The governing body of a municipality may establish by resolution an office, board, or other municipal agency to plan, establish, construct, maintain, or operate a hospital facility. The resolution shall prescribe the powers, duties, compensation, and tenure of the members of the governing authority. The municipality shall remain responsible for the expenses of planning, establishment, construction, maintenance and operation of the hospital facilities.

(b) (1) The county board of commissioners of a county may establish by resolution a county hospital authority to plan, establish, construct, maintain, or operate a hospital facility. The authority shall be referred to as ". . . . . County Hospital Authority."

(2) The county hospital authority shall consist of six appointed members and one ex officio member.

(3) The appointed members of the authority shall be appointed by the county board of commissioners. All appointed members shall be residents of the county. Three of the members shall be residents of a city in the county and the remaining three members shall not be residents of the same city or cities in which the other three members appointed under this subdivision reside.

(4) For the initial appointments to the county hospital authority, two of the members shall be appointed for a term of three years, two for a term of four years, and two for a term of five years to achieve staggered terms. All subsequent appointments shall be for five-year terms.

(5) The ex officio member of the county hospital authority shall be a member of the county board of commissioners. The ex officio member's term on the hospital authority shall be commensurate with his or her term as a member of the county board of commissioners.

(6) When any member of the county hospital authority resigns or is removed from office before the expiration of the member's term, the county board of commissioners shall appoint a person to serve the unexpired portion of the term.

(c) Any authority vested in a county under this Part or any authority or power that may be exercised by a hospital authority under the Hospital Authorities Act, Chapter 131E, Article 2, Part B, may be vested by resolution to the county board of commissioners in a county hospital authority established under this section. However, a county hospital authority shall exercise only the powers and duties prescribed in the county board of commissioners' resolution. The county board of commissioners shall determine in the resolution the

compensation, traveling and any other expenses which shall be paid to each member of the county hospital authority. However, the expenses to plan, establish, construct and operate the hospital facility shall remain the responsibility of the county. (1983, c. 775, s. 1.)

### §131E-10. Condemnation.

Every municipality is authorized to condemn property to carry out the purposes of this Part. In condemning property, a municipality shall proceed in the manner provided in Chapter 40A of the General Statutes or in the charter of the municipality. A municipality or its agents is authorized to enter upon land, provided no unnecessary damage is done, to make surveys and examinations relative to any condemnation proceeding. Notwithstanding the provisions of any other statute or of any applicable municipal charter, the municipality may take possession of property to be condemned at any time after the commencement of the condemnation proceeding. The municipality shall not be precluded from abandonment of the condemnation of property in any case where possession has not taken place. (1983, c. 775, s. 1.)

### §131E-11. Federal and State aid.

Every municipality or nonprofit association is authorized to accept and disburse federal and State moneys, whether made available by grant, loan, gift or devise, to carry out the purposes of this Part. All federal moneys shall be accepted and disbursed upon the terms and conditions prescribed by the United States, if the terms and conditions are consistent with State law. All State moneys shall be accepted and disbursed upon the terms and conditions prescribed by either or both the State and the North Carolina Medical Care Commission. Unless the terms and conditions provide otherwise, the chief financial officer of the municipality shall deposit all moneys received under this section and keep them in separate trust funds. (1983, c. 775, s. 1.)

### §131E-12. Public purposes.

The exercise of the powers, privileges, and authorities conferred on municipalities by this Part are public and government functions, exercised for a public purpose and matters of public necessity. In the case of a county, the exercise of the powers, privileges and authorities conferred by this Part is a county function and purpose, as well as a public and governmental function. In the case of any municipality other than a county, the exercise of the powers, privileges, and authorities conferred by this Part is a municipal function and purpose, as well as a public and governmental function. (1983, c. 775, s. 1.)

### §131E-13. Lease or sale of hospital facilities to for-profit corporations by municipalities and hospital authorities.

(a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic, authorized to do business in North Carolina, subject to these conditions, which shall be included in the lease, agreement of sale, or agreement of conveyance:

- (1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical-surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Human Resources.
- (2) The corporation shall ensure that indigent care is available to the population of the municipality or area served by the hospital authority at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation.
- (3) The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.
- (4) The corporation shall ensure that admission to and services of the facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.
- (5) The corporation shall prepare an annual report that shows compliance with the requirements of the lease, sale, or conveyance.

The corporation shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if the corporation dissolves without a successor corporation to carry out the terms and conditions of the lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital facility including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital; provided that any building, land, or equipment associated with the hospital facility that the corporation has constructed or acquired since the sale may revert only upon payment to the corporation of a sum equal to the cost less depreciation of the building, land, or equipment.

This section shall not apply to leases, sales, or conveyances of nonmedical services or commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus hospital property that is not required in the delivery of necessary hospital services at the time of the lease, sale, or conveyance.

Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, sales or conveyances under this section.

(b) In the case of a sale or conveyance, if either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the corporation shall agree to the following:

By the effective date of sale or conveyance, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall fur

to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in North Carolina.

(c) In the case of a lease, the municipality or hospital authority shall determine the length of the lease. No lease executed under this section shall be deemed to convey a freehold interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed by this section. If the term of the lease is more than 10 years, and either general obligation bonds or revenue bonds issued for the benefit of the hospital to be leased are outstanding at the time of the lease, then the corporation shall agree to the following:

By the effective date of the lease, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

(d) The municipality or hospital authority shall comply with the following procedures before leasing, selling, or conveying a hospital facility, or part thereof:

- (1) The municipality or hospital authority shall first adopt a resolution declaring its intent to sell, lease, or convey the hospital facility at a regular meeting on 10 days' public notice. Notice shall be given by publication in one or more papers of general circulation in the affected area describing the intent to lease, sell, or convey the hospital facility involved, known potential buyers or lessees, a solicitation of additional interested buyers or lessees and intent to negotiate the terms of the lease or sale. Specific notice, given by certified mail, shall be given to the local office of each state-supported program that has made a capital expenditure in the hospital facility, to the Department of Human Resources, and to the Office of State Budget and Management.
- (2) At the meeting to adopt a resolution of intent, the municipality or hospital authority shall request proposals for lease or purchase by direct solicitation of at least five prospective lessees or buyers. The solicitation shall include a copy of G.S. 131E-13.
- (3) The municipality or hospital authority shall conduct a public hearing on the resolution of intent not less than 15 days after its adoption. Notice of the public hearing shall be given by publication at least 15 days before the hearing. All interested persons shall be heard at the public hearing.

- (4) Before considering any proposal to lease or purchase, the municipality or hospital authority shall require information on charges, services and indigent care at similar facilities owned or operated by the proposed lessee or buyer.
- (5) Not less than 45 days after adopting a resolution of intent and not less than 30 days after conducting a public hearing on the resolution of intent, the municipality or hospital authority shall conduct a public hearing on proposals for lease or purchase that have been made. Notice of the public hearings shall be given by publication at least 10 days before the hearing. The notice shall state that copies of proposals for lease or purchase are available to the public.
- (6) The municipality or hospital authority shall make copies of the proposals to lease or purchase available to the public at least 10 days before the public hearing on the proposals.
- (7) Not less than 60 days after adopting a resolution of intent, the municipality or hospital authority at a regular meeting shall approve any lease, sale, or conveyance by a resolution. The municipality or hospital authority shall adopt this resolution only upon a finding that the lease, sale, or conveyance is in the public interest after considering whether the proposed lease, sale, or conveyance will meet the health related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons. Notice of the regular meeting shall be given at least 10 days before the meeting and shall state that copies of the lease, sale, or conveyance proposed for approval are available.
- (8) At least 10 days before the regular meeting at which any lease, sale or conveyance is approved, the municipality or hospital authority shall make copies of the proposed contract available to the public (1983 (Reg. Sess., 1984), c. 1066, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1066, s. 3, makes this section effective July 1, 1984, and only applicable to leases, sales, or conveyances made on or after that date.

**§ 131E-14. Lease or sale of hospital facilities to certain nonprofit corporations.**

If a municipality or hospital authority leases, sells, or conveys a hospital facility, or part, to a nonprofit corporation of which a majority of voting members of its governing body is not appointed or controlled by the municipality or hospital authority, the procedural requirements set forth in G.S. 131E-13(d) shall apply. (1983 (Reg. Sess., 1984), c. 1066, s. 2.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1066, s. 3, makes this section effective July 1, 1984, and only applicable to leases, sales, or conveyances made on or after that date.

**§ 131E-14.1. Branch facilities.**

Notwithstanding anything in this Article, any county owning and operating a hospital organized under the provisions of this Article may erect, remodel, enlarge, purchase, finance, and operate branches and related facilities within this State but outside the boundaries of the county subject to the following limitations:

- (1) No moneys derived from the exercise by the owning county of its power of taxation shall be expended on facilities located outside its boundaries;
- (2) No moneys derived from the issuance by the owning county of its bonds or notes shall be expended on facilities located outside its boundaries;
- (3) The owning county shall not possess the power of eminent domain or have the right of condemnation with respect to hospital facilities located outside its boundaries.
- (4) The power conferred on counties by G.S. 153A-169 and G.S. 153A-170 to adopt ordinances regulating the use of county-owned property and parking on county-owned property shall not extend to hospital facilities located outside its boundaries unless the board of commissioners of the county in which the facility is located shall by resolution permit any such ordinance to be applicable within its jurisdiction;
- (5) The owning county shall not be deemed liable, by virtue of operating hospital facilities outside its boundaries, for the cost of medical care of paupers who are legal residents of some other county; and
- (6) The authority granted by this section may not be exercised in any county that has within its borders four or more incorporated municipalities which qualify to receive funds under G.S. 136-41.2. (1983, c. 578, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 578, § 2, makes this section effective upon ratification. The act was ratified June 22, 1983.

This section was enacted by Session Laws 1983, c. 578, s. 1, as § 131-28.22A. Pursuant to Session Laws 1983, c. 775, s. 6, this section has been redesignated as § 131E-14.1.

## Part B. Hospital Authority.

### § 131E-15. Title and purpose.

(a) This Part shall be known as the "Hospital Authorities Act."

(b) The General Assembly finds and declares that in order to protect the public health, safety, and welfare, including that of low income persons, it is necessary that counties and cities be authorized to provide adequate hospital, medical, and health care and that the provision of such care is a public purpose. Therefore, the purpose of this Part is to provide an alternate method for counties and cities to provide hospital, medical, and health care. (1943, c. 780, ss. 1, 2; 1971, c. 799; 1983, c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 775, § 7, makes this Chapter effective January 1, 1984, except that this Part is made effective upon ratification. The act was ratified July 15, 1983.

Session Laws 1983, c. 775, s. 3, provides:

"Sec. 3. Notwithstanding the foregoing, any unit of government, or units of government acting jointly, that as of December 31, 1983, is operating a hospital or hospitals pursuant to Articles 2 or 2A of Chapter 131 of the General

Statutes may continue to operate pursuant to the provisions of those Articles as they existed on December 31, 1983, to the extent that those Articles are inconsistent with this Chapter. However, a unit of government that has been operating a hospital pursuant to those Articles may choose to continue operations under the provisions of one of the Parts of Article 2 of this Chapter by adopting an appropriate resolution and by satisfying all other requirements of the relevant Part of Article 2 of this Chapter."

## CASE NOTES

**Hospital Granting Exclusive Privilege to Use Equipment Held Not Immune under State Action Exemption.** — In an antitrust action brought under §§ 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) brought by plaintiff physicians asserting that defendant hospital had improperly restricted use of its CAT Scan, defendant was held to have failed to show, in support of its motion to dismiss, that

the General Assembly had authorized defendant to grant exclusive privileges to certain physicians to use its facilities with the intent to restrict competition, so as to render defendant immune from antitrust liability under the state action exemption. *Coastal Neuro-Psychiatric Assocs. v. Onslow County Hosp. Auth.*, 607 F. Supp. 49 (E.D.N.C. 1985).

## § 131E-16. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Board of county commissioners" means the legislative body charged with governing the county.
- (2) "Bonds" means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.
- (3) "City" means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.
- (4) "City clerk" and "mayor" means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.
- (5) "City council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.
- (6) "Commissioner" means one of the members of a hospital authority appointed in accordance with the provisions of this Part.
- (7) "Community general hospital" means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.
- (8) "Contract" means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.
- (9) "Corporation, foreign or domestic, authorized to do business in North Carolina" means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.
- (10) "County" means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.
- (11) "County clerk" and "chairman of the board of county commissioners" means the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.
- (12) "Federal government" means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

- (13) "Government" means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
- (14) "Hospital authority" means a public body and a body corporate and politic organized under the provisions of this Part.
- (15) "Hospital facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; domiciliary homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.
- (16) "Municipality" means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.
- (17) "Real property" means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.
- (18) "State" means the State of North Carolina. (1943, c. 780, s. 3; 1971, c. 780, s. 22; c. 799; 1983, c. 775, s. 1.)

### **131E-17. Creation of a hospital authority.**

- (a) A hospital authority may be created whenever a city council or a county board of commissioners finds and adopts a resolution finding that it is in the interest of the public health and welfare to create a hospital authority.
- (b) After the adoption of a resolution creating a hospital authority, the mayor or the chairman of the county board of commissioners shall appoint commissioners in accordance with G.S. 131E-18.
- (c) The commissioners shall be a public body and a body corporate and politic upon the completion of the procedures described in G.S. 131E-19. (1943, c. 780, s. 4; 1971, c. 799; 1983, c. 775, s. 1.)

## § 131E-18. Commissioners.

(a) The mayor or the chairman of the county board shall appoint the commissioners of the authority. There shall be not less than six and not more than 30 commissioners. Upon a finding that it is in the public interest, the commissioners may adopt a resolution increasing or decreasing the number of commissioners by a fixed number; Provided that no decrease in the number of commissioners shall shorten a commissioner's term. A certified copy of the resolution and a list of nominees shall be submitted to the mayor or the chairman of the county board of commissioners for appointments in accordance with the procedures set forth in subsection (d) of this section.

(b) For the initial appointments of commissioners, one-third of the commissioners shall be appointed for a term of one year, one-third for a term of two years, and one-third for a term of three years to achieve staggered terms. All subsequent appointments shall be for three-year terms. A commissioner shall hold office until a successor has been appointed and qualified. Vacancies from resignation or removal from office shall be filled for the unexpired portion of the term.

(c) The mayor or the chairman of the county board of commissioners shall name the first chair of the authority. Thereafter, the commissioners shall elect each subsequent chair from their members. The commissioners shall elect from their members the first vice-chair and all subsequent vice-chairs.

(d) When a commissioner resigns, is removed from office, completes a term of office, or when there is an increase in the number of commissioners, the remaining commissioners shall submit to the mayor or the chairman of the county board of commissioners a list of nominees for appointment to the commission. The mayor or the chairman of the county board of commissioners shall appoint, only from the nominees, the number of commissioners necessary to fill all vacancies. However, the mayor or the chairman of the county board of commissioners may require the commissioners to submit as many additional lists of nominees as he or she may desire.

(e) The mayor shall file with the city clerk, or the chairman of the county board of commissioners shall file with the county clerk, a certificate of appointment or reappointment of a commissioner. The certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

(f) Commissioners shall receive no compensation for their services, but they shall be entitled to reimbursement for necessary expenses, including travel expenses, incurred in the discharge of their duties.

(g) For a county with a population of less than 75,000, according to the most recent decennial federal census, the following exceptions to the provisions of this section shall apply:

- (1) The commissioners shall be appointed by the county board of commissioners rather than the chairman of the county board of commissioners;
- (2) In making appointments under subsection (d) of this section, the county board of commissioners shall consider the nominations of the commissioners of the authority, but the county board of the commissioners is not bound by the nominations and may choose any qualified person.

The foregoing exceptions shall not apply when a county with a population of less than 75,000 jointly establishes a hospital authority with a city.

(h) A majority of the commissioners shall constitute a quorum. (1943, c. 780, s. 5; 1971, c. 799; 1973, c. 792; 1981, c. 525, s. 1; 1983, c. 775, s. 1.)

**131E-19. Incorporation of a hospital authority.**

(a) After the commissioners are appointed, they shall present to the Secretary of State an application for incorporation as a hospital authority. The application shall be signed by each of the commissioners and shall set forth:

- (1) That the city council or the county board of commissioners has found that it is in the interest of the public health and welfare to create a hospital authority;
- (2) That the mayor or the chairman of the county board of commissioners has appointed them as commissioners;
- (3) The name and official residence of each of the commissioners;
- (4) A certified copy of the appointment evidencing the commissioners' right to office, and the date and place of induction into and taking of office;
- (5) That they desire the hospital authority to become a public body and a body corporate and politic under this Part;
- (6) The term of office of each of the commissioners;
- (7) The name which is proposed for the corporation; and
- (8) The location and principal office of the corporation.

The application shall be subscribed and sworn to by each of the commissioners before an officer authorized by the laws of this State to take and certify oaths. This officer shall certify upon the application that he or she personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed to the application and took the oath in the officer's presence.

(b) The Secretary of State shall examine the application. If he or she finds that the name proposed for the corporation is not identical with that of a person or of any other corporation in this State or so nearly similar so as to lead to confusion and uncertainty, the application shall be filed and recorded in the appropriate book of record in the Secretary of State's office. The Secretary of State shall then make and issue to the commissioners a certificate of incorporation pursuant to this Part, under the Seal of the State, and shall record the certificate with the application.

(c) A hospital authority's name or the location or principal office of the corporation may be changed by the adoption of a resolution by the majority of the authority's commissioners. A copy of the resolution, duly verified by the chair and secretary of the commission before an officer authorized by the laws of this State to take and certify oaths, shall be delivered to the Secretary of State, along with a conformed copy. If the Secretary of State finds that the proposed name is not identical with that of a person or any corporation of this State, or so nearly similar as to lead to confusion and uncertainty, the resolution shall be filed and recorded in the appropriate book of record in the Secretary of State's office. A resolution changing the location or principal office of the hospital authority shall be filed and recorded in the appropriate book of record in the Secretary of State's office. The Secretary of State shall then return to the authority the conformed copy, together with a certificate stating that the attached copy is a true copy of the document in the Secretary of State's office, that shows the date of filing.

(d) In any legal proceeding, a copy of the certificate of incorporation, certified by the Secretary of State, shall be admissible in evidence and shall be conclusive proof of its filing and contents and the incorporation of the hospital authority in accordance with this Part. (1943, c. 780, s. 4; 1966, c. 988, s. 1; 1971, c. 799; 1983, c. 775, s. 1.)

### § 131E-20. Boundaries of the authority.

(a) The territorial boundaries of a hospital authority shall include the city or county creating the authority and the area within 10 miles from the territorial boundaries of that city or county. In no event shall the territorial boundaries of a hospital authority include, in whole or in part, the area of any previously existing hospital authority. All priorities shall be determined on the basis of the time of issuance of the certificates of incorporation by the Secretary of State.

(b) After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city or county shall in no way affect the territorial boundaries of the authority. (1943, c. 780, s. 4; 1971, c. 79; 1983, c. 775, s. 1.)

#### CASE NOTES

Cited in *Coastal Neuro-Psychiatric Assocs. v. Onslow County Hosp. Auth.*, 607 F. Supp. 49 (E.D.N.C. 1985).

### § 131E-21. Conflict of interest.

No commissioner or employee of the hospital authority shall:

- (1) Acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital facility or
- (2) Have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility, except an employment contract for an employee. The foregoing restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business; Provided that any such contract, undertaking, or other transaction shall be authorized by the commissioners by specific resolution on which no commissioner having an interest, direct or indirect, shall vote.

The fact that a person owns ten percent (10%) or less stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of that corporation or other business entity does not make the person have an "interest, direct or indirect" as this phrase is used in subsections (1) and (2) of the section; provided that, in order for the exception to apply, the contract, undertaking or other transaction shall be authorized by the commissioners by specific resolution on which no commissioner or employee having an interest, direct or indirect, shall vote.

If a commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any hospital facility, the commissioner or employee shall immediately disclose the same in writing to the authority and the disclosure shall be entered upon the minutes of the authority. Failure to disclose shall constitute misconduct in office and shall be grounds for a commissioner's removal from office under G.S. 131E-22. (1943, c. 780, s. 7; 1971, c. 749; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1058, s. 1.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 2, 1984, inserted the present second paragraph.

## § 131E-22. Removal of commissioners.

(a) The appointing authority, as stated in G.S. 131E-18, may remove a commissioner for inefficiency, neglect of duty, or misconduct in office. A commissioner may be removed only after he or she has been given a copy of the charges and provided the opportunity to be heard in person or by counsel. A commissioner is entitled to at least 10 days after receipt of the notice to prepare for a hearing before the mayor or the chairman of the county.

(b) An obligee of the authority may file with the mayor or the chairman of the county board of commissioners written charges that the authority is willfully violating the laws of the State or a term, provision, or covenant to any contract to which the authority is a party. The mayor or the chairman of the county board of commissioners shall give each of the commissioners a copy of the charges at least 10 days prior to the hearing on the charges. The commissioners shall be provided an opportunity to be heard in person or by counsel. The mayor or the chairman of the county board of commissioners shall, within 15 days after receipt of the charges, remove any commissioners of the authority who are found to have acquiesced in any willful violation. If a commissioner has not filed a written statement before the hearing with the authority stating his or her objections to or lack of participation in the violation, the commissioner shall be deemed to have acquiesced in a willful violation.

(c) If, after due and diligent search, a commissioner to whom charges are required to be delivered cannot be found within the county where the authority is located, the charges shall be deemed to be served upon the commissioner when it is mailed to the commissioner at the commissioner's last known address as the same appears on the records of the authority.

(d) In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk, or the chairman of the county board of commissioners shall file with the county clerk, a record of the proceedings together with the charges against the commissioner and the findings. (1943, c. 780, s. 8; 1971, c. 799; 1983, c. 775, s. 1.)

## § 131E-23. Powers of the authority.

(a) An authority shall have all powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to those powers granted elsewhere in this Part:

- (1) To investigate hospital, medical, and health conditions and the means of improving those conditions;
- (2) To determine where inadequate hospital and medical facilities exist;
- (3) To accept donations or money, personal property, or real estate for the benefit of the authority and to take title to the same from any person, firm, corporation or society;
- (4) To acquire by purchase, gift, devise, lease, condemnation, or otherwise any existing hospital facilities;
- (5) To purchase, lease, obtain options upon, or otherwise acquire any real or personal property or any interest therein from any person, firm, corporation, city, county, or government;
- (6) To sell, exchange, transfer, assign, or pledge any real or personal property or any interest therein to any person, firm, corporation, city, county or government;

- (7) To own, hold, clear and improve property;
- (8) To borrow money upon its bonds, notes, debentures, or evidences of indebtedness, as provided for in G.S. 131E-26 and G.S. 131E-27;
- (9) To purchase real or personal property pursuant to G.S. 131E-32;
- (10) To appoint an administrator of a hospital facility and necessary assistants, and any and all other employees necessary or advisable, to fix their compensation, to adopt necessary rules governing their employment, and to remove employees;
- (11) To delegate to its agents or employees any powers or duties as it may deem appropriate;
- (12) To employ its own counsel and legal staff;
- (13) To adopt, amend and repeal bylaws for the conduct of its business;
- (14) To enter into contracts for necessary supplies, equipment, or services for the operation of its business;
- (15) To appoint committees or subcommittees as it shall deem advisable, to fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of the authority's business;
- (16) To establish procedures for health care providers to secure the privilege of practicing within any hospital operated by the authority pursuant to Part B of Article 5 of this Chapter;
- (17) To establish reasonable rules governing the conduct of health care providers while on duty in any hospital operated by the facility pursuant to Part B of Article 5 of this Chapter;
- (18) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital facility, or any part of a facility;
- (19) To enter into any contracts or other arrangements with any municipality, other public agency of this or any other State or of the United States, or with any individual, private organization, or nonprofit association for the provision of hospital, clinical, or similar services;
- (20) Subject to subsection (c), to lease any hospital facilities to or from any municipality, other public agency of this or any other state or of the United States, or to any individual, corporation, or association upon any terms and subject to any conditions as may carry out the purposes of this Part. Subject to subsection (c), the authority may provide for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers, in the same manner as the authority itself might do;
- (21) To act as an agent for the federal, State or local government in connection with the acquisition, construction, operation or management of a hospital facility, or any part thereof;
- (22) To arrange with the State, its subdivisions and agencies, and any county or city, to the extent it is within the scope of their respective functions,
  - (a) To cause the services customarily provided by each to be rendered for the benefit of the hospital authority,
  - (b) To furnish, plan, replan, install, open or close streets, roads, alleys, sidewalks or similar facilities and to acquire property, options or property rights for the furnishing of property or services for a hospital facility, and
  - (c) To provide and maintain parks and sewage, water and other facilities for hospital facilities and to lease and rent any of the dwellings or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital facility and to establish and revise the rents and charges;

- (23) To insure the property or the operations of the authority against risks as the authority may deem advisable;
- (24) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds under their control;
- (25) To sue and be sued;
- (26) To have a seal and to alter it at pleasure;
- (27) To have perpetual succession;
- (28) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;
- (29) To remove vehicles parked on land owned or leased by the hospital authority in areas clearly designated as no parking or restricted parking zones. An owner of a removed vehicle as a condition of regaining possession of the vehicle, shall reimburse the hospital authority for all reasonable costs, not to exceed fifty dollars (\$50.00), incidental to the removal and storage of the vehicle provided that the designation of the area as a no parking or restricted parking zone clearly indicates that the owner may be subject to these costs;
- (30) To plan and operate hospital facilities;
- (31) To provide teaching and instruction programs and schools for medical students, interns, physicians, nurses, technicians and other health care professionals;
- (32) To provide and maintain continuous resident physician and intern medical services;
- (33) To adopt, amend and repeal rules and regulations governing the admission of patients and the care, conduct, and treatment of patients;
- (34) To establish a fee schedule for services received from hospital facilities and make the services available regardless of ability to pay;
- (35) To maintain and operate isolation wards for the care and treatment of mental, contagious, or other similar diseases;
- (36) To sell a hospital facility pursuant to G.S. 131E-8; and
- (37) To agree to limitations upon the exercise of any powers conferred upon the hospital authority by this Part in connection with any loan by a government.

(b) A hospital authority may exercise any or all of the powers conferred upon it by this Part, either generally or with respect to any specific hospital facility or facilities, through or by designated agents, including any corporation or corporations which are or shall be formed under the laws of this State.

(c) A hospital authority shall not sell nor convey any rights of ownership the authority has in any hospital facility as defined in G.S. 131E-6(4), including the buildings, land and equipment associated with the hospital, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, land or equipment by a hospital authority to any corporation or other business entity operated for profit.

A hospital authority may lease any hospital facility or part to any corporation, foreign or domestic, authorized to do business in North Carolina, on terms and conditions consistent with the purposes of this Part. The hospital authority shall determine the length of the lease; however, no lease under this subsection shall be longer than 10 years, including options to renew or extend the original term of the lease, except that leases of surplus buildings, land or equipment may be for any length of time determined by the hospital authority. The lease shall provide that the hospital facility will be operated as a

community general hospital open to the general public and that the lessee will accept Medicare and Medicaid patients. No lease executed under this subsection shall be deemed to convey a freehold interest. No bonds, notes nor other evidences of indebtedness shall be issued by a hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

For purposes of this subsection, "surplus" means any building, land or equipment which is not required for use in the delivery of necessary health care services by a hospital facility at the time of the sale, conveyance, ownership rights, or lease.

This subsection shall not be construed to affect any pending litigation nor to reflect any legislative intent as to any prior authorized or executed agreements. This subsection shall be effective from July 15, 1983 until June 30, 1984.

(d) No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to a hospital authority unless otherwise specified by the General Assembly. (1913, c. 42, s. 15; 1917, c. 268; C.S., s. 7273; 1983, c. 775, s. 1.)

#### CASE NOTES

**Hospital Granting Exclusive Privilege to Use Equipment Held Not Immune under State Action Exemption.** — In an antitrust action brought under §§ 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) brought by plaintiff physicians asserting that defendant hospital had improperly restricted use of its CAT Scan, defendant was held to have failed to show, in support of its motion to dismiss, that

the General Assembly had authorized defendant to grant exclusive privileges to certain physicians to use its facilities with the intent to restrict competition, so as to render defendant immune from antitrust liability under the state action exemption. *Coastal Neuro-Psychiatric Assocs. v. Onslow County Hosp. Auth.* 607 F. Supp. 49 (E.D.N.C. 1985).

#### § 131E-24. Eminent domain.

(a) A hospital authority may acquire by eminent domain any real property including fixtures and improvements, which it deems necessary to carry out the purposes of this Part. The hospital authority may exercise the power of eminent domain under the provisions of Chapter 40A of the General Statutes or any other statute now in force or subsequently enacted for the exercise of the power of eminent domain.

(b) No property belonging to any city, town, or county, any governmental, religious or charitable organization, or to any existing hospital or clinic may be acquired without its consent. No property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or agency, if any, having regulatory power over the corporation.

(c) The right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for the facility has been issued by the North Carolina Utilities Commission. The proceedings leading up to issuing of the certificate of public convenience and necessity, and the right of appeal from the proceedings shall be governed by the Public Utilities Act Chapter 62 of the General Statutes, and the rights under that act are hereby expressly reserved to all interested parties in the proceedings. In addition to the powers now granted by law to the North Carolina Utilities Commission, the Utilities Commission is authorized to investigate and examine all facilities set up or attempted to be set up under this Part and to determine the

question of public convenience and necessity for the facility. (1943, s. 780, s. 1; 1971, c. 799; 1981, c. 919, s. 18; 1983, c. 775, s. 1.)

### **131E-25. Zoning and building laws.**

All hospital facilities of the authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the hospital facility is situated. (1943, c. 780, s. 11; 1971, c. 799; 1983, c. 775, s. 1.)

### **131E-26. Revenue bonds and notes.**

(a) A hospital authority shall have the power to issue revenue bonds under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5, or the bond and revenue anticipation provisions of Chapter 159 of the General Statutes, Article 9, for the purpose of acquiring, constructing, reconstructing, improving, enlarging, bettering, equipping, extending or operating hospital facilities.

(b) A hospital authority shall have the power to borrow for the purposes above enumerated upon its notes or other evidences of indebtedness, subject to the approval of the Local Government Commission as provided in G.S. § 131E-32(c). Such approval shall be required regardless of the amount of any such borrowing. Any borrowing by a hospital authority before the date of ratification of Part B of Article 2 of this Chapter, whether or not approved by the Local Government Commission, is valid, ratified and confirmed. (1983, c. 775, s. 1.)

### **§ 131E-27. Contracts with federal government.**

A hospital authority is authorized:

- (1) To borrow money and accept grants from the federal government for or to aid in the construction of a hospital facility;
- (2) To acquire any land acquired by the federal government for the construction of a hospital facility; and
- (3) To acquire, lease or manage any hospital facility constructed or owned by the federal government.

To these ends, a hospital authority is authorized to enter into contracts, mortgages, trust indentures, leases or other agreements giving the federal government the right to supervise and approve the construction, maintenance and operation of the hospital facility. It is the purpose and intent of this Part to authorize every hospital authority to do any and all things necessary to secure the financial aid and cooperation of the federal government in the construction, maintenance, and operation of hospital facilities. (1943, c. 780, s. 19; 1971, c. 799; 1983, c. 775, s. 1.)

### **§ 131E-28. Tax exemptions.**

(a) Hospital authorities shall be exempt from the payment of taxes or fees to the State or any of its subdivisions, or to any officer or employee of the State or any of its subdivisions.

(b) Hospital authority property used for public purposes shall be exempt from all local and municipal taxes and for the purposes of this tax exemption, an authority shall be deemed to be a municipal corporation.

(c) Bonds, notes, debentures, or other evidences of indebtedness of a hospital authority issued under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5, or issued pursuant to the bond and revenue anticipation provisions of Chapter 159 of the General Statutes, Article 9, or issued pursuant to G.S. 131E-26(b) or contracted pursuant to G.S. 131E-32 and the transfer of and income from such instruments, including profits on sales, shall at all times be free from taxation by the State or any of its subdivisions, except for inheritance or gift taxes. (1943, c. 780, s. 21; 1971, c. 799; 1973, c. 695, s. 6; 1977, c. 268; 1983, c. 775, s. 1.)

### § 131E-29. Audits and recommendations.

Each hospital authority shall file with the mayor of the city or the chairman of the county board of commissioners at least annually an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations necessary to carry out the purposes of this Part. (1943, c. 780, s. 22; 1971, c. 799; 1983, c. 775, s. 1.)

### § 131E-30. Appropriations.

Each year the governing body of a city or county in which the hospital authority is located may appropriate and transfer funds to the authority. The appropriations shall be from the General Fund and may not exceed five per cent (5%) of the General Fund. Money appropriated and paid to the hospital authority by a city or county shall be deemed a necessary expense of the city or county. However, the appropriations shall not be deemed to be a revenue of the authority for the purpose of bonds of the hospital authority issued under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5. (1943, c. 780, s. 25; 1971, c. 780, s. 23; c. 799; 1983, c. 775, s. 1.)

### § 131E-31. Transfers of property by a city or county to a hospital authority.

(a) A city or county may lease, sell, convey, or otherwise transfer, with or without consideration or with nominal consideration, any property, whether real or personal or mixed, to a hospital authority whose territorial boundaries include at least part of the city or county. A hospital authority is authorized to accept such lease, transfer, assignment or conveyance and to bind itself to the performance and observation of any agreements and conditions required by the city or county.

(b) If a city or county sells, conveys, or otherwise irrevocably transfers to a hospital authority property with a market value in excess of two hundred fifty thousand dollars (\$250,000), and if the hospital authority accepts this property, the mayor of the city or the chairman of the county board of commissioners shall have the right to name additional commissioners to serve on the authority. The number of additional commissioners shall be such that the proportion of additional commissioners to existing commissioners is approximately equal to the proportion of the total value being transferred to the hospital authority to the total value of property already held by the authority. The determination of the ratios will be made solely by the governing body of the city or county transferring the property to the hospital authority; however, in no event shall fewer than two nor more than nine commissioners be added to the hospital authority. The total number of commissioners shall be increased by the number of commissioners added under this subsection. The

terms of commencement and expiration of the initial terms of the commissioners being added shall be determined by agreement between the hospital authority and the governing body of the city or county. After the expiration of the initial terms, subsequent terms will be three years. Copies of the agreement setting out the number of persons being added and the terms of each shall be filed with the clerk of the city or the clerk of the county board of commissioners making the transfer and, thereafter, copies of the reports referred to in G.S. 131E-29 shall be filed with the clerk of the city or the clerk of the county board of commissioners. (1943, c. 780, s. 26; 1961, c. 988, s. 2; 1971, c. 799; 1983, c. 775, s. 1.)

### **131E-32. Purchase money security interests.**

(a) An authority shall have the power and authority to purchase real or personal property under installment contracts, purchase money mortgages or deeds of trust, or other instruments, which create in the property purchased a security interest to secure payment of the purchase price and interest thereon. No deficiency judgment may be rendered against any authority for breach of an obligation authorized by this section. Any contract made or entered into by an authority before the date of ratification of Part B of Article 2 of this Chapter which would have been valid hereunder is valid, ratified and confirmed.

(b) A hospital authority may contract pursuant to this section in an amount of less than seven hundred fifty thousand dollars (\$750,000), adjusted, as hereinafter provided, in any single transaction without the approval of the Local Government Commission: Provided, however, that the approval of the Local Government Commission shall be required for any single contract pursuant to this section if the aggregate dollar amount of all such contracts outstanding after any such single transaction, exclusive of revenue bonds issued pursuant to G.S. 131E-26 and federal contracts entered pursuant to G.S. 131E-27, would exceed ten percent (10%) of the total operating revenues, as hereinafter defined, of the hospital authority for its most recently completed fiscal year as set forth in the audited financial statements of such authority for such fiscal year. The approval of the Local Government Commission shall be required with respect to any single contract pursuant to this section in an amount of seven hundred fifty thousand dollars (\$750,000) or more, adjusted as hereinafter provided.

(c) Approval of the Local Government Commission under this section or as required by G.S. 131E-26(b) shall be obtained in accordance with such rules and regulations as the Local Government Commission may prescribe and shall be evidenced by the secretary's certificate on the contract or note or other evidence of indebtedness. In determining whether to approve any such contract or borrowing, the Local Government Commission shall consider whether the hospital authority can demonstrate the financial responsibility and capability of the hospital authority to fulfill its obligations with respect to such contract or borrowing. The Local Government Commission may approve the application without other findings, if it finds that (i) the proposed project or the purpose of the borrowing is necessary and expedient, (ii) the contract or the borrowing, under the circumstances, is preferable to a bond issue for the same purpose, (iii) the sums to fall due under the contract or borrowing are adequate and not excessive for the proposed purpose, (iv) the authority's debt management procedures are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law and (v) the authority is not in default on any of its debt service obligations. Any contract or borrowing subject to this subsection requiring the approval of the Local Government Commission that does not bear the secretary's certifi-

cate thereon shall be void, and it shall be unlawful for any officer, employee or agent of a hospital authority to make any payments of money thereunder. An order of the Local Government Commission approving any such contract or borrowing shall not be regarded as an approval of the legality of the contract or borrowing in any respect.

(d) The seven hundred fifty thousand dollars (\$750,000) amount referred to in G.S. 131E-32(b) shall be in effect from July 15, 1983 through September 30, 1984. For each twelve-month period thereafter, the seven hundred fifty thousand dollar (\$750,000) amount shall be the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

(e) For purposes of G.S. 131E-32(b), the "total operating revenues" of a hospital authority for a fiscal year means patient revenue, less provisions for contractual adjustments, uncompensated care and bad debts, plus other operating revenues, all as determined in accordance with generally accepted accounting principles. (1983, c. 775, s. 1.)

### § 131E-33. Part controlling.

Insofar as the provisions of this Part are inconsistent with the provisions of any other law, the provisions of this Part shall be controlling; however this Part shall not be construed as preventing a city, town, or county from establishing and operating a hospital under the authority of any other law now or hereafter in effect. (1943, c. 780, s. 28; 1971, c. 799; 1983, c. 775, s. 1.)

### § 131E-34. Part applicable to City of High Point.

All the provisions of this Part shall apply to the City of High Point, Guilford County, North Carolina, as fully as if the population of the city exceeded 75,000 inhabitants. (1947, c. 349; 1971, c. 799; 1983, c. 775, s. 1.)

§§ 131E-35 to 131E-39: Reserved for future codification purposes.

## Part C. Hospital District Act.

### § 131E-40. Title and purpose.

(a) This Part shall be known as the "Hospital District Act."

(b) It is the purpose of this Part to authorize the creation of hospital districts to furnish hospital, clinical and similar services to the people of this State.

(c) This Part provides an additional and alternative method for the provision of hospital, clinical and similar services.

(d) This Part shall be construed liberally to effect its purposes. (1983, c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 775, s. 3, provides:

"Sec. 3. Notwithstanding the foregoing, any unit of government, or units of government acting jointly, that as of December 31, 1983, is operating a hospital or hospitals pursuant to Articles 2 or 2A of Chapter 131 of the General

Statutes may continue to operate pursuant to the provisions of those Articles as they existed on December 31, 1983, to the extent that those Articles are inconsistent with this Chapter. However, a unit of government that has been operating a hospital pursuant to those Articles may choose to continue operations under the

provisions of one of the Parts of Article 2 of this Chapter by adopting an appropriate resolution and by satisfying all other requirements of the relevant Part of Article 2 of this Chapter."

### **131E-41. Methods of creation of a hospital district.**

(a) The voters of an area may petition their county board of commissioners and the North Carolina Medical Care Commission for the creation of a hospital district. All of the area proposed to be included within a hospital district must be located within one county. The petition shall be signed by at least 500 voters of the area described in the petition. However, if the area has less than 100 voters, then the minimum number of petitioners shall be 250 voters. The petition shall set forth:

- (1) A description of the area to be included within the proposed hospital district;
- (2) The names of all municipalities located in whole or in part in the proposed hospital district;
- (3) The names of all publicly owned hospitals in the proposed hospital district;
- (4) The purpose or purposes sought to be accomplished by the creation of the hospital district; and
- (5) The proposed name of the hospital district.

The petition shall be delivered to the county board of commissioners of the county in which the proposed hospital district would be located. If the county board of commissioners approves the creation of the hospital district, they shall have the petition delivered to the North Carolina Medical Care Commission for review under G.S. 131E-42.

(b) In the alternative, the county board of commissioners, in its discretion, may create a hospital district by resolution. This authority exists only when one hospital district already exists in the county, or when a special tax levy for hospital purposes has been authorized or is now authorized with respect to a portion of the county. This power is limited to establishing a hospital district in the area lying outside the existing hospital district or outside the portion of the county in which a hospital tax levy has been or is now authorized. When a county board of commissioners exercises its power under this subsection, all other provisions of this Part shall be applicable, except as modified by this subsection. (1949, c. 766, s. 5; 1953, c. 1045, s. 1; 1959, cc. 877, 1074; 1971, c. 780, s. 37.4; 1973, c. 476, s. 152; c. 494, s. 45; c. 1090, s. 1; 1983, c. 775, s. 1.)

### **§ 131E-42. Hearing and determination.**

(a) After receipt of a petition for the creation of a hospital district that meets the requirements of G.S. 131E-41(a) and that has been approved by the county board of commissioners, the North Carolina Medical Care Commission shall give notice of a hearing on the creation of a hospital district. The notice of hearing shall be posted at the county courthouse door and at three public places within the proposed district. In addition, notice of hearing shall be published at least once for three successive weeks in a newspaper circulating in the proposed district. The notice of hearing shall specify:

- (1) The date of hearing which shall not be earlier than 20 days after the first posting and publication of notice;
- (2) The location of the hearing, which shall be within the county in which the proposed district would be located; and
- (3) That any interested person may appear and be heard at the hearing.

(b) At the time and place specified in the notice of hearing, the North Carolina Medical Care Commission, or its designee, shall hear all interested persons, and, if necessary, adjourn and reconvene at a later time.

(c) After the hearing, the North Carolina Medical Care Commission shall determine if it is in the public interest and beneficial to the residents of the area to create a hospital district, and, if it is, shall adopt a resolution creating the hospital district. The resolution shall define the area to be included in the hospital district. The area shall either be the one described in the petition or part of that area. However, no municipality, in whole or in part, shall be included in a hospital district unless the governing body of the municipality shall have approved by resolution the inclusion and shall have filed a certified copy of the resolution with the North Carolina Medical Care Commission.

(d) Each hospital district shall be designated by the North Carolina Medical Care Commission as the ". . . . . Hospital District of . . . . . County," inserting in the blank spaces a name identifying the locality and the name of the county.

(e) The North Carolina Medical Care Commission shall give notice of the creation of a hospital district. The notice shall be published at least once in two successive weeks in the newspaper in which the notice of hearing required by G.S. 131E-42(a) was published. A notice substantially in the following form, the blanks first being properly filled in, with the printed or written signature of the executive secretary of the North Carolina Medical Care Commission appended, shall be published with the resolution:

The foregoing resolution was passed by the North Carolina Medical Care Commission on the . . . . . day of . . . . ., 19. .; it was first published on the . . . . . day of . . . . ., 19. ..

Any action or proceeding questioning the validity of the resolution or creation of the . . . . . Hospital District of . . . . . County or the inclusion in the district of any of the areas described in the resolution must be commenced within thirty days after the first publication of this resolution.

.....  
Secretary  
North Carolina Medical Care Commission.

(1943, c. 766, s. 5; 1951, c. 805; 1953, c. 1045, ss. 1, 2; 1959, c. 877; 1973, c. 476, s. 152; c. 1090, s. 1; 1983, c. 775, s. 1.)

**§ 131E-43. Limitation of actions.**

Any action or proceeding in any court to set aside a resolution of the North Carolina Medical Care Commission creating any hospital district, or questioning the validity of the resolution, or the creation of any hospital district, or the inclusion in the district of any of the territory described in the resolution creating the district, must be commenced within 30 days after the first publication of the resolution and notice required by G.S. 131E-42(e). Thereafter, no right of action or defense founded upon the invalidity of a resolution or the creation of a district or the inclusion of any territory in the district shall be asserted, nor shall the validity of the resolution or the creation of the district or the inclusion of any territory be open to question in any court upon any ground, except in any action or proceeding commenced within the 30-day period. (1949, c. 766, s. 5; 1951, c. 805; 1953, c. 1045, s. 2; 1973, c. 476, s. 152; c. 1090, s. 1; 1983, c. 775, s. 1.)

**131E-44. General powers.**

a) The inhabitants of a hospital district are a body corporate and politic by that name specified by the North Carolina Medical Care Commission. Under that name they:

- (1) Are vested with all the property and rights of property belonging to any corporation;
- (2) Have perpetual succession;
- (3) May sue or be sued;
- (4) May contract;
- (5) May acquire any real or personal property;
- (6) May hold, invest, sell or dispose of property;
- (7) May have a seal and alter and renew it; and
- (8) May exercise the powers conferred upon them by this Part.

b) A hospital district is vested with all the powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to the powers granted elsewhere:

- (1) Those powers granted under the Municipal Hospital Act, Chapter 131E of the General Statutes, Article 2, Part A;
- (2) To issue general obligation and revenue bonds and bond anticipation notes pursuant to the Local Government Finance Act, Chapter 159 of the General Statutes;
- (3) To issue tax and revenue anticipation notes pursuant to Chapter 159 of the General Statutes, Article 9, Part 2; and
- (4) All other powers as are necessary and incidental to the exercise of the powers of this Part. (1971, c. 780, s. 37.4; 1973, c. 476, s. 152; c. 494, s. 45; 1983, c. 775, s. 1.)

**131E-45. County taxes.**

The county board of commissioners may levy a tax for the financing of the operation, equipment, and maintenance of any hospital operated by the district, including any public or nonprofit hospital, if the tax is approved by a majority of the qualified voters of the hospital district who shall vote on the question of levying the tax. The county board of commissioners shall determine the rate or amount of taxes that will be levied if approved by the voters of the district. The election on the question of levying the tax may be held at any time fixed by the county board of commissioners and shall be conducted in the same manner as bond elections held under G.S. 159-61. (1949, c. 766, s. 5; 1953, c. 1045, s. 6; 1983, c. 775, s. 1.)

**131E-46. Referendum on repeal of tax levy.**

(a) The board of commissioners of the county in which a hospital district was created under the provisions of this Part may, if a tax levy was authorized by referendum under G.S. 131E-45, call a referendum on the repeal of the authority to levy a tax. Such referendum may be called only if there are no outstanding general obligation bonds of the district.

(b) The question on the ballot shall be:

FOR removal of the right of the board of county commissioners to levy and collect a tax in . . . . . Hospital District of . . . . . County,

AGAINST removal of the right of the board of county commissioners to levy and collect a tax in . . . . . Hospital District of . . . . . County.”

(c) The referendum shall be conducted in the same manner as bond elections held under G.S. 159-61. No new registration of voters shall be required.

(d) If a majority of the votes cast are in favor of the question, then beginning on the first day of the fiscal year following the date of the referendum the board of county commissioners shall have no authority to levy a tax in the hospital district unless the voters approve under G.S. 131E-45. No referendum may be held within one year of the date of a referendum under this section (1983, c. 775, s. 1.)

### § 131E-47. Governing body.

The board of county commissioners of the county in which a hospital district is located shall be the governing body of the district. All of the provisions of the Municipal Hospital Act, Chapter 131E, Article 2, Part A, shall apply to the hospital district and to the county board of commissioners as the governing body. (1953, c. 1045, s. 7; 1983, c. 775, s. 1.)

§§ 131E-48 to 131E-54: Reserved for future codification purposes.

## ARTICLE 3.

### *North Carolina Specialty Hospitals.*

#### Part A. Lenox Baker Children's Hospital.

### § 131E-55. Intent; application for admission.

(a) The Lenox Baker Children's Hospital may treat, care for, train and educate children from birth to age 21 in the State who have cerebral palsy and other chronic or subacute orthopedic, neuromuscular and pediatric disabilities who are capable of being habilitated or rehabilitated. The Lenox Baker Children's Hospital shall disseminate knowledge concerning the extent, nature, and prevention of such disabling ailments.

(b) Application for the admission of a child must be made by a parent, guardian, or person standing in loco parentis. (1945, c. 504, s. 1; 1953, c. 8, s. 1; 1973, c. 115, s. 1; 1977, c. 467, s. 15; 1983, c. 775, s. 1.)

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncompensated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

### § 131E-56. Authority of Board of Directors of hospital.

(a) The Board of Directors is authorized to adopt rules necessary for the operation of the hospital in a manner consistent with the intent and purpose of this Article.

(b) The Board of Directors is authorized to accept and use donations to further the intent of this Article. (1983, c. 775, s. 1.)

### § 131E-57. Control and management of hospital.

The Department shall have the general superintendence, management, and control of the hospital, its grounds and buildings, its officers and employees, and its patients and all matters relating to its government, discipline, contacts, and fiscal concerns. (1945, c. 504, s. 5; 1973, c. 476, s. 162; 1983, c. 775, s. 1.)

### § 131E-58. Authority of the Department.

The Department, with the approval of the Governor and the Council of State, is authorized to secure by gift or purchase suitable real estate within the State and to erect or improve buildings for carrying out the purposes of the hospital. No real estate shall be purchased nor any commitments made for the erection or permanent improvements of any buildings involving the use of State funds until an appropriation for permanent improvements of the hospital is expressly authorized by the General Assembly. (1945, c. 504, s. 3; 1973, c. 476, s. 162; 1983, c. 775, s. 1.)

§ 131E-59 to 131E-64: Reserved for future codification purposes.

## Part B. Other Programs Controlled by the Department.

### 131E-65. Alcohol Detoxification Program.

There shall be no reduction of services offered, no contracting of primary services, nor removal of this facility from Buncombe County without prior approval of the General Assembly. (1983, c. 775, s. 1.)

**131E-66:** Repealed by Session Laws 1985, c. 589, s. 40, effective January 1, 1986.

**Editor's Note.** — The repealed section was derived from Session Laws 1983, c. 775, s. 1. Session Laws 1985, c. 589, s. 65 is a severability clause.

### 131E-67. Specialty hospitals.

All functions, powers, duties, and obligations heretofore vested in the Board of Directors of the North Carolina Specialty Hospitals and Eastern North Carolina Hospital are hereby transferred to and vested in the Department. All appropriations heretofore made to such Board of Directors or to any of the hospitals are hereby transferred to the Department. The Secretary of the Department shall have the power and duty to adopt rules for the operation of these facilities. (1979, c. 838, s. 46; 1983, c. 775, s. 1.)

§ 131E-68, 131E-69: Reserved for future codification purposes.

## ARTICLE 4.

*Construction and Enlargement of Hospitals.***§ 131E-70. Construction and enlargement of local hospitals.**

(a) The Department is authorized to continue surveys of all counties in the State to determine:

- (1) The hospital needs of the county;
- (2) The economic ability of various areas to support adequate hospital service;
- (3) What assistance by the State, if any, is necessary to supplement other available funds; to finance the construction of new hospitals and health centers, additions to existing hospitals and health centers; and to finance equipment necessary to provide adequate hospital service for the citizens of the county;

and to periodically report this information, together with its recommendations, to the Governor, who shall transmit the reports to the General Assembly for any legislative action necessary to ensure an adequate statewide hospital program.

(b) The Department is authorized to act as the agency of the State to develop and administer a statewide plan in accordance with rules adopted by the Medical Care Commission for the construction and maintenance of hospitals, public health centers and related facilities and to receive and administer funds which may be provided by the General Assembly and by the federal government.

(c) The Department is authorized to develop statewide plans for the construction and maintenance of hospitals, medical centers and related facilities or other plans necessary in order to meet the requirements and receive the benefits of applicable federal legislation.

(d) The Department is authorized to adopt rules to carry out the intent and purposes of this Article.

(e) The Department shall be responsible for doing all acts necessary to authorize the State to receive the full benefits of any federal statutes enacted for the construction and maintenance of hospitals, health centers or allied facilities.

(f) The Medical Care Commission shall make grants-in-aid to counties, cities, towns and subdivisions of government to acquire real estate and construct hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities acquired by municipalities or subdivisions of government for use as community hospitals. These appropriations and funds made available by the State shall be allocated, apportioned and granted for the purposes of this Article and for other purposes in accordance with the rules adopted by the Medical Care Commission. The Medical Care Commission may furnish financial and other types of aid and assistance to any nonprofit hospital owned and operated by a corporation or association, no part of the net earnings, which inures, or may lawfully inure, to the benefit of any private shareholder or individual, upon the same terms and conditions as this aid and financial assistance is granted to municipalities and subdivisions of government.

(g) The Department may make available to any eligible hospital, clinic, or other medical facility operated by the State any unallocated federal sums or balances remaining after all grants-in-aid for local approvable projects made by the Department have been completed, disbursed or encumbered. (1945, c. 1096; 1947, c. 933, ss. 3, 5; 1949, c. 592; 1951, c. 1183, s. 1; 1971, c. 134; 1973, c. 476, s. 152; c. 1090, s. 1; 1979, c. 504, ss. 8, 14; 1983, c. 775, s. 1.)

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncom-

pen-sated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

**131E-71 to 131E-74:** Reserved for future codification purposes.

ARTICLE 5.

*Hospital Licensure Act.*

**131E-75. Title; purpose.**

- a) This Article shall be known as the "Hospital Licensure Act."
- b) The purpose of this article is to establish hospital licensing requirements which promote public health, safety and welfare and to provide for the development, establishment and enforcement of basic standards for the care and treatment of patients in hospitals. (1947, c. 933, s. 6; 1983, c. 775, s. 1.)

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncom-

pen-sated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

**131E-76. Definitions.**

As used in this article, unless otherwise specified:

- (1) "Commission" means the North Carolina Medical Care Commission.
- (2) "Governing body" means the Board of Trustees, Board of Directors, partnership, corporation, association, person or group of persons who maintain and control the hospital. The governing body may or may not be the owner of the properties in which the hospital services are provided.
- (3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, and domiciliary homes licensed under G.S. 131D-2.
- (4) "Infirmity" means a unit of a school, or similar educational institution, which has the primary purpose to provide limited short-term health and nursing services to its students.
- (5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital or a committee of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing. (1947, c. 933, s. 6; 1949, c. 920, s. 1; 1955, c. 369; 1961, c. 51, s. 1; 1973, c. 476, s. 152; 1983, c. 775, s. 1; 1985, c. 589, s. 41.)

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1986, substituted "Article 2 of Chapter 122C of the General Statutes" for "G.S. 122-72" in the last sentence of subdivision (3).

## Part A. Hospital Licensure.

### § 131E-77. Licensure requirement.

(a) No person or governmental unit shall establish or operate a hospital in this state without a license. An infirmary is not required to obtain a license under this Part.

(b) The Commission shall prescribe by rule that any licensee or prospective applicant seeking to make specified types of alteration or addition to its facilities or to construct new facilities shall submit plans and specifications before commencement to the Department for preliminary inspection and approval recommendations with respect to compliance with the applicable rules under this Part.

(c) An applicant for licensing under this Part shall provide information related to hospital operations as requested by the Department. The required information shall be submitted by the applicant on forms provided by the Department and established by rule.

(d) Upon receipt of an application for a license, the Department shall issue a license if it finds that the applicant complies with the provisions of this Article and the rules of the Commission. The Department shall renew each license in accordance with the rules of the Commission.

(e) The Department shall issue the license to the operator of the hospital who shall not transfer or assign it except with the written approval of the Department.

(f) The operator shall post the license on the licensed premises in an area accessible to the public. (1947, c. 933, s. 6; 1949, c. 920, ss. 3, 4; 1963, c. 619, s. 1; 1973, c. 476, s. 152; c. 1090, s. 1; 1975, c. 718, s. 2; 1983, c. 775, s. 1.)

### § 131E-78. Adverse action on a license.

(a) The Department shall have the authority to deny, suspend, revoke, annul, withdraw, recall, cancel, or amend a license in any case when it finds a substantial failure to comply with the provisions of this Part or any rule promulgated under this Part.

(b) The Department shall conduct a hearing in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act, when:

- (1) The Department denies an application and the applicant requests a hearing; or
- (2) The Department initiates proceedings under subsection (a).

(c) Any applicant or operator who is dissatisfied with the decision of the Department as a result of the hearing provided in this section and after a written copy of the decision is served, may request a judicial review under Chapter 150A of the General Statutes, the Administrative Procedure Act (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1; 1981, c. 614, ss. 16, 17; 1983, c. 775, s. 1.)

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

**131E-79. Rules and enforcement.**

- (1) The Commission shall promulgate rules necessary to implement this Article.
- (2) The Department shall enforce this Article and the rules of the Commission. (1947, c. 933, s. 6; 1973, c. 476, s. 152; 1983, c. 775, s. 1.)

**131E-80. Inspections.**

(1) The Department shall make or cause to be made inspections as it may deem necessary. Any hospital licensed under this Part shall at all times be subject to inspections by the Department according to the rules of the Commission.

(2) The Department may delegate to any state officer or agency the authority to inspect hospitals. The Department may revoke this delegated authority at its discretion and make its own inspections.

Authorized representatives of the Department shall have at all times the right of proper entry upon any and all parts of the premises of any place in which entry is necessary to carry out the provisions of this Part or the rules adopted by the Commission; and it shall be unlawful for any person to resist a proper entry by such authorized representative upon any premises other than a private dwelling. However, no representative shall, by this entry onto the premises, endanger the health or well being of any patient being treated in a hospital.

(3) To enable the Department to determine compliance with this Part and the rules promulgated under the authority of this Part and to investigate complaints made against a hospital licensed under this Part, while maintaining the confidentiality of the complainant, the Department shall have the authority to review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the hospital licensed under this Part and the personnel records of those individuals employed by the licensed hospital. The examinations of these records is permitted notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient. Proceedings of medical review committees are exempt from the provisions of this section. The hospital, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient, employee or legal representative, or unless disclosure is required by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a hospital without the consent of that person. Any officer, administrator, or employee of the Department who willfully discloses confidential or privileged information without appropriate authorization or court order shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00). Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "Public Records" defined.

(e) Information received by the Commission and the Department through filed reports, license applications, or inspections that are required or authorized by the provisions of this Part, may be disclosed publicly except where this disclosure would violate the confidential relationship existing between physician and patient. However, no such public disclosure shall identify a patient involved without permission of the patient or court order. (1947, c. 933, s. 6; 1973, c. 476, s. 152; c. 1090, s. 1; 1981, c. 586, s. 3; 1983, c. 775, s. 1.)

### § 131E-81. Penalties.

(a) Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor, and upon conviction shall be liable for a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) Except as otherwise provided in this Part, any person who willfully violates any provision of this Part or who willfully fails to perform any act required, or who willfully performs any act prohibited by this Part, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by imprisonment for a period not to exceed two years or by both a fine and imprisonment in the discretion of the court. However, any person who willfully violates any rule adopted by the Commission under this Part or who willfully fails to perform any act required by, or who willfully does any act prohibited by, these rules shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed fifty dollars (\$50.00) or imprisonment for a period not to exceed 30 days. (1947, c. 933, s. 6; 1983, c. 775, s. 1.)

### § 131E-82. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, in the absence of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37, Chapter 1 of the General Statutes, and Rule 65 of the Rules of Civil Procedure. (1947, c. 933, s. 6; 1973, c. 476, s. 152; 1983, c. 775, s. 1.)

§§ 131E-83, 131E-84: Reserved for future codification purposes.

## Part B. Hospital Privileges.

### §131E-85. Hospital privileges and procedures.

(a) The granting or denial of privileges to practice in hospitals to physicians licensed under Chapter 90 of the General Statutes, Article 1, dentists and podiatrists and the scope and delineation of such privileges shall be determined by the governing body of the hospital. Such determinations shall be based upon the applicant's education, training, experience, demonstrated competence and ability, and judgment and character of the applicant, and the reasonable objectives and regulations of the hospital, including, but not limited to appropriate utilization of hospital facilities, in which privileges are sought. Nothing in this Part shall be deemed to mandate hospitals to grant or deny to any such individuals or others privileges to practice in hospitals.

(b) The procedures to be followed by a licensed hospital in considering applications of dentists and podiatrists for privileges to practice in such hospitals shall be similar to those applicable to applications of physicians licensed under Chapter 90 of the General Statutes, Article 1. Such procedures shall be available upon request.

(c) In addition to the granting or denial of privileges, the governing body of each hospital may suspend, revoke, or modify privileges.

(d) All applicants or individuals who have privileges shall comply with all applicable medical staff bylaws, rules and regulations, including the policies and procedures governing the qualifications of applicants and the scope and delineation of privileges. (1981, c. 659, s. 10; 1983, c. 775, s. 1.)

#### CASE NOTES

**Reasonableness of Qualifications Is Only Question Before Court.** — The court is charged with the narrow responsibility of ascertaining that the qualifications imposed by the board are reasonably related to the operation of the hospital and fairly administered. In short, so long as staff selections are administered with fairness, geared by a rationale compatible with hospital responsibility, and unencumbered with irrelevant considerations, a court should not interfere. *Cameron v. New Hanover Mem. Hosp.*, 58 N.C. App. 414, 293 S.E.2d 901, appeal dismissed & cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982), decided under former §§ 131-126.11A, 131-126.11B.

**No court should substitute its evaluation for that of the hospital board.** It is the board, not the court, which is charged with the responsibility of providing a competent staff of doctors. *Cameron v. New Hanover Mem. Hosp.*, 58 N.C. App. 414, 293 S.E.2d 901, appeal dismissed & cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982), decided under former §§ 131-126.11A, 131-126.11B.

**Patient's Freedom of Choice Subject to Hospital's Staff Privilege Standards.** — The right to enjoy hospital staff privileges is not absolute; it is subject to the standards set by the hospital's governing body. This is implicit in the language of § 90-202.12, especially in

view of the policy of this State as currently stated by this section. Section 90-202.12 does not require a hospital to grant staff privileges regardless of the standards set by its board of trustees which are reasonably related to the operation of the hospital. Generally, the protection offered by § 90-202.12 is for patients to have the freedom to choose a qualified "provider of care or service." *Cameron v. New Hanover Mem. Hosp.*, 58 N.C. App. 414, 293 S.E.2d 901, appeal dismissed & cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982), decided under former §§ 131-126.11A, 131-126.11B.

**Hospital Granting Exclusive Privilege to Use Equipment Held Not Immune under State Action Exemption.** — In an antitrust action brought under §§ 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) brought by plaintiff physicians asserting that defendant hospital had improperly restricted use of its CAT Scan, defendant was held to have failed to show, in support of its motion to dismiss, that the General Assembly had authorized defendant to grant exclusive privileges to certain physicians to use its facilities with the intent to restrict competition, so as to render defendant immune from antitrust liability under the state action exemption. *Coastal Neuro-Psychiatric Assocs. v. Onslow County Hosp. Auth.*, 607 F. Supp. 49 (E.D.N.C. 1985).

**§ 131E-86. Limited privileges.**

(a) It shall be unlawful for an individual who is not licensed under Chapter 90 of the General Statutes, Article 1, to admit a patient to a hospital without written proof in accordance with the policy of the governing body of the hospital that a physician licensed under Chapter 90 of the General Statutes, Article 1, who is a member of the medical staff will be responsible for the performance of a basic medical appraisal and for the medical needs of the patient. The governing body of a hospital may waive this requirement for a dentist licensed under Chapter 90 of the General Statutes, Article 2, to the extent authorized by this statute, who has successfully completed a postgraduate program in oral and maxillofacial surgery accredited by the American Dental Association.

(b) The governing body of each hospital shall not grant privileges that exceed the scope of a license. (1983, c. 775, s. 1.)

**§ 131E-87. Reports of disciplinary action; immunity from liability.**

The chief administrative officer of every licensed hospital in the State shall report to the appropriate occupational licensing board any revocation, suspension, or limitation of privileges to practice in that hospital. Each hospital shall also report to the board its medical staff resignations. Any person making a report required by this section shall be immune from any resulting criminal prosecution or civil liability unless the person knew the report was false or acted in reckless disregard of whether the report was false. (1983, c. 775, s. 1.)

§§ 131E-88, 131E-89: Reserved for future codification purposes.

**Part C. Discharge from Hospital.****§ 131E-90. Authority of administrator; refusal to leave after discharge.**

The case of a patient who refuses or fails to leave the hospital upon discharge by the attending physician shall be reviewed by two physicians licensed to practice medicine in this State, one of whom may be the attending physician. If in the opinion of the physicians, the patient should be discharged as cured or as no longer needing treatment or for the reason that treatment cannot benefit the patient's case or for other good and sufficient reasons, the patient's refusal to leave shall constitute a trespass. The patient shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed fifty dollars (\$50.00) or imprisoned not more than 30 days. (1965, c. 258; 1983, c. 775, s. 1.)

§§ 131E-91 to 131E-94: Reserved for future codification purposes.

## Part D. Medical Review Committee.

## §131E-95. Medical review committee.

(a) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(b) The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records" defined," and shall not be subject to discovery or introduction into evidence in any civil action against a hospital or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about his testimony before the committee or any opinions formed as a result of the committee hearings. (1973, c. 1111; 1981, c. 725; 1983, c. 775, s. 1.)

## CASE NOTES

**Purpose.** — Former § 131-170 (similar to subsection (b) of this section) was enacted upon the theory that external access to peer investigations conducted by staff committees stifles candor and inhibits objectivity. It represents a legislative choice between competing public concerns. It embraces the goal of medical staff candor at the cost of impairing plaintiffs' access to evidence. *Cameron v. New Hanover Mem. Hosp.*, 58 N.C. App. 414, 293 S.E.2d 901,

appeal dismissed & cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

**Policy Grounded in Common Law.** — Policy enunciated by former § 131-170 (similar to subsection (b) of this section) is grounded in the common law. *Cameron v. New Hanover Mem. Hosp.*, 58 N.C. App. 414, 293 S.E.2d 901, appeal dismissed & cert. denied, 307 N.C. 127, 297 S.E.2d 399 (1982).

§ 131E-96 to 131E-99: Reserved for future codification purposes.

## ARTICLE 6.

*Health Care Facility Licensure Act.*

## Part A. Nursing Home Licensure Act.

## §131E-100. Title; purpose.

(a) This Part shall be known as the "Nursing Home Licensure Act."

(b) The purpose of the Nursing Home Licensure Act is to establish authority and duty for the Department to inspect and license private nursing homes (1983, c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 80, provides:

"Notwithstanding any plans or rules of the Department of Human Resources to the contrary, a certificate of need may be granted for skilled or intermediate care facilities in a county in which a county-owned licensed skilled nursing facility or intermediate care facility has been closed, demolished, or destroyed, in whole or in part, on or before Janu-

ary 1, 1983, but only to the extent that licensed beds were taken out of use as a result of the closure, demolition, or destruction of a facility."

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncompensated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

## § 131E-101. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Combination home" means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and domiciliary home.
- (2) "Commission" means the North Carolina Medical Care Commission.
- (3) "Community advisory committee" means a nursing home advisory committee established for the statutory purpose of working to carry out the intent of the Nursing Home Patients' Bill of Rights (Chapter 131E, Article 6, Part B) in accordance with G.S. 143B-181.1.
- (4) "Domiciliary home," as distinguished from a nursing home, means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is home with the sheltered or personal care their age or disability requires. Medical care in a domiciliary home is usually occasional and incidental, such as may be required in the home of any individual in the family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. Domiciliary homes are to be distinguished from nursing homes subject to licensure under this Part. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.
- (5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital, of physicians having privileges within the nursing home or of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of or necessity for health care services under applicable federal statutes.
- (6) "Nursing home" means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A "nursing home" is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities.

ties. A "nursing home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

- (7) "Peer review committee" means any committee appointed in accordance with G.S. 131E-108, "Peer review." (1961, c. 51, s. 3; 1981, c. 833; 1983, c. 775, s. 1.)

### § 131E-102. Licensure requirements.

(a) No person shall operate a nursing home without a license obtained from the Department. Any person may operate a nursing home or a combination home, as defined in this Part, in the same building or in two or more buildings adjoining or next to each other on the same site. Both a nursing home and a combination home must be licensed by the Department under this Part.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part.

(c) A license to operate a nursing home shall be annually renewed upon the filing and the Department's approval of the renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) In order for a nursing home to maintain its license it shall not intentionally impede the proper performance of the duties of a lawfully appointed community advisory committee as set forth in G.S. 131E-128(h). (1961, c. 51, s. 3; 1963, c. 859; 1983, c. 775, s. 1.)

### § 131E-103. Adverse action on a license.

(a) Subject to subsection (b), the Department shall have the authority to deny a new or renewal application for a license, and to amend, recall, suspend or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). (1961, c. 51, s. 3; 1983, c. 775, s. 1.)

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

### § 131E-104. Rules and enforcement.

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) The Commission shall adopt rules for the operation of the domiciliary portion of a combination home that are equal to the rules adopted by the Social Services Commission for the operation of freestanding domiciliary homes. The domiciliary portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents.

(c) The Department shall enforce the rules adopted or amended by the Commission with respect to nursing homes. (1961, c. 51, s. 3; 1973, c. 476, 128; 1981, c. 614, s. 1; 1983, c. 775, s. 1.)

### § 131E-105. Inspections.

(a) The Department shall inspect any nursing home and any domiciliary home operated as a part of a nursing home in accordance with rules adopted by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representative of the Department, when necessary for investigating compliance with this Part or rules promulgated by the Commission, may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communications between physician and patient," or any other rules of law, if the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information which is provided without malice or fraud to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "Public records' defined." Prior to releasing any information or allowing any inspections referred to in this subsection, the patient must upon admission be advised in writing by the facility that the patient has the right to object in writing to the release of information or review of the records and that by an objection in writing the patient may prohibit the inspection or release of the records.

(c) Authorized representatives of the Department with identification to this effect shall have at all times the right of proper entry upon any and all parts of the premises of any place in which entry is necessary to carry out the

provisions of this Part or the rules adopted by the Commission. It shall be unlawful for any person to resist a proper entry by an authorized representative upon any premises other than a private dwelling. (1981, c. 586, s. 1; c. 1984, s. 1; 1983, c. 775, s. 1.)

### **131E-106. Evaluation of residents in domiciliary homes.**

The Department shall prescribe the method of evaluation of residents in the domiciliary portion of a combination home in order to determine when any of these residents is in need of professional medical and nursing care as provided in licensed nursing homes. (1963, c. 859; 1981, c. 833; 1983, c. 775, s. 1.)

### **131E-107. Medical or peer review committees.**

A member of a duly appointed medical or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131E-108. (1983, c. 775, s. 1.)

### **131E-108. Peer review.**

It is not a violation of G.S. 131E-117(5) for medical records to be disclosed to a private peer review committee if:

- (1) The peer review committee has been approved by the Department;
- (2) The purposes of the peer review committee are to:
  - (a) Survey facilities to verify a high level of quality care through evaluation and peer assistance;
  - (b) Resolve written complaints in a responsible and professional manner; and
  - (c) Develop a basic core of knowledge and standards useful in establishing a means of measuring quality of care; and
- (3) The peer review committee keeps such records confidential. (1979, c. 707; 1983, c. 775, s. 1.)

### **131E-109. Penalties.**

(a) Any person establishing, conducting, managing or operating any nursing home without a license shall be guilty of a misdemeanor, and upon conviction shall be liable for a fine of not more than five hundred dollars (\$500.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) Any person acting under the authority of the Department who gives advance notice to an operator of a nursing home of the date or time that the nursing home is to be inspected shall be guilty of a misdemeanor, and upon conviction shall be liable for a fine of not more than five hundred dollars (\$500.00) or imprisonment for a period not to exceed 30 days, or both. The inspection of a nursing home for initial licensure shall be exempt from the prohibition of prior notice. All subsequent inspections must comply with the provisions of this subsection.

(c) The Secretary or a designee may suspend the admission of any new patients or residents at any nursing home or domiciliary home where the conditions of the nursing home or domiciliary home are detrimental to the

health or safety of the patient or resident. This suspension shall remain in effect until the Secretary is satisfied that conditions or circumstances merit the removal of the suspension. This subsection shall be in addition to authority to suspend or revoke the license of the home.

(d) Except as otherwise provided in this Part, any person who violates any provision of this Part or who willfully fails to perform any act required, or who willfully performs any act prohibited by this Part, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine or by imprisonment for a period not to exceed two years or by both such fine and imprisonment at the discretion of the court; Provided, however, that any person who willfully violates any rule adopted by the Commission under this Part or who willfully fails to perform any act required by, or who willfully performs any act prohibited by, these rules shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed fifty dollars (\$50.00) or by imprisonment for a period not to exceed 30 days. (1977, c. 656, ss. 1, 2; 1981, c. 667, ss. 1, 2; 1983, c. 775, s. 1.)

### § 131E-110. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a nursing home without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure (1983, c. 775, s. 1.)

§§ 131E-111 to 131E-114: Reserved for future codification purposes.

## Part B. Nursing Home Patients' Bill of Rights.

### § 131E-115. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and homes for the aged and disabled licensed pursuant to G.S. 131E-102, and patients in a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights. (1977, c. 897, s. 1; 1983, c. 143, s. 2; c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 143, s. 2, effective July 1, 1983, added "and patients in a nursing home operated by a hospital which is licensed under Article 13A of Chapter

131 of the General Statutes" at the end of the first sentence of repealed § 130-264. Pursuant to Session Laws 1983, c. 775, s. 6, the amendment by c. 143 has been inserted in this sec

ion. The reference to repealed Article 13A of Chapter 131 has been replaced by reference to Article 5 of Chapter 131E.

### CASE NOTES

**The Nursing Home Patients' Bill of Rights does not set the standard to which nursing homes are held accountable in negligence damage actions.** Such a holding would ignore the purpose of the negligence per se doctrine and the malpractice law of this State. It would permit the trier of fact to set its own standard of care for health care providers and speculate virtually without limits on the culpability of their conduct. *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

The Nursing Home Patients' Bill of Rights is a laudable statement of policy and requirements imposed on licensed nursing homes,

with a remedial enforcement scheme which provides for injunctive relief and/or license revocation and administrative penalties. It may be relevant in a negligence case to show very generally a patient's expectations from a nursing home, but it is not a substitute, through the doctrine of negligence per se, for the well-established standard of care to be applied in negligence actions for damages against health care providers. *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

**In negligence actions against health care providers, § 90-21.12 sets the applicable standard of care.** *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

## § 131E-116. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Administrator" means an administrator of a facility.
- (2) "Facility" means a nursing home and a home for the aged or disabled licensed pursuant to G.S. 131E-102, and also means a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E.
- (3) "Patient" means a person who has been admitted to a facility.
- (4) "Representative payee" means a person certified by the federal government to receive and disburse benefits for a recipient of governmental assistance. (1977, c. 897, s. 1; 1983, c. 143, s. 1; c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 143, s. 1, effective July 1, 1983, added "and also means a nursing home operated by a hospital which is licensed under Article 13A of Chapter 131 of the General Statutes" at the end of subsection (b) of repealed § 130-265. Pursuant to

Session Laws 1983, c. 775, s. 6, the amendment by c. 143 has been inserted in subdivision (2) of this section. The reference to repealed Article 13A of Chapter 131 has been replaced by reference to Article 5 of Chapter 131E.

## § 131E-117. Declaration of patient's rights.

All facilities shall treat their patients in accordance with the provisions of this Part. Every patient shall have the following rights:

- (1) To be treated with consideration, respect, and full recognition of personal dignity and individuality;
- (2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State statutes and rules;
- (3) To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving this statement, the patient shall sign a written receipt which must be on file in the facility and available for inspection;

- (4) To have on file in the patient's record a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research. Written evidence of compliance with this subdivision, including signed acknowledgments by the patient, shall be retained by the facility in the patient's file;
- (5) To receive respect and privacy in the patient's medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;
- (6) To be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;
- (7) To receive from the administrator or staff of the facility a reasonable response to all requests;
- (8) To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage;
- (9) To manage the patient's financial affairs unless authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for this purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have an accounting available for inspection and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to this account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage the patient's financial affairs at any time upon five days' notice.
- (10) To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;
- (11) To enjoy privacy in the patient's room;
- (12) To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on the patient's personal behalf or that of others to the facility's staff, the community advisory committee, the administrator, the Department, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;
- (13) To not be required to perform services for the facility without personal consent and the written approval of the attending physician;
- (14) To retain, to secure storage for, and to use personal clothing and possessions, where reasonable;

- (15) To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days' advance notice to ensure orderly transfer or discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

#### CASE NOTES

Applied in *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

### 131E-118. Transfer of management responsibilities.

The patient's representative who has been given the power in writing by the patient to manage the patient's financial affairs or the patient's legal guardian as appointed by a court or the patient's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by the provisions of this Part, may perform any other act, and may receive or furnish any information required by this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

### 131E-119. No waiver of rights.

No facility may require a patient to waive the rights specified in this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

### 131E-120. Notice to patient.

(a) A copy of G.S. 131E-115 through G.S. 131E-127 shall be posted conspicuously in a public place in all facilities. Copies of G.S. 131E-115 through G.S. 131E-127 shall be furnished to the patient upon admittance to the facility, to all patients currently residing in the facility, to the sponsoring agency, to a representative payee of the patient, or to any person designated in G.S. 131E-118, and to the patient's next of kin, if requested. Receipts for the statement signed by these persons shall be retained in the facility's files.

(b) The address and telephone number of the section in the Department responsible for the enforcement of the provisions of this Part shall be posted and distributed with copies of the Part. The address and telephone number of the county social services department shall also be posted and distributed. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

### § 131E-121. Responsibility of administrator.

Responsibility for implementing the provisions of this Part shall rest on the administrator of the facility. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

### § 131E-122. Staff training.

Each facility shall provide appropriate staff training to implement each patient's rights included in this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

### § 131E-123. Civil action.

Every patient shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Part. The Department, a general guardian, or any person appointed as guardian ad litem pursuant to law, may institute an action pursuant to this section on behalf of the patient or patients. Any agency or person named above may enforce the rights of the patient specified in this Part which the patient is unable to personally enforce (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

#### CASE NOTES

Applied in *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

### § 131E-124. Enforcement and investigation; confidentiality.

(a) The Department shall be responsible for the enforcement of the provisions of this Part. The Department shall investigate complaints made to it and reply within a reasonable time, not to exceed 60 days, upon receipt of a complaint.

(b) The Department is authorized to inspect patients' medical records maintained at the facility when necessary to investigate any alleged violation of this Part.

(c) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

#### CASE NOTES

Applied in *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

### § 131E-125. Revocation of a license.

(a) The Department shall have the authority to revoke a license issued pursuant to G.S. 131E-102 in any case where it finds that there has been a substantial failure to comply with the provisions of this Part or any failure that endangers the health, safety or welfare of patients.

Such revocation shall be effected by mailing to the licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed.

(b) In the case of a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E, when the Department of Human Resources finds that there has been a substantial failure to comply with the provisions of this Part, it may issue an order preventing the continued operation of the home.

Such order shall be effected by mailing to the hospital by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such order shall become effective 20 days after the mailing of the notice, unless the hospital, within such 20-day period, shall give written notice to the Department of Human Resources requesting a hearing, in which case the order shall be deemed to be suspended. If a hearing has been requested, the hospital shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Human Resources may rescind the order upon being satisfied that the reasons for the order have been or will be removed. (1977, c. 397, s. 1; 1983, c. 143, s. 3; c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 143, s. 3, effective July 1, 1983, designated the first two paragraphs of repealed § 130-274 as subsection (a) of that section and added subsection (b). Pursuant to Session Laws 1983, c. 775, s. 6,

the amendment by c. 143 has been effectuated in this section. A reference to repealed Article 13A of Chapter 131 has been replaced by reference to Article 5 of Chapter 131E.

#### CASE NOTES

**Applied in** *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

### § 131E-126. Penalties.

(a) The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility:

- (1) Which fails to comply with either the entire section of patients' rights listed in G.S. 131E-117 or with any one of these rights which endangers the health, safety or welfare of a patient.
- (2) Which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(b) Each day of a continued violation shall constitute a separate violation. The penalty for each violation shall be ten dollars (\$10.00) per day per patient affected by the violation.

(c) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150A of the General Statutes.

(d) The Secretary may bring a civil action in the Superior Court of Wake County to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150A-36. (1977, c. 897, s. 1; 1981, c. 197; 1983, c. 775, s. 1.)

**Editor's Note.** — Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B. Section 150A-36, referred to in this section, has been recodified as 150B-36.

### CASE NOTES

**Applied** in *Makas v. Hillhaven, Inc.*, 589 F. Supp. 736 (M.D.N.C. 1984).

### § 131E-127. No interference with practice of medicine or physician-patient relationship.

Nothing in this Part shall be construed to interfere with the practice of medicine or the physician-patient relationship. (1977, c. 897, s. 1; 1983, c. 775 s. 1.)

### § 131E-128. Nursing home advisory committees.

(a) It is the purpose of the General Assembly that community advisory committees work to maintain the intent of this Part within the nursing homes in this State, including nursing homes operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is the further purpose of the General Assembly that the committees promote community involvement and cooperation with nursing homes and an integration of these homes into a system of care for the elderly.

- (b) (1) A community advisory committee shall be established in each county which has a nursing home, including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing homes, the committee shall have one additional member for each nursing home in excess of three.
- (2) In each county with four or more nursing homes, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each nursing home in the county. Each member must serve on at least one subcommittee.
- (3) Each committee shall be appointed by the board of county commissioners. Of the members, a minority (not less than one-third, but as close to one-third as possible) must be chosen from among persons nominated by a majority of the chief administrators of nursing homes in the county and of the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes. If the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to make a nomination within 45 days after written notification has been sent to them by the board of county commissioners requesting a nomination, these appointments may be made by the board of county commissioners without nominations.
- (c) Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a three-year term. Persons who were originally nominees of nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, or who were appointed by the board of county commissioners when the nursing home

administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make nominations, may not be reappointed without the consent of a majority of the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes within the county. If the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to approve or reject the reappointment within 45 days of being requested by the board of county commissioners, the commissioners may reappoint the member if they so choose.

(d) Any vacancy shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes or a person appointed when the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make a nomination shall be selected from among persons nominated by the administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, as provided in subsection (b). If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have been notified of the appointment or vacancy if nomination or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is not required. If nominations or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is required, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the 45-day period for action by the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes.

(e) The committee shall elect from its members a chair, to serve a one-year term.

(f) Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member or immediate family member of an employee or governing board member of a home served by a committee, or immediate family member of a patient in a home served by a committee may be a member of a committee. Membership on a committee shall not be considered an office as defined in G.S. 128-1 or G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, which shall supply a copy to the Division of Facility Services.

(g) The Division of Aging, Department of Human Resources, shall develop training materials which shall be distributed to each committee member and nursing home. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under subsection (h) of this section. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

- (h) (1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.
- (2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.
- (3) Each member of a committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes served by those subcommittees to which the member has been appointed.
- (4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. The names of all complaining persons shall remain confidential unless written permission is given for disclosure.
- (5) Each home shall cooperate with the committee as it carries out its duties.
- (6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time. (1977, c. 897, s. 2; 1977, 2nd Sess., c. 1192, s. 1; 1983, c. 143, ss. 4-9; c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 143, ss. 4-9 amended repealed § 130-9.5, effective July 1, 1983. Pursuant to Session Laws 1983, c. 775, s. 6, the changes made by c. 143 have been effectuated in this section. References in c. 143 to repealed Article 13A of Chapter 131 have been replaced by references to Article 5 of Chapter 131E. Chapter 143, at the end of the first sentence of subsection (a), inserted "including nursing homes operated by hospitals licensed under Article 5 of G.S. Chapter 131E"; in the first sentence of subdivision (b)(1) inserted the language "including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E"; in subdivision (b)(3)

added the language beginning "and of the governing bodies" at the end of the second sentence, and inserted "and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes" in the last sentence; in subsections (c) and (d) inserted "and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes" following "administrators" throughout those subsections; and at the end of the last sentence of subsection (d) substituted the language beginning "after the 45-day period for action" for "after the nursing home administrators' 45-day period for action has expired."

§§ 131E-129 to 131E-134: Reserved for future codification purposes.

## Part C. Home Health Agency Licensure Act.

### § 131E-135. Title; purpose.

(a) This Part shall be known as "Home Health Agency Licensure Act."

(b) The purpose of this Part is to establish licensing requirements for home health agencies. (1983, c. 775, s. 1.)

### § 131E-136. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Commission" means the North Carolina Medical Care Commission.
- (2) "Home health agency" means a private organization which provides home health services.
- (3) "Home health services" means health care and medical services and medical supplies provided to an individual by a home health agency or by others under arrangements with the agency, on a visiting basis, in a place of temporary or permanent residence used as an individual's home. The services may include but are not limited to the following:
  - a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
  - b. Physical, occupational or speech therapy;
  - c. Medical social services, home health aid services, and other therapeutic services;
  - d. Medical supplies, other than drugs and biologicals, and the use of medical appliances. (1971, c. 539, s. 1; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1022, s. 4.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, makes the act effective from November 1, 1984, through June 30, 1987.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment substituted "North Carolina Medical Care Commission" for "Commission for Health Services" in subdivision (1).

### § 131E-137. Home health services to be provided in all counties.

(a) Every county shall provide home health services as defined in this Part.

(b) For purposes of this section, home health services shall be as defined in this Part, except that these services may be provided by any organization listed in subsection (c) of this section.

(c) Home health services may be provided by a county health department, by a district health department, by a home health agency licensed under this Part, or by a public agency. The county may provide home health services by contract with another health department or with a home health agency or public agency in another county.

(d) Repealed by Session Laws 1985, c. 8, s. 1, effective July 1, 1985. (1977, 2nd Sess., c. 1184; 1979, c. 754, s. 1; 1983, c. 775, s. 1; 1985, c. 8.)

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, deleted subsection (d), which read "After December 31, 1979, the provisions of this section shall not

apply to Pamlico County as long as it continues to furnish an equivalent home health service to clients as provided by this section."

### § 131E-138. Licensure requirements.

(a) No person shall operate a home health agency without a license obtained from the Department.

(b) An applicant shall provide nursing service and at least one other home health service, as stated in G.S. 131E-136(3).

(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part.

(d) The Department shall renew the license in accordance with the rules of the Commission.

(e) Each license shall be issued only for the premises and persons named in the license and shall not be transferable or assignable except with the written approval of the Department.

(f) The license shall be posted in a conspicuous place on the licensed premises. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1983, c. 775, s. 1.)

### § 131E-139. Adverse action on a license.

(a) The Department may suspend, revoke, annul, withdraw, recall, cancel or amend a license when there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150A of the General Statutes, The Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1983, c. 775, s. 1.)

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

### § 131E-140. Rules and enforcement.

(a) The Commission is authorized to adopt, amend and repeal all rules necessary for the implementation of this Part.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home health agencies. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1983, c. 775, s. 1.)

### § 131E-141. Inspection.

(a) The Department shall inspect home health agencies in accordance with rules adopted by the Commission to determine compliance with the provisions of this Part and the rules established by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been clients of the agency being inspected unless that client objects in writing to review of that client's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through an agency

who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communication between physician and patient," or any other rule of law; Provided the client has not made written objection to this disclosure. The agency, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning an agency without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this section, the client must be advised in writing by the licensed agency that the client has the right to object in writing to release of information or review of the client's records and that by an objection in writing the client may prohibit the inspection or release of the records. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1981, c. 586, s. 2; 1983, c. 775, s. 1.)

### § 131E-142. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a home health agency without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (1983, c. 775, s. 1).

§§ 131E-143, 131E-144: Reserved for future codification purposes.

## Part D. Ambulatory Surgical Facility Licensure.

### § 131E-145. Title; purpose.

(a) This Part shall be known as the "Ambulatory Surgical Facility Licensure Act."

(b) The purpose of this Part is to provide for the development, establishment and enforcement of basic standards:

- (1) For the care and treatment of individuals in ambulatory surgical facilities; and

- (2) For the maintenance and operation of ambulatory surgical facilities so as to ensure safe and adequate treatment of such individuals in ambulatory surgical facilities. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

## § 131E-146. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Ambulatory surgical facility" means a facility designed for the provision of an ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility.
- (1a) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.
- (2) "Commission" means the North Carolina Medical Care Commission (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1; 1983 (Reg. Sess. 1984), c. 1064, s. 1.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 2, 1984, rewrote subdivision (1) and inserted subdivision (1a).

## § 131E-147. Licensure requirement.

(a) No person shall operate an ambulatory surgical facility without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part.

(c) A license to operate an ambulatory surgical facility shall be annually renewed upon the filing and the department's approval of a renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) Licenses shall be posted in a conspicuous place on the licensed premises. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

### § 131E-148. Adverse action on a license.

(a) Subject to subsection (b), the Department is authorized to deny a new or renewal application for a license, and to amend, recall, suspend or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

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

### § 131E-149. Rules and enforcement.

(a) The Commission is authorized to adopt, amend and repeal all rules necessary for the implementation of this Part. These rules shall be no stricter than those issued by the Commission under G.S. 131E-79 of the Hospital Licensing Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to ambulatory surgical facilities. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

### § 131E-150. Inspections.

(a) The Department shall make or cause to be made inspections of ambulatory surgical facilities as necessary. The Department is authorized to delegate to a State officer, agent, board, bureau or division of State government the authority to make inspections according to the rules adopted by the Commission. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communication between physician and patient," or any other rule of law; Provided the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent

jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of the person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "'Public record defined.'" Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the facility that the patient has the right to object in writing to this release of information or review of the records and that by objecting in writing, the patient may prohibit the inspection or release of the records. (1977, 2nd Sess., c. 1214, s. 1; 1981, c. 586, s. 5; 1983, c. 775, s. 1.)

#### OPINIONS OF ATTORNEY GENERAL

**Posting of sign concerning right to object to release of information is insufficient notice.** — See Opinion of Attorney General to Mr. I. O. Wilkerson, Jr., Director, Division of Facility Services, 51 N.C.A.G. 17 (1981), rendered under former § 131B-7.

### § 131E-151. Penalties.

A person who owns in whole or in part or operates an ambulatory surgical facility without a license is guilty of a misdemeanor, and upon conviction will be subject to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of continuing violation after conviction is considered a separate offense. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

### § 131E-152. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an ambulatory surgical facility without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

§§ 131E-153, 131E-154: Reserved for future codification purposes.

## ARTICLE 7.

*Regulation of Ambulance Services.*§ 131E-155. **Definitions.**

As used in this Article, unless otherwise specified:

- (1) "Ambulance" means any privately or publicly owned motor vehicle, aircraft, or vessel that is specially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for the transportation on the streets or highways, waterways or airways of this State of persons who are sick, injured, wounded, or otherwise incapacitated or helpless.
- (2) "Ambulance attendant" means an individual who has completed a training program in emergency medical care and first aid approved by the Department and has been certified as an ambulance attendant by the Department.
- (3) "Ambulance provider" means an individual, firm, corporation or association who engages or professes to engage in the business or service of transporting patients in an ambulance.
- (4) "Commission" means the North Carolina Medical Care Commission.
- (5) "Emergency medical technician" means an individual who has completed a training program in emergency medical care at least equal to the National Standard Training Program for emergency medical technicians as defined by the United States Department of Transportation and has been certified as an emergency medical technician by the Department.
- (6) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless such that the need for some medical assistance might be anticipated while being transported to or from a medical facility.
- (7) "Practical examination" means a test where an applicant for certification or recertification as an emergency medical technician or ambulance attendant demonstrates the ability to perform specified emergency medical care skills. (1983, c. 775, s. 1.)

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncompen-

sated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

§ 131E-156. **Permit required to operate ambulance.**

(a) No person, firm, corporation, or association, either as owner, agent, provider, or otherwise, shall furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to be engaged in the business or service of transporting patients upon the streets or highways, waterways or airways in North Carolina unless a valid permit from the Department has been issued for each ambulance used in the business or service.

(b) Before a permit may be issued for a vehicle to be operated as an ambulance, the ambulance provider must apply to the Department for an ambulance permit. Application shall be made upon forms and according to procedures established by the Department. Prior to issuing an original or renewal permit for an ambulance, the Department shall determine that the vehicle for which the permit is issued meets all requirements as to equipment, design,

supplies and sanitation as set forth in this Article and in the rules of the Commission and that the ambulance provider has the certified personnel necessary to operate the ambulance in accordance with this Article. Permits issued for ambulances shall be valid for a period specified by the Department, not to exceed one year.

(c) Duly authorized representatives of the Department may issue temporary permits for vehicles not meeting required standards for a period not exceed 60 days, when it determines the public interest will be served.

(d) When a permit has been issued for an ambulance as specified by this Article, the vehicle and records relating to the maintenance and operation of the vehicle shall be open to inspection by duly authorized representatives of the Department at all reasonable times. (1967, c. 343, s. 3; 1973, c. 476, s. 12; c. 1224, s. 1; 1983, c. 775, s. 1.)

### **§ 131E-157. Standards for equipment; inspection of equipment and supplies required for ambulances.**

(a) The Commission shall adopt rules specifying equipment, sanitation, supply and design requirements for ambulances.

(b) The Department shall inspect each ambulance for compliance with the requirements set forth by the Commission and this Article when it deems an inspection is necessary. The Department shall maintain a record of the inspection.

(c) Upon a determination, based upon an inspection, that an ambulance fails to meet the requirements of this Article or rules adopted under this Article, the Department may suspend or revoke the permit for the ambulance concerned until these requirements are met. (1967, c. 343, s. 3; 1973, c. 476, s. 128; c. 1224, s. 1; 1983, c. 775, s. 1.)

### **§ 131E-158. Certified personnel required.**

(a) Every ambulance when transporting a patient on an emergency mission shall be occupied at a minimum by the following:

(1) At least one emergency medical technician who shall be responsible for the medical aspects of the mission prior to arrival at the medical facility, assuming no other individual of higher certification or license is available; and

(2) One ambulance attendant who is responsible for the operation of the vehicle and rendering assistance to the emergency medical technician.

(b) The Commission shall adopt rules setting forth exemptions to the requirements stated in (a) of this section applicable to situations where exemptions are considered by the Commission to be in the public interest. (1967, c. 343, s. 3; 1973, c. 476, s. 128; c. 725; c. 1224, s. 1; 1975, c. 612; 1983, c. 775, s. 1.)

### **§ 131E-159. Requirements for certification.**

(a) An individual seeking certification as an emergency medical technician or ambulance attendant shall apply to the Department using forms prescribed by that agency. The Department's representatives shall examine the applicant for emergency medical technician by written and practical examination and the applicant for ambulance attendant by written (or oral if requested) and practical examination. The Department shall issue a certificate to the

applicant who meets all the requirements set forth in this Article and the rules adopted for this Article and who successfully completes the examinations required for certification. Emergency medical technician and ambulance attendant certificates shall be valid for a period not to exceed two years and may be renewed after reexamination if the holder meets the requirements set forth in the rules of the Commission. The Department is authorized to revoke or suspend a certificate at any time it determines that the holder no longer meets the qualifications prescribed for emergency medical technicians or for ambulance attendants.

(b) The Commission shall adopt rules setting forth the qualifications required for certification of ambulance attendants and emergency medical technicians.

(c) Duly authorized representatives of the Department may issue temporary certificates with or without examination upon finding that this action will be in the public interest. Temporary certificates shall be valid for a period not exceeding 90 days. (1967, c. 343, s. 3; 1973, c. 476, s. 128; c. 725; c. 1224, s. 1; 1975, c. 612; 1983, c. 775, s. 1.)

### **131E-160. Exemptions.**

The following vehicles are exempt from the provisions of this Article:

- (1) Privately owned vehicles not regularly used in the business of transporting patients;
- (2) A vehicle rendering service as an ambulance in case of a major catastrophe or emergency, when the permitted ambulances based in the locality of the catastrophe or emergency are insufficient to render the services required;
- (3) Any ambulance based outside this State, except that an ambulance which receives a patient within this State for transportation to a location within this State shall comply with the provisions of this Article;
- (4) Ambulances owned and operated by an agency of the United States government; and
- (5) Vehicles owned and operated by rescue squads chartered by the State of North Carolina as nonprofit corporations or associations which are not regularly used to transport sick, injured, wounded or otherwise incapacitated or helpless persons except as a part of rescue operations. (1967, c. 343, s. 3; c. 1257, s. 2; 1983, c. 775, s. 1.)

### **131E-161. Violation declared misdemeanor.**

It shall be the responsibility of the ambulance provider to ensure that the ambulance operation complies with the provisions of this Article and all rules adopted for this Article. Upon the violation of any part of this Article or any rule adopted under authority of this Article, the Department shall have the power to revoke or suspend the permits of all vehicles owned or operated by the violator. The operation of an ambulance without a valid permit or after a permit has been suspended or revoked or without an emergency medical technician and ambulance attendant aboard as required by G.S. 131E-158, shall constitute a misdemeanor punishable by a fine or imprisonment or both in the discretion of the court. (1967, c. 343, s. 3; 1973, c. 476, s. 128; 1983, c. 775, s. 1.)

§§ 131E-162 to 131E-164: Reserved for future codification purposes

## ARTICLE 8.

### *Cardiac Rehabilitation Certification Program.*

#### § 131E-165. Title; purpose.

(a) This Article shall be known as the "Cardiac Rehabilitation Certification Program."

(b) The purpose of this Article is to provide for the development, establishment, and enforcement of basic rules and certification:

- (1) For the care and treatment of individuals in out-of-hospital cardiac rehabilitation programs; and
- (2) For the maintenance and operation of cardiac rehabilitation programs to ensure safe and adequate treatment of individuals in cardiac rehabilitation programs. (1983, c. 775, s. 1.)

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncompensated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

ated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

#### § 131E-166. Definitions.

As used in this Article, unless otherwise specified:

- (1) "Cardiac Rehabilitation Program" means a program certified under this Article for the delivery of cardiac rehabilitation services to clients in environments other than hospitals and includes, but shall not be limited to, coordinated, physician-directed, individualized programs of therapeutic activity and adaptation designed to assist the cardiac patient in attaining the highest rehabilitative potential.
- (2) "Certification" means the issuance of a certificate by the Department upon determination that cardiac rehabilitation services offered at given program site meet all cardiac rehabilitation program rules (1983, c. 775, s. 1.)

#### § 131E-167. Certificate requirement.

(a) Applications for certification shall be available from the Department and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed two years upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article.

(b) A provisional certificate may be issued for a period not to exceed six months to a program:

- (1) That does not substantially comply with the rules, when failure to comply does not endanger the health, safety, or welfare of the client being served by the program;
- (2) During the initial stages of operation if determined appropriate by the Department.

(c) Prior to offering a cardiac rehabilitation program as defined in this Article, such a program must be inspected, evaluated, and certified as having substantially met the rules adopted by the Department under this Article.

(d) A certificate to operate a Cardiac Rehabilitation Program shall be renewed upon the successful re-evaluation of the program as stated in the rules adopted pursuant to this Article.

(e) Each certificate shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(f) A certificate shall be posted in a conspicuous place on the certified premises. (1983, c. 775, s. 1.)

### **131E-168. Adverse action on a certificate.**

(a) Subject to subsection (b), the Department is authorized to deny a new or renewal certificate and to suspend or revoke an existing certificate upon determination that there has been a substantial failure to comply with the provisions of this Article or the rules promulgated under this Article.

(b) The provisions of Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). (1983, c. 775, s. 1.)

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

### **131E-169. Rules and enforcement.**

(a) The Department is authorized to adopt, amend, and repeal all rules as may be designed to further the accomplishment of this Article.

(b) The Department shall enforce the rules adopted for the certification of cardiac rehabilitation programs. (1983, c. 775, s. 1.)

### **131E-170. Inspections.**

(a) The Department shall make or cause to be made inspections of Cardiac Rehabilitation Programs as it deems necessary. The Department is empowered to delegate to a State officer, agent, board, bureau or division of State government the authority to make these inspections according to the rules promulgated by the Department. In addition, an individual who is not a State officer or agent and who is delegated the authority to make these inspections must be approved by the Department. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the program being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through a program who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communication between physician and patient," or any other rule of law, provided the patient has not made written objection to this disclosure. The program, its employees, and any person interviewed during these inspections shall be immune from

liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the program that the patient has the right to object in writing to the release of information, to review of the records and that by an objection in writing the patient may prohibit the inspection or release of the records. (1983, c. 775, s. 1.)

§§ 131E-171 to 131E-174: Reserved for future codification purposes.

## ARTICLE 9.

### *Certificate of Need.*

#### § 131E-175. Findings of fact.

The General Assembly of North Carolina makes the following findings:

- (1) That, because of the manner in which health care is financed, the forces of free market competition are largely absent and that government regulation is therefore necessary to control the cost, utilization and distribution of health services.
- (2) That the continuously increasing cost of health care service threatens the health and welfare of the citizens of this State in that the citizens need assurance of economical and readily available health care.
- (3) That the current system of planning for health care facilities and equipment has led to the proliferation of new inpatient acute care facilities and medical equipment beyond the need of many localities in this State and an inadequate supply of health personnel and resources for long term, intermediate, and ambulatory care in many localities.
- (4) That this trend of proliferation of unnecessary health care facilities and equipment results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of acute care hospital services by physicians.
- (5) That a certificate of need law is required by Title XV of the Public Health Service Act as a condition for receipt of federal funds. If these funds were withdrawn the State of North Carolina would lose in excess of fifty-five million dollars (\$55,000,000).
- (6) That excess capacity of health facilities places an enormous economic burden on the public who pay for the construction and operation of these facilities as patients, health insurance subscribers, health plan contributors, and taxpayers.

- (7) That the general welfare and protection of lives, health, and property of the people of this State require that new institutional health services to be offered within this State be subject to review and evaluation as to type, level, quality of care, feasibility, and other criteria as determined by provisions of this Article or by the North Carolina Department of Human Resources pursuant to provisions of this Article prior to such services being offered or developed in order that only appropriate and needed institutional health services are made available in the area to be served. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 1; 1983, c. 775, s. 1.)

**Editor's Note.** — Session Laws 1977, 2nd ss., c. 1182, which enacted repealed 131-175 to 131-188, predecessors to this Article, provided in s. 4, as amended by Session Laws 1981, c. 1127, s. 30, and Session Laws 81 (Reg. Sess., 1982), c. 1242, s. 1(a):

"This act shall not apply to any project which has received approval under the Section 1122, L. 92-603 program prior to January 1, 1979, as long as construction has commenced before January 1, 1980.

"This act shall not apply to any project for which application is made under this Section 1122, P.L. 92-603 program between July 1, 1978, and January 1, 1979, if such application is approved, and construction has commenced before January 1, 1980.

"Rules and Regulations under this act may be issued at any time after the date of ratification of this act [June 16, 1978], but shall not become effective prior to January 1, 1979.

"Provided, that, notwithstanding the provisions of the two paragraphs, this act shall apply to any project described in either of those two paragraphs or exempt from this act because construction had commenced prior to June 16, 1978, unless, prior to January 1, 1983:

"(1) Sufficient land has been acquired for the project;

"(2) All necessary building permits and zoning or subdivision approval has been obtained;

"(3) A construction contract has been awarded and payments have been made on the construction contract; and

"(4) Either foundation walls for the project have been raised above grade level, or if a building or buildings existed on that site on January 1, 1983, a contract has been signed to demolish them and total or partial demolition has taken place.

"Provided further, that this paragraph does not apply to any project required to be licensed under Article 13A of Chapter 131 of the General Statutes."

Session Laws 1981 (Reg. Sess., 1982), c. 1242, s. 1(b), provided:

"Any beds released as a result of tests set forth in subsection (a) of this section shall be allocated in a statewide pool, from which allocations

can be made, with first priority being given to those counties which do not have at least one skilled care or one intermediate care facility."

Session Laws 1981, c. 1127, s. 89, and 1981 (Reg. Sess., 1982), c. 1242, s. 2, contain severability clauses.

Session Laws 1983, c. 775, s. 2, provides:

"Sec. 2. Section 4 of Chapter 1182, Session Laws of 1977 (Second Session 1978), as amended by Section 30 of Chapter 1127, Session Laws of 1981, and as amended by Section 1(a) of Chapter 1242, Session Laws of 1981 (Regular Session, 1982), is not repealed and is hereby reenacted to apply to Article 9 of Chapter 1242, Session Laws of 1981 (Regular Session, 1982), is not repealed and is hereby reenacted to apply to Article 9 of Chapter 131E of the General Statutes as of the effective date of this act. Session 1(b) of Chapter 1242, Session Laws of 1981 (Regular Session, 1982) is not repealed and is hereby reenacted to apply to Article 9 of Chapter 131E of the General Statutes as of the effective date of this act."

Session Laws 1983, c. 415, provides for a one-year freeze on the granting of certificates of need for alcohol treatment beds, drug treatment beds, or both. Sections 1 through 4 of the act provide as follows:

"Section 1. Notwithstanding any law to the contrary, beginning with the effective date of this act the North Carolina Department of Human Resources shall not issue any certificate of need under Article 18 of Chapter 131 [Article 9 of Chapter 131E] of the General Statutes for any alcohol treatment beds, drug treatment beds, or both unless the governing body of the applicable health systems agency has rendered or decided not to render, by April 30, 1983, a recommendation on the application for alcohol treatment beds, drug treatment beds, or both. This prohibition will expire June 30, 1984. For reviews commenced after June 30, 1984, new applications must be submitted and the State shall not accept any such applications prior to April 1, 1984.

"Sec. 2. Prior to the end of this limitation the Department of Human Resources is directed to review and revise "policy, criteria and standards for health care facilities" for alcohol and

drug abuse treatment as required by G.S. 131-177(4) [131E-177(4)] with the specific objective of limiting expansion in this area to the most cost effective treatment alternatives.

"Sec. 3. The North Carolina Mental Health Study Commission is directed to appoint an Ad Hoc Committee of recognized specialists in the field of Alcohol and Drug Rehabilitation Treatment. The Ad Hoc Committee shall be of the size and composition as determined by the Study Commission and members of the committee shall be responsible for their own expenses.

"This Ad Hoc Committee shall study, but not be limited to, development of criteria for defining the appropriate place of treatment, i.e., ambulatory or inpatient care; and define the optimal method(s) of treatment including appropriate mix of professional and supportive personnel. These and other related issues shall be studied particularly as they pertain to the most cost effective treatment of the client within the public and private sectors.

"This Ad Hoc Committee shall report its recommendations on proposed State policies and any needed statutory revisions to the Study Commission by February 1, 1984.

"Sec. 4. This act is effective upon ratification."

The Act was ratified June 2, 1983.

Session Laws 1983, c. 835, s. 1, provides: "Notwithstanding any other law to the contrary, including Chapter 1127, Section 31 of the 1981 Session Laws and any other similar or special provision found in the 1983 Session Laws, if a county has a population of 25,000 or more and if no nursing home licensed under G.S. 130-9(e) [see now § 131E-100 et seq.] is located in such county, the Department of Human Resources may issue a certificate of need under Article 18 of Chapter 131 [Article 9 of Chapter 131E] of the General Statutes and the regulations promulgated thereunder, including the State Medical Facilities Plan.

Session Laws 1983, c. 835, s. 2, provides that the act is effective upon ratification. The act was ratified July 20, 1983.

Session Laws 1983 (Reg. Sess., 1984), c. 999, provides: "Section 1. Notwithstanding the pro-

visions of Article 9 of Chapter 131E of the General Statutes or of any other law, beginning on the effective date of this act, and until January 31, 1985, the Department of Human Resources shall not issue a certificate of need for:

"(1) Any new or additional home health agency; or

"(2) Any new or additional home health service.

This prohibition shall not apply to home health agencies and home health services for which completed applications, including the required fees, have been filed prior to July 1, 1984.

"Sec. 2. Any person who has applied for a certificate of need and who has not received one due to failure to complete the application and pay the fees shall not be required to file a new application with the Department of Human Resources in order for that proposal to be reviewed after January 31, 1985. That person may request the Department to review the application that already has been filed when complete. Nonetheless, the Department of Human Resources may adopt rules requiring an applicant to review the application and update it where appropriate."

Session Laws 1983 (Reg. Sess., 1984), c. 999, s. 3 makes the act effective upon ratification. The act was ratified June 27, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 80, provides:

"Notwithstanding any plans or rules of the Department of Human Resources to the contrary, a certificate of need may be granted for skilled or intermediate care facilities in a county in which a county-owned licensed skilled nursing facility or intermediate care facility has been closed, demolished, or destroyed, in whole or in part, on or before January 1, 1983, but only to the extent that licensed beds were taken out of use as a result of the closure, demolition, or destruction of a facility."

**Legal Periodicals.** — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncompensated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

## CASE NOTES

**For discussion of history and purpose of the North Carolina certificate of need legislation,** see *North Carolina ex rel. Edmisten v. P.I.A. Asheville, Inc.*, 740 F.2d 274 (4th Cir. 1984).

**The certificate of need requirements represent a clearly articulated policy** by the State of North Carolina to regulate acquisitions of existing health care facilities which result in no change in services or bed capacity.

*North Carolina ex rel. Edmisten v. P.I.A. Asheville, Inc.*, 740 F.2d 274 (4th Cir. 1984).

North Carolina's certificate of need legislation, show that the North Carolina Legislature was concerned about the unrelenting rise in the cost of health care, and about wasteful, duplicative major acquisitions by health care providers. *North Carolina ex rel. Edmisten v. P.I.A. Asheville, Inc.*, 740 F.2d 274 (4th Cir. 1984).

**Hospital Granting Exclusive Privilege to Equipment Held Not Immune under State Action Exemption.** — In an antitrust action brought under §§ 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) brought by plaintiff physicians asserting that defendant hospital had improperly restricted use of its X-ray Scan, defendant was held to have failed to carry its burden, in support of its motion to dismiss, that

the General Assembly had authorized defendant to grant exclusive privileges to certain physicians to use its facilities with the intent to restrict competition, so as to render defendant immune from antitrust liability under the state action exemption. *Coastal Neuro-Psychiatric Assocs. v. Onslow County Hosp. Auth.*, 607 F. Supp. 49 (E.D.N.C. 1985).

### § 131E-176. (Effective until January 1, 1988) Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Ambulatory surgical facility" means a facility designed for the provision of an ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility.
- (1a) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.
- (2) "Bed capacity" means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by regulations of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage.
- (2a) "Capital expenditure" means an expenditure which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
- (3) "Certificate of need" means a written order of the Department setting forth the affirmative findings that a proposed project sufficiently satisfies the plans, standards, and criteria prescribed for such projects by this Article and by rules and regulations of the Department as provided in G.S. 131E-183(a) and which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.
- (4) "Certified cost estimate" means an estimate of the total cost of a project certified by the proponent of the project within 60 days prior to or subsequent to the date of submission of the proposed new institutional health service to the Department and which is based on:

- a. Preliminary plans and specifications;
  - b. Estimates of the cost of equipment certified by the manufacturer or vendor; and
  - c. Estimates of the cost of management and administration of project.
- (5) "Change in bed capacity" means (i) any increase in the total number of beds, or (ii) any relocation of beds from one physical facility or to another, or (iii) a decrease in the total number of beds when that decrease involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section, or (iv) redistribution of beds among different categories when that redistribution involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section. For purposes of this subdivision "beds" means beds in hospitals, rehabilitation facilities, psychiatric facilities, chemical dependency treatment facilities, intermediate care facilities, skilled nursing facilities and intermediate care facilities for the mentally retarded.
- (5a) "Chemical dependency treatment facility" means a public or private facility, or unit in a facility, which is engaged in providing 24-hour day treatment for chemical dependency or substance abuse. The treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:
- a. A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 130C of the General Statutes,
  - b. A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C,
  - c. A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C;
- and may be identified as "chemical dependency, substance abuse, alcoholism, or drug abuse treatment units," "residential chemical dependency, substance abuse, alcoholism or drug abuse facilities," "social setting detoxification facilities" and "medical detoxification facilities," or by other names if the purpose is to provide treatment for chemically dependent or substance abusing persons, but shall not include halfway houses or recovery farms.
- (6) "Department" means the North Carolina Department of Human Resources.
- (7) To "develop" when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service not provided in the previous 12-month reporting period or the incurring of a financial obligation in relation to the offering of such a service.
- (8) "Final decision" means an approval, an approval with conditions, or denial of an application for a certificate of need.
- (9) "Health care facilities" means hospitals; psychiatric facilities; skilled nursing facilities; kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities, including intermediate care facilities for the mentally retarded or persons with related conditions; rehabilitation facilities; home health agencies; chemical dependency treatment facilities, and ambulatory surgical facilities.

- (10) "Health maintenance organization (HMO)" means a public or private organization which has received its certificate of authority under Chapter 57B of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or:
- a. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;
  - b. Is compensated, except for copayments, for the provision of the basic health care services listed above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and
  - c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organizations, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.
- (11) "Health systems agency" means an agency, as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
- (12) "Home health agencies" means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services. "Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for paragraph e of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:
- a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
  - b. Physical, occupational or speech therapy;
  - c. Medical social services, home health aid services, and other therapeutic services;
  - d. Medical supplies, other than drugs and biologicals and the use of medical appliances;
  - e. Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.
- (13) "Hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. The term includes all facilities licensed pursuant to G.S. 131E-77 of the General Statutes.

- (13a) "Hospice" means any coordinated program of home care within provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.
- (14) "Intermediate care facility" means a public or private institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health-related care and services above the level of room and board.
- (14a) "Intermediate care facility for the mentally retarded" means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy or related conditions.
- (15) "Major medical equipment" means a single unit or a single system of components with related functions which is used to provide medical and other health services and which costs more than six hundred thousand dollars (\$600,000). In determining whether medical equipment costs more than six hundred thousand dollars (\$600,000), the costs of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the cost shall be deemed to be the fair market value.
- (16) "New institutional health services" means:
- a. The construction, development, or other establishment of a new health care facility;
  - b. The obligation by or on behalf of a health care facility or a local health department established under Article 2 of Chapter 130 of the General Statutes of any capital expenditure, other than one to acquire an existing health care facility, which exceeds the expenditure minimum. Further, increases in approved capital expenditures, if they exceed the expenditure minimum, are also new institutional health services. The expenditure minimum is one million dollars (\$1,000,000) for the 12-month period beginning October 1, 1985. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum;
  - c. The obligation of a capital expenditure by or on behalf of a health care facility when it is associated with a change in bed capacity and within the limits set forth in G.S. 131E-176(5);

- d. The obligation of any capital expenditure by or on behalf of a health care facility which is associated with the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months or with the termination of a health service which was offered in or through the facility;
- e. A change in a project which was subject to review under paragraphs a, b, c, or d of this subdivision and for which a certificate of need had been issued, if the change is proposed within one year after the project was completed. For the purposes of this paragraph, a change in a project is a change in bed capacity, the addition of a health service, or the termination of a health service, regardless of whether a capital expenditure is associated with the change;
- f. The offering of a health service by or on behalf of a health care facility if the service was not offered by or on behalf of the health care facility in the previous 12 months and if the annual operating costs of the service equal or exceed the expenditure minimum. The expenditure minimum for annual operating costs is two hundred fifty thousand dollars (\$250,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index;
- g. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility or the acquisition by any person of major medical equipment that includes magnetic resonance imaging and lithotripters, regardless of ownership or location;
- h. The acquisition by any person of major medical equipment not owned by or located in a health care facility if notice of the acquisition is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice, finds that the equipment will be used to provide services to inpatients of a hospital, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, or the Department, within 30 days after receipt of the notice, finds that the major medical equipment is among the types enumerated in g. above;
- i. The use, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, of major medical equipment which was acquired without a certificate of need, to treat inpatients of a hospital;
- j. The obligation of a capital expenditure by any person to acquire an existing health care facility, if a notice of intent is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice of intent, finds that there will be a change in bed capacity, the addition of a health service not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility;
- k. A change in bed capacity, the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility, in a health care facility

which was acquired without a certificate of need, if such change occurs within one year of the acquisition;

- l. Notwithstanding the provisions of G.S. 131E-176(16)h and j, the purchase, lease or acquisition of any of the following: any health care facility, or portion thereof; major medical equipment; a controlling interest in the health care facility, or portion thereof; or a controlling interest in major medical equipment. The aforesaid are new institutional health services if the asset was obtained under a certificate of need issued pursuant to G.S. 131E-176(16)h.
  - m. Any conversion of nonhealth care facility beds to health care facility beds, regardless of whether a capital expenditure is associated with the conversion. A bed is a nonhealth care facility bed if a facility that contained only that type of bed would not be a health care facility. A bed is a health care facility bed if a facility that contained only that type of bed would be a health care facility.
  - n. The construction, development, or other establishment of a hospice if the operating budget thereof is in excess of one hundred thousand dollars (\$100,000) or if there is the obligation of a capital expenditure by or on behalf of the hospice as provided in G.S. 131E-176(16)b.
- (17) "North Carolina State Health Coordinating Council" means the Council as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
  - (18) To "offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.
  - (19) "Person" means an individual, a trust or estate, a partnership, corporation, including associations, joint stock companies, and insurance companies; the State, or a political subdivision or agency instrumentality of the State.
  - (20) "Project" or "capital expenditure project" means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health care facility.
  - (21) "Psychiatric facility" means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.
  - (22) "Rehabilitation facility" means a public or private inpatient or outpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision, and shall include "comprehensive outpatient rehabilitation facilities" as defined by the Social Security Act and the regulations promulgated by the Department of Health and Human Services pursuant to that act.

- (23) "Skilled nursing facility" means a public or private institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.
- (24) "State Health Plan" means the plan required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
- (25) "State Medical Facilities Plan" means the plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, as required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
- (26) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1002, s. 9.
- (27) "Tuberculosis hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, ss. 1, 2; c. 1127, ss. 24-29; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1002, ss. 1-9; c. 1022, ss. 2, 3; c. 1064, s. 1; c. 1110, ss. 1, 2; 1985, c. 589, ss. 42, 43(a); c. 740, ss. 1, 2, 6.)

**Section Set Out Twice.** — The section above is effective until January 1, 1988. For this section as amended effective January 1, 1988, see the following section, also numbered section 131E-176.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, makes the act effective from November 1, 1984, through June 30, 1987.

Session Laws 1983 (Reg. Sess., 1984), c. 110, s. 15, provides: "The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

Session Laws 1983 (Reg. Sess., 1984), c. 110, s. 17, provides that the enactment of ss. 1 through 3 of the act (which amended § 131E-176 and 131E-178) shall not be construed as requiring a facility which had obtained prior to June 30, 1984, a certificate of need for such use under prior law to obtain a new certificate of need on account of the special inclusion of chemical dependency treatment facilities in Article 9 of Chapter 131E.

Session Laws 1985, c. 740, s. 7, as amended by Session Laws 1985, c. 791, s. 54. 1, provides that section 6 of the act, which amended this section, shall not apply to an acquisition of major medical equipment for which a notice of acquisition pursuant to G.S. 131E-176(16)(h) has been approved by the Department prior to the effective date of the act.

Session Laws 1985, c. 589, s. 65, and c. 740, s. 5 are severability clauses.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment by c. 1002, effective June 27, 1984, rewrote subdivision (5), inserted "psychiatric facilities" in subdivision (9), rewrote the second sentence of subdivision (13), which read "Such term does include psychiatric hospitals as defined in subdivision (21) of this section, or tuberculosis hospitals, as defined in subdivision (27) of this section," deleted the second sentence of subdivision (14), which read "This term includes intermediate care facilities for the mentally retarded or persons with related conditions such as epilepsy, cerebral palsy or autism," inserted subdivision (14a), rewrote paragraph c of subdivision (16), which read "The obligation of any capital expenditure by or on behalf of any health care facility which is associated with a change in bed capacity," rewrote subdivision (21), which formerly defined the term "psychiatric hospital," inserted "or outpatient" and added the language beginning "and shall include 'comprehensive outpatient rehabilitation facilities'" in subdivision (22), and deleted former subdivision (26), which formerly defined the term "State Mental Health Plan."

The 1983 (Reg. Sess., 1984) amendment by c. 1022, effective from November 1, 1984, through June 30, 1987, inserted subdivision (13a) and added paragraph (n) of subdivision (16).

The 1983 (Reg. Sess., 1984) amendment by c. 1064, effective July 2, 1984, rewrote subdivision (1) and inserted subdivision (1a).

The 1983 (Reg. Sess., 1984) amendment by c. 1110, effective July 6, 1984, added subdivision (5a) and inserted "chemical dependency treatment facilities" in subdivision (9).

The 1985 amendment by c. 589, ss. 42 and 43(a), effective January 1, 1986, inserted "or Article 2 of General Statutes Chapter 122C" in paragraphs (5a)b and (5a)c and substituted "Article 2 of Chapter 122C" for "Chapter 122" in subdivisions (14a) and (21).

The 1985 amendment by c. 740, ss. 1, 2 and 6, effective July 12, 1985, in subdivision (15) substituted "six hundred thousand dollars (\$600,000)" for "four hundred thousand dollars (\$400,000)" in the present first and second sentences, deleted a former second sentence, which read "This does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory

services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraph (10) and (11) of Section 1861(s) that act," and substituted "cost" for "costs" in the present second sentence, in paragraph (16)b substituted "one million dollars (\$1,000,000)" for "six hundred thousand dollars (\$600,000)" and "1985" for "1979" in the present sentence, in paragraph (16)g added "or the acquisition by any person of major medical equipment that includes magnetic resonance imaging and lithotripters, regardless of ownership or location," and in paragraph (16)h added "or the Department, within 30 days after receipt of the notice, finds that the major medical equipment is among the types enumerated in paragraph g. above."

### § 131E-176. (Effective January 1, 1988) Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Ambulatory surgical facility" means a facility designed for the provision of an ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility.
- (1a) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.
- (2) "Bed capacity" means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by regulations of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage.
- (2a) "Capital expenditure" means an expenditure which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
- (3) "Certificate of need" means a written order of the Department setting forth the affirmative findings that a proposed project sufficiently sat-

ifies the plans, standards, and criteria prescribed for such projects by this Article and by rules and regulations of the Department as provided in G.S. 131E-183(a) and which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.

- (4) "Certified cost estimate" means an estimate of the total cost of a project certified by the proponent of the project within 60 days prior to or subsequent to the date of submission of the proposed new institutional health service to the Department and which is based on:
- Preliminary plans and specifications;
  - Estimates of the cost of equipment certified by the manufacturer or vendor; and
  - Estimates of the cost of management and administration of the project.
- (5) "Change in bed capacity" means (i) any increase in the total number of beds, or (ii) any relocation of beds from one physical facility or site to another, or (iii) a decrease in the total number of beds when that decrease involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section, or (iv) a redistribution of beds among different categories when that redistribution involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section. For purposes of this subdivision "beds" means beds in hospitals, rehabilitation facilities, psychiatric facilities, chemical dependency treatment facilities, intermediate care facilities, skilled nursing facilities and intermediate care facilities for the mentally retarded.
- (5a) "Chemical dependency treatment facility" means a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:
- A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 131E, of the General Statutes,
  - A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under [or] Article 2 of General Statutes Chapter 122C,
  - A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under [or] Article 2 of General Statutes Chapter 122C;
- and may be identified as "chemical dependency, substance abuse, alcoholism, or drug abuse treatment units," "residential chemical dependency, substance abuse, alcoholism or drug abuse facilities," "social setting detoxification facilities" and "medical detoxification facilities," or by other names if the purpose is to provide treatment of chemically dependent or substance abusing persons, but shall not include halfway houses or recovery farms.
- (6) "Department" means the North Carolina Department of Human Resources.
- (7) To "develop" when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service not provided in the previous 12-month reporting period or the incurring of a financial obligation in relation to the offering of such a service.

- (8) "Final decision" means an approval, an approval with conditions, or denial of an application for a certificate of need.
- (9) "Health care facilities" means hospitals; psychiatric facilities; skilled nursing facilities; kidney disease treatment centers, including free standing hemodialysis units; intermediate care facilities, including intermediate care facilities for the mentally retarded or persons with related conditions; rehabilitation facilities; home health agencies; chemical dependency treatment facilities, and ambulatory surgical facilities.
- (10) "Health maintenance organization (HMO)" means a public or private organization which has received its certificate of authority under Chapter 57B of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or:
- Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;
  - Is compensated, except for copayments, for the provision of the basic health care services listed above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and
  - Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organizations or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.
- (11) "Health systems agency" means an agency, as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
- (12) "Home health agencies" means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.
- "Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for paragraph e of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:
- Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
  - Physical, occupational or speech therapy;
  - Medical social services, home health aid services, and other therapeutic services;
  - Medical supplies, other than drugs and biologicals and the use of medical appliances;
  - Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

- (13) "Hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. The term includes all facilities licensed pursuant to G.S. 131E-77 of the General Statutes.
- (13a) "Hospice" means any coordinated program of home care within provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.
- (14) "Intermediate care facility" means a public or private institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health-related care and services above the level of room and board.
- (14a) "Intermediate care facility for the mentally retarded" means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy or related conditions.
- (15) "Major medical equipment" means a single unit or a single system of components with related functions which is used to provide medical and other health services and which costs more than six hundred thousand dollars (\$600,000). In determining whether medical equipment costs more than six hundred thousand dollars (\$600,000), the costs of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the cost shall be deemed to be the fair market value.
- (16) "New institutional health services" means:
- a. The construction, development, or other establishment of a new health care facility;
  - b. The obligation by or on behalf of a health care facility or a local health department established under Article 2 of Chapter 130A of the General Statutes of any capital expenditure, other than one to acquire an existing health care facility, which exceeds the expenditure minimum. Further, increases in approved capital expenditures, if they exceed the expenditure minimum, are also new institutional health services. The expenditure minimum is one million dollars (\$1,000,000) for the 12-month period beginning October 1, 1985. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replace-

- ment of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum;
- c. The obligation of a capital expenditure by or on behalf of a health care facility when it is associated with a change in bed capacity and within the limits set forth in G.S. 131E-176(5);
  - d. The obligation of any capital expenditure by or on behalf of a health care facility which is associated with the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months or with the termination of a health service which was offered in or through the facility;
  - e. A change in a project which was subject to review under paragraphs a, b, c, or d of this subdivision and for which a certificate of need had been issued, if the change is proposed within one year after the project was completed. For the purposes of this paragraph, a change in a project is a change in bed capacity, the addition of a health service, or the termination of a health service, regardless of whether a capital expenditure is associated with the change;
  - f. The offering of a health service by or on behalf of a health care facility if the service was not offered by or on behalf of the health care facility in the previous 12 months and if the annual operating costs of the service equal or exceed the expenditure minimum. The expenditure minimum for annual operating costs is two hundred fifty thousand dollars (\$250,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index;
  - g. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility or the acquisition by any person of major medical equipment that includes magnetic resonance imaging and lithotripters, regardless of ownership or location;
  - h. The acquisition by any person of major medical equipment not owned by or located in a health care facility if notice of the acquisition is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice, finds that the equipment will be used to provide services to inpatients of a hospital, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, or the Department, within 30 days after receipt of the notice, finds that the major medical equipment is among the types enumerated in g. above;
  - i. The use, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, of major medical equipment which was acquired without a certificate of need, to treat inpatients of a hospital;
  - j. The obligation of a capital expenditure by any person to acquire an existing health care facility, if a notice of intent is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice of intent, finds that there will be a change in bed capacity, the addition of a health service not offered by or on behalf of the facility within the previous 12 months, or the termi-

nation of a health service which was offered by or on behalf of the facility;

- k. A change in bed capacity, the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility, in a health care facility which was acquired without a certificate of need, if such change occurs within one year of the acquisition;
  - l. Notwithstanding the provisions of G.S. 131E-176(16)h and j, the purchase, lease or acquisition of any of the following: any health care facility, or portion thereof; major medical equipment; a controlling interest in the health care facility, or portion thereof; or a controlling interest in major medical equipment. The aforesaid are new institutional health services if the asset was obtained under a certificate of need issued pursuant to G.S. 131E-180;
  - m. Any conversion of nonhealth care facility beds to health care facility beds, regardless of whether a capital expenditure is associated with the conversion. A bed is a nonhealth care facility bed if a facility that contained only that type of bed would not be a health care facility. A bed is a health care facility bed if a facility that contained only that type of bed would be a health care facility.
  - n. The construction, development, or other establishment of a hospice if the operating budget thereof is in excess of one hundred thousand dollars (\$100,000) or if there is the obligation of any capital expenditure by or on behalf of the hospice as provided in G.S. 131E-176(16)b.
- (17) "North Carolina State Health Coordinating Council" means the Council as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
  - (18) To "offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.
  - (19) "Person" means an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insurance companies; the State, or a political subdivision or agency or instrumentality of the State.
  - (20) "Project" or "capital expenditure project" means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health care facility.
  - (21) "Psychiatric facility" means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.
  - (22) "Rehabilitation facility" means a public or private inpatient or outpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated pro-

gram of medical and other services which are provided under competent, professional supervision, and shall include "comprehensive outpatient rehabilitation facilities" as defined by the Social Security Act and the regulations promulgated by the Department of Health and Human Services pursuant to that act.

- (23) "Skilled nursing facility" means a public or private institution or distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.
- (24) "State Health Plan" means the plan required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
- (25) "State Medical Facilities Plan" means the plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, as required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.
- (26) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1002, s. 9.
- (27) "Tuberculosis hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, ss. 1-2; c. 1127, ss. 24-29; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1002, ss. 1-9; c. 1022, ss. 2, 3; c. 1064, s. 1; c. 1110, ss. 1, 2; 1985, c. 589, ss. 42, 43(a), (b); c. 740, ss. 1, 2, 6.)

**Section Set Out Twice.** — This section above is effective January 1, 1988. For this section as in effect until January 1, 1988, see the preceding section, also numbered 131E-176.

**Editor's Note.** —

Session Laws 1985, c. 740, s. 7, as amended by Session Laws 1985, c. 791, s. 54.1, provides that section 6 of the act, which amended this section, shall not apply to an acquisition of major medical equipment for which a notice of acquisition pursuant to G.S. 131E-176(16)(h) has been approved by the Department prior to the effective date of the act.

The word "or" has been bracketed preceding "Article 2 of General Statutes Chapter 122C" in subdivision (5a), since Session Laws 1985, c. 589, s. 43(b), effective Jan. 1, 1988, deleted "Article 1A of General Statutes Chapter 122" in that subdivision following "under" but did not delete "or" following the deleted language.

Session Laws 1985, c. 589, s. 65, and c. 740, s. 5 are severability clauses.

**Effect of Amendments.** —

The 1985 amendment by c. 589, ss. 42 and 43(a), effective January 1, 1986, inserted "or Article 2 of General Statutes Chapter 122C" in paragraphs (5a)b and (5a)c and substituted "Article 2 of Chapter 122C" for "Chapter 122" in subdivisions (14a) and (21).

The 1985 amendment by c. 589, s. 43(b), effective January 1, 1988, deleted "Article 1A of

General Statutes Chapter 122" following "licensed under" in paragraphs (5a)b and (5a)c.

The 1985 amendment by c. 740, ss. 1, 2 and 6, effective July 12, 1985, in subdivision (15) substituted "six hundred thousand dollars (\$600,000)" for "four hundred thousand dollars" (\$400,000)" in the present first and second sentences, deleted a former second sentence, which read "This does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraph (10) and (11) of Section 1861(s) of that act," and substituted "cost" for "costs" in the present second sentence, in paragraph (16)b substituted "one million dollars (\$1,000,000)" for "six hundred thousand dollars (\$600,000)" and "1985" for "1979" in the third sentence, in paragraph (16)g added "or the acquisition by any person of major medical equipment that includes magnetic resonance imaging and lithotripters, regardless of ownership or location," and in paragraph (16)h added "or the Department, within 30 days after receipt of the notice, finds that the major medical equipment is among the types enumerated in g. above.

### 131E-177. Department of Human Resources is designated State Health Planning and Development Agency; powers and duties.

The Department of Human Resources is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to fulfill responsibilities defined in Title XV of the Public Health Service Act.

The Department shall exercise the following powers and duties:

- (1) To establish standards and criteria or plans required to carry out the provisions and purposes of this Article and to adopt rules and regulations pursuant to Chapter 150A of the General Statutes;
- (2) Adopt, amend, and repeal such rules and regulations, consistent with the laws of this State, as may be required by the federal government for grants-in-aid for health care facilities and health planning which may be made available by the federal government. This section shall be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;
- (3) Define, by regulation, procedures for submission of periodic reports by persons or health facilities subject to agency review under this Article;
- (4) Develop policy, criteria, and standards for health care facilities planning, conduct statewide inventories of and make determinations of need for health care facilities, and develop a State plan coordinated with other plans of health systems agencies with other pertinent plans and with the State health plan of the Department;
- (5) Implement, by regulation, criteria for project review;
- (6) Have the power to grant, deny, suspend, or revoke a certificate of need;
- (7) Solicit, accept, hold and administer on behalf of the State any grants or bequests of money, securities or property to the Department for use by the Department or health systems agencies in the administration of this Article;
- (8) Develop procedures for appeals of decisions to approve or deny a certificate of need, as provided by G.S. 131E-188; and
- (9) Establish and collect fees for submitting applications for certificates-of-need, which fees shall be based on the total cost of the project for which the applicant is applying. This fee may not exceed fifteen thousand dollars (\$15,000) and may not be less than four hundred dollars (\$400.00).

The Secretary of Human Resources shall have final decision-making authority with regard to all functions described in this section. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 1; 1983, c. 713, s. 96; c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 713, s. 96, amended repealed § 131-177, by inserting "and" at the end of subdivision (9) thereof (which was the same as the last paragraph of this section) and adding a new subsection (10). Pursuant to Session Laws 1983, c. 775, s. 6, the subdivision added by c. 713, s. 96, has been inserted as subdivision (9) of this section and "and" has been added at the end of subdivision (8).

Session Laws 1983, c. 713, s. 109, made s. 96 effective upon ratification and applicable to applications received or processed on or after that date. Section 109 further provided that applicants for a certificate-of-need whose applications were submitted but not processed as of the effective date of the act should remit the fee imposed by the act within ten days of notification by the Secretary of Human Resources of the amount of the fee. The act was ratified July 8, 1983.

Session Laws 1983, c. 415, provides for a one-year freeze on the granting of certificates of need for alcohol treatment beds, drug treatment beds, or both. Sections 1 through 4 of the act provide as follows:

"Section 1. Notwithstanding any law to the contrary, beginning with the effective date of this act the North Carolina Department of Human Resources shall not issue any certificate of need under Article 18 of Chapter 131 [Article 9 of Chapter 131E] of the General Statutes for any alcohol treatment beds, drug treatment beds, or both unless the governing body of the applicable health systems agency has rendered or decided not to render, by April 30, 1983, a recommendation on the application for alcohol treatment beds, drug treatment beds, or both. This prohibition will expire June 30, 1984. For reviews commenced after June 30, 1984, new applications must be submitted and the State shall not accept any such applications prior to April 1, 1984.

"Sec. 2. Prior to the end of this limitation the Department of Human Resources is directed to review and revise "policy, criteria and standards for health care facilities" for alcohol and drug abuse treatment as required by G.S. 131-177(4) [131E-177(4)] with the specific objective of limiting expansion in this area to the most cost effective treatment alternatives.

"Sec. 3. The North Carolina Mental Health Study Commission is directed to appoint an Ad Hoc Committee of recognized specialists in the field of Alcohol and Drug Rehabilitation Treatment. The Ad Hoc Committee shall be of the size and composition as determined by the Study Commission and members of the committee shall be responsible for their own expenses.

"This Ad Hoc Committee shall study, but not be limited to, development of criteria for defining the appropriate place of treatment, i.e., ambulatory or inpatient care; and define the optimal method(s) of treatment including appropriate mix of professional and supportive personnel. These and other related issues shall be studied particularly as they pertain to the most cost effective treatment of the client within the public and private sectors.

"This Ad Hoc Committee shall report its recommendations on proposed State policies and any needed statutory revisions to the Study Commission by February 1, 1984.

"Sec. 4. This act is effective upon ratification."

The Act was ratified June 2, 1983.

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

## § 131E-178. Activities requiring certificate of need.

(a) No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department. Provided that chemical dependency treatment facilities containing beds licensed as of June 30, 1984, shall not be required to obtain a certificate of need. A hospital shall not be required to obtain a certificate of need for a new institutional health service offered or developed by or on behalf of the hospital for outpatients in a freestanding facility unless all other persons offering or developing the same new institutional health service in a freestanding facility are required under this Article to obtain a certificate of need.

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service the fair market value of the asset shall be deemed to be the purchase price.

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the department. An obligation for a capital expenditure is incurred by or on behalf of a health care facility when:

- (1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;
- (2) The governing body of a health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(3) In the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure, such expenditure shall be deemed not to exceed the expenditure minimum for capital expenditures regardless of the actual amount expended, provided that the following conditions are met:

- (1) The certified estimated cost is prepared in writing 60 days or more before the obligation for the capital expenditure is incurred. Certified cost estimates shall be available for inspection at the facility and sent to the Department upon its request.
- (2) The facility on whose behalf the expenditure was made notifies the Department in writing within 30 days of the date on which such expenditure is made if the expenditure exceeds the expenditure minimum for capital expenditures. The notice shall include a copy of the certified cost estimate.

(e) The Department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and surveys, and the acquisition of a potential site. (1977, 2nd Sess., c. 1182, s. 2; 1979, c. 876, s. 2; 1981, c. 651, s. 3; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 3; 1985, c. 740, s. 3.)

**Editor's Note.** — Session Laws 1981, c. 1127, s. 31, provides:

"(a) Findings of Fact. — The General Assembly of North Carolina makes the following findings:

"(1) That additional time is needed to plan and develop community alternatives to institutional care;

"(2) That time is needed to assess the impact of recent federal statutory changes contained in Omnibus Budget Reconciliation Act of 1981 on long-term care services in North Carolina;

"(b) No certificate of need shall be granted after January 1, 1982, under Article 18 of Chapter 131 [Article 9 of Chapter 131E] of the General Statutes (The North Carolina Health Planning and Resource Development Act of 1978, as amended) for any additional bed capacity or new bed capacity for any skilled nursing facility, proposed skilled nursing facility, intermediate care facility, or proposed intermediate care facility, (as defined in G.S. 131-176 [131E-176]), until all skilled nursing facility bed capacity and all intermediate care facility bed capacity authorized by any certificate of need or authorized under Section 1122 of the Social Security Act (42 U.S.C.S. 1320a-1.) has been constructed, and until the total of all such beds constructed subsequent to the effective date of this section are at seventy-five percent (75%) occupancy.

"(c) Notwithstanding any provision of Article 18 of Chapter 131 [Article 9 of Chapter 131E] of the General Statutes, no certificate of need for bed capacity for a skilled nursing facility or intermediate care facility, which beds

were not constructed on or before the effective date of this section, may be transferred or sold (other than by devise or by operation of law upon death) until the conditions of subsection (b) of this section have been satisfied.

"(d) The Department of Human Resources may issue regulations to implement this section.

"(e) This section shall not apply to certificates of need for intermediate care facilities for the mentally retarded.

"(f) This section does not apply to conversion of home for aged beds to intermediate care facility or skilled nursing facility beds in a continuing care for the elderly and infirm facility as defined in G.S. 131A-3 as amended by Chapter 867, Session Laws of 1981, if the conversion is in pursuance to the policy in the State Medical Facilities Plan."

Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 15, provides: "The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 17, provides that the enactment of ss. 1 through 3 of the act (which amended §§ 131E-176 and 131E-178) shall not be construed as requiring a facility which had obtained prior to June 30, 1984, a certificate of need for such use under prior law to obtain a

new certificate of need on account of the special inclusion of chemical dependency treatment facilities in Article 9 of Chapter 131E.

Session Laws 1985, c. 740, s. 5 is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added the second sentence of subsection (a).

The 1985 amendment, effective July 12, 1985, added the last sentence of subsection (a)

### § 131E-179. Research activities.

(a) Notwithstanding any other provisions of this Article, a health care facility may acquire major medical equipment to be used solely for research, offer institutional health services to be used solely for research, or incur the obligation of a capital expenditure solely for research, without a certificate of need if the Department grants an exemption. The Department shall grant an exemption if the health care facility files a notice of intent with the Department in accordance with rules promulgated by the Department and if the Department finds that the acquisition, offering or obligation will not:

- (1) Affect the charges of the health care facility for the provision of medical or other patient care services other than services which are included in the research;
- (2) Substantially change the bed capacity of the facility; or
- (3) Substantially change the medical or other patient care services of the facility.

(b) After a health care facility has received an exemption pursuant to subsection (a) of this section, it shall not use the major medical equipment, offer the institutional health services, or use the equipment or facility acquired through the capital expenditure, in a manner which affects the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research, without first obtaining a certificate of need from the Department.

(c) Any of the activities described in subsection (a) of this section shall be deemed to be solely for research even if they include patient care provided on an occasional and irregular basis and not as a part of the research program. (1983, c. 775, s. 1.)

### § 131E-180. Health maintenance organization.

(a) Subject to the provisions of subsection (b) of this section, no inpatient health care facility controlled, directly or indirectly, by a health maintenance organization, hereinafter referred to as HMOs, or combination of HMOs, shall offer or develop new institutional health services without first obtaining a certificate of need from the Department. Further, subject to the provisions of subsection (b) of this section, no health care facility of an HMO shall offer or develop any of the new institutional health services specified in G.S. 131E-176(16)g, h, and i without first obtaining a certificate of need from the Department. This section shall not be construed as requiring that a certificate of need be obtained before an HMO is established.

(b) The requirements of subsection (a) of this section shall not apply to any person who receives an exemption under this subsection. In order to receive an exemption an application must be submitted to the Department and the appropriate health systems agency or agencies. The application shall be on forms prescribed by the Department and contain the information required by the Department. The application shall be submitted at a time and in a manner prescribed by the rules and regulations of the Department. The Department may grant an exemption if it finds that the applicant is qualified or will be qualified on the date the activity is undertaken. Any of the following are qualified applicants:

- (1) An HMO or combination of HMOs, if (i) the HMO or combination of HMOs has an enrollment of at least 50,000 individuals in its service area, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled in the HMO or HMOs in combination; or
- (2) A health care facility, or portion thereof, if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iv) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combination; or
- (3) A health care facility, or portion thereof, if (i) the facility is or will be leased by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area and on the date the application for exemption is submitted at least 15 years remain on the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combination.

(c) If a fee-for-service component of an HMO or combination of HMOs qualifies for an exemption under subsection (b) of this section, then it must be granted an exemption.

(d) In reviewing certificate of need applications submitted pursuant to this section, the Department shall not deny the application solely because the proposal is not addressed in the applicable health systems plan, annual implementation plan or State health plan.

(e) Notwithstanding the review criteria of G.S. 131E-183(a), if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the Department may grant the certificate if it finds, in accordance with G.S. 131E-183(a)(10), that (i) granting the certificate is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (ii) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it. (1983, c. 775, s. 1; 1985, c. 740, s. 4.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, substituted "shall" for "may" in the fifth sentence of

subsection (b) and near the beginning of subsection (e).

### § 131E-181. Nature of certificate of need.

A certificate of need shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned. Provided, however, that a certificate of need granted to operate a hospital may be transferred or assigned to another person undertaking a legal obligation to own or operate the hospital if the Department determines that:

- (1) The existing hospital cannot reasonably continue operating in a manner sufficient to provide the health services for which its certificate of need was granted;
- (2) Another person is ready, willing and able to assume ownership and operation of the hospital and to provide the appropriate and needed health services;
- (3) Failure to approve the transfer or assignment would likely result in significant deficiency in the level of health services available in the area to be served; and
- (4) There is no pending application for a certificate of need which is likely to be granted for providing the appropriate and needed service within time to prevent a significant deficiency in the level of health services available in the area to be served.

Any certificate of need transferred or assigned under this section may be under such conditions as the Department considers necessary to best protect the health and lives of the people of this State. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 5; 1983, c. 775, s. 1; 1985, c. 521, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 521, s. 2 provides that the act shall expire July 1, 1987.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, added the last two sentences.

### § 131E-182. Application.

(a) The Department in its rules and regulations shall establish schedules for submission and review of completed applications. The schedules, which shall be consistent with federal law and regulations, shall provide that applications for similar proposals in the same health service area will be reviewed together.

(b) An application for a certificate of need shall be made on forms provided by the Department. The application forms, which may vary according to the type of proposal, shall require such information as the Department, by its rules and regulations, deems necessary to conduct the review. An applicant shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131E-183 and with duly adopted standards, plans and criteria.

(c) All fees established by the Department for submitting an application for a certificate-of-need are due when the application is submitted. These fees are not refundable, regardless whether a certificate-of-need is issued. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 6; 1983, c. 713, s. 97; c. 775, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 713, s. 97, amended repealed § 131-180 by adding a new subsection (c). Pursuant to Session Laws 1983, c. 775, s. 6, the new subsection (c) has been inserted in this section.

Session Laws 1983, c. 713, s. 109, made s. 97 effective upon ratification and applicable to applications received or processed on or after that date. Section 109 further provided that applicants for a certificate-of-need whose applica-

ions were submitted but not processed as of the effective date of the act should remit the fee imposed by the act within ten days of notifi-

cation by the Secretary of Human Resources of the amount of the fee. The act was ratified July 8, 1983.

### § 131E-183. Review criteria.

(a) The Department shall promulgate rules implementing criteria outlined in this subsection to determine whether an applicant is to be issued a certificate for the proposed project. Criteria so implemented are to be consistent with federal law and regulations and shall cover:

- (1) The relationship of the proposed project to the State Medical Facilities Plan, [and] the State Health Plan.
- (2) The relationship of services reviewed to the long-range development plan, if any, of the persons providing or proposing such services.
- (3) The need that the population served or to be served by such services has for such services, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups, and the elderly, are likely to have access to those services.
- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.
- (4) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated.
- (5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.
- (6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.
- (7) The availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State Health Plan.
- (8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.
- (9) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.
- (10) The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:
  - a. The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and

- b. The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from the providers, the Department shall consider only whether the services from these providers:
1. Would be available under a contract of at least five year duration;
  2. Would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
  3. Would cost no more than if the services were provided by the HMO; and
  4. Would be available in a manner which is administrative feasible to the HMO.
- (11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.
- (12) In the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.
- (13) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups, such as low income persons, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the applicable health systems plan, annual implementation plan, and State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the Department shall consider:
- a. The extent to which medically underserved populations currently use the applicant's proposed services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;
  - b. The performance of the applicant in meeting its obligation, if any under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;
  - c. The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and
  - d. The extent to which the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.
- (14) The effect of the means proposed for delivery of the health services on the clinical needs of health professional training programs in the area in which the services are to be provided.
- (15) If the proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

- (16) The special circumstances of health care facilities with respect to the need for conserving energy.
  - (17) In accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), the factors which influence the effect of competition on the supply of the health services being reviewed.
  - (18) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), and serve to promote quality assurance and cost effectiveness.
  - (19) In the case of proposed health services or facilities, the efficiency and appropriateness of the use of existing, similar services and facilities.
  - (20) In the case of existing services or facilities, the quality of care provided in the past.
  - (21) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the bases of the need for and availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The Department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.
- (b) Criteria adopted for reviews in accordance with subsection (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.
- (c) (See Editor's Note for Applicability and Effective Date). In reviewing applications for skilled nursing facilities or intermediate care facilities to be provided within a "life care" or "care for life" institution, the determination of need for beds shall not include a relationship of the proposed project to the need for such services specified in the State Medical Facilities Plan or State Health Plan provided that (i) the use of the proposed facilities is to be limited to resident members of the "life care" or "care for life" institution, (ii) the facilities are not to be certified for participation in either the Medicare or Medicaid programs, (iii) the ratio of skilled nursing facility beds and intermediate care facility beds to domiciliary and other residential arrangements shall not exceed one to three, and (iv) the facilities are to be developed after residential housing has been established or be developed as a part of a total housing construction program which shall result in the complex being one inseparable project. Facilities developed under this provision shall not alter the need for nursing home beds for the general population that exists now or at any time in the future. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 7; 1983, c. 775, s. 1; c. 920, s. 2; 1983 (Reg. Sess., 1984), c. 1002, s. 10; 1985, c. 445, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 920, s. 2, amended repealed § 131-181 by adding a new subsection (c). Pursuant to Session Laws 1983, c. 775, s. 6, the new subsection (c) has been inserted in this section.

Session Laws 1983, c. 920, s. 3, makes the act applicable only to facilities owned and operated by a nonprofit organization (including a corporation, association, or religious organization) with a membership of 5,000 or more, or by

a corporation which is totally controlled by such an organization. Section 3 further provides that before such a facility obtaining a certificate of need under the act may be operated other than as part of a "life care" or "care for life" institution, a certificate of need must be obtained without regard to subsection (c), and that no certificate of need may be granted under the act after June 30, 1984.

Section 4 of Session Laws 1983, c. 920, makes the act effective upon ratification, except that item (i) of the first sentence of subdivision (c) is made effective January 1, 1986.

Session Laws 1983, c. 920, s. 3, as amended by Session Laws 1983 (Reg. Sess., 1984), c. 1046, makes the act applicable only to facilities owned and operated by a nonprofit organization (including a corporation, association, or religious organization) with a membership of 5,000 or more, or by a corporation which is totally controlled by such an organization. Section 3 further provides that before such a facility obtaining a certificate of a need under the act may be operated other than as part of a "life care" or "care for life" institution, a certificate of need must be obtained without regard to subsection (c), and that no certificate of need may be granted under the act after June 30, 1984, except that a certificate may be granted under the act after that date if the application was in process and the Certificate of Need Section of the Division of Facilities Services had determined the application complete for review as of that date.

Session Laws 1985, c. 445, ss. 2 to 4, provide:

"Sec. 2. This act applies only to facilities owned and operated by a nonprofit organization with a membership of 5,000 or more, including a corporation, association, or religious organization, or by a corporation which is totally controlled by such an organization; provided, however, that any autonomous religious

society or organization which is a member of a nonprofit convention, conference or association whose member organizations in the aggregate have 5,000 or more members, within the State of North Carolina may be included under the provisions of this act and provide and operate the facilities herein authorized. Before a facility obtaining a certificate of need under the act may be operated as other than part of a "life care" or "care for life" institution, a certificate of need must be obtained without regard to Sections 1 or 2 of this act. No certificate of need application under this act shall be accepted by the Department for a review date beginning after June 30, 1986.

"Sec. 3. The Department of Human Resources shall study the feasibility and impact of applying the provisions of this act to all nonprofit and for-profit life care facilities, and the Secretary of the Department of Human Resources shall submit a report on the findings and recommendations to the Speaker, the Lieutenant Governor and the fiscal staff of the General Assembly on or before June 1, 1986.

"Sec. 4. This act is effective upon ratification."

The act was ratified June 24, 1985.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 27, 1984, deleted "and the State Mental Health Plan" at the end of subdivision (a)(1).

The 1985 amendment, effective June 24, 1985, rewrote subsection (c).

## § 131E-184. Required approvals.

(a) Except as provided in subsection (b), the Department shall issue a certificate of need for a proposed capital expenditure if:

- (1) The capital expenditure is required (i) to eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building or life safety codes or regulations, or (ii) to comply with State licensure standards, or (iii) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that act; and
- (2) The Department determines that (i) the facility or services for which the capital expenditure is proposed is needed, and (ii) the obligation of the capital expenditure is consistent with the State Health Plan. Even though the proposal is inconsistent with the State Health Plan, the Department may issue a certificate of need if emergency circumstances pose an imminent threat to public health.

(b) Those portions of a proposed project which are not to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review under the criteria developed under G.S. 131E-183. (1983, c. 775, s. 1.)

**131E-185. Review process.**

(a) Except as provided in subsection (c) of this section there shall be a time limit of 90 days for review of the project beginning on the day the Department declares the application "complete for review," as established by departmental regulations.

- (1) The appropriate health systems agency or agencies shall have 60 days to review each application as to consistency with duly adopted plans, standards, and criteria. Following the review the health systems agency shall submit to the Department its comments and recommendations. The comments may include a recommendation to approve the application, to approve the application with conditions, to defer the application, or to deny the application. Suggested modifications, if any, shall relate directly to the project under review.
- (2) The appropriate health systems agency shall, during the course of its review, provide an opportunity for a public meeting at which interested persons may introduce testimony and exhibits.
- (3) Any person may file written comments and exhibits concerning a proposal under review with the appropriate health systems agency and the Department.

(b) The Department shall issue as provided in this Article a certificate of need with or without conditions or reject the application within the review period.

(c) The Department shall promulgate rules establishing criteria for determining when it would not be practicable to complete a review within 90 days from receipt of a completed application. If the Department finds that these criteria are met for a particular project, it may extend the review period for a period not to exceed 60 days and provide notice of such extension to all affected persons. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, ss. 9, 10; 1983, c. 775, s. 1.)

**§ 131E-186. Final decision.**

The Department shall send its decision along with written findings to the person proposing the new institutional health service and to the Health Systems Agency for the health service area in which the new service is proposed to be offered or developed. In the case of a final decision to "approve" or "approve with conditions" a proposal for a new institutional health service, the Department shall issue a certificate of need to the person proposing the new institutional health service. (1977, 2nd Sess., c. 1182, s. 2; 1983, c. 775, s. 1.)

**§ 131E-187. Written notice of decision.**

The Department shall, within 15 days after it makes a final decision on an application, provide in writing to the applicant, to the appropriate Health Systems Agency and, upon request to affected persons, the findings and conclusions on which it based its decision, including but not limited to, the criteria used by the Department in making its decision. (1977, 2nd Sess., c. 1182, s. 2; 1983, c. 775, s. 1.)

## § 131E-188. Administrative and judicial review.

(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption, any affected person shall be entitled to a contested case hearing under Article 3 of Chapter 150A of the General Statutes, if the Department receives a request therefor within 30 days after its decision.

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review of all or any portion of any final decision of the Department in the following manner. The appeal shall be to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal of the final decision of the Department shall be taken within 30 days of the receipt of the written notice of decision required by G.S. 131E-187 and notice of appeal shall be filed with the Division of Facilities Services, Department of Human Resources and with all other affected persons who were parties to the contested hearing.

(c) The term "affected persons" includes: the applicant; the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas located within the same standard metropolitan statistical area; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within that geographic area; health care facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located, which provide services similar to the services of the facility under review; health care facilities and HMOs which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; third party payers who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 11; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1000, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1000, s. 4, provides that the act shall become effective October 1, 1984, but shall not affect any appeal for which notice of

appeal was filed prior to the effective date of the act.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment rewrote subsection (b)

## § 131E-189. Withdrawal of a certificate of need.

(a) The Department shall specify in each certificate of need the time the holder has to make the service or equipment available or to complete the project and the timetable to be followed. The timetable shall be the one proposed by the holder of the certificate of need unless at the time the certificate of need is issued the Department determines by a preponderance of the evidence that the timetable proposed by the holder is unreasonable and that a different timetable should be followed by the holder. The holder of the certificate shall submit such periodic reports on his progress in meeting the timetable as may be required by the Department. If, after reviewing the progress, the Department determines that the holder of the certificate is not meeting the timetable and not making a good faith effort to meet it, the Department may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate.

(b) The Department may withdraw any certificate of need which was issued subject to a condition or conditions, if the holder of the certificate fails to satisfy such condition or conditions.

(c) The Department may withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility. Transfers resulting from personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 12; 1983, c. 775, s. 1)

### **131E-190. Enforcement and sanctions.**

(a) Only those new institutional health services which are found by the Department to be needed as provided in this Article and granted certificates of need shall be offered or developed within the State.

(b) No formal commitments made for financing, construction, or acquisition regarding the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such service or activities has been granted.

(c) Nothing in this Article shall be construed as terminating the P.L. 92-603, Section 1122, capital expenditure program or the contract between the State of North Carolina and the United States under that program. The sanctions available under that program and contract, with regard to the determination or whether the amounts attributable to an applicable project or capital expenditure project should be included or excluded in determining payments to the proponent under Titles V, XVIII, and XIX of the Social Security Act, shall remain available to the State.

(d) If any health care facility proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the penalty for such violation of this Article and rules and regulations hereunder is the withholding of federal and State funds under Titles V, XVIII, and XIX of the Social Security Act for reimbursement of capital and operating expenses related to the provision of the new institutional health service.

(e) If any health care facility proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the licensure for such facility may be revoked or suspended by the Medical Care Commission, or the Commission for Health Services, as appropriate.

(f) A civil penalty of not more than twenty thousand dollars (\$20,000) may be assessed by the Department against any person who knowingly offers or develops any new institutional health service within the meaning of this Article without a certificate of need issued under this Article and the rules and regulations pertaining thereto, or in violation of the terms of such a certificate. In determining the amount of the penalty the Department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. The Department 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 within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Department may specify, the Department may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Department, in the superior court of the county in which the person assessed has his 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 Department's action (which shall include a review of the

amount of the assessment), shall be as provided in Chapter 150A of the General Statutes. For the purpose of this subsection, the word "person" shall include an individual in his capacity as an officer, director, or employee of a person as otherwise defined in this Article.

(g) No agency of the State or any of its political subdivisions may appropriate or grant funds or financially assist in any way a person, applicant, or facility which is or whose project is in violation of this Article.

(h) If any health care facility proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, the Secretary of Human Resources or any person aggrieved, as defined by G.S. 150A-2(6), may bring a civil action for injunctive relief, temporary or permanent, against the person offering, developing or operating a new institutional health service. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 13; 1983, c. 775, s. 1.)

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

tion 150A-2(6), referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, and has been recodified as § 150B-2(6).

### § 131E-191. Venue.

(a) Any action brought by a "person aggrieved" as defined by G.S. 150A-2(6), to enforce the provisions of this Article against any health care facility as defined in G.S. 131E-176(9), or its agents or employees, may be brought in the superior court of any county in which the cause of action arose or in the county in which the health care facility is located, or in Wake County.

(b) An action brought by a "party" as defined in G.S. 150A-2(5), except an "affected person" who was a party to a contested case hearing who must bring an action in the North Carolina Court of Appeals pursuant to G.S. 131E-188(b), who has exhausted all administrative remedies made available to that party by statute or rules and regulations, may be brought in the Superior Court of Wake County at any time after a final decision by the Department. Such action must be filed not later than 30 days after a written copy of the final decision by the Department is given by personal service or registered or certified mail to the person seeking judicial review. (1977, 2nd Sess., c. 1182, s. 2; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1000, s. 3

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1000, s. 4, provides that the act shall become effective October 1, 1984, but shall not affect any appeal for which notice of appeal was filed prior to the effective date of the act.

Section 150A-2(5) and 150A-2(6), referred to

in this section, were rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and have been recodified as §§ 150B-2(5) and 150B-2(6), respectively.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment rewrote the first sentence of subsection (b).

§§ 131E-192 to 131E-199: Reserved for future codification purposes.

## ARTICLE 10.

*Hospice Licensure Act.*§ 131E-200. **Title; purpose.**

This Article shall be known as the Hospice Licensure Act." The purpose of this Article is to establish licensing requirements for hospices. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, makes this Article effective from November 1, 1984, through June 30, 1987.

§ 131E-201. **Definitions.**

As used in this Article, unless a different meaning or construction is clearly required by the context:

- (1) "Commission" means the North Carolina Medical Care Commission.
- (2) "Department" means the Department of Human Resources.
- (3) "Hospice" means any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.
- (4) "Hospice patient" means a patient diagnosed as terminally ill by a physician licensed to practice medicine in North Carolina, who the physician anticipates to have a life expectancy of weeks or months, generally not to exceed six months, and who alone, or in conjunction with designated family members, has voluntarily requested and been accepted into a licensed hospice program.
- (5) "Hospice patient's family" means the hospice patient's immediate kin, including a spouse, brother, sister, child, or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the hospice patient's family by mutual agreement among the hospice patient, the relation or individual and the hospice team.
- (6) "Hospice team" or "Interdisciplinary team" means the following hospice personnel: physician licensed to practice medicine in North Carolina; nurse holding a valid, current license as required by North Carolina law; social worker; clergy member; and trained hospice volunteer. Other health care practitioners may be included on the team as the needs of the patient dictate or at the request of the physician. Other providers of special services may also be included as the needs of the patient dictate.
- (7) "Identifiable hospice administration" means an administrative group, individual, or legal entity that has an identifiable organizational structure, accountable to a governing board directly or through a chief executive officer. This administration shall be responsible for the management of all aspects of the program.
- (8) "Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process, rather

than the treatment aimed at investigation and intervention for the purpose of cure or prolongation of life. (1983 (Reg. Sess., 1984), 1022, s. 1.)

### § 131E-202. Licensing.

(a) The Commission shall adopt rules for the licensing and regulation of hospices pursuant to this Article for the purpose of providing care, treatment, health, safety, welfare, and comfort of hospice patients. These rules shall include, but not be limited to:

- (1) The qualifications and supervision of licensed and nonlicensed personnel;
- (2) The provision and coordination of home and inpatient care, including the development of a written care plan;
- (3) The management, operation, staffing, and equipping of the hospice program;
- (4) Clinical and business records kept by the hospice; and
- (5) Procedures for the review of utilization and quality of care.

(b) The Department shall provide applications for hospice licensure. Each application filed with the Department shall contain all information requested therein. A license shall be granted to the applicant upon determination by the Department that the applicant has complied with the provisions of this Article and with the rules adopted by the Commission thereunder. Each license shall be issued only for the premises and persons named therein, shall not be transferable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises.

(c) The Department shall renew the license in accordance with this Article and with rules adopted thereunder. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 7, provides: "Notwithstanding the effective date of this act, the Commission shall have the authority, as provided in G.S. 131E-202, to commence the rulemaking

process as defined in G.S. 150A, the Administrative Procedure Act, upon ratification of this act." Section 8 of c. 1022 makes the act effective from November 1, 1984, through June 30, 1987.

### § 131E-203. Coverage.

(a) Except as provided in subsection (b), no person shall operate or represent himself to the public as operating a hospice without obtaining a license from the Department pursuant to this Article.

(b) Hospices administered by local health departments established under Article 2 of Chapter 130A of the General Statutes shall not be required to be licensed under this Article. Additionally, health care facilities and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes shall not be required to be separately licensed under this Article. However, any facility or agency exempted from licensure as a hospice under this subsection shall be subject to rules adopted pursuant to this Article.

(c) Hospice care shall be available 24 hours a day, seven days a week. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

### 131E-204. Inspections.

The Department shall inspect all hospices that are subject to rules adopted pursuant to this Article in order to determine compliance with the provisions of this Article and with rules adopted thereunder. Inspections shall be conducted in accordance with rules adopted by the Commission. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

### 131E-205. Adverse action on a license; appeal procedures.

(a) The Department may suspend, revoke, cancel, or amend a license when there has been a substantial failure to comply with this Article or with rules and regulations adopted thereunder.

(b) Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action pursuant to subsection (a) and all judicial review arising therefrom. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

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

### 131E-206. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may maintain an action in the name of the State for injunctive relief or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a hospice without a license.

(b) Notwithstanding the provisions of G.S. 131E-203(b) or the existence of any other remedy, the Department may maintain an action in the name of the State for injunctive relief or other process against any person to restrain or prevent substantial noncompliance with this Article or the rules adopted hereunder.

(c) If any person shall hinder the proper performance of duty of the Department in carrying out the provisions of this Article, the Department may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

### 131E-207. Confidentiality.

(a) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under G.S. 131E-204:

- (1) Department representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any person who is or has been a hospice patient; and
- (2) Any person involved in treating a patient at or through a hospice may disclose information to a Department representative unless the patient objects in writing to review of his records or disclosure of the information. A hospice shall not release any information or allow any inspections under this section without first informing each affected patient in writing of his right to object to and thereby prohibit release of information or review of records pertaining to him.

A hospice, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

(b) The Department shall not disclose:

- (1) Any confidential or privileged information obtained under this section unless the patient or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure or
- (2) The name of anyone who has furnished information concerning a hospice without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. Any Department employee who willfully discloses this information without appropriate authorization or court order shall be guilty of a misdemeanor and upon conviction fined at the discretion of the court but not to exceed five hundred dollars (\$500.00).

(c) All confidential or privileged information obtained under this section and the names of persons providing this information shall be exempt from Chapter 132 of the General Statutes. (1983 (Reg. Sess., 1984), c. 1022, s. 1.

§§ 131E-208, 131E-209: Reserved for future codification purposes.

## ARTICLE 11.

### *North Carolina Medical Database Commission.*

#### § 131E-210. Title and purpose.

(a) This Article shall be known as the "North Carolina Medical Database Commission Act".

(b) The General Assembly finds that as a result of rising medical care costs and the concern expressed by medical care providers, medical consumers, third-party payers, and health care planners involved with planning for the provision of medical care, there is an urgent need to understand patterns and trends in the use and cost of these services. It is the intent and purpose of this Article to establish an information base to be used to improve the appropriate and efficient usage of medical care services, while at the same time maintaining an acceptable quality of health care services in this State. This is to be accomplished by compiling a uniform set of data and disseminating aggregate data, including but not limited to price and utilization data. It is the intent of the General Assembly to require that the information necessary for a review and comparison of cost, utilization patterns, and quality of medical services be supplied to the Medical Database Commission by all medical care providers and third-party payers both public and private. It is the intent of the General Assembly that any duplication in the collection of medical care data shall be eliminated as recommended by the Medical Database Commission. The information is to be compiled by a statewide clearinghouse and made available in an aggregate form to interested persons, including medical care providers, payors, medical care consumers, and health care planners to improve the decision-making processes regarding access, identified needs, patterns of medical care, price and use of appropriate medical care services. The Commission shall take steps to assure that patient confidentiality shall be protected (1985, c. 757, s. 208 (a).)

**Editor's Note.** — Session Laws 1985, c. 757, 208(b) provides: "(b) The initial appointment of the employer from a business with 200 or more employees, the Hospital Administrator, and the representative of State government shall be for three years. The initial appointments of the employer from a business of less than 200 employees, the physician, and the commercial insurance representative shall be for two years. The initial appointments of the

nurse, health care provider, and the representative of Blue Cross and Blue Shield of North Carolina shall be for one year. Thereafter, the terms of all members shall be for three years."

Session Laws 1985, c. 757, s. 208(d) provides that this Article shall expire and the North Carolina Medical Database Commission shall terminate on July 1, 1991.

Session Laws 1985, c. 757, s. 211 makes this Article effective July 1, 1985.

### **131E-211. North Carolina Medical Database Commission; created.**

(a) There is created the North Carolina Medical Database Commission, to receive medical care data from providers and insurers, construct databases, analyze cost and utilization trends and oversee dissemination of data to users and to further the purposes, findings, and declarations of the General Assembly as found in G.S. 131E-210. The Commission may require that data be submitted to a data processor from all State agencies and State supported providers and from all medical care providers and third-party payers both public and private as described in G.S. 131E-212(b)(1), in accordance with this article; provided, however, that any data submitted by a medical provider to this Commission shall not be required to be submitted to another State agency, commission, or board, except for medicaid reimbursement data and reports otherwise required by State law or federal regulation.

(b) The North Carolina Medical Database Commission shall consist of nine members. The appointments shall be made as follows:

- (1) One employer from a business with 200 or more employees shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (2) One employer from a business with less than 200 employees shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.
- (3) One physician shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (4) One hospital administrator shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.
- (5) One representative of a commercial insurance company providing health insurance in North Carolina shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (6) One representative of Blue Cross and Blue Shield of North Carolina shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.
- (7) One representative of State government at large shall be appointed by the Governor.
- (8) One nurse shall be appointed by the General Assembly upon the recommendation of the Speaker of the House in accordance with G.S. 120-121.
- (9) One health care provider shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

The Insurance Commissioner and the Secretary of Human Resources shall be ex officio members of the Commission without voting power.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled for the unexpired portion of the terms by appointment by the Governor.

(c) The members of the Commission shall serve terms of three years and may serve not more than two consecutive full three-year terms.

(d) The members of the Commission shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) The majority of the Commission shall constitute a quorum for the transaction of business.

(f) The members of the Commission shall select a chairman and vice-chairman. Effective for terms to begin on or after July 1, 1987, no person may be elected chairman or vice-chairman unless they have been a member of the Commission for two years before their election. Effective July 1, 1987, the term of the chairman and vice-chairman shall be one year, and no person may be elected to the same office for two full consecutive terms.

(g) The Commission shall meet at least once during each calendar quarter upon the call of the chairman.

(h) The Commission shall issue annual reports on or before March 15 of each calendar year including recommendations to the General Assembly for any changes in the General Statutes needed to further the purposes of this Article. The initial report shall survey the types of discharge and encounter specific data on medical services collected by the State and shall make recommendations for the elimination of duplication in the collection of that data. Subsequent reports shall include plans for expanding the uniform database which shall begin with data from in-patient hospital admissions, then shall include data at the earliest feasible time from hospital emergency room, hospital ambulatory surgery centers, freestanding ambulatory surgery centers and other medical providers including, but not limited to, all license health care professionals or entities providing health care services who submit third-party claims, as described in G.S. 131E-212(b)(1). The initial mechanism for data collection will be the UB-82 claim form for hospital inpatient.

(i) The Commission may hire professional and other staff needed to implement the requirements of this Article. Clerical and other services to the Commission may be provided by the Department of Insurance.

(j) The Commission shall prepare and submit its annual budget directly to the Governor.

(k) The Commission shall have the authority to set fees with regard to the collection, compilation, and dissemination of data and to provide reimbursement to data providers in accordance with G.S. 131E-212(b)(4).

(l) The Commission shall adopt standard coding systems to assure adequate data quality. (1985, c. 757, s. 208(a).)

## **§ 131E-212. North Carolina Medical Database Commission powers.**

The Commission shall contract with an organization that shall act as a data processor. The data processor shall, pursuant to rules and policies adopted by the Commission, collect the data from the hospitals, third-party carriers, State agencies, and others as described in subdivision (b)(1) of this subsection; build and maintain the database; analyze the information; and prepare reports.

(b) The Commission may adopt rules after holding required public hearings and complying with the other procedural requirements of Chapter 150A of the General Statutes, governing the acquisition, compilation, and dissemination of all data collected pursuant to this Article. The rules shall provide, at a minimum that:

- (1) The Commissioner of Insurance shall require all third-party payers, including licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans to provide to the Commission the claims data, as required by this Article. The data shall be provided in the most useful form possible to the data processor, which may include copies of the UB-82 to report hospital inpatient claims information, datatape, or other electronic media.
  - (2) This data shall include the following: patient's age, sex, zip code, third-party coverage, principal and other diagnoses, date of admission, procedure and discharge date, principal and other procedures, total charges and components of those charges, attending physician identification number, and hospital identification number.
  - (3) The Commission shall ensure that adequate measures have been taken to provide system security for all data and information acquired under this Article.
  - (4) The data shall be collected in the most efficient and cost-effective manner and the providers of the data shall be reimbursed for the reasonable cost incurred in providing for the actual data to the Commission as determined by the Commission.
  - (5) The Commission shall develop procedures to assure the confidentiality of patient records. Patient names, addresses, and other personal identifiers shall be omitted from the database.
  - (6) A data provider may obtain data it has submitted as well as other aggregate data, but it may not access data submitted by another provider and which is limited only to that provider. Prior to the release or dissemination of any data, in any form, the Commission shall permit providers an opportunity to verify the accuracy of any information pertaining to the provider.
  - (7) The Commission shall charge users for the cost of data preparation for information that is beyond the routine data disseminated by the Commission.
  - (8) Time limits shall be set for the submission and review of data by data providers and penalties shall be established for failure to submit and review the data within the established time.
- (c) The Commission may accept gifts, grants, donations, or contributions from any source. These funds shall be held in a separate account and used solely in furtherance of the purposes of this article.
- (d) The Commission may establish committees to study issues related to the operation of the Commission and the database.
- (e) Any person who submits data as required by this Article shall be immune from liability in any civil action. This immunity is in addition to any other immunity to which the person is otherwise entitled.
- (f) Data collected by and furnished to the Commission pursuant to this article shall not be shared among other State agencies unless the information is approved by the Commission as a public record pursuant to G.S. 131E-213.
- (g) The Commission may not use the data collected for a purpose other than one authorized by this Article.
- (h) The Commission shall ensure that no collection of unneeded or irrelevant data will be allowed and that information collected will be kept current and accurate. (1985, c. 757, s. 208(a).)

**§ 131E-213. North Carolina Medical Database not public records.**

The individual forms, computer tapes, or other forms of data collected by and furnished to the Commission or data processor shall not be public records under Chapter 132 of the General Statutes and shall not be subject to public inspection. After approval by the Commission, the compilations prepared for release or dissemination from the data collected, except for a report prepared for an individual data provider containing information concerning only its transactions, shall be public records. The confidentiality of patient's individual personal identifiers, such as name or address in conjunction with a social security or patient identification number, is to be protected and the laws of this State with regard to patient confidentiality apply. (1985, c. 757, s. 208(a)).

## Chapter 132.

### Public Records.

#### 132-1. "Public records" defined.

**Local Modification.** — (As to Chapter 132) City of Durham: 1985, c. 727.

**Cross References.** — As to records of education agencies, see § 115C-3. As to exception for student test scores, see § 115C-182.

**Legal Periodicals.** —

For a note on the public's access to public records, see 60 N.C.L. Rev. 853 (1982).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

#### CASE NOTES

**Chapter Contemplates Disclosure as well as Storage.** — A presumed legislative intent to mandate the extensive preservation of public records prescribed by this Chapter, with storage at public expense, but to which the public is denied access, is untenable. Preservation for its own sake, absent access, would be an absurdity. *Advance Publications, Inc. v. City of Elizabeth City*, 53 N.C. App. 504, 281 S.E.2d 69 (1981).

**S.B.I. records are not public records** and access to them is not available under the Public Records Act. Access to S.B.I. records is controlled entirely by § 114-15. *News & Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984).

**The phrase "pursuant to law or ordinance in connection with the transaction of public business,"** should include, in addition to those records required by law, those records that are kept in carrying out lawful duties. *News & Observer Publishing Co. v. Wake County Hosp. Sys.*, 55 N.C. App. 1, 284 S.E.2d 542 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, appeal dismissed and cert. denied, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 42 (1982).

**"Agency of North Carolina government or its subdivisions"**. — The phrase "agency of North Carolina government or its subdivisions" in this section need be construed only upon the plain meaning of this section and in the context of the public records statutes. *News & Observer Publishing Co. v. Wake County Hosp. Sys.*, 55 N.C. App. 1, 284 S.E.2d 542 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, appeal dismissed and cert. denied, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 42 (1982).

**Letter from Engineer Consulting for City.** — A letter received by the manager of defendant-city from a consulting engineer whom defendant-city employed to inspect construction work on additions and modifications to its water treatment plant is a public record subject to disclosure. *Advance Publications, Inc. v. City of Elizabeth City*, 53 N.C. App. 504, 281 S.E.2d 69 (1981).

**Wake County Hospital System is an agency** of the county under the North Carolina public records statutes. *News & Observer Publishing Co. v. Wake County Hosp. Sys.*, 55 N.C. App. 1, 284 S.E.2d 542 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, appeal dismissed and cert. denied, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 42 (1982).

By virtue of the definitions in §§ 143-318.10(b) and 159-39(a), the Wake County Hospital System is a "public body" that must, by law, record settlement terms considered in executive sessions; in addition, the public has the right to know the terms of settlements made by the system in actions for wrongful terminations of its agreements, since the funds from which the settlements were paid must be considered the county's funds. *News & Observer Publishing Co. v. Wake County Hosp. Sys.*, 55 N.C. App. 1, 284 S.E.2d 542 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, appeal dismissed and cert. denied, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 42 (1982).

**Cited in Carnahan v. Reed**, 53 N.C. App. 589, 281 S.E.2d 408 (1981); *Housing Auth. v. Montgomery*, 55 N.C. App. 422, 286 S.E.2d 114 (1982).

#### OPINIONS OF ATTORNEY GENERAL

**Copies of Forms Maintained, etc.** — The correct citation to the opinion of the At-

torney General cited under this catchline in the replacement volume is 48 N.C.A.G. 63.

### § 132-1.1. Confidential communications by legal counsel to public board or agency; not public records.

**Legal Periodicals.** — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

#### CASE NOTES

**Cited in** News & Observer Publishing Co. v. Wake County Hosp. Sys., 55 N.C. App. 1, 284 S.E.2d 542 (1981).

### § 132-3. Destruction of records regulated.

#### CASE NOTES

**Applied in** State v. Caldwell, 53 N.C. App. 1, 279 S.E.2d 852 (1981).

### § 132-6. Inspection and examination of records.

**Local Modification.** — New Hanover: 1981, c. 960.  
**Legal Periodicals.** —

For a note on the public's access to public records, see 60 N.C.L. Rev. 853 (1982).

#### CASE NOTES

**"Any Person" Includes Corporation.** — The General Assembly did not intend to exclude corporate entities from the scope of the

phrase "any person" in this section. Advance Publications, Inc. v. City of Elizabeth City, 53 N.C. App. 504, 281 S.E.2d 69 (1981).

### § 132-9. Access to records.

**Local Modification.** — New Hanover: 1981, c. 960.  
**Legal Periodicals.** —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

#### CASE NOTES

**"Any Person" Includes Corporation.** — The General Assembly did not intend to exclude corporate entities from the scope of the phrase "any person" in this section. Advance Publications, Inc. v. City of Elizabeth City, 53 N.C. App. 504, 281 S.E.2d 69 (1981).

**Cited in** Carnahan v. Reed, 53 N.C. App. 589, 281 S.E.2d 408 (1981); Housing Auth. v. Montgomery, 55 N.C. App. 422, 286 S.E.2d 11 (1982).

## Chapter 133.

### Public Works.

#### Article 1.

##### General Provisions.

#### Sec.

133-24. Government contracts; violations of G.S. 75-1 and 75-2.

133-25. Conviction; punishment.

133-26. Individuals convicted may not serve on licensing boards.

133-27. Suspension from bidding.

133-28. Civil damages; liability; statute of limitations.

133-29. Reporting of violations of G.S. 75-1 or 75-2.

133-30. Noncollusion affidavits.

133-31. Perjury; punishment.

133-32. Gifts and favors regulated.

133-33. Cost estimates; bidders' lists.

ec.

33-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

#### Article 2.

##### Relocation Assistance.

33-9. Replacement housing for homeowners.

33-10. Replacement housing for tenants and certain others.

33-10.1. Authorization for replacement housing.

33-18 to 133-22. [Reserved.]

#### Article 3.

##### Regulation of Contractors for Public Works.

33-23. Definition.

## ARTICLE 1.

### *General Provisions.*

#### § 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.

**Local Modification.** — (As to this Chapter) 365; Tyrrell County Board of Education: 1983, Tyrrell: 1985, c. 120. New Hanover: 1983, c. 580.

#### § 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

(a) In the interest of public health, safety and economy, every officer, board, department, or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of one hundred thousand dollars (\$100,000) for the repair of public buildings where such repair does not include major structural change, or in excess of forty-five thousand dollars (\$45,000) for the construction of, or additions to, public buildings or State-owned and operated utilities shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of Chapter 83 of the General Statutes, or by a registered engineer, in accordance with the provisions of Chapter 89C of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all such plans and specifications.

(b) On all projects requiring the services of an architect or engineer, or both, the architect or engineer, or both, whose names and seals appear on the plans and specifications shall conduct frequent and regular inspections of such inspections as required by the contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:

- (1) The inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and
- (2) To the best of his knowledge and in the professional opinion of the architect or engineer the contractor has fulfilled the obligations of such plans, specifications, and contract.

No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled the obligations of such plans, specifications, and contract.

(d) On repair projects involving the expenditures of public funds in an amount of one hundred thousand dollars (\$100,000), or less, or on construction or addition projects involving the expenditures of public funds in an amount of forty-five thousand dollars (\$45,000), or less, and on which no registered architect or engineer is employed, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction.

(1953, c. 1339; 1957, c. 994; 1963, c. 752; 1973, c. 1414, s. 2; 1979, c. 891; 1981, c. 687; 1983 (Reg. Sess., 1984), c. 970, s. 1.)

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

**Editor's Note.** — Chapter 83, referred to in subsection (a) of this section, was rewritten by Session Laws 1979, c. 871, s. 1, and has been recodified as Chapter 83A.

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, in subsection (a), inserted "one hundred thousand dollars (\$100,000) for the repair of public buildings where such repair does not include major structural change, or in excess of," substituted "of, or additions to, public buildings" for "or

repair of public buildings," and substituted "Chapter 89C" for "Chapter 89"; in subsection (d), deleted "construction or" preceding "repair projects" near the beginning, inserted "in an amount of one hundred thousand dollars (\$100,000), or less, or on construction or addition projects involving the expenditures of public funds," and added the provisions beginning ", except that the provisions of this subsection shall not apply" at the end of the subsection; and made other minor changes.

The 1983 (Reg. Sess., 1984) amendment, effective October 1, 1984, rewrote subsection (b).

## ARTICLE 2.

### *Relocation Assistance.*

#### § 133-9. Replacement housing for homeowners.

(a) In addition to payments otherwise authorized by this Article and subject to the provisions of G.S. 133-10.1 the agency may make an additional payment not in excess of fifteen thousand dollars (\$15,000) to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

- (1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this section shall be made in accordance with standards established by the agency making the additional payment.
  - (2) The amount, if any, shall be the amount which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.
  - (3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.
- (1971, c. 1107, s. 1; 1981, c. 101, s. 1.)

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

**Effect of Amendments.** — The 1981 amendment inserted "and subject to the provisions of G.S. 133-10.1" in the first sentence of subsection (a).

Session Laws 1981, c. 101, s. 5, provides: "This act shall apply to all 'displaced persons' as defined in Article 2 of Chapter 133, moving after May 1, 1980."

## § 133-10. Replacement housing for tenants and certain others.

In addition to amounts otherwise authorized by this Article and subject to the provisions of G.S. 133-10.1, the agency may make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under G.S. 133-9 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either:

(1971, c. 1107, s. 1; 1981, c. 101, s. 2.)

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

**Effect of Amendments.** — The 1981 amendment inserted "and subject to the provisions of G.S. 133-10.1" in the first sentence.

Session Laws 1981, c. 101, s. 5, provides: "This act shall apply to all 'displaced persons' as defined in Article 2 of Chapter 133, moving after May 1, 1980."

### § 133-10.1. Authorization for replacement housing.

As a last resort, if a project cannot proceed to actual construction because of the lack of availability of comparable sale or rental housing, or because required federal-aid payments are in excess of those otherwise authorized by this Article, the Department of Transportation may:

- (4) Exceed the limitation in G.S. 133-9(a) and 133-10. (1975, c. 515; 1981, c. 101, ss. 3, 4.)

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

**Effect of Amendments.** — The 1981 amendment added subdivision (4), and substituted the present introductory paragraph for the former paragraph, which read: "If subject to the 'additional payment' limitation specified in G.S. 133-9(a) with respect to each person displaced from a dwelling actually owned and

occupied by him a program or project cannot proceed to actual construction because of the lack of availability of comparable sale or rental housing, the Department of Transportation, upon a determination that such housing cannot otherwise be made available, may."

Session Laws 1981, c. 101, s. 5, provides: "This act shall apply to all 'displaced persons' as defined in Article 2 of Chapter 133, moving after May 1, 1980."

§§ 133-18 to 133-22: Reserved for future codification purposes.

## ARTICLE 3.

### *Regulation of Contractors for Public Works.*

#### § 133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" is used as defined in G.S. 55-2(9). (1981, c. 764, s. 1.)

**Editor's Note.** — Session Laws 1981, c. 764, s. 4, made this Article effective 60 days after ratification and provided that it would be prospective in its application. The act was ratified July 2, 1981.

Session Laws 1981, c. 764, s. 3, contains a severability clause.

#### § 133-24. Government contracts; violation of G.S. 75-1 and 75-2.

Every person who shall engage in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provisions of G.S. 75-1 and 75-2 shall be guilty of a felony under this section where the combination, conspiracy, or other unlawful act in restraint of trade involves:

- (1) A contract for the purchase of equipment, goods, services or materials or for construction or repair let or to be let by a governmental agency;

- (2) A subcontract for the purchase of equipment, goods, services or materials or for construction or repair with a prime contractor or proposed prime contractor for a governmental agency. (1981, c. 764, s. 1.)

### § 133-25. Conviction; punishment.

(a) Upon conviction of violating G.S. 133-24, any person shall be punished as a Class H felon. The court may also impose a fine of up to one hundred thousand dollars (\$100,000) on any convicted individual and a fine of up to one million dollars (\$1,000,000) on any convicted corporation. Any fine imposed pursuant to this section shall not be deductible on a State income tax return for any purpose.

(b) For a period of up to three years from the date of conviction, said period to be determined in the discretion of the court, no person shall be eligible to enter into a contract with any governmental agency, either directly as a contractor or indirectly as a subcontractor, if that person has been convicted of violating G.S. 133-24.

(c) In the event an individual is convicted of violating G.S. 133-24, the court may, in its discretion, for a period of up to three years from the date of conviction, provide that the individual shall not be employed by a corporation as an officer, director, employee or agent, if that corporation engages in public construction or repair contracts with a governmental agency, either directly as a contractor or indirectly as a subcontractor.

(d) The court shall also have authority to direct the appropriate contractor's licensing board to suspend the license of any contractor convicted of violating G.S. 133-24 for a period of up to three years from the date of conviction. (1981, c. 764, s. 1.)

### § 133-26. Individuals convicted may not serve on licensing boards.

No individual shall be eligible to serve as a member of any contractor's licensing board who has been convicted of criminal charges involving either:

- (1) A conspiracy in restraint of trade in the courts of this State in violation of G.S. 75-1, 75-2, or 133-24, or similar charges in any federal court or in any other state court; or
- (2) Bribery or commercial bribery in violation of G.S. 14-218 or 14-353 in the courts of this State, or of similar charges in any federal court or the court of any other state. (1981, c. 764, s. 1.)

### § 133-27. Suspension from bidding.

Any governmental agency shall have the authority to suspend for a period of up to three years from the date of conviction any person and any subsidiary or affiliate of any person from further bidding to the agency and from being a subcontractor to a contractor for the agency and from being a supplier to the agency if that person or any officer, director, employee or agent of that person has been convicted of charges of engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of any other state.

A governmental agency may order a temporary suspension of any contractor, subcontractor, or supplier or subsidiary or affiliate thereof charged in an indictment or an information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of this or any other state until the charges are resolved.

The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency. (1981, c. 764, s. 1.)

### **§ 133-28. Civil damages; liability; statute of limitations.**

(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within three years of the date of accrual of the cause of action. (1981, c. 764, s. 1.)

### **§ 133-29. Reporting of violations of G.S. 75-1 or 75-2.**

Any person having knowledge of acts committed in violation of G.S. 75-1 or 75-2 involving a contract with a governmental agency who reports the same to that governmental agency and assists in any resulting proceedings may receive a reward as set forth herein. The governmental agency is authorized to pay to the informant up to twenty-five percent (25%) of any civil damages that it collects from the violator named by the informant by reason of the information furnished by the informant. The information and knowledge to be reported includes but is not limited to any agreement or proposed agreement or offer or request for agreement among contractors, subcontractors or suppliers to rotate bids, to share the profits with a contractor not the low bidder, to sublet work in advance of bidding as a means of preventing competition, to refrain from bidding, to submit prearranged bids, to submit complimentary bids, to set up territories to restrict competition, or to alternate bidding. (1981, c. 764, s. 1.)

### **§ 133-30. Noncollusion affidavits.**

Noncollusion affidavits may be required by rule of any governmental agency from all prime bidders. Any such requirement shall be set forth in the invitation to bid. Failure of any bidder to provide a required affidavit to the governmental agency shall be grounds for disqualification of his bid. The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency. (1981, c. 764, s. 1.)

### **§ 133-31. Perjury; punishment.**

Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class H felon. (1981, c. 764, s. 1.)

## § 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) Has a contract with a governmental agency; or
- (2) Has performed under such a contract within the past year; or
- (3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contract; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1.)

## § 133-33. Cost estimates; bidders' lists.

Any governmental agency responsible for letting public contracts may promulgate rules concerning the confidentiality of:

- (1) The agency's cost estimate for any public contracts prior to bidding; and
- (2) The identity of contractors who have obtained proposals for bid purposes for a public contract.

If the agency's rules require that such information be kept confidential, an employee or officer of the agency who divulges such information to any unauthorized person shall be subject to disciplinary action. This section shall not be construed to require that cost estimates or bidders' lists be kept confidential. (1981, c. 764, s. 1.)

## Chapter 134A. Youth Services.

### Article 1.

#### Division of Youth Services in the Department of Human Resources.

Sec.

134A-8. Powers and duties of Secretary of Human Resources.

### ARTICLE 1.

#### *Division of Youth Services in the Department of Human Resources.*

### § 134A-1. Legislative intent and purpose.

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 25, establishes a schedule of priorities for allocating funds to local area mental health programs and local education agencies to provide appropriate treatment and education programs to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a class in the case of Willie M., et al. vs. Hunt, et al. The act appropriates funds to the Division of Mental Health, Mental Retardation, and Substance Abuse, to the Division of Youth Services, and to the Department of Public Education, establishes a reserve fund, and provides for certain reporting requirements. The act further provides that the prohibitions on use of State funds prescribed by G.S. 122-35.53(c) do not apply to any funds appropriated for the treatment of members of the above named class.

Session Laws 1983, c. 761, s. 77, effective July 1, 1983, sets out legislative findings with regard to funds and programs serving members of the class of Willie M., et al. v. Hunt, et al., provides for the expenditure of funds on behalf of this class, and provides for certain reporting requirements.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 61, and Session Laws 1985, c. 479, s. 85, set out legislative findings with regard to the children identified as a class in the case of Willie M., et al. vs. Hunt, et al., indicate the legislative intent with regard to expenditure of funds appropriated for the class members and provide for a supplemental reserve fund to be allocated to local education agencies to serve class members. In addition, these provisions

set out reporting requirements and authorize the Department of Human Resources to ensure the provision of appropriate services to class members where a local program is not providing appropriate services.

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

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

Session Laws 1985, c. 791, ss. 18, and 18.1 provide:

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

"The State Board of Education is directed to determine the most cost effective methods of educating Willie M. students and to report its findings to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by March 1, 1986.

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

## § 134A-8. Powers and duties of Secretary of Human Resources.

The Secretary shall have the following powers and duties:

- (5) To provide a quality educational program in each training school, including vocational education which is realistic in relation to available jobs, and to administer this educational system;
- (7) To promulgate rules and regulations to implement the provisions of this Chapter and the responsibilities of the Secretary and the Department of Human Resources under Chapter 7A. (1977, c. 627, s. 6; 1981, c. 50, s. 6; c. 614, s. 18.)

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

**Effect of Amendments.** — The first 1981 amendment deleted "with the advice of the

Youth Services Advisory Committee" from the end of subdivision (5).

The second 1981 amendment, effective July 1, 1981, added subdivision (7).

**Chapter 135.**

**Retirement System for Teachers and State Employees;  
Social Security.**

**Article 1.**

**Retirement System for Teachers and  
State Employees.**

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- 135-1.1. Licensing and examining boards.
- 135-3. (Effective until September 1, 1986) Membership.
- 135-3. (Effective September 1, 1986) Membership.
- 135-4. Creditable service.
- 135-5. Benefits.
- 135-5.1. Optional retirement program for State institutions of higher education.
- 135-6. Administration.
- 135-8. Method of financing.
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- 135-14. Pensions of certain former teachers and State employees.
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**Article 2.**

**Coverage of Governmental Employees  
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- 135-27. Transfers from State to certain association service.

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- 135-32 to 135-33.1. [Repealed.]
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- 135-40.1. (Effective July 1, 1986) General definitions.
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- 135-40.4. (Effective July 1, 1986) Benefits in general.
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- 135-40.6. (Effective until July 1, 1986) Benefits subject to deductible and coinsurance (comprehensive benefits).
- 135-40.6. (Effective July 1, 1986) Benefits subject to deductible and coinsurance (comprehensive benefits).
- 135-40.7. General limitations and exclusions.
- 135-40.7A. (Effective until January 1, 1988) Special provisions for chemical dependency.
- 135-40.7A. (Effective January 1, 1988) Special provisions for chemical dependency.
- 135-40.8. Out-of-pocket expenditures.
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- 135-40.11. Cessation of coverage.
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- 135-40.14. Right to amend.
- 135-41 to 135-49. [Reserved.]

**Article 4.**

**Uniform Judicial Retirement Act of  
1973.**

- 135-50. Short title and purpose.
- 135-51. Scope.
- 135-53. Definitions.
- 135-54. Name and date of establishment.
- 135-55. Membership.
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- 135-56.1. [Repealed.]

- Sec.  
 135-56.2. Creditable service for other employment.  
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 135-60. Disability retirement benefits.  
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 135-68. Contributions by the members.  
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 135-73 to 135-76. [Reserved.]

**Article 4A.**  
**Uniform Solicitorial Retirement Act of 1974.**

- Sec.  
 135-77 to 135-83. [Repealed.]

**Article 4B.**  
**Uniform Clerks of Superior Court Retirement Act of 1975.**

- 135-84 to 135-86. [Repealed.]

**Article 5.**  
**Supplemental Retirement Income Act of 1984.**

- 135-90. Short title and purpose.  
 135-91. Administration.  
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 135-93. Contributions.  
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**ARTICLE 1.**

*Retirement System for Teachers and State Employees.*

**§ 135-1. Definitions.**

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (5) "Average final compensation" shall mean the average annual compensation of a member during the four consecutive calendar years of membership service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages.
- (7a) "Compensation" shall mean all salaries and wages, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work.
- (10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Uniform Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program and pages. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee" shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid

from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above-described national guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest.

(11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.

(11b) "Law-Enforcement Officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 8<sup>1/2</sup>; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1; 1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227; 1971, c. 117, ss. 1-5; c. 338, s. 1; 1973, c. 507, s. 5; c. 640, s. 2; c. 1233; 1975, c. 475, s. 1; 1977, c. 574, s. 1; 1979, c. 972, s. 1; 1981, c. 557, ss. 1, 2; 1983, c. 412, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 227; 1985, c. 649, s. 3.)

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

**Editor's Note.** —

Session Laws 1983, c. 761, s. 222, provides that notwithstanding the provisions of this Chapter any member of the Teachers' and State Employees' Retirement System who is at least 60 years of age with 25 or more years of

creditable service at retirement shall be entitled to an unreduced service retirement allowance based upon the number of years of creditable service at the time of retirement. The section also provides for the employer to pay certain costs. Section 222 is made effective July 1, 1983, through June 30, 1985, and applicable to those members whose retirement becomes effective before July 1, 1985.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 114, provides:

"Notwithstanding the provisions of Chapter 135 of the General Statutes, any member of the Teachers' and State Employees' Retirement System who was at least 60 years of age with 25 or more years of creditable service and who retired on a reduced service retirement allowance between July 1, 1981, and June 30, 1983, shall have his retirement allowance increased by the elimination of the reduction factors applicable at the time of retirement. This increase in retirement allowances shall apply equally to the allowance of surviving annuitant of a beneficiary. This section shall become effective on the first of the month following a determination by the System's consulting actuary that sufficient gains are available in the System to pay the total present value actuarial cost of the increased retirement allowance."

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

#### Effect of Amendments. —

The 1981 amendment, effective September 1, 1981, inserted ", not including any terminal payments for unused sick leave," in subdivisions (5) and (7a).

The 1983 amendment, effective July 1, 1983, deleted the last sentence of subdivision (10), which read "'Employee' shall also mean any full-time employee of the North Carolina Symphony Society, Inc., and of the North Carolina Art Society, Inc.," and deleted the last sentence of subdivision (11), which read "'Employer' shall also mean the North Carolina Symphony Society, Inc., and the North Carolina Art Society, Inc."

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, added subdivision (11b).

The 1985 amendment, effective July 8, 1985, added "but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages" at the end of subdivision (5).

#### CASE NOTES

**The intent of this Chapter is not to exclude, but to include, State employees under an umbrella of protections designed to provide maximum security in their work environment and to afford a measure of freedom from apprehension of old age and disability.** *Stanley v. Retirement & Health Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643, cert. denied, 305 N.C. 587, 292 S.E.2d 571 (1982).

**The Teachers' and State Employees' Retirement System of North Carolina is an agency or instrumentality of the State.** *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637, cert. denied and appeal dismissed, 310 N.C. 626, 315 S.E.2d 692 (1984).

### § 135-1.1. Licensing and examining boards.

Any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade or occupation, in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause its employees so employed prior to July 1, 1983 to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such board's paying all of the employer's contributions or matching funds from funds of the board and on such board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such board may also be effected to the extent that such board requests provided the board pays all of the employer's contributions or matching funds necessary for such purpose and provided said board collects from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System determines, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. (1959, c. 1012; 1983, c. 412, s. 3.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, inserted “on or before July 1, 1983” and “so employee prior to July 1, 1983” in the first sentence.

## § 135-2. Name and date of establishment.

### CASE NOTES

**The Teachers' and State Employees' Retirement System of North Carolina is an agency or instrumentality of the State.**  
Stanley v. Retirement & Health Benefits Div.,

66 N.C. App. 122, 310 S.E.2d 637, cert. denied and appeal dismissed, 310 N.C. 626, 315 S.E.2d 692 (1984).

## § 135-3. (Effective until September 1, 1986) Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All persons who shall become teachers or State employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin 90 days after the election, appointment or employment of a “teacher or employee” as the terms are defined in this Chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a “teacher or employee,” as the terms are defined in this Chapter. Under such rules and regulations as the Board of Trustees may establish and promulgate, Cooperative Agricultural Extension Service employees may in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. On and after July 1, 1965, new extension service employees in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees who are required to accept a federal civil service appointment may elect in writing, on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the Local Retirement System; provided further, that effective July 1, 1985, an extension service employee who is employed in part by a county and who is compensated in whole by the Cooperative Agricultural Extension Service pursuant to a contract where the Cooperative Agricultural Extension Service is reimbursed by the county for the county's share of the compensation shall participate exclusively in the Teachers' and State Employees' Retirement System to the extent of their full compensation. On or after July 1, 1979, upon election, appointment or employment, a legislative employee shall automatically become a member of the Teachers' and State Employees' Retirement System.
- (2) All persons who are teachers or State employees on February 17, 1941, or who may become teachers or State employees on or before July 1, 1941, except those who shall notify the Board of Trustees, in writing, on or before January 1, 1942, that they do not choose to become members of this Retirement System, shall become members of the Retirement System.

- (3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967; Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.
- (4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or before January 1, 1942, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the President of the United States. Any such employee who within a period of 12 months after the cessation of such federal service or employment, is again employed by the State or any employer as said term is defined in this Chapter, or within said period of 12 months engages in service or membership service, shall be permitted to resume active participation in the Retirement System and to resume his or her contributions as provided by this Chapter. If such member so elects, he or she may pay to the Board of Trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this Chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.
- (5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946. Any such member on or after June 30, 1965, anything in this Chapter to the contrary, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank on or before January 1, 1942, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.

- (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1 effective July 1, 1982.
- (7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963, and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 135-5(b) as in effect at the date of such retirement.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b), subdivisions (1), (2) and (3).
  - b. In lieu of the benefits provided in paragraph a of this subdivision (7) any member who separates from service on or after July 1, 1951, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
  - c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951, and prior to the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, subsequent to July 1, 1951, and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
  - d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by

all members. Upon his subsequent retirement, he shall be entitled to the allowance described in 1 below reduced by the amount in 2 below.

1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
  2. The actual equivalent of the retirement benefits he previously received.
- e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of his retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1, and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 135-1(3).
- (8) The provisions of this subsection (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967 or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforesated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b1); provided that such benefits will be computed in accordance with (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with (b3) on or after July 1, 1969. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his

total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age of 60 while in such employment provided that he is otherwise vested.

- b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

| <i>Age at Retirement</i> | <i>Percentage Reduction</i> |
|--------------------------|-----------------------------|
| 59                       | 7                           |
| 58                       | 14                          |
| 57                       | 20                          |
| 56                       | 25                          |
| 55                       | 30                          |
| 54                       | 35                          |
| 53                       | 39                          |
| 52                       | 43                          |
| 51                       | 46                          |
| 50                       | 50                          |

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age

of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

c. Should a beneficiary who retired on an early or service retirement allowance be restored to service for a period of time exceeding six calendar months, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the uniform contribution rate payable by all members. Notwithstanding the foregoing, the beneficiary may irrevocably elect to commence membership immediately upon being restored to service, with cessation of his retirement allowance; and, the acceptance of the first monthly retirement allowance after being restored to service shall be an election to delay membership for the aforementioned six calendar months. Upon his subsequent retirement, he shall be entitled to the greater of the two allowances described in 1 and 2 below.

1. The allowance to which he would be entitled had he not been restored to service with cessation of retirement allowance, plus the allowance to which he would be entitled on account of his service after restoration to service and membership; Provided, for the sole purpose of determining retirement eligibility on account of his service after restoration, that his creditable service shall be taken as the sum of his creditable service prior to and subsequent to his restoration to service; or

2. The allowance to which he would be entitled if his retirement were commencing for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service prior to and subsequent to his restoration to service, reduced by the actuarial equivalent of the retirement allowance he previously received; provided, in no event may he alter his Election of Optional Allowance as previously made.

d. A beneficiary whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is restored to service shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based

on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.

2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.
- e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989.
- (8a) Notwithstanding the provisions of paragraphs c and d of subdivision (8) to the contrary, a beneficiary who was a beneficiary retired on an early service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by the State and beneficiaries last employed by the State to this Retirement System on January 1, 1985, and who also was a contributing member of this Retirement System on January 1, 1985 shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership.
- (9) Members who are participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 may retain their membership status and receive all benefits provided by this Chapter during the period of the exchange provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall, notwithstanding whether he and his employer are making contributions to the member's account during the exchange period, be entitled to the death benefit if he otherwise qualifies under the provisions of this Article and provided further that no duplicate benefit shall be paid. (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 9<sup>1</sup>/<sub>2</sub>; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14; 1971, c. 117, ss. 6-8; c. 118, ss. 1, 2; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363; 1977, c. 783, s. 3; 1979, c. 396; c. 972, s. 2; 1981, c. 979, s. 1; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 228, 229, 236; c. 1106, ss. 2, 4; 1985, c. 520, s. 1; c. 649, s. 11.)

**Section Set Out Twice.** — The section above is effective until September 1, 1986. For this section as amended effective September 1, 1986, see the following section, also numbered 135-3.

**Editor's Note.** —

Session Laws 1983, c. 556, s. 3, provides as follows: "Any beneficiary in the Local Governmental Employees' Retirement System or the Teachers' and State Employees' Retirement System who was excluded from membership upon return to service on account of former G.S. 128-24(5)c or G.S. 135-3(8)c may elect to repay all retirement allowances received while so excluded plus an amount equal to the member contributions which would otherwise have been made, to the appropriate Retirement System, and thereby establish retroactive membership service. The election and payment of these amounts must be made by December 31, 1983. The employer of the member shall, coincident with the payment by the member, pay to the appropriate Retirement System an amount equal to the employer contributions which would otherwise have been made while the member was so excluded from membership."

Session Laws 1985, c. 520, ss. 3 and 4, provide:

"Sec. 3. An active or retired extension service employee who was employed in part by a county and in part by the Cooperative Agricultural Extension Service and who was paid his accumulated contributions from either the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System while retaining his accumulated contributions in the other Retirement System for the same period may on or before June 30, 1986, or 90 days after the effective date of this legislation, whichever comes last, repay in a lump sum the accumulated contributions withdrawn with interest and a fee added thereto to be determined by the Board of Trustees and restore the service credit represented thereby.

"Sec. 4. Nothing in this act should be construed to require any employee of the Coopera-

tive Agricultural Extension Service who has elected to become a member of a retirement system for employees of the United States Government to become a member of the Teachers' and State Employees' Retirement System."

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

**Effect of Amendments.** —

The 1981 amendment substituted "compensation received for the 12 months of service prior to retirement" for "average final compensation" at the end of the first sentence of paragraph 7(e).

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, deleted subdivision (6). The amendments also rewrote subdivision (8)c, to the extent that a detailed comparison is not possible.

Session Laws 1981 (Reg. Sess., 1982), c. 1396, s. 5 empowers and directs the Board of Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to adjust the employers' rates of contribution to the level necessary to fund the provisions of the act.

The 1983 amendment, effective June 17, 1983, rewrote subdivision (8)c and added subdivision (8)d.

The 1983 (Reg. Sess., 1984) amendment by c. 1034, effective January 1, 1985, deleted the former fourth, fifth and sixth sentences of subdivision (1), relating to State highway patrolmen and other law-enforcement officers, and added paragraphs (8) b1 and (8) b2 and subdivision (8a).

The 1983 (Reg. Sess., 1984) amendment by c. 1106, ss. 2, 4, effective September 1, 1985, and not applicable to agreements entered into before the effective date of the act, rewrote paragraph (8)d and added paragraph (8)e.

The 1985 amendment by c. 520, s. 1, effective July 1, 1985, added the proviso at the end of the next-to-last sentence of subdivision (1).

The 1985 amendment by 649, s. 11, effective July 8, 1985, substituted "paragraphs c and d" for "paragraphs b1 and b2" near the beginning of subdivision (8a).

### § 135-3. (Effective September 1, 1986) Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All persons who shall become teachers or State employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin 90 days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this Chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this Chapter. Under such rules and regulations as the Board of Trustees may establish and promulgate, Cooperative Agricultural Extension Service employees

may in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. On and after July 1, 1965, new extension service employees in the employ of a county participating in the Local Government Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees who are required to accept a federal civil service appointment must elect in writing, on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the Local Retirement System; provided further, that effective July 1, 1985, an extension service employee who is employed in part by a county and who is compensated in whole by the Cooperative Agricultural Extension Service pursuant to a contract where the Cooperative Agricultural Extension Service is reimbursed by the county for the county's share of the compensation shall participate exclusively in the Teachers' and State Employees' Retirement System to the extent of their full compensation. On or after July 1, 1979, upon election, appointment or employment, a legislative employee shall automatically become a member of the Teachers' and State Employees' Retirement System.

- (2) All persons who are teachers or State employees on February 1, 1941, or who may become teachers or State employees on or before July 1, 1941, except those who shall notify the Board of Trustees, in writing, on or before January 1, 1942, that they do not choose to become members of this Retirement System, shall become members of the Retirement System.
- (3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member. Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.
- (4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or after January 1, 1942, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the President of the United States. Any such employee who within a period of 12 months after the cessation of such federal service or employment, is again employed by the State or any em

ployer as said term is defined in this Chapter, or within said period of 12 months engages in service or membership service, shall be permitted to resume active participation in the Retirement System and to resume his or her contributions as provided by this Chapter. If such member so elects, he or she may pay to the Board of Trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this Chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.

- (5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946. Any such member on or after June 30, 1965, anything in this Chapter to the contrary, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank on or before January 1, 1942, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.
- (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1, effective July 1, 1982.
- (7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963, and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 135-5(b) as in effect at the date of such retirement.
  - a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b), subdivisions (1), (2) and (3).
  - b. In lieu of the benefits provided in paragraph a of this subdivision (7) any member who separates from service on or after July 1, 1951, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written

- application to the Board of Trustees setting forth at what time not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provide further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
- c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951 and prior to the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, subsequent to July 1, 1951, and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.
- d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to the allowance described in 1 below reduced by the amount in 2 below.
1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
  2. The actuarial equivalent of the retirement benefits he previously received.
- e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of his retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1, and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 135-1(3).
- (8) The provisions of this subsection (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disa-

bility as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967 or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b1); provided that such benefits will be computed in accordance with (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with (b3) on or after July 1, 1969. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

- b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

| <i>Age at Retirement</i> | <i>Percentage Reduction</i> |
|--------------------------|-----------------------------|
| 59                       | 7                           |
| 58                       | 14                          |

| <i>Age at Retirement</i> | <i>Percentage Reduction</i> |
|--------------------------|-----------------------------|
| 57                       | 20                          |
| 56                       | 25                          |
| 55                       | 30                          |
| 54                       | 35                          |
| 53                       | 39                          |
| 52                       | 43                          |
| 51                       | 46                          |
| 50                       | 50                          |

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.
- c. Should a beneficiary who retired on an early or service retirement allowance be reemployed by an employer participating in the Retirement System on a permanent full-time, part-time, temporary, or on fee-for-service basis, whether contractual or otherwise, the retirement allowance shall be suspended if the beneficiary receives or earns any of the following:
  - 1. Salary or fees or both in excess of one thousand five hundred dollars (\$1,500) per month;
  - 2. Salary or fees or both in excess of thirteen thousand five hundred (\$13,500) during any consecutive 12 calendar months;
  - 3. Salary or fees or both during any consecutive 12 calendar months, which is greater than fifty percent (50%) of the r

- ported compensation during the 12 months of service preceding the effective date of retirement; or
4. Salary or fees or both during any month, which when added to the retirement allowance at retirement exceeds the monthly compensation earned immediately prior to retirement, if re-employed by the same employer within 90 days of the effective date of retirement.

The suspension of the retirement allowance shall be effective as of the first day of the month in which the beneficiary meets the conditions set forth in conditions 1 or 4 of this paragraph and effective as of the first day of the next succeeding month following the month in which the beneficiary meets the conditions set forth in conditions 2 or 3 of this paragraph. The retirement allowance shall be reinstated the month following termination of reemployment or the month following the month in which the conditions set forth in this paragraph are no longer met. The Board of Trustees may adjust the monetary limits in this paragraph by an amount equivalent to any across-the-board salary increase granted to employees of the State by the General Assembly. Each employer shall report information monthly to the Board of Trustees on forms provided by the Board on each reemployed beneficiary sufficient for the effective enforcement of this paragraph. Notwithstanding the foregoing, any beneficiary may irrevocable elect to recommence membership in the Retirement System immediately upon being restored to service, whereupon the retirement allowance shall cease.

- d. A beneficiary whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is restored to service shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

- e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989.
- (8a) Notwithstanding the provisions of paragraphs c and d of subdivision (8) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by the State and beneficiaries last employed by the State to this Retirement System on January 1, 1985, and who also was a contributing member of this Retirement System on January 1, 1985, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership.
- (9) Members who are participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 may retain their membership status and receive all benefits provided in this Chapter during the period of the exchange provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall, notwithstanding whether he and his employer are making contributions to the member's account during the exchange period, be entitled to the death benefit he otherwise qualifies under the provisions of this Article and provided further that no duplicate benefits shall be paid. (1941, c. 25, § 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 1; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 9<sup>1</sup>/<sub>2</sub>; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14; 1971, c. 117, ss. 6-8; c. 118, ss. 2; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363; 1977, c. 783, s. 3; 1979, c. 30, c. 972, s. 2; 1981, c. 979, s. 1; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 228, 229, 230; c. 1106, ss. 1, 2, 4; 1985, c. 520, s. 1; c. 649, ss. 2, 11.)

**Section Set Out Twice.** — The section above is effective September 1, 1986. For this section as in effect until September 1, 1986, see the preceding section, also numbered § 135-3.

**Editor's Note.** —

Session Laws 1985, c. 520, ss. 3 and 4, provide:

"Sec. 3. An active or retired extension service employee who was employed in part by a county and in part by the Cooperative Agricultural Extension Service and who was paid his accumulated contributions from either the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System while retaining his accumulated contributions in the other Retirement System for the same period may on or before June 30, 1986, or 90 days after the effective date of this legislation, whichever comes last,

repay in a lump sum the accumulated contributions withdrawn with interest and a sum added thereto to be determined by the Board of Trustees and restore the service credit represented thereby.

"Sec. 4. Nothing in this act should be construed to require any employee of the Cooperative Agricultural Extension Service who is elected to become a member of a retirement system for employees of the United States Government to become a member of the Teachers' and State Employees' Retirement System."

The 1985 amendment by c. 520, s. 1, effective July 1, 1985, added the proviso at the end of the next-to-last sentence of subdivision (9).

The 1985 amendment by c. 649, s. 11, effective July 8, 1985, substituted "paragraphs b1 and b2" for "paragraphs b1 and b2" near the beginning of subdivision (8a).

Session Laws 1983 (Reg. Sess., 1984), c. 06, s. 1 as amended by Session Laws 1985, c. 9, s. 2, rewrote paragraph (8)c, effective September 1, 1986.

The 1983 (Reg. Sess., 1984) amendment by c. 1106, s.1, as amended by Session Laws 1985, c. 649, s. 2, effective September 1, 1986, and not applicable to agreements entered into before the effective date of the act, rewrote paragraph (8)c.

### 135-4. Creditable service.

(a) Under such rules and regulations as the Board of Trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946, shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that, notwithstanding the foregoing, any member retiring on or after July 1, 1965, with credit for not less than 10 years of membership service shall file such detailed statement of service as a teacher or State employee rendered by him prior to July 1, 1941, for which he claims credit; provided, that any member who retired on a service retirement allowance prior to July 1, 1965, who at the time of his retirement did not qualify for credit for his service as a teacher or State employee prior to July 1, 1941, may request on and after July 1, 1971, that his original benefit be recalculated, in accordance with the formula prevailing at the time of his retirement, to include credit for such service with the new benefit to become effective on the first of the month following certification of the prior service.

(c) Subject to the above restrictions and to such other rules and regulations as the Board of Trustees may adopt, the Board of Trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the Board of Trustees may use for the purpose of this Chapter the compensation rates which will be determined by the average salary of the members for five years immediately preceding the date this System became operative as the records show the member actually received. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof not to exceed one month of credit for each two years of membership service or fraction thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for early retirement, disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently returns to service for a period of five years, may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

On and after July 1, 1973, a member whose account in the North Carolina Local Governmental Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 128-24(1a) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the North Carolina Local Governmental Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

On or after July 1, 1979, a member who has obtained 60 months of aggregate service, or five years of membership service, as an employee of the North Carolina General Assembly, except legislators, participants in the Legislative Intern Program and pages, may make a lump sum payment together with interest, and an administrative fee for such service, to the Teachers' and State Employees' Retirement System of an amount equal to what he would have contributed had he been a member on his first day of employment.

On and after January 1, 1985, the creditable service of a member who was a member of the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by the State from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, shall include service that was creditable in the Law-Enforcement Officers' Retirement System; and membership service with that System shall be membership service with this Retirement System; provided, notwithstanding any provision of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law-Enforcement Officers' Retirement System shall not be diminished and may be purchased as creditable service with this Retirement System under the same conditions which would have otherwise applied.

(f) Armed Service Credit. —

- (1) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from such armed services under other than dishonorable conditions shall be entitled to full credit for all prior service.
- (2) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from such armed services under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in such armed services up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.
- (3) Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed services.

- (4) Under such rules as the board of trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the board of trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.
- (5) The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.
- (6) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(j1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees.

(k) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the the Law-Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one half of the cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s), provided that he left service prior to July 1, 1974. Any person who leaves service after June 30, 1974, and who withdraws his contributions in accordance with G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law-Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover the full cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired

members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.

Notwithstanding any provision to the contrary, a law enforcement officer who was transferred from the Law Enforcement Officers' Retirement System to this Retirement System pursuant to Article 12C of Chapter 143 of the General Statutes and withdrew his accumulated contributions prior to January 1, 1985, in accordance with G.S. 128-27(f) or G.S. 135-5(f) for non-law enforcement service and who has 10 years or more of membership service standing to his credit may repay in a total lump sum the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one-half the cost of providing such additional credits plus a fee to cover the expense of handling which shall be determined by the Board of Trustees and receive credit for the creditable service forfeited at the time of withdrawal.

(l) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate accrued rights, see Editor's Note below.

(n) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate accrued rights, see Editor's Note below.

(o) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate accrued rights, see Editor's Note below.

(p) Credit for prior temporary State employment. — Notwithstanding any other provision of this Chapter, a member may purchase service credit for temporary State employment upon completion of 10 years of membership service and subject to the condition that the member had been classified as a temporary employee for more than three years. Each employer shall certify to the Board of Trustees that an employee is eligible to purchase this service credit prior to the member making payment. Payment for the service credit shall be in a single lump sum based upon the amount the member would have contributed if he had been properly classified as a permanent employee and been a member of this retirement system.

(p1) Part-Time Service Credit. —

(1) Notwithstanding any other provision of this Chapter, upon completion of 10 years of membership service, any member may purchase service previously rendered as a part-time teacher or employee of the State, except for temporary or part-time service rendered while a full time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 135-4(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service.

(2) Under all requirements and conditions set forth in the preceding subdivision of this subsection (p1), except for the requirement that the completion of 10 years of membership service be subsequent to service rendered as a part-time teacher or employee of the State, any member with 10 or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time teacher or employee of the State if (i) the member terminates or has terminated employment in any capacity as a

teacher or employee of the State, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.

(q) Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 135-3(6), may purchase membership service credits of such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 135-8(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum.

(r) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

- (1) Leaves of Absence Terminated Prior to July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the board of trustees.
- (2) Leaves of Absence Terminating On and After July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

(s) Credit at Full Cost for Temporary State Employment. — In addition to the provisions of subsection (p) above, any member may purchase creditable service for State employment when classified as a temporary teacher or employee subject to the conditions that the:

- (1) Member was employed by an employer as defined in G.S. 135-1(11);
- (2) Member's temporary employment met all other requirements of G.S. 135-1(10) or (25);
- (3) Member has completed 10 years or more of membership service;
- (4) Member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
- (5) Member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis

of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire or an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative expense fee to be determined by the Board of Trustees.

(t) Credit at Full Cost for Local Government Employment. — Any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in the North Carolina Local Governmental Employees' Retirement System upon completion of 10 years of membership service by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees.

(u) Any member who was a wildlife protector who elected to become a member of the Law Enforcement Officers' Retirement System pursuant to Chapter 837 of the 1971 Session Laws by the transfer of accumulated contributions from this Retirement System to the Law Enforcement Officers' Retirement System and who has not subsequently applied for and received a return of accumulated contributions shall be entitled to creditable service for the service as a non-law enforcement officer forfeited as a result of the transfer pursuant to Chapter 837 of the 1971 Session Laws.

(v) Omitted Membership Service — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

- (1) Within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the average yield on the pension accumulation fund for the preceding calendar year; or
- (3) After three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service.

(w) Notwithstanding any other provisions of this Chapter, a member, upon the completion of 10 years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4; 1953, c. 1050, s. 3; 1959, c. 513, s. 1½; 1961, c. 116, s. 3; c. 779, s. 2; 1963, c. 1262; 1965, c. 780, s. 1; c. 924; 1967, c. 720, s. 3; 1969, c. 1223, ss. 3, 4; 1971, c. 117, ss. 9, 10; c. 993; 1973, c. 241, s. 2; c. 242, s. 2; c. 667, s. 2; c. 737, s. 1; c. 816, s. 1; c. 1063; c. 1311, ss. 1-5; 1975, c. 205, s. 2; c. 875, s. 47; 1977, cc. 317, 790; 1979, c. 826; c. 866, s. 2; c. 867; c. 972, s. 3; 1981, c. 557, s. 3; c. 636, s. 1; c. 1116, s. 1; 1981 (Reg. Sess., 1982), c. 1396, s. 4; 1983, c. 533, s. 1; c. 725; 1983 (Reg. Sess., 1984), c. 1030; c. 1034, ss. 230, 231; c. 1045, ss. 1, 2; 1985, c. 401, ss. 1, 2; c. 407, s. 1; c. 479, s. 193; c. 512; c. 530; c. 649, ss. 1, 4; c. 749, s. 1.)

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

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 46, provides: "The State Personnel Commission and the Office of State Personnel, Department of Administration, shall grant aggregate State Service credit to former employees of the General Assembly for the amount of service to the General Assembly that those employees are authorized, for the purposes of retirement under Chapter 135 of the North Carolina General Statutes. This section shall not apply to legislators, participants in the Legislative Intern Program or pages."

Session Laws 1981, c. 636, s. 1, effective July 1, 1981, deleted subdivision (f)(6), which concerned purchase of service credit for service in the armed forces of the United States, subsection (l), which concerned purchase of credit for service to governmental entities, subsection (n), which defined "out-of-state service", and subsection (o), which concerned purchase of credit for time spent as a court reporter prior to establishment of the Uniform Court System, but provided that any inchoate or accrued rights of any member on July 1, 1981, shall not be diminished.

Prior to this amendment, subdivision (f)(6) and subsections (l), (n) and (o) read:

"(f) (6) Notwithstanding any other provision of this Chapter, teachers and other State employees not otherwise al-

lowed service credit for service in the armed forces of the United States may, upon completion of 10 years of membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any

reserve component of the armed forces of the United States. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.

"(l) Notwithstanding any other provision of this Chapter, any member may, upon completion of 10 years of current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service. Payment shall be permitted only on a total lump sum, an amount based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made.

Notwithstanding the foregoing provisions, any member may, upon completion of 10 years of current membership service, purchase Federal School, Overseas Dependent Schools, or Military Dependent Schools service, or, while on an approved leave of absence from employment with the State of North Carolina, foreign service in the International Cooperation Administration or the Agency for International Development upon the same terms as in the preceding paragraph for out-of-state service.

"(n) Wherever the terminology "out-of-state service," is used in this section, that terminology shall be interpreted to include the United States Public Health Service and time spent in the Merchant Marines while in the United States Naval Reserve.

"(o) Notwithstanding any other provision of this Chapter, a member who is presently a court reporter may buy in time spent serving as court reporter prior to the establishment of

the Uniform Court System in 1968 by purchasing service credits, provided that the purchase payment equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities. Account shall be taken of the additional retirement allowance arising on account of the additional service credit commencing at the earliest date of which the member could retire or of a reduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 183, provides:

"Notwithstanding the provisions of G.S. 135-4(e) and G.S. 135-4(m), any otherwise qualified member who did not purchase prior service credits in the Teachers' and State Employees' Retirement System for employment with the General Assembly within three years after first eligibility may purchase such credits on or before December 31, 1984, as prescribed by G.S. 135-4(e). The difference between the full cost of allowing these service credits as defined in G.S. 135-4(m) and the member's cost pursuant to G.S. 135-4(e) shall be paid to the Retirement System from appropriations made to the General Assembly during the 1983 biennium."

Session Laws 1983 (Reg. Sess., 1984), c. 1045, s. 3, provides: "Notwithstanding any provision of this Article to the contrary, any inchoate or accrued rights of a member in service on July 1, 1974, for service credits at no cost for employment with a local government whose participation in the Local Governmental Employees' Retirement System began prior to July 1, 1984, shall in no way be diminished."

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

Session Laws 1985, c. 407, s. 2 provides:

"Sec. 2. Notwithstanding the provisions of G.S. 128-26(m) or G.S. 135-4(u) any member of the Local Governmental Employees' Retirement System or Teachers' and State Employees' Retirement System, who presents clear and convincing evidence that he was quoted a cost to purchase omitted membership service by either Retirement System within three years prior to the effective date of this act under some other rule, regulation or administrative interpretation, shall continue to have the right to purchase omitted membership service based on the same rule, regulation or administrative interpretation if such cost is paid within 180 days of the effective date of this act."

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

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

**Effect of Amendments. —**

The first 1981 amendment, effective September 1, 1981, inserted "not to exceed one month of credit for each two years of membership service or fraction thereof" in the first paragraph of subsection (e).

The second 1981 amendment, effective July 1, 1981, deleted subdivision (f)(6), which concerned purchase of service credit for service in the armed forces of the United States, subsection (l), which concerned purchase of credit for service to governmental entities, subsection (n), which defined "out-of-state service", and subsection (o), which concerned purchase of credit for time spent as a court reporter prior to establishment of the Uniform Court System. Session Laws 1981, c. 636, s. 1, provides that any inchoate or accrued rights of any member on July 1, 1981, shall not be diminished.

The third 1981 amendment added subsection (p).

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, added subsection (q).

Session Laws 1981 (Reg. Sess., 1982), c. 1396, s. 5, empowers and directs the Board of Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to adjust the employers' rates of contribution to the level necessary to fund the provisions of the act.

The first 1983 amendment, effective July 1, 1983, added subsection (r).

The second 1983 amendment, effective Jan. 1, 1984, added subsection (s).

The 1983 (Reg. Sess., 1984) amendment by c. 1030, effective January 1, 1985, added subsection (p1).

The 1983 (Reg. Sess., 1984) amendment by c. 1034, effective January 1, 1985, added the last paragraph of subsection (e), and in subsection (k) substituted "Law Enforcement Officers' Retirement System" for "Law Enforcement Officers' Benefit and Retirement Fund" in the first sentence and inserted "or the rules and regulations of the Law Enforcement Officers' Retirement System" in the second sentence.

The 1983 (Reg. Sess., 1984) amendment by c. 1045, effective June 29, 1984, deleted a proviso at the end of subsection (a), which read "provided, that any person who is a member of the Teachers' and State Employees' Retirement

System on July 1, 1974, and who was previously employed by a participating unit of the North Carolina Local Governmental Employees' Retirement System and who terminated his service with such unit prior to its participation in the North Carolina Local Governmental Employees' Retirement System shall file a detailed statement of all service to such political entity," deleted a former second sentence of subsection (a), which read "Certification of such service shall be furnished to the Teachers' and State Employees' Retirement System," and added subsection (t).

The 1985 amendment by c. 401, ss. 1, 2, effective June 17, 1985, added the last paragraph of subsection (k) and added new subsection (u).

The 1985 amendment by c. 407, s. 1, effective June 17, 1985, added subsection (v).

The 1985 amendment by c. 479, s. 193, effective January 1, 1985, substituted "but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for early retirement, disability retirement or for a vested deferred allowance" for "but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for service retirement, disability retirement, early retirement or for a vested deferred allowance" at the end of subsection (e).

The 1985 amendment by c. 512, effective July 1, 1985, rewrote subdivision (s)(1), which read "Member became a contributing member or resumed contributing membership immediately subsequent to termination of temporary employment, with the same employer."

The 1985 amendment by c. 530, effective July 1, 1985, designated the first paragraph of subsection (p1) as subdivision (p1)(1) and added subdivision (p1)(2).

The 1985 amendment by c. 649, ss. 1, 4, effective July 8, 1985, added the last sentence of subsection (c) and inserted a new subsection (j1).

The 1985 amendment by c. 749, s. 1, effective July 15, 1985, added subsection (w).

**Legal Periodicals.** — For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

#### CASE NOTES

**Stated in** *In re Ford*, 52 N.C. App. 569, 279 S.E.2d 122 (1981).

**Cited in** *Stanley v. Retirement & Health*

*Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643 (1982).

## OPINIONS OF ATTORNEY GENERAL

**Subsection 135-4(m) Was Not Repealed by Session Laws 1975, Chapter 875.** — See opinion of Attorney General to Mr. W.H. Hambleton, Director, Retirement and Health

Benefits Division, Department of the Treasurer, Nov. 8, 1977. This paragraph is set out to correct a misleading catchline appearing in the replacement volume. — Ed. note.

## § 135-5. Benefits.

## (a) Service Retirement Benefits. —

- (1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.
  - (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
  - (3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.
  - (4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.
- (b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:
- (1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
  - (2) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above but shall be reduced by one-quarter of one percent ( $\frac{1}{4}$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.
  - (3) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2) above.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b8) Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985]. — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent ( $\frac{1}{3}$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, a member shall receive the following service retirement allowance:

- (1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
  - b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent ( $\frac{1}{3}$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.
- (2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent ( $\frac{1}{4}$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for

disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.
- (2) Notwithstanding the foregoing provisions,
  - a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);
  - b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and
  - c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the

Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.
- (2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have re-

ceived on account of his service since his last restoration had he entered service at the time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a below reduced by the amount in b below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1985, shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this sec-

tion. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this section.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; Provided, further, that such agency or subdivision shall have notified the executive director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

(1) Death Benefit Plan. — There is hereby 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 System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees 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 System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, 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 greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a maximum of twenty thousand dollars (\$20,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (1) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978 and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, 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. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) 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.
- (2) Last day of actual service shall be:
  - a. When employment has been terminated, the last day the member actually worked.
  - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).
- (4) A member on leave of absence from his position as a teacher or State employee 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 teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars (\$20,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

(o) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

|  |   |
|--|---|
| <p><i>Increase<br/>In Index</i></p> <p>1.00 to 1.49%</p> | <p><i>Increase In<br/>Allowance</i></p> <p>1%</p> |
|--|---|

| <i>Increase<br/>In Index</i> | <i>Increase In<br/>Allowance</i> |
|------------------------------|----------------------------------|
| 1.50 to 2.49%                | 2%                               |
| 2.50 to 3.49%                | 3%                               |
| 3.50% or more                | 4%                               |

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

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.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980. — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985. From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10.)

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

**Editor's Note.** —

The amendment by Session Laws 1985, c. 479, s. 190, to subsection (b8) directed that "on or after January 1, 1985, but prior to July 1, 1985" be substituted for "on or after July 1, 1985" in the catchline and first sentence of subsection (b8). The language to be inserted by this amendment has been bracketed in, since the language of subsection (b8) prior to the amendment read "on or after January 1, 1985," not "on or after July 1, 1985."

Session Laws 1983, c. 761, s. 233, provides that s. 229 of the act, which amended subdivision (m)(1) of § 135-5, shall not diminish any inchoate or accrued rights of any member in service on the date of ratification of the act. The act was ratified July 15, 1983.

Session Laws 1983, c. 761, s. 259, is a severability clause.

Session Laws 1983, c. 902, ss. 2 and 3, provide:

"Sec. 2. Whereas Chapter 242 of the 1973 Session Laws enacted the 30-year unreduced retirement benefit for teachers and State employees who retired on and after July 1, 1973, without requiring any increase in the employer contribution rate; and whereas undistributed gains in the Teachers' and State Employees' Retirement System have been at least \$25 million per year since December 31, 1977, and averaging almost \$ million per year since December 31, 1977; now therefore, the total present value cost of this act shall be funded by undistributed gains in the Teachers' and State Employees' Retirement System for the year ending December 31, 1982, without requiring any increase in the employer contribution rate.

"Sec. 3. This act shall become effective July 1, 1983, and the increased benefit shall be payable on the first of the month following a determination by the System's consulting actuary that sufficient gains are available in the System to pay the total present value actuarial cost of the increased benefit."

Session Laws 1983 (Reg. Sess., 1984), c. 1049, s. 4, provides: "No inchoate or pending right of any beneficiary in receipt of a disability retirement allowance from the Teachers' and State Employees', Local Governmental Employees', or Law Enforcement Officers' Retirement Systems, on the date of ratification of this act shall be diminished." The act was ratified July 2, 1984.

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

Session Laws 1985, c. 479, s. 192(c) provides: "The provisions of subsections (a) and (b) of this section shall apply equally to the surviving designated beneficiaries of members of the

retirement systems who died within five years prior to the ratification of this act so long as such a surviving designated beneficiary returns to the appropriate retirement system any lump-sum benefits paid to the surviving designated beneficiary which are a precondition to the receipt of the monthly allowance. Any benefits due and payable under this section shall be prospective on and after ratification."

Session Laws 1985, c. 520, ss. 3 and 4, provide:

"Sec. 3. An active or retired extension service employee who was employed in part by a county and in part by the Cooperative Agricultural Extension Service and who was paid his accumulated contributions from either the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System while retaining his accumulated contributions in the other Retirement System for the same period may on or before June 30, 1986, or 90 days after the effective date of this legislation, whichever comes last, repay in a lump sum the accumulated contributions withdrawn with interest and a fee added thereto to be determined by the Board of Trustees and restore the service credit represented thereby.

"Sec. 4. Nothing in this act should be construed to require any employee of the Cooperative Agricultural Extension Service who has elected to become a member of a retirement system for employees of the United States Government to become a member of the Teachers' and State Employees' Retirement System."

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

**Effect of Amendments.** —

Session Laws 1981, c. 672, in the first sentence of the first paragraph of subsection (f), substituted "his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the sum of his contributions and the accumulated regular interest thereon." Session Laws 1981, c. 672, s. 5, makes the amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 689, effective July 1, 1981, added the second proviso in the first paragraph of subsection (c).

Session Laws 1981, c. 859, effective on and after July 1, 1980, substituted "(cc)" for "(x4)" near the end of the first sentence in subsection (bb), and added subsections (dd) and (ee).

Session Laws 1981, c. 940, added the third proviso in the first paragraph of subsection (c),

containing subdivisions (1) and (2), and added the second paragraph of subsection (c).

Session Laws 1981, c. 975, rewrote subdivision (1) of subsection (e).

Session Laws 1981, c. 978, deleted "in service" following "Any member" near the beginning of subdivision (1) of subsection (a), and substituted "60 years and have at least 5 years of membership service or shall have completed 30 years of creditable service" for "60 years or shall have completed 30 years of service, and notwithstanding that, during such period of notification, he may have separated from service" at the end of the proviso at the end of subdivision (1) of subsection (a). The amendment also deleted "regardless of his years of creditable service" following "sixty-fifth birthday" near the beginning of subdivision (1) of subsection (b7).

Session Laws 1981, c. 980, effective July 1, 1982, inserted "but prior to July 1, 1982" in the catchline and the text of subsection (d3) and added subsection (d4). The amendment also substituted "of this section" for "above" following "subsection (c)" in subsection (d3).

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, added subsection (ff).

Session Laws 1981, c. 859, s. 97, and Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 81, contain severability clauses.

The first 1983 amendment, effective June 8, 1983, substituted "not earlier than 60 days from the date of termination of service" for "not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System" in the first sentence of the first paragraph of subsection (f).

The second 1983 amendment, effective July 1, 1983, added subdivision (a)(3); substituted "had attained the age of 60 years with at least five years of creditable service" for "had attained age 55 regardless of length of service" in subdivision (m)(1); added the last paragraph of subsection (o); and added subsection (gg).

The third 1983 amendment, effective July 1, 1983, added subsection (hh).

The 1983 (Reg. Sess., 1984) amendment by c. 1019, effective October 1, 1984, deleted subdivision (a)(2), relating to members in service who attained age 70.

The 1983 (Reg. Sess., 1984) amendment by 1034, s. 222, effective July 1, 1984, added subsection (ii).

The 1983 (Reg. Sess., 1984) amendment by 1034, ss. 232-235 and 237, effective January 1985, added subdivision (a) (4), inserted subsection (b8), added the next-to-last paragraph of subsection (c), added the proviso at the end of subdivision (e)(1), and rewrote subdivision (m)(1), which read "The member had obtained age 50 with at least 20 years of creditable service, or had obtained the age 60 years with at least five years creditable service, or had credited for at least 30 years of service regardless of age."

The 1983 (Reg. Sess., 1984) amendment by 1049, effective January 1, 1984, in the first paragraph of subsection (l), rewrote subdivision (2), deleted subdivisions (3) and (4), and rewrote the last sentence of that paragraph.

The 1985 amendment by c. 348, s. 2, effective July 1, 1985, added the second paragraph of subsection (f).

The 1985 amendment by c. 479, s. 189(a) effective July 1, 1985, added subsection (jj).

The 1985 amendment by c. 479, s. 190, effective July 1, 1985, substituted "on or after July 1, 1980, but prior to July 1, 1985" for "on or after July 1, 1980" at the end of the catchline of subsection (b7) and in the first sentence thereof, substituted "on or after January 1, 1985, but prior to July 1, 1985" for "on or after July 1, 1985" in the catchline to subsection (b8) and in the first sentence thereof, and added subsection (b9).

The 1985 amendment by c. 479, s. 191, effective July 1, 1985, added subsection (kk).

The 1985 amendment by c. 479, s. 192(a), effective July 1, 1985, added the final paragraph of subsection (c), with its subdivisions (1) and (2).

The 1985 amendment by c. 479, s. 194, effective retroactive to July 1, 1984, added the next-to-last paragraph of subsection (c).

The 1985 amendment by c. 520, s. 2, effective July 1, 1985, added the last sentence of the first paragraph of subsection (f).

The 1985 amendment by c. 649, ss. 8, 10, effective July 8, 1985, added subdivisions (e)(3a) and (e)(5).

**Legal Periodicals.** — For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

## CASE NOTES

**Constitutionality.** — Subsection (l) of this section, as in effect in 1974, was constitutional on its face. *Stanley v. Retirement & Health Benefits Div.*, 55 N.C. App. 588, 286 S.E.2d 643, cert. denied, 305 N.C. 587, 292 S.E.2d 571 (1982).

### Grant of Disability Retirement Benefits

### Terminated Status as "Career Teacher".

— The granting of a career teacher's application for disability retirement benefits under the Teachers' and State Employees' Retirement System operated as an acceptance of her resignation by implication and terminated her status as a "career teacher" under former

§ 115-142, since a finding that her disability was "likely to be permanent" was implicit in the granting of her application for disability retirement benefits (subsection (c) and this finding rendered her status as a disabled retiree wholly inconsistent with her former status as a "career teacher." *Meachan v. Montgomery County Bd. of Educ.*, 47 N.C. App. 271, 267 S.E.2d 349 (1980).

**Applied** in *Bennett v. Hertford County Bd. of Educ.*, 69 N.C. App. 615, 317 S.E.2d 912 (1984).

**Stated** in *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637 (1984).

### § 135-5.1. Optional retirement program for State institutions of higher education.

(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of administrators and faculty of The University of North Carolina with the rank of instructor or above who (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf.

(b) Participation in the Optional Retirement Program shall be governed as follows:

- (1) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as established by this section.
- (2) Eligible employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in the Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the employing institution and shall be effective as of the date of entry into eligible service.
- (3) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.
- (4) No election by an eligible employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a contract or contracts or trust participation under the Program.
- (5) If any participant having less than five years coverage under the Optional Retirement Program leaves the employ of The University of North Carolina and either retires or commences employment with an employer not having a retirement program with the same company underwriting the participant's annuity contract, regardless of whether the annuity contract is held by the participant, a trust, or the Retirement System, the participant's interest in the Optional Retirement Program attributable to contributions of The University of North Carolina shall be forfeited and shall either (i) be refunded to

The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

(c) Each employing institution shall contribute on behalf of each participant in the Optional Retirement Program an amount equal to the amount which the employee would be required to contribute to the Retirement System as a member of the Retirement System as specified in G.S. 135-8(b)(1). Each participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Contributions authorized or required by the provisions of this subsection on behalf of each participant shall be made, consistent with Section 414(h) of the Internal Revenue Code by salary reduction according to rules and regulations established by The University of North Carolina. Additional personal contributions may also be made by a participant by payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17. Payment of contributions shall be made by the employing institution to the designated company or companies underwriting the annuities or the trustees for the benefit of each participant, and this employer contribution shall not be subject to any State tax if made under the Optional Retirement Program or, otherwise, by salary reduction.

(d) The Board of Governors of The University of North Carolina shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such contracts or trust agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

- (1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;
- (2) The relation of these rights and benefits to the amount of contributions to be made;
- (3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and
- (4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this subsection, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this section.

(e) The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration.

(f) Any eligible employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.

(g) No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The University of North Carolina, or the Board of Trustees of the Teachers'

and State Employees' Retirement System with respect to any employee selecting and participating in the Optional Retirement Program or with respect to any beneficiary of that employee. Benefits shall be payable to participants or their beneficiaries only by the designated company in accordance with the terms of the contracts or trust agreement. (1971, c. 338, s. 2; c. 916; 1973, c. 425; 1977, c. 1070; 1985, c. 309.)

**Cross references.** — As to the pick up of certain employee contributions by the employer, see § 135-8.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, rewrote this section.

## 135-6. Administration.

(b) Membership of Board; Terms. — The Board shall consist of 14 members, as follows:

- (1) The State Treasurer, ex officio;
- (2) The Superintendent of Public Instruction, ex officio;
- (3) Ten members to be appointed by the Governor and confirmed by the Senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the State; one of the appointive members shall be an employee of the Board of Transportation, who shall be appointed by the Governor for a term of four years commencing April 1, 1947, and quadrennially thereafter; one of the appointive members shall be a representative of higher education appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one of the appointive members shall be a retired teacher who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one shall be a retired State employee who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1977, and quadrennially thereafter; one to be a general State employee, and three who are not members of the teaching profession or State employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years; one appointive member shall be a law-enforcement officer employed by the State, appointed by the Governor, for a term of four years commencing April 1, 1985. At the expiration of these terms of office the appointment shall be for a term of four years;
- (4) Two members appointed by the General Assembly, one appointed upon the recommendation of the Speaker of the House of Representatives, and one appointed upon the recommendation of the President of the Senate in accordance with G.S. 120-121. Neither of these members may be an active or retired teacher or State employee or an employee of a unit of local government. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(1941, c. 25, s. 6; 1943, c. 719; 1947, c. 259; 1957, c. 541, s. 15; 1965, c. 780, s. 1; 1969, c. 805; c. 1223, s. 17; 1973, c. 241, s. 8; c. 507, s. 5; c. 1114; 1977, c. 564; 1979, c. 376; 1981 (Reg. Sess., 1982), c. 1191, s. 11; 1983 (Reg. Sess., 1984), c. 1034, s. 238.)

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

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

**Effect of Amendments.** —

The 1981 (Reg. Sess., 1982) amendment (the Separation of Powers Act of 1982) rewrote subdivision (4) of subsection (b), which formerly provided for two members, one to be a member of the House of Representatives appointed by the Speaker of the House and one to be a mem-

ber of the Senate appointed by the President thereof.

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted "14" for "13" in the introductory language of subsection (b), substituted "Ten" for "Nine" at the beginning of subdivision (b)(3), and inserted "one appointive member shall be a law-enforcement officer employed by the State, appointed by the Governor, for a term of four years commencing April 1, 1985" at the end of the second sentence of subdivision (b)(3).

**CASE NOTES**

**Board without Power to Waive Statutory Deadlines.** — The Board of Trustees of the Retirement System does not have discretionary power to extend or waive statutory deadlines for the reinstatement of a withdrawn account or for purchase of out-of-state service, since a waiver would not be a rule or regulation to

prevent injustice and inequality across the board but simply a waiver in a specific instance. *In re Ford*, 52 N.C. App. 569, 278 S.E.2d 122 (1981).

**Stated in Stanley v. Retirement & Health Benefits Div.**, 66 N.C. App. 122, 310 S.E.2d 637 (1984).

**§ 135-7. Management of funds.**

**CASE NOTES**

**Applied in Stanley v. Retirement & Health Benefits Div.**, 66 N.C. App. 122, 310 S.E.2d 637 (1984).

**§ 135-8. Method of financing.**

(b) **Annuity Savings Fund.** — The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to any payments from the annuity savings fund shall be made as follows:

- (1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State, from salaries other than the appropriation from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter 135 of Volume 3B of the General Statutes, as amended, and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to

time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2, Chapter 135 of Volume 3B of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, with respect to the period of service commencing on July 1, 1963, and ending December 31, 1965, the rates of such deduction shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars (\$4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars (\$4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deductions shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1975, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600). Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

Notwithstanding the foregoing, effective July 1, 1975, with respect to the period of service commencing on July 1, 1975, the rate of such deductions shall be six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Chapter. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon, to the individual account of the member from whose compensation said deduction was made.

- (3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the compensation that the State of North Carolina pays and shall transmit same to the State Retirement System monthly. Provided, that for the purpose of enabling the boards of education to make such payment, the tax-levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this Chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.
- (4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the Board of Trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this Chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959, except as provided for in G.S. 135-4(e).
- (5) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer for the sole purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer. This approval shall be made prior to the purchase of the creditable service, is limited to a career total of four years for each member, and may be obtained in the following manner:
- a. Approved leave of absence. — Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
  - b. No educational leave policy. — Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund

in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.

- c. Educational program prior to July 1, 1981. — Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus a fee to be determined by the Board of Trustees.

Payments required to be made by the member and/or the employer under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

- (6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this Chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(b1) Pick Up of Employee Contributions. — Anything within this section to the contrary notwithstanding, effective July 1, 1982, an employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the employees as members under subsection (b) of this section with respect to the service of employees after June 30, 1982.

The members' contributions picked up by an employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by an employer shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by his employer. This deduction, however, shall not reduce his compensation as defined in subdivision (7a) of G.S. 135-1. Picked up contributions shall be transmitted to the System monthly for the

preceding month by means of a warrant drawn by the employer and payable to the Teachers' and State Employees' Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. In the case of a failure to fulfill these conditions, the provisions of subsection (f)(3) of this section shall apply.

The pick up of employee contributions by an employer as provided for hereunder shall be equally applicable to participant contributions required under the optional retirement program as specified in G.S. 135-5.1(c).

(d) Pension Accumulation Fund. — The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) On account of each member there shall be paid in the pension accumulation fund by employers an amount equal to a certain percentage of the actual compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one-hundredths percent (2.57%) for teachers, and one and fifty-seven one-hundredths percent (1.57%) for State employees, and the accrued liability contribution shall be two and ninety-four one-hundredths percent (2.94%) for teachers and one and fifty-nine one-hundredths percent (1.59%) of the salary of other State employees.
- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board to make each valuation required by this Chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the Board of Trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
- (3) Immediately succeeding the first valuation the actuary engaged by the Board of Trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four percent (4%) of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valua-

tions if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the Board of Trustees that the accrued liability contribution rate may be reduced without impairing the Retirement System, the Board of Trustees may cause the accrued liability contribution rate to be reduced.

- (4) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total actual compensation of all members during the preceding year: Provided, however, that, subject to the provisions of subdivision (3) of this subsection the amount of each annual accrued liability contribution shall be at least three percent (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.
- (5) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value as actuarially computed and approved by the Board of Trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.
- (6) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.
- (7) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(1941, c. 25, s. 8; c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8; 1955, c. 1155, s. 3-5; 1959, c. 513, s. 4; 1963, c. 687, ss. 4, 5; 1965, c. 780, s. 1; 1967, c. 720, ss. 1, 13; 1969, c. 1223, s. 13; 1971, c. 117, ss. 2, 10; 1975, c. 457, s. 5; c. 879, s. 46; 1977, c. 909; 1981, c. 636, s. 1; c. 1000, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 8; 1985, c. 539, ss. 1, 2.)

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

**Effect of Amendments.** — The first 1981 amendment, effective July 1, 1981, deleted the second sentence of subdivision (b)(5), which provided for the purchase of credit by employees for periods of absence for purposes of education which increased the employee's efficiency on his or her return to state employment in cases where the employee had unsuccessfully petitioned for an official leave of absence.

Session Laws 1981, c. 636, s. 1, provides that any inchoate or accrued rights of any member on July 1, 1981, shall not be diminished.

The second 1981 amendment rewrote subdivision (5) of subsection (b), and deleted the former second sentence of subdivision (1) of sub-

section (d), which read: "In addition, such contributions by employers will be required for each member on leave of absence who makes monthly contributions in accordance with (b)(5) above, and will be based on the salary or wage the member was receiving at the time the leave of absence was granted."

The 1981 (Reg. Sess., 1982) amendment, effective July 1, 1982, added subsection (b1).

Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 81, contains a severability clause.

The 1985 amendment, effective July 1, 1985, in subdivision (b)(5) substituted "This approval shall be made prior to the purchase of the creditable service" for "This creditable service" and "is limited" for "shall be limited" in the introductory paragraph and rewrote the last paragraph.

CASE NOTES

**Applied** in Stanley v. Retirement & Health Benefits Div., 66 N.C. App. 122, 310 S.E.2d 637 (1984).

**Cited** in Stanley v. Retirement & Health Benefits Div., 55 N.C. App. 588, 286 S.E.2d 6 (1982).

**§ 135-9. Exemption from taxes, garnishment, attachment etc.**

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, an optional benefit or any other right accrued or accruing to any person under the provisions of this Chapter, and the moneys in the various funds created by this Chapter, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Chapter specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a state-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary. (1941, c. 25, s. 9; 1985, c. 402, s. 1; c. 649, s. 5.)

**Effect of Amendments.** — The 1985 amendment by c. 402, s. 1, effective June 17, 1985, inserted "Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribu-

tion under G.S. 50-20," at the beginning of this section.

The 1985 amendment by c. 649, s. 5, effective July 8, 1985, added the last sentence.

CASE NOTES

The language of this section is clear and unequivocal. A person's rights to state employee retirement benefits are not assignable. Reynolds v. N.C. State Employees Credit Union, 31 Bankr. 296 (Bankr. E.D.N.C. 1983).

Section 1C-1601(c) does not preclude the use of this section by a bankruptcy debtor to claim an exemption in state employee retirement benefits. In re Hare, 32 Bankr. 1 (Bankr. E.D.N.C. 1983).

**§ 135-14. Pensions of certain former teachers and State employees.**

On and after July 1, 1983, special pensions and allowances of certain former teachers and State employees shall be paid out of the Pension Accumulation Fund of the Retirement System, as follows:

- (1) Any person who was a teacher or employee, as defined in G.S. 135-1(10) and (25), for 20 or more years, whose separation from service was prior to April 1, 1956, was not due to any dishonorable cause, and who had attained age 65 prior to July 1, 1960, shall upon application be paid an allowance of one hundred seventy-three dollars and twenty-five cents (\$173.25) per month.
- (2) Any beneficiary who did not qualify for Social Security benefits and had 20 or more years of creditable service and qualified for a minimum eighty-five dollars (\$85.00) per month under the provisions of Chapter 1140 of the 1965 Session Laws, shall be paid the allowance in effect on June 30, 1983.

- (3) Any beneficiary who did not qualify for Social Security benefits and who had 15 years but less than 20 years of creditable service and qualified for a benefit of four dollars (\$4.00) per month for each year of creditable service under the provisions of Chapter 1199 of the 1965 Session Laws shall be paid the allowance in effect on June 30, 1983.
- (4) All the allowances in subsections (1) through (3) of this section may be adjusted by any cost-of-living increases in retirement allowances provided by the General Assembly or by the Board of Trustees. (1943, c. 785; 1953, c. 1132, s. 1; 1955, c. 1199, ss. 1, 2; 1957, cc. 852, 1408, 1412; 1959, c. 538, s. 1; 1979, c. 1057, ss. 1, 2; 1983, c. 761, s. 223.)

**Editor's Note. —**

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments. —**

The 1983 amendment, effective July 1, 1983, rewrote this section.

### § 135-16.1. Blind or visually handicapped employees.

(a) On July 1, 1971, all blind or visually handicapped employees employed by the Department of Human Resources shall be enrolled as members of the Teachers' and State Employees' Retirement System. All such employees shall be given full credit for all service theretofore as employees of the Department of Human Resources. All retired employees drawing or receiving benefits from and under the private retirement plan purportedly created on December 6, 1966, by the Bureau of Employment for the Blind Division pursuant to a trust agreement purportedly entered into with a private banking institution as trustee shall continue to be paid by the Teachers' and State Employees' Retirement System benefits in the same amount which they purportedly were entitled to under the private retirement plan and trust agreement, except that such retired persons shall be eligible for such annual cost-of-living increases as may be provided for retirement members of the Teachers' and State Employees' Retirement System under the provisions of this Article.

(b) Upon the enrollment of the employees in the Teachers' and State Employees' Retirement System, the purported private retirement plan and trust agreement hereinabove referred to shall be dissolved and terminated.

(c) Notwithstanding the foregoing, blind persons licensed by the State and operating vending facilities under contract with the Department of Human Resources, Division of Services for the Blind and its successors, hereinafter referred to as licensed vendors, so licensed on and after October 1, 1983, shall not be members of the Retirement System. All licensed vendors in service or who are members of the Retirement System before October 1, 1983, shall make an irrevocable election to do one of the following:

- (1) Continue contributing membership service as if an employee under the same conditions and requirements as are otherwise provided, and have the rights of a member to all benefits and a retirement allowance;
- (2) Receive a return of accumulated contributions with cessation of contributing membership service, under G.S. 135-5(f), and in any event with regular interest regardless of membership service; or
- (3) Terminate contributing membership service and be entitled alternatively to the benefits and allowances provided under G.S. 135-3(8) or 135-5(a). (1971, c. 1025, s. 3; 1973, c. 476, s. 143; 1983, c. 867, s. 3.)

**Effect of Amendments.** — The 1983 amendment, effective July 20, 1983, designated the first and second paragraphs of this section as subsections (a) and (b) and added subsection (c).

## ARTICLE 2.

### *Coverage of Governmental Employees under Title II of the Social Security Act.*

#### § 135-27. Transfers from State to certain association service.

(a) Any member whose service as a teacher or State employee is terminated because of acceptance of a position prior to July 1, 1983, with the North Carolina Education Association, the North Carolina State Employees' Association, North Carolina State Firemen's Association, the North Carolina State Highway Employees Association, North Carolina Teachers' Association and the State Employees' Credit Union, alumni associations of state-supported universities and colleges, local professional associations of teachers and State employees as defined by the Board of Trustees, and North Carolina State School Boards Association may elect to leave his total accumulated contributions in this Retirement System during the period he is in such association employment, by filing with the Board of Trustees at the time of such termination the form provided by it for that purpose.

(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause the employees of such association or organization so employed prior to July 1, 1983, to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. The provisions of this subsection shall be fully applicable to the North Carolina Symphony Society, Inc. and the North Carolina Art Society, Inc.

(e) Notwithstanding the foregoing, employees of the State Employees' Credit Union who are in service and members of the Retirement System on June 30, 1983, shall, on or before October 1, 1983, make an irrevocable election to do one of the following:

- (1) Continue contributing membership service under the same conditions and requirements as are otherwise provided, and have the rights of a member to all benefits and a retirement allowance; or
- (2) Receive a return of accumulated contributions with cessation of contributing membership service, under G.S. 135-5(f) and in any event with regular interest regardless of membership service; or

(3) Terminate contributing membership service and be entitled alternatively to the benefits and allowances provided under G.S. 135-3(8) or G.S. 135-5(a).

(f) Notwithstanding the foregoing, employees of the State Employees Association of North Carolina, the employees of the North Carolina Association of Educators, and the employees of the North Carolina School Boards Association who are in service and members of the Retirement System on June 30, 1985, shall, on or before October 1, 1985, make an irrevocable election to exercise one of the three options provided in G.S. 135-27(e). (1953, c. 1050, s. 1; 1959, c. 513, s. 5; 1961, c. 516, s. 5; 1967, c. 720, s. 14; 1969, cc. 540, 847, 1227; 1983, c. 412, ss. 4-6; c. 782; 1985, c. 757, s. 200.)

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

**Effect of Amendments.** — The first 1983 amendment, effective July 1, 1983, inserted "prior to July 1, 1983" in the first sentence of subsection (a), and in subsection (d) inserted "on or before July 1, 1983" and "so employed

prior to July 1, 1983" in the first sentence and added "and the North Carolina Art Society, Inc." at the end of the last sentence.

The second 1983 amendment, effective July 18, 1983, added subsection (e).

The 1985 amendment, effective July 1, 1985, added subsection (f).

## § 135-29. Referenda and certification.

**Editor's Note.** — The historical citation at the end of this section in the replacement vol-

ume should read: "(1955, c. 1154, s. 11; 1961, c. 516, s. 8.)"

### ARTICLE 3.

#### *Other Teacher, Employee Benefits.*

##### Part 1. General Provisions.

§§ 135-32 to 135-33.1: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1398, s. 1, effective October 1, 1982.

**Editor's Note.** — Repealed § 135-33 was amended by Session Laws 1981, c. 859, ss. 13.12, 13.13. Repealed § 135-33.1 was amended by Session Laws 1981, c. 859, ss. 13.14, 13.15.

## § 135-34. Disability salary continuation.

The Board of Trustees of the Retirement System shall formulate, establish and administer for teachers and State employees with one or more years of service, including all employees of the General Assembly except participants in the Legislative Intern Program and pages, a program of disability salary continuation benefits to the extent that funds for such benefits are specifically appropriated by the General Assembly. Such a program may be provided by the Board either directly or through the purchase of contracts therefor, or any combination thereof, as in its discretion it may deem wise and expedient. Benefits provided under this program of disability salary continuation shall not be reduced in any manner as a result of social security payments received with respect to any dependent or dependents of the disabled employee or as a result of compensation received from the Veterans Administration of the United States for disease or disability incurred while a member of the armed forces of the United States. This program shall include licensed vendors who

are members of the Retirement System on account of G.S. 135-16.1(c)(1) (1971, c. 1009, s. 1; 1973, c. 746; c. 1278, s. 2; 1979, c. 972, s. 6; 1981, c. 859, s. 13.16; 1981 (Reg. Sess., 1982), c. 1398, s. 2; 1983, c. 867, s. 5.)

**Effect of Amendments. —**

The 1981 amendment, effective July 1, 1981, substituted "The Committee on Employee Hospital and Medical Benefits shall formulate and establish" for "The Board of Trustees of the Retirement System shall formulate, establish and administer" at the beginning of the first sentence, substituted "other than participants" for "except for participants" near the middle of the second sentence, and substituted "those benefits" for "such benefits" near the end of the first sentence. The amendment also substituted the second sentence for the former second sentence, which read: "Such a program may be

provided by the Board either directly or through the purchase of contracts therefor, or any combination thereof, as in its discretion may deem wise and expedient," and added the third sentence.

The 1981 (Reg. Sess., 1982) amendment re-enacted this section as it read before the amendment by Session Laws 1981, c. 859, s. 13.16.

Session Laws 1981, c. 859, s. 97, contains severability clause.

The 1983 amendment, effective July 20, 1983, added the last sentence.

**§ 135-35:** Repealed by Session Laws 1981, c. 859, s. 13.17, effective July 1, 1981; 1981 (Regular Session, 1982), c. 1398, s. 1, effective October 1, 1982.

**Editor's Note. —** This section was again repealed by Session Laws 1981 (Reg. Sess., 1982), c. 1398, s. 1.

Session Laws 1981, c. 859, s. 97, contains severability clause.

**§ 135-36:** Repealed by Session Laws 1981 (Regular Session, 1982), c. 1398, s. 1, effective October 1, 1982.

**§ 135-37. Confidentiality.**

Any information as herein described in this section which is in the possession of the Executive Administrator and the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan or its Plan Administrator under the Teachers' and State Employees' Comprehensive Major Medical Plan shall be confidential and shall be exempt from the provisions of Chapter 132 of the General Statutes or any other provision requiring information and records held by State agencies to be made public or accessible to the public. This section shall apply to all information concerning individuals, including the fact of coverage or noncoverage, whether or not a claim has been filed, medical information, whether or not a claim has been paid, and any other information or materials concerning a plan participant. Provided however, such information may be released to the State Auditor, or to the Attorney General, or to the persons designated under G.S. 135-39.3 in furtherance of their statutory duties and responsibilities, or to such persons or organizations as may be designated and approved by the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, but any information so released shall remain confidential as stated above and any party obtaining such information shall assume the same level of responsibility for maintaining such confidentiality as that of the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan. (1981, c. 355; 1981 (Reg. Sess., 1982), c. 1398, ss. 3, 4; 1983, c. 922, s. 21.10; 1985, c. 732, s. 38.)

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment inserted “, or received from the Plan Administrator contracted with by the Board of Trustees of the Teachers’ and State Employees’ Comprehensive Major Medical Plan” in the first sentence and in the third sentence inserted “or to the persons designated under G.S. 135-39.3” and substituted “their”

for “his” preceding “statutory duties,” as the section stood before the 1985 amendment.”

The 1983 amendment, effective July 22, 1983, rewrote the last sentence, as the section stood before the 1985 amendment.

The 1985 amendment, effective July 12, 1985, changed the catchline and rewrote this section.

## § 135-38. Committee on Employee Hospital and Medical Benefits.

(a) The Committee on Employee Hospital and Medical Benefits shall consist of 12 members as follows:

- (1) The President Pro Tempore of the Senate;
- (2) The Majority Leader of the Senate;
- (3) The Chairman of the Senate Committee on Appropriations;
- (4) A Cochairman of the Senate Committee on Base Budget designated by the President of the Senate;
- (5) A Cochairman of the Senate Committee on Finance designated by the President of the Senate;
- (6) One other member of the Senate appointed by the President of the Senate;
- (7) The Speaker Pro Tempore of the House of Representatives;
- (8) The Chairman of the House Committee on Appropriations Base Budget;
- (9) The Chairman of the House Committee on Appropriations Expansion Budget;
- (10) The Chairman of the House Committee on Finance; and
- (11) Two other members of the House appointed by the Speaker.

(b) The members of the Committee who are members because of the offices they hold shall remain on the Committee for the duration of their terms in those offices. The President of the Senate and Speaker of the House shall appoint the other members of the Committee for two-year terms beginning on July 1 of odd-numbered years.

(c) The Committee shall recommend to the General Assembly programs for hospital, medical care and disability salary continuation benefits as provided in this Article. The Committee may consult with the Board of Trustees of the Retirement System concerning the Disability Salary Continuation Plan, and with the Board of Trustees and the Executive Administrator of the Teachers’ and State Employees’ Comprehensive Major Medical Plan in connection with the Comprehensive Major Medical Plan, and these two Boards and the Executive Administrator, and their directors, staff, and contractors shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article.

(d) The time members spend on Committee business shall be considered official legislative business for purposes of G.S. 120-3. (1981, c. 859, s. 13.18; 1981 (Reg. Sess., 1982), c. 1398, s. 5; 1983, c. 452, ss. 1, 2; 1985, c. 732, s. 45.)

**Editor’s Note.** — Session Laws 1981, c. 859, s. 98, makes this section effective July 1, 1981.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

**Effect of Amendments.** — The 1981 (Reg. Sess., 1982) amendment rewrote subsection (c)

to the extent that a detailed comparison is not possible.

The 1983 amendment, effective June 6, 1983, substituted “The Majority Leader of the Senate” for “The Chairman of the Senate Committee on Ways and Means” in subdivision

(a)(2), substituted "A Cochairman of the Senate Committee on Base Budget designated by the President of the Senate" for "The Chairman of the Senate Committee on Base Budget" in subdivision (a)(4), and substituted "A Cochairman of the Senate Committee on Finance designated by the President of the Senate" for "The Chairman of the Senate Committee on Finance" in subdivision (a)(5).

The 1985 amendment, effective July 12, 1985, substituted "with the Board of Trustees

and the Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan in connection with the Comprehensive Major Medical Plan, and these two Boards and the Executive Administrator" for "with the Board of Trustees of the Teachers and State Employees' Comprehensive Major Medical Plan in connection with the Comprehensive Major Medical Plan, and these two Boards" in the second sentence of subsection (c).

## Part 2. Administrative Structure.

### § 135-39. Board of Trustees established.

(a) There is hereby established the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan.

(a1) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall consist of nine members.

(b) Three members shall be appointed by the Governor. Of the initial members, one shall serve a term to expire June 30, 1983, and two shall serve terms to expire June 30, 1984. Subsequent terms shall be for two years. Vacancies shall be filled by the Governor.

The member appointed by the Governor to serve a term beginning July 1, 1985, shall be an employee enrolled in the Plan. Any successor to such member shall also be an employee enrolled in the Plan.

(c) Three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. Of the initial members, two shall serve terms expiring June 30, 1983, and one shall serve a term expiring June 30, 1984. Vacancies shall be filled in accordance with G.S. 120-122.

One of the members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives may be a retired employee enrolled in the Plan.

(d) Three members shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121. Of the initial members, two shall serve terms expiring June 30, 1983, and one shall serve a term expiring June 30, 1984. Vacancies shall be filled in accordance with G.S. 120-122.

One of the members appointed by the General Assembly upon the recommendation of the President of the Senate for a term beginning July 1, 1985, shall be an employee enrolled in the Plan. Any successor to such member shall also be an employee enrolled in the Plan.

(d1) Repealed by Session Laws 1985, c. 732, s. 60, effective July 12, 1985.

(e) The Governor shall have the power to remove any member appointed by him under subsection (b). The General Assembly may remove any member appointed under subsections (c) or (d).

(f) The members of the Board of Trustees shall receive one hundred dollars (\$100.00) per day whenever the full Board of Trustees holds a public session, and travel allowances under G.S. 138-6 when traveling to and from meetings of the Board of Trustees or hearings under G.S. 135-39.7, but shall not receive any subsistence allowance or per diem under G.S. 138-5, except when holding a meeting or hearing where this section does not provide for payment of one hundred dollars (\$100.00) per day.

(g) No State employee, member of the General Assembly, State officer, or anyone who is receiving benefits under the Plan or who is eligible to receive benefits under the Plan or who provides services, equipment or supplies under the Plan shall be eligible for membership on the Board of Trustees, except for the designated employees and retired employee appointed under subsections (b) through (d) of this section, provided that such designated persons may not serve on the executive committee.

(h) No member of the Commission may serve more than three consecutive two-year terms.

(i) Meetings of the Board of Trustees may be called by the Executive Administrator, the Chairman, or by any three members. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 1; 1985, c. 732, ss. 2-5, 8, 11, 42, 59, 60.)

**Effect of Amendments.** — The 1983 amendment, effective July 22, 1983, deleted "within the office of State Budget and Management" following "established" in subsection (a).

The 1985 amendment by c. 732, s. 42, effective June 23, 1982, deleted "a salary of" following "shall receive" in subsection (f).

The 1985 amendment by c. 732, s. 3, effective July 12, 1985, added the last paragraph of subsection (b).

The 1985 amendment by c. 732, s. 4, effective July 12, 1985, added the last paragraph of subsection (c).

The 1985 amendment by c. 732, s. 5, effective July 12, 1985, added the last paragraph of subsection (d).

The 1985 amendment by c. 732, s. 8, effective July 12, 1985, added the language beginning "except for the designated employees" at the end of subsection (g).

The 1985 amendment by c. 732, s. 59, effective July 12, 1985, added subsection (i).

The 1985 amendment by c. 732, s. 60, effective July 12, 1985, deleted subsection (d1), pertaining to the filling of vacancies in case the General Assembly fails to make appointments under subsection (c) or (d) of this section prior to sine die adjournment of the 1981 General Assembly.

The 1985 amendment by c. 732, s. 2, effective Aug. 1, 1985, substituted "one hundred dollars (\$100.00) per day" for "two hundred dollars (\$200.00) per day" in subsection (f).

The 1985 amendment by c. 732, s. 11, effective Aug. 1, 1985, substituted "whenever the full Board of Trustees holds a public session" for "when the Board of Trustees meets or when holding a hearing under G.S. 135-39.7" and added the language beginning "except when holding" in subsection (f).

## § 135-39.1. Auditing of the Plan.

The Board of Trustees and the Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan and the Plan Administrator shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 913, s. 24; 1985, c. 732, s. 46.)

**Effect of Amendments.** — The 1983 amendment, effective July 22, 1983, rewrote this section.

The 1985 amendment, effective July 12, 1985, inserted "and the Executive Administrator."

## § 135-39.2. Officers, quorum, meetings.

(a) The Board of Trustees shall elect from its own membership for a one-year term a chairman and vice-chairman, and shall elect a secretary.

(b) Six members of the Board of Trustees in office shall constitute a quorum. Decisions of the Board of Trustees shall be made by a majority vote of the Trustees present, except as otherwise provided in this Part.

(c) The Board of Trustees shall meet initially upon the call of the Governor. Meetings may be called by the Chairman, or at the written request of three members. (1981 (Reg. Sess., 1982), c. 1398, s. 6.)

### § 135-39.3. Oversight team.

(a) The Committee on Employee Hospital and Medical Benefits may use employees of the Legislative Services Office and may employ contractual services as approved by the Legislative Services Commission to monitor the Executive Administrator and Board of Trustees, the Plan Administrator, and the Comprehensive Major Medical Plan. The Director of the Budget may use employees of the Office of State Budget and Management to monitor the Executive Administrator and Board of Trustees, the Plan Administrator, and the Comprehensive Major Medical Plan. Such assistance to the Committee on Employee Hospital and Medical Benefits and to the Director of the Budget shall comprise an oversight team.

(b) The oversight team shall, jointly or individually, have access to all records of the Board of Trustees, the Executive Administrator, the Plan Administrator, and the Comprehensive Major Medical Plan. They shall, jointly or individually, be entitled to attend all meetings of the Board of Trustees.

(c) The oversight team shall report to the Committee on Employee Hospital and Medical Benefits when requested by the Committee. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 47; 67.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, rewrote subsection (a), and inserted “the Executive Ad-  
 ministrator” in the first sentence of subsection (b).

### § 135-39.3A. Advisory Committees.

(a) There is established an Advisory Committee of Plan Participants. The Committee shall consist of nine persons enrolled in the Plan, three appointed by the Governor, three appointed by the Speaker of the House of Representatives, and three appointed by the President of the Senate. Members shall be appointed for two-year terms beginning July 1, 1985, and biennially thereafter. Members shall receive per diem, allowance, and reimbursement of travel expenses under G.S. 138-5 if not State employees, and shall receive travel allowance as provided by G.S. 138-6 if State employees. The Advisory Committee of Plan Participants shall have such advisory functions as are assigned by the Executive Administrator and Board of Trustees.

(b) There is established an Advisory Committee of Plan Providers. The Committee shall consist of nine persons who provide services under the Plan, three appointed by the Governor, three appointed by the Speaker of the House of Representatives, and three appointed by the President of the Senate. Members shall be appointed for two-year terms beginning July 1, 1985, and biennially thereafter. Members shall receive per diem, allowance, and reimbursement of travel expenses under G.S. 138-5 if not State employees, and shall receive travel allowances as provided by G.S. 138-6 if State employees. The Advisory Committee of Plan Providers shall have such advisory functions as are assigned by the Executive Administrator and Board of Trustees. (1985, c. 732, s. 6.)

**Editor’s Note.** — Session Laws 1985, c. 732, s. 6, effective July 12, 1985, added this section.

### § 135-39.4. Selection of Plan Administrator.

(a) The General Assembly requests, authorizes and directs the State Budget Officer to select the lowest responsible bidder on a per transaction basis from the proposals submitted April 8, 1982, to the Division of Purchase and Contract, North Carolina Department of Administration and opened April 14, 1982, in response to Request for Proposals #2-V04-01, as the Plan Administrator to administer the Comprehensive Major Medical Plan described in Part 3 of this Article for the period October 1, 1982, through September 30, 1986, on an Administrative Services only basis. Upon ratification of this Part, the State Budget Officer may authorize the Plan Administrator selected pursuant to this paragraph to begin preparatory work.

(b) The Board of Trustees shall contract with the Plan Administrator under the terms and conditions of the Request for Proposals dated February 15, 1982, by the Department of Administration, Division of Purchase and Contract, as amended or clarified by Addendum Number 1 of March 2, 1982; Addendum Number 2 of March 4, 1982; and Addendum Number 3 of March 15, 1982, as long as the Plan Administrator contracts as proposed in the offer in response to the request for proposal.

(c) Modifications from the request for proposal and the offer made in response may be made by the Executive Administrator and Board of Trustees, but such modification may not change any of the provisions of the Comprehensive Major Medical Plan provided in Part 3 of this Article except that the Executive Administrator and Board of Trustees may make such administrative modifications as may be deemed necessary to facilitate the operation of the Comprehensive Major Medical Plan, or to correct typographical errors, or as provided in subsection (e). The Executive Administrator and Board of Trustees shall consult with the Committee on Employee Hospital and Medical Benefits in regard to all such modifications as soon as reasonably practical.

(d) Recodified as G.S. 135-39.5(16) by Session Laws 1985, c. 732, s. 23, effective July 12, 1985.

(e) If the Executive Administrator and Board of Trustees determines that the annualized cost of the Plan will exceed the amount budgeted, they may, after consultation with the Committee on Employee Hospital and Medical Benefits and after receiving the advice of the Committee, modify the benefits under Part 3 of this Article to reduce the costs to that level. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 3; 1985, c. 732, ss. 23, 48, 49.)

**Editor's Note.** — The act which enacted this Part was ratified on June 23, 1982.

Subsection (d) of this section was formerly subdivision (16) of § 135-39.5. It was recodified by Session Laws 1985, c. 732, s. 23, effective July 12, 1985.

**Effect of Amendments.** — The 1983 amendment, effective July 22, 1983, inserted "that the Board may make such administrative modifications as may be deemed necessary to facilitate the operation of the Comprehensive Major Medical Plan, or" and substituted "correct typographical errors, or" for "correct a ty-

pographical error, or except" in the first sentence of subsection (c) and rewrote the second sentence of subsection (c).

The 1985 amendment, effective July 12, 1985, in the first sentence of subsections (c) and (e) inserted "Executive Administrator and" and substituted "the Executive Administrator and Board of Trustees" for "the Board" and in the second sentence of subsection (c) substituted "The Executive Administrator and Board of Trustees" for "The Board" and substituted "they may" for "it may" in subsection (e).

## § 135-39.4A. Executive Administrator.

(a) The Plan shall have an Executive Administrator.

(b) The Executive Administrator shall be appointed by the Commissioner of Insurance, upon the advice of the Committee on Employee Hospital and Medical Benefits, for a two-year term beginning July 1, 1985, and biennially thereafter, subject to confirmation by the General Assembly in joint session or by joint resolution or bill. The Commissioner of Insurance shall, except for the initial appointment, submit the name of the nominee to the General Assembly no later than May 1 of each odd-numbered year.

(c) The Executive Administrator may be removed from office by the Commissioner of Insurance.

(d) Whenever a vacancy in the office of Executive Administrator shall occur (including if the initial appointment is not confirmed by the General Assembly before the 1985 Regular Session adjourns until 1986), other than by expiration of term, the Commissioner of Insurance shall, upon the advice of the Committee on Employee Hospital and Medical Benefits, submit a nominee to the General Assembly, for confirmation in joint session or by joint resolution or bill, to serve the remainder of the unexpired term. If there is such a vacancy in the office of Executive Administrator and the General Assembly is not in session, or has adjourned for more than 10 days, the Commissioner of Insurance may, upon the advice of the Committee on Employee Hospital and Medical Benefits, appoint an Executive Administrator to serve on an interim basis until the twentieth day of legislative session after the appointment is made.

(e) Whenever there is a vacancy in the office of Executive Administrator, the Commissioner of Insurance shall be ex officio Executive Administrator until the vacancy is filled in accordance with this section.

(f) The Executive Administrator may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Plan Administrator shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits.

(g) The Executive Administrator shall be responsible for:

- (1) Cost management programs;
- (2) Education and illness prevention programs;
- (3) Training programs for Health Benefit Representatives;
- (4) Membership functions;
- (5) Long-range planning;
- (6) Provider and participant relations; and
- (7) Communications.

(h) The Executive Administrator shall make reports and recommendations on the Plan to the President of the Senate, the Speaker of the House of Representatives and the Committee on Employee Hospital and Medical Benefits. (1985, c. 732, s. 10.)

**Editor's Note.** — Session Laws 1985, c. 732, s. 10, effective July 12, 1985, added this section.

## § 135-39.5. Powers and duties of the Executive Administrator and Board of Trustees.

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

- (1) Supervising and monitoring of the Plan Administrator.
- (2) Providing for enrollment of employees in the Plan.
- (3) Communicating with employees enrolled under the Plan.
- (4) Communicating with health care providers providing services under the Plan.
- (5) Making payments at appropriate intervals to the Plan Administrator for benefit costs and administrative costs.
- (6) Conducting administrative reviews under G.S. 135-39.7.
- (7) Annually assessing the performance of the Plan Administrator.
- (8) Preparing and submitting to the Governor and the General Assembly cost estimates for the health benefits plan.
- (9) Recommending to the Governor and the General Assembly changes or additions to the health benefits program and health care cost containment programs.
- (10) Working with State employee groups to improve health benefit programs.
- (11) Repealed by Session Laws 1985, c. 732, s. 9, effective July 12, 1985.
- (12) Determining basis of payments to health care providers.
- (13) Requiring bonding of the Plan Administrator in the handling of State funds.
- (14) Repealed by Session Laws 1985, c. 732, s. 7, effective July 12, 1985.
- (15) In case of termination of the contract under G.S. 135-39.5A, or failure to contract under G.S. 135-39.4(b), to select a new Plan Administrator, after competitive bidding procedures approved by the Department of Administration.
- (16) Notwithstanding the provisions of Part 3 of this Article, to formulate and implement cost-containment measures which are not in direct conflict with that Part.
- (17) Implementing pilot programs necessary to evaluate proposed cost containment measures which are not in direct conflict with Part 3 of this Article, and expending funds necessary for the implementation of such programs. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50.)

**Editor's Note.** — Subdivision (16) of this section was formerly subsection (d) of § 135-39.4. It was recodified and rewritten by Session Laws 1985, c. 732, s. 23, effective July 12, 1985.

**Effect of Amendments.** — The 1983 amendment, effective July 22, 1983, deleted the proviso at the end of former subdivision (11), which read "provided that all such action under this subdivision must have the approval of the State Budget Officer after consultation

with the Committee on Employee Hospital and Medical Benefits."

The 1985 amendment, effective July 12, 1985, inserted "Executive Administrator and" in the introductory language; deleted subdivision (11), relating to employment of such clerical, professional staff, and other assistants as may be necessary; deleted subdivision (14), relating to the establishing of advisory councils of beneficiaries and providers; and added subdivision (17).

### § 135-39.5A. Termination.

The Executive Administrator and Board of Trustees may terminate the contract with the Plan Administrator as provided in the request for proposal (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 51.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, inserted "Executive Administrator and."

### § 135-39.5B. Prepaid plans.

The Executive Administrator and Board of Trustees may, after consultation with the Committee on Employee Hospital and Medical Benefits, provide for optional prepaid hospital and medical benefits plans. Benefits offered under such optional plans shall be comparable to those offered under the Plan. The amounts of State funds contributed for such optional plans shall not be more than the amounts contributed for each person eligible under G.S. 135-40.2 on a noncontributory basis, with the person selecting an optional plan paying any excess, if necessary. The provisions of G.S. 57B-11 shall not apply to any optional prepaid hospital and medical benefits plans provided for by the Executive Administrator and Board of Trustees. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 37.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, rewrote this section.

### § 135-39.6. Special funds created.

(a) There are hereby established two special funds, to be known as the Public Employee Health Benefit Fund and the Health Benefit Reserve Fund.

All premiums, fees, charges, rebates, refunds or any other receipts including, but not limited to, earnings on investments, occurring or arising in connection with health benefits programs established by this Article, shall be deposited into the Public Employee Health Benefit Fund. Disbursements from the Fund shall include any and all amounts required to pay the benefits and administrative costs of such programs as may be determined by the Executive Administrator and Board of Trustees.

Any unencumbered balance in excess of prepaid premiums or charges in the Public Employee Health Benefit Fund at the end of each fiscal year shall be used first, to provide an actuarially determined Health Benefit Reserve Fund for incurred but unrepresented claims, second, to reduce the premiums required in providing the benefits of the health benefits programs, and third to improve the plan, as may be provided by the General Assembly. The balance in the Health Benefits Reserve Fund may be transferred from time to time to the Public Employee Health Benefit Fund to provide for any deficiency occurring therein.

The Public Employee Health Benefit Fund and the Health Benefit Reserve Fund shall be deposited with the State Treasurer and invested as provided in G.S. 147-69.2 and 147-69.3.

(b) Disbursement from the Public Employee Health Benefit Fund may be made by warrant drawn on the State Treasurer by the Executive Administrator, or the Executive Administrator and Board of Trustees may by contract authorize the Plan Administrator to draw the warrant. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 43, 63.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, rewrote the second sentence of the second paragraph of subsection (a) and in subsection (b) substituted "Executive Administrator" for "Commission" following "by the" and substituted "Executive Administrator and Board of Trustees" for "Commission" following "or the."

**§ 135-39.6A. Premiums set.**

The Executive Administrator and Board of Trustees shall, from time to time, establish premium rates for the Comprehensive Major Medical Plan except as they may be established by the General Assembly in the Current Operations Appropriations Act, and establish regulations for payment of the premiums. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 52.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, inserted "Executive Administrator and" and inserted "except as they may be established by the General Assembly in the Current Operations Appropriations Act."

**§ 135-39.7. Administrative review.**

If, after exhaustion of internal appeal handling as outlined in the contract with the Plan Administrator any person is aggrieved, the Plan Administrator shall bring the matter to the attention of the Executive Administrator and Board of Trustees, which may make a binding decision on the matter in accordance with procedures established by the Executive Administrator and Board of Trustees. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 53.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, inserted "Executive Administrator and" in two places.

**§ 135-39.8. Rules and regulations.**

The Executive Administrator and Board of Trustees may issue rules and regulations to implement Parts 2 and 3 of this Article. Rules and regulations of the Board of Trustees shall remain in effect until amended or repealed by the Executive Administrator and Board of Trustees. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 54.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, inserted "Executive Administrator and" in the first sentence and added the second sentence.

**§ 135-39.9. Reports to the General Assembly.**

(a) The Executive Administrator and Board of Trustees shall report to the General Assembly at such times and in such forms as shall be provided by the Committee on Employee Hospital and Medical Benefits.

(b) Repealed by Session Laws 1985, c. 732, s. 55.1, effective July 12, 1985.

(c) The Executive Administrator and Board of Trustees shall continually monitor expenditures under the Plan, and at any time it estimates that expenditures on an annualized basis will exceed one hundred twenty million dollars (\$120,000,000) it shall report that fact to the Committee on Employee Hospital and Medical Benefits. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 55, 55.1.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, inserted "Executive Administrator and" in subsections (a) and (c) and deleted subsection (b), which required the Board of Trustees to report to the Committee on Employee Hospital and Medical Benefits no later than April 1, 1983, on the status of the Plan as of February 28, 1983.

**§ 135-39.10. Meaning of "Executive Administrator and Board of Trustees".**

Whenever in this Article the words "Executive Administrator and Board of Trustees" appear, they mean that the Executive Administrator shall have the power, duty, right, responsibility, privilege or other function mentioned, after consulting with the Board of Trustees of the Teachers' and State Employees Comprehensive Major Medical Plan, or its Executive Committee. (1985, c. 732, s. 57.)

**Editor's Note.** — Session Laws 1985, c. 732, s. 57, effective July 12, 1985, added this section.

**Part 3. Comprehensive Major Medical Plan.**

**§ 135-40. Undertaking.**

(a) The State of North Carolina undertakes to make available a Comprehensive Major Medical Plan (hereinafter called the "Plan") to employees, retired employees and certain of their dependents which will pay benefits in accordance with the terms hereof.

(b) The Plan benefits will be provided under contracts between the State and the Plan Administrator selected by the State. Plan Administrator refers to the administrator, third party administrator or other party contracting with the State to administer the Plan benefits. Such contracts shall include the substance of G.S. 135-40.1 through G.S. 135-40.13 and Parts I through K of the description of Plan in the request for proposal, and shall be administered by the respective Plan Administrator of the State which will determine benefits and other questions arising thereunder. The contracts necessarily will conform to applicable State laws. If any of the provisions of G.S. 135-40.1 through G.S. 135-40.13 and Parts I through K must be modified for inclusion in the contract because of State laws, such modification will be made.

(c) Payroll deduction shall be available for coverage under this Part under G.S. 135-39.5B of amounts not paid by the State.

(d) Notwithstanding any other provisions of the Plan, the Executive Administrator and Board of Trustees are specifically authorized to use all appropriate means to secure tax qualification of the Plan under any applicable provisions of the Internal Revenue Code of 1954 as amended. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 44, 61.)

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1398, s. 2, [7], makes this Part effective Oct. 1, 1982.

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, inserted "or under G.S. 135-39.5B" in subsection (c) and added subsection (d).

### 135-40.1. (Effective until July 1, 1986) General definitions.

As used in Parts 2 and 3 of this Article, the following terms have the meaning specified as follows:

(1) **Chemical Dependency.** — The term “chemical dependency” means the pathological use or abuse of alcohol or other drugs in a manner or to a degree that produces an impairment in personal, social or occupational functioning and which may, but need not, include a pattern of tolerance and withdrawal.

(1a) **Covered Services.** — Any necessary, reasonable, and customary items of service, at least a portion of the expense of which is covered under at least one of the plans covering the person for whom claim is made or service provided. To the extent legally possible, it shall be synonymous with allowable expenses.

(2) **Deductible.** — Deductible shall mean an amount of covered expenses during a calendar year which must be incurred after which benefits (subject to the deductible) become payable. The deductible for an employee, retired employee and/or his or her dependents shall be one hundred dollars (\$100.00) for each calendar year.

The deductible applies separately to each covered individual in each calendar year, subject to an aggregate maximum of three hundred dollars (\$300.00) per family (employee or retiree and his or her covered dependents) in any calendar year.

If two or more family members are injured in the same accident only one deductible is required for charges related to that accident during the benefit period.

(3) **Dependent Child.** — A natural, legally adopted, or foster child of the employee and/or spouse, unmarried, up to the first of the month following his or her 19th birthday, whether or not the child is living with the employee, as long as the employee is legally responsible for such child’s maintenance and support. Dependent child shall also include any child under age 19 who has reached his or her 18th birthday, provided the employee was legally responsible for such child’s maintenance and support on his or her 18th birthday.

A foster child is covered (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the Plan Administrator accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a claim is incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of, the child(ren), are not eligible participants.

Coverage may be extended beyond the 19th birthday under the following conditions:

a. If the dependent is a full-time student, between the ages of 19 and 26, who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction.

b. The dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent’s

- 19th birthday, and (ii) the dependent was covered by the Plan and/or the Predecessor Plan when such handicap began and there has been no lapse in coverage since that time or, the dependent was not covered by the Predecessor Plan at the time the handicap began, but was subsequently covered by the Predecessor Plan and there has been no lapse in coverage since that time.
- (4) **Doctor.** — A doctor of medicine, a doctor of osteopathy licensed to practice medicine or surgery by the Board of Medical Examiners of the state in which he or she practices, a doctor of dentistry, a doctor of podiatry or surgical chiropody, a doctor of optometry, a doctor of chiropractic, or a doctor of psychology who is licensed or certified in the State and has a doctorate practice degree in psychology and at least two years' clinical experience in a recognized health setting which has met the standards of the National Register of Health Service Providers in Psychology, each of whom is licensed to practice by the state in which he or she performs any service covered by this Plan, and who regularly charges and collects fees in his or her own right.
  - (5) **Employee.** — Any permanent full-time or permanent part-time regular employee (designated as half-time or more) of an employing unit.
  - (6) **Employing Unit.** — A North Carolina School System; Technical Institute; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examiners' Board whose employees are eligible for membership in the Teachers' and State Employees' Retirement System.
  - (7) **Enrollment.** — New employees must enroll themselves and their dependents within 30 days from the date of employment. Coverage may become effective on the first day of the month following date of enrollment on payroll or on the first day of the following month. New employees not enrolling themselves and their dependents within 30 days, or not adding dependents when first eligible as provided herein may enroll on the first day of any month but will be subject to a 12-month waiting period for preexisting health conditions, except for employees who elect to change their coverage in accordance with rules established by the Executive Administrator and Board of Trustees for optional prepaid hospital and medical benefit plans. Children born to covered employees having coverage type (2), (3), or (5), as outlined in G.S. 135-40.3(d) shall be automatically covered at the time of birth. Children born to covered employees having coverage type (1) shall be automatically covered at birth so long as the Plan Administrator receives notification within 30 days of the date of birth that the employee desires to change from coverage (1) to coverage type (2), (3) or (5), provided that the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born.
  - (7a) **Fiscal Year.** — The period beginning July 1 and ending on June 30 of the succeeding calendar year.
  - (8) **Health Benefits Representative.** — The employee designated by the employing unit to administer the Comprehensive Major Medical Plan for the unit and its employees. The HBR is responsible for enrolling new employees, reporting changes, explaining benefits, reconciling group statements and remitting group fees.
  - (9) **Home Health Aide.** — An individual who provides medical or therapeutic care and who reports to and is under the direct supervision of a Home Health Care Agency.
  - (10) **Home Health Care Agency.** — An agency which is constituted, licensed and operated in accordance with the laws pertaining to agencies providing home health care.

- (11) Home Health Care Coverage. — Coverage for home care and treatment established and approved in writing by a physician who certifies that continual hospital confinement would be required without the care and treatment specified by this coverage.
- (12) Hospital. — An institution which meets fully all the following criteria:
- a. A general medical and surgical hospital, including eye, ear, nose and throat, maternity, pediatric, tuberculosis, or mental hospital, licensed as such by the applicable State agency.
  - b. It is primarily engaged in providing — for compensation from its patients and on an inpatient basis — diagnostic and therapeutic facilities for the surgical and medical diagnosis, treatment and care of injured and sick persons by or under the supervision of the staff of physicians;
  - c. It continuously provides 24-hour-a-day nursing service by registered graduate nurses; and
  - d. It is not, other than incidentally, a place for rest, a place for the aged, a place for drug addicts, a place for alcoholics, a nursing home, a hotel, or the like. Hospitals classified and accredited as psychiatric hospitals by the Joint Commission on Accreditation of Hospitals will be deemed to be hospitals for the purpose of this Plan.
- (13) Medicare. — The Health Insurance for the Aged and Disabled Program under Title XVIII of the Social Security Act as such act was amended by the Social Security Amendments of 1965 (Public Law 89-97), as such program is currently constituted and as it may be later amended.
- (13a) Plan. — The Teachers' and State Employees' Comprehensive Major Medical Plan.
- (14) Predecessor Plan. — The Hospital and Medical Benefits for the Teachers' and State Employees' Retirement System of the State of North Carolina.
- (15) Preexisting Condition. — A condition, disease, illness or injury which existed or had its beginning to any degree, whether diagnosed or not, prior to the effective date of coverage.
- (16) Pregnancy. — Shall include resulting childbirth, miscarriage or abortion.
- (17) Retired Employee. — Retired teachers and State employees who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contribution of the State of North Carolina, so long as the retiree is enrolled.
- (18) Skilled Nursing Facility. — An institution licensed under applicable State laws and primarily engaged in providing to inpatients, under the supervision of a doctor and a registered professional nurse, skilled nursing care and related services on a 24-hour basis, and rehabilitative services.
- (19) Usual, Customary and Reasonable. — The meaning of the term "UCR" shall be developed from criteria used for determining reasonable charges for services, including usual preoperative examination and customary postoperative care and care of usual complications, and shall be based on the usual charge made by an individual doctor for his or her private patients for a particular service, or the customary charge within the range of usual fees charged by most doctors of similar skill and training in North Carolina for the comparable service, whichever is the lower. A fee is reasonable if it meets the above two criteria. In cases of unusual complexity and cases involving sup-

plemental skills of two or more doctors, reasonable charges will be determined by the Plan Administrator upon advice of its medical advisors. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 21.1, 21.2, 21.7; 1983 (Reg. Sess., 1984), c. 1110, s.10; 1985, c. 192, 7; c. 732, ss. 12, 19, 25, 26.)

**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered 135-40.1.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 15, provides: "The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

Section 58 of Session Laws 1985, c. 732, provides: "Sections 20, 21, 22, and 36 of this act provide for certain limitations to be imposed on a fiscal year rather than a calendar year basis. Notwithstanding the prior law and Section 9 of this act (new G.S. 135-40.1(7a), January 1, 1985, through July 31, 1985, shall be considered a calendar year and August 1, 1985, through June 30, 1986, shall be considered a fiscal year for the purpose of Sections 20, 21, 22, and 36 of this act."

**Effect of Amendments.** — Session Laws 1983, c. 922, s. 4, effective retroactive to Oct. 1, 1982, added the second sentence of the first paragraph of subdivision (3).

Session Laws 1983, c. 922, s. 21.1, effective retroactive to Oct. 1, 1982, substituted "Providers" for "Provided" in subdivision (4).

Session Laws 1983, c. 922, s. 21.2, effective Oct. 1, 1983, inserted "between the ages of 18 and 26" in paragraph a of the last paragraph of subdivision (3) and rewrote paragraph b of subdivision (3).

Session Laws 1983, c. 922, s. 21.7, effective Jan. 1, 1984, rewrote the present second paragraph of subdivision (2).

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, added subdivision (1) defining the term "Chemical Dependency," and redesignated former subdivision (1), defining the term "Covered Services," as subdivision (1a).

The 1985 amendment by c. 192, s. 7, effective July 1, 1985, deleted the former second paragraph of subdivision (2), which read "Covered expenses incurred during the last three months of a calendar year and used toward satisfying the deductible in that calendar year may be reused toward satisfying the deductible for the next calendar year."

The 1985 amendment by c. 732, s. 25, effective Oct. 1, 1982, added the language beginning "or, the dependent was not covered" at the end of subdivision (3)b.

The 1985 amendment by c. 732, s. 19, effective July 1, 1985, added subdivision (7a).

The 1985 amendment by c. 732, s. 12, effective July 12, 1985, added subdivision (13a).

The 1985 amendment by c. 732, s. 26, effective July 12, 1985, rewrote subdivision (7).

## § 135-40.1. (Effective July 1, 1986) General definitions.

As used in Parts 2 and 3 of this Article, the following terms have the meaning specified as follows:

(1) **Chemical Dependency.** — The term "chemical dependency" means the pathological use or abuse of alcohol or other drugs in a manner or to a degree that produces an impairment in personal, social or occupational functioning and which may, but need not, include a pattern of tolerance and withdrawal.

(1a) **Covered Services.** — Any necessary, reasonable, and customary items of service, at least a portion of the expense of which is covered under at least one of the plans covering the person for whom claim is made or service provided. To the extent legally possible, it shall be synonymous with allowable expenses.

(2) **Deductible.** — Deductible shall mean an amount of covered expenses during a calendar year which must be incurred after which benefits (subject to the deductible) becomes payable. The deductible for an employee, retired employee and/or his or her dependents shall be one hundred fifty dollars (\$150.00) for each calendar year.

The deductible applies separately to each covered individual in each calendar year, subject to an aggregate maximum of four hundred fifty dollars (\$450.00) per family (employee or retiree and his or her covered dependents) in any calendar year.

If two or more family members are injured in the same accident only one deductible is required for charges related to that accident during the benefit period.

- (3) **Dependent Child.** — A natural, legally adopted, or foster child of the employee and/or spouse, unmarried, up to the first of the month following his or her 19th birthday, whether or not the child is living with the employee, as long as the employee is legally responsible for such child's maintenance and support. Dependent child shall also include any child under age 19 who has reached his or her 18th birthday, provided the employee was legally responsible for such child's maintenance and support on his or her 18th birthday.

A foster child is covered (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the Plan Administrator accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a claim is incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of, the child(ren), are not eligible participants.

Coverage may be extended beyond the 19th birthday under the following conditions:

- a. If the dependent is a full-time student, between the ages of 19 and 26, who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction.
  - b. The dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, and (ii) the dependent was covered by the Plan and/or the Predecessor Plan when such handicap began and there has been no lapse in coverage since that time or, the dependent was not covered by the Predecessor Plan at the time the handicap began, but was subsequently covered by the Predecessor Plan and there has been no lapse in coverage since that time.
- (4) **Doctor.** — A doctor of medicine, a doctor of osteopathy licensed to practice medicine or surgery by the Board of Medical Examiners of the state in which he or she practices, a doctor of dentistry, a doctor of podiatry or surgical chiropody, a doctor of optometry, a doctor of chiropractic, or a doctor of psychology who is licensed or certified in the State and has a doctorate practice degree in psychology and at least two years' clinical experience in a recognized health setting or has met the standards of the National Register of Health Services Providers in Psychology, each of whom is licensed to practice by the state in which he or she performs any service covered by this Plan, and who regularly charges and collects fees in his or her own right.

- (5) Employee. — Any permanent full-time or permanent part-time regular employee (designated as half-time or more) of an employing unit.
- (6) Employing Unit. — A North Carolina School System; Technical Institute; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in the Teachers and State Employees' Retirement System.
- (7) Enrollment. — New employees must enroll themselves and their dependents within 30 days from the date of employment. Coverage may become effective on the first day of the month following date of entry on payroll or on the first day of the following month. New employees not enrolling themselves and their dependents within 30 days, or not adding dependents when first eligible as provided herein may enroll on the first day of any month but will be subject to a 12-month waiting period for preexisting health conditions, except for employees who elect to change their coverage in accordance with rules established by the Executive Administrator and Board of Trustees for optional prepaid hospital and medical benefit plans. Children born to covered employees having coverage type (2), (3), or (5), as outlined in G.S. 135-40.3(d) shall be automatically covered at the time of birth. Children born to covered employees having coverage type (1) shall be automatically covered at birth so long as the Plan Administrator receives notification within 30 days of the date of birth that the employee desires to change from coverage (1) to coverage type (2), (3), or (5), provided that the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born.
- (7a) Fiscal Year. — The period beginning July 1 and ending on June 30 of the succeeding calendar year.
- (8) Health Benefits Representative. — The employee designated by the employing unit to administer the Comprehensive Major Medical Plan for the unit and its employees. The HBR is responsible for enrolling new employees, reporting changes, explaining benefits, reconciling group statements and remitting group fees.
- (9) Home Health Aide. — An individual who provides medical or therapeutic care and who reports to and is under the direct supervision of a Home Health Care Agency.
- (10) Home Health Care Agency. — An agency which is constituted, licensed and operated in accordance with the laws pertaining to agencies providing home health care.
- (11) Home Health Care Coverage. — Coverage for home care and treatment established and approved in writing by a physician who certifies that continual hospital confinement would be required without the care and treatment specified by this coverage.
- (12) Hospital. — An institution which meets fully all the following criteria:
  - a. A general medical and surgical hospital, including eye, ear, nose and throat, maternity, pediatric, tuberculosis, or mental hospital, licensed as such by the applicable State agency.
  - b. It is primarily engaged in providing — for compensation from its patients and on an inpatient basis — diagnostic and therapeutic facilities for the surgical and medical diagnosis, treatment and care of injured and sick persons by or under the supervision of the staff of physicians;
  - c. It continuously provides 24-hour-a-day nursing service by registered graduate nurses; and

- d. It is not, other than incidentally, a place for rest, a place for the aged, a place for drug addicts, a place for alcoholics, a nursing home, a hotel, or the like. Hospitals classified and accredited as psychiatric hospitals by the Joint Commission on Accreditation of Hospitals will be deemed to be hospitals for the purpose of this Plan.
- (13) Medicare. — The Health Insurance for the Aged and Disabled Program under Title XVIII of the Social Security Act as such act was amended by the Social Security Amendments of 1965 (Public Law 89-97), as such program is currently constituted and as it may be later amended.
- (13a) Plan. — The Teachers' and State Employees' Comprehensive Major Medical Plan.
- (14) Predecessor Plan. — The Hospital and Medical Benefits for the Teachers' and State Employees' Retirement System of the State of North Carolina.
- (15) Preexisting Condition. — A condition, disease, illness or injury which existed or had its beginning to any degree, whether diagnosed or not, prior to the effective date of coverage.
- (16) Pregnancy. — Shall include resulting childbirth, miscarriage or abortion.
- (17) Retired Employee. — Retired teachers and State employees who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contribution of the State of North Carolina, so long as the retiree is enrolled.
- (18) Skilled Nursing Facility. — An institution licensed under applicable State laws and primarily engaged in providing to inpatients, under the supervision of a doctor and a registered professional nurse, skilled nursing care and related services on a 24-hour basis, and rehabilitative services.
- (19) Usual, Customary and Reasonable. — The meaning of the term "UCR" shall be developed from criteria used for determining reasonable charges for services, including usual preoperative examination and customary postoperative care and care of usual complications, and shall be based on the usual charge made by an individual doctor for his or her private patients for a particular service, or the customary charge within the range of usual fees charged by most doctors of similar skill and training in North Carolina for the comparable service, whichever is the lower. A fee is reasonable if it meets the above two criteria. In cases of unusual complexity and cases involving supplemental skills of two or more doctors, reasonable charges will be determined by the Plan Administrator upon advice of its medical advisors. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 4, 21.1, 21.2, 21.7; 1983 (Reg. Sess., 1984), c. 1110, s.10; 1985, c. 192, ss. 7, 16.1, 16.2; c. 732, ss. 12, 19, 25, 26.)

**Section Set Out Twice.** — The section above is effective July 1, 1986. For this section as in effect until July 1, 1986, see the preceding section, also numbered 135-40.1.

**Editor's Note.** —

Section 58 of Session Laws 1985, c. 732, provides: "Sections 20, 21, 22, and 36 of this act provide for certain limitations to be imposed on a fiscal year rather than a calendar year basis.

Notwithstanding the prior law and Section 9 of this act (new G.S. 135-40.1(7a), January 1, 1985, through July 31, 1985, shall be considered a calendar year and August 1, 1985, through June 30, 1986, shall be considered a fiscal year for the purpose of Sections 20, 21, 22, and 36 of this act."

**Effect of Amendments.** — The 1985 amendment by c. 192, s. 7, effective July 1,

1985, deleted the former second paragraph of subdivision (2), which read "Covered expenses incurred during the last three months of a calendar year and used toward satisfying the deductible in that calendar year may be reused toward satisfying the deductible for the next calendar year."

The 1985 amendment by c. 192, ss. 16.1 and 16.2, effective July 1, 1986, substituted "one hundred fifty dollars (\$150.00)" for "one hundred dollars (\$100.00)" in the second sentence of the first paragraph of subdivision (2) and substituted "four hundred fifty dollars

(\$450.00)" for "three hundred dollars (\$300.00)" in the next-to-last paragraph of subdivision (2).

The 1985 amendment by c. 732, s. 25, effective Oct. 1, 1982, added the language beginning "or, the dependent was not covered" at the end of subdivision (3)b.

The 1985 amendment by c. 732, s. 19, effective July 1, 1985, added subdivision (7a).

The 1985 amendment by c. 732, s. 12, effective July 12, 1985, added subdivision (13a).

The 1985 amendment by c. 732, s. 26, effective July 12, 1985, rewrote subdivision (7).

## § 135-40.2. Eligibility.

(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

- (1) All permanent full-time employees of an employing unit who meet the following conditions:
  - a. Paid from general or special State funds, or
  - b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.
- (2) Retired teachers, State employees, and members of the General Assembly.
- (3) Surviving spouses of deceased retirees and surviving spouses of deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs.
- (3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.
- (4) Members of the General Assembly.

(b) The following person shall be eligible for coverage under the Plan, in a full contributory basis, subject to the provisions of G.S. 135-40.3:

- (1) Repealed by Session Laws 1983, c. 761, s. 255, effective upon the convening of the 1985 Regular Session.
- (2) Former members of the General Assembly.
- (3) Surviving spouses of deceased former members of the General Assembly.
- (3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.
- (4) All permanent part-time employees (designated as half-time or more) of an employing unit who meets the conditions outlined in subdivision (a)(1)a. above.
- (5) The spouses and eligible dependents of enrolled employees, retirees and enrolled members and enrolled surviving spouses, as outlined in subdivisions (a)(1) through (a)(3) above.
- (6) Blind persons licensed by the State to operate vending facilities under contract with the Department of Human Resources, Division of Services for the Blind and its successors, who are:
  - a. Operating such a vending facility;
  - b. Former operators of such a vending facility whose service as an operator would have made these operators eligible for an early or service retirement allowance under Article 1 of this Chapter had they been members of the Retirement System; and

c. Former operators of such a vending facility who attain five or more years of service as operators and who become eligible for and receive a disability benefit under the Social Security Act upon cessation of service as an operator.

(7) The spouses and eligible dependents of enrolled members of the General Assembly.

(c) No person shall be eligible for coverage as an employee or retired employee and as a dependent of an employee or retired employee at the same time. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time.

(d) Former employees who are receiving disability retirement benefits shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on the same basis as a retired employee. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits.

(e) Employees on official leave of absence without pay may elect to continue this group coverage at group cost provided that they pay the full employee and employer contribution through the employing unit during the leave period.

(f) For the support of the benefits made available to any member vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of employees who are receiving a survivor's alternate benefit under G.S. 135-5(m) of those associations listed in G.S. 135-27(a), licensing and examining boards under G.S. 135-1.1, the North Carolina Art Society, Inc., and the North Carolina Symphony Society, Inc., each association, organization or board shall pay to the Plan the full cost of providing these benefits under this section as determined by the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan. In addition, each association, organization or board shall pay to the Plan an amount equal to the cost of the benefits provided under this section to presently retired members of each association, organization or board since such benefits became available at no cost to the retired member. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — Session Laws 1983, c. 499, effective retroactively from and after June 23, 1982, added subsection (f).

Session Laws 1983, c. 761, ss. 252-255, effective upon the convening of the 1985 Regular Session of the General Assembly, rewrote subdivision (2) of subsection (a), which read "Retired teachers and State employees"; inserted "and members of the General Assembly who are" and substituted "any of the State-supported retirement programs" for "G.S. 135-5(m)" in subdivision (3) of subsection (a); added subdivision (4) of subsection (a); and de-

leted subdivision (1) of subsection (b), which read "Member of the General Assembly."

Session Laws 1983, c. 867, s. 4, effective July 20, 1983, added subdivision (b)(6).

Session Laws 1983, c. 922, s. 5, effective retroactive to Oct. 1, 1982, made a minor stylistic change in subdivision (3) of subsection (a) as it read prior to the effective date of the amendment made by c. 761, s. 253. Subdivision (3) of subsection (a) has been set out as amended by c. 761.

The 1985 amendment, retroactive to October 1, 1982, added subdivisions (a)(3a), (b)(3a) and (b)(7).

### § 135-40.3. Effective dates of coverage.

(a) Employees and Retired Employees. —

(1) Employees and retired employees covered under the Predecessor Plan will continue to be covered, subject to the terms hereof.

(2) New employees may apply for coverage to be effective on the first day of the month following employment, or on a like date the following month if the employee has enrolled.

- (3) Employees not enrolling or adding dependents when first eligible in accordance with G.S. 135-40.1(7) may enroll later on the first of any following month but will be subject to a 12-month waiting period for a preexisting health condition, except employees who elect to change their coverage in accordance with rules adopted by the Executive Administrator and Board of Trustees for optional prepaid hospital and medical benefit plans.
  - (4) Members of the General Assembly, beginning with the 1985 Session, shall become first eligible with the convening of each Session of the General Assembly, regardless of a Member's service during previous Sessions. Members and their dependents enrolled when first eligible after the convening of each Session of the General Assembly will not be subject to any waiting periods for preexisting health conditions. Members of the 1983 Session of the General Assembly, not already enrolled, shall be eligible to enroll themselves and their dependents on or before October 1, 1983, without being subject to any waiting periods for preexisting health conditions.
- (b) Waiting Periods and Preexisting Conditions. —
- (1) New employees and dependents enrolling when first eligible are subject to no waiting period for preexisting conditions under the Plan.
  - (2) Employees not enrolling or not adding dependents when first eligible may enroll later on the first of any following month, but will be subject to a twelve-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section.
- (c) Dependents of Employees and Retired Employees. —
- (1) Dependents of employees and retired employees who have family coverage under the Predecessor Plan will continue to be covered subject to the terms hereof.
  - (2) Employees who have dependents may apply for family coverage at the time they enroll as provided in subdivisions (a)(2) and (a)(3) and such dependents will be covered under the Plan beginning the same date as such employees.
  - (3) Employees and retired employees may change from individual to family coverage upon written application at any time after acquiring a dependent, and such dependent will be covered under the Plan beginning the first of the next calendar month following receipt of such application by the Plan Administrator.
  - (4) Employees who wish to change from family coverage to individual coverage shall give written notice to the Plan Administrator within 31 days after any change in the status of dependents, (resulting from death, divorce, etc.) which requires a change from family coverage to individual coverage.
  - (5) Employees not adding dependents when first eligible may enroll later on the first of any following month, but dependents will be subject to a 12-month waiting period for preexisting health conditions except as provided in subdivision (a)(3) of this section.
- (d) Types of Coverage Available. — There are five types of coverage which an employee or retiree may elect.
- (1) Employee Only. — Covers enrolled employees only. Maternity benefits are provided to employee only.
  - (2) Employee and Child(ren). — Covers enrolled employee and all eligible dependent children. Maternity benefits are provided to the employee only.
  - (3) Employee and Family. — Covers employee and spouse, and all eligible dependent children. Maternity benefits are provided to employee or enrolled spouse.

- (4) Split Coverage-Wife. — Covers female State employee whose husband is also employed by the State, and who enrolls in (5). Maternity benefits provided.
- (5) Split Coverage-Husband. — Covers male State employee whose wife is also employed by the State, and who enrolls in (4). (Also covers dependent children). (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 761, s. 256; c. 922, s. 6; 1985, c. 732, ss. 39-41.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The first 1983 amendment, effective July 15, 1983, added subdivision (a)(4).

The second 1983 amendment, effective retroactive to Oct. 1, 1982, rewrote subsection (b).

The 1985 amendment, effective July 12, 1985, rewrote subdivision (a)(3) and added "except as provided in subdivision (a)(3) of this section" at the end of subdivisions (b)(2) and (c)(5).

## § 135-40.4. (Effective until July 1, 1986) Benefits in general.

In the event a covered person, as a result of accidental bodily injury, disease or pregnancy, incurs covered expenses, the Plan will pay benefits up to the amounts described in G.S. 135.40.5 through G.S. 135-40.9.

The Plan is divided into two parts. The first part includes certain benefits which are not subject to a deductible or coinsurance. The second part is a comprehensive plan and includes those benefits which are subject to both a one hundred dollar (\$100.00) deductible for each covered individual to an aggregate maximum of three hundred dollars (\$300.00) per family and coinsurance of 90%/10%. There is a limit on out-of-pocket expenses under the second part.

Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan may begin the process of negotiating prospective rates of charges that are to be allowed under the plan with preferred providers of institutional and professional medical care and services. The Executive Administrator and Board of Trustees shall, under the provisions of G.S. 135-39.5(12), pursue such preferred provider contracts on a timely basis and shall make monthly reports to the President of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits on its progress in negotiating such prospective rates for allowable charges. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 21.8; 1985, c. 192, ss. 1, 13; c. 732, s. 64.)

**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered 135-40.4.

**Effect of Amendments.** — The 1983 amendment, effective Jan. 1, 1984, substituted "an aggregate maximum of three hundred dollars (\$300.00)" for "a maximum of three deductibles" in the third sentence of the second paragraph.

The 1985 amendment by c. 192, ss. 1 and 13, effective July 1, 1985, substituted "90%/10%" for "95%/5%" at the end of the third sentence of the second paragraph, and added the last paragraph.

The 1985 amendment by c. 732, s. 64, effective July 12, 1985, inserted "Executive Administrator and" preceding "Board of Trustees" in the first and second sentences of the last paragraph.

### § 135-40.4. (Effective July 1, 1986) Benefits in general.

In the event a covered person, as a result of accidental bodily injury, disease or pregnancy, incurs covered expenses, the Plan will pay benefits up to the amounts described in G.S. 135-40.5 through G.S. 135-40.9.

The Plan is divided into two parts. The first part includes certain benefits which are not subject to a deductible or coinsurance. The second part is a comprehensive plan and includes those benefits which are subject to both a one hundred fifty dollar (\$150.00) deductible for each covered individual to an aggregate maximum of four hundred fifty dollars (\$450.00) per family and coinsurance of 90%/10%. There is a limit on out-of-pocket expenses under the second part.

Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan may begin the process of negotiating prospective rates of charges that are to be allowed under the Plan with preferred providers of institutional and professional medical care and services. The Executive Administrator and Board of Trustees shall, under the provisions of G.S. 135-39.5(12), pursue such preferred provider contracts on a timely basis and shall make monthly reports to the President of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits on its progress in negotiating such prospective rates for allowable charges. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 21.8; 1985, c. 192, ss. 1, 13, 14; c. 732, s. 64.)

**Section Set Out Twice.** — This section above is effective July 1, 1986. For this section as in effect until July 1, 1986, see the preceding section, also numbered 135-40.4.

**Effect of Amendments.** —

The 1985 amendment by c. 192, ss. 1 and 13, effective July 1, 1985, substituted "90%/10%" for "95%/5%" at the end of the third sentence of the second paragraph, and added the last paragraph.

The 1985 amendment by c. 192, s. 14, effective July 1, 1986, substituted "one hundred fifty dollar (\$150.00) deductible" for "one hundred dollar (\$100.00) deductible" and "four hundred fifty dollars (\$450.00) per family" for "three hundred dollars (\$300.00) per family" in the third sentence of the second paragraph.

The 1985 amendment by c. 732, s. 64, effective July 12, 1985, inserted "Executive Administrator and" preceding "Board of Trustees" in the first and second sentences of the last paragraph.

### § 135-40.5. Benefits not subject to deductible or coinsurance.

(a) Repealed by Session Laws 1985, c. 192, s. 5, effective July 1, 1985.

(b) Ambulatory (Outpatient) Surgery. — The Plan will pay one hundred percent (100%) of reasonable and customary charges for facility and surgeon's charges for surgery performed in an ambulatory surgical facility if that surgery is not normally performed on an outpatient basis. Medical supplies, drugs, laboratory and other ancillary services and physicians' services will be covered under the comprehensive section of the Plan.

(c) Preadmission Testing. — The Plan will pay one hundred percent (100%) if reasonable and customary charges for diagnostic, laboratory and x-ray examinations performed on an outpatient basis.

(d) Second Surgical Opinions. — The Plan will pay one hundred percent (100%) of reasonable and customary charges for one presurgical consultation by a second surgeon regarding the performance of nonemergency surgery. The Plan will also pay one hundred percent (100%) of the reasonable and customary charges for diagnostic, laboratory and x-ray examinations required by the

second surgeon. Second surgical opinions for tonsillectomy and adenoidectomy procedures may be provided by Board-qualified pediatricians and family practitioners when qualified surgeons are not available to provide second surgical opinions. Should the first two opinions differ as to the necessity of surgery, the Plan will pay one hundred percent (100%) of reasonable and customary charges for the consultation of the third surgeon.

As used in this section and the provisions of G.S. 135-40.8(b), second surgical opinions shall be required for the following procedures otherwise covered by the Plan: transurethral resection of the prostate, hemorrhoidectomy, hysterectomy, tonsillectomy and adenoidectomy, cholecystectomy, revision of the nasal structure, coronary artery bypass surgery, thyroid surgery, and surgery on the knee. Second surgical opinions for coronary by-pass surgery may be provided by doctors who are Board-qualified in internal medicine when qualified surgeons are not available to provide a second surgical opinion. The Plan Administrator may waive the requirement for obtaining a second surgical opinion required by this subsection or required by G.S. 135-40.8(b) if the location and availability of surgeons qualified to provide second opinions creates an unjust hardship or if the medical condition of the patient would be adversely affected. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 7; 1985, c. 192, ss. 5, 9, 12; c. 732, ss. 16-18.)

**Effect of Amendments.** — The 1983 amendment, effective retroactive to Oct. 1, 1982, added the third and fourth sentences of subsection (d).

The 1985 amendment by c. 192, ss. 9 and 12, effective July 1, 1985, added "if that surgery is not normally performed on an outpatient basis" at the end of the first sentence of subsection (b), and added the fifth sentence of subsection (d).

The 1985 amendment by c. 192, s. 5, effective with respect to accidental injury occurring on or after July 1, 1985, deleted subsection (a), relating to accidental injury.

The 1985 amendment by c. 732, ss. 16-18, effective July 1, 1985, deleted "mastectomy and mammoplasty, surgery on the spinal column and/or nerves" preceding "revision" in the fifty sentence of subsection (d); added the next-to-last sentence in subsection (d); added the last sentence in subsection (d).

### § 135-40.6. (Effective until July 1, 1986) Benefits subject to deductible and coinsurance (comprehensive benefits).

The following benefits are subject to a deductible of one hundred dollars (\$100.00) per covered individual to an aggregate maximum of three hundred dollars (\$300.00) per family per fiscal year and are payable on the basis of ninety percent (90%) by the Plan and ten percent (10%) by the covered individual up to a maximum of three hundred dollars (\$300.00) out-of-pocket per calendar year:

- (1) **In-Hospital Benefits.** — The Plan pays in-hospital benefits for each single confinement, when charged by a hospital, for room accommodation, including bed, board and general nursing care, but not to exceed the charge for semiprivate room or ward accommodations.

The Plan will pay the following covered charges, when charged by a hospital, for each confinement.

- a. Intensive and cardiac nursing care.
- b. All recognized drugs and medicines for use in the hospital.
- c. Radiation services, including diagnostic x-rays, x-ray therapy, radiation therapy and treatment.
- d. Clinical and pathological laboratory examinations.
- e. Electrocardiograms and electroencephalograms.
- f. Physical therapy.

- g. Intravenous solutions.
- h. Oxygen and oxygen therapy, plus the use of equipment.
- i. Dressings, ordinary splints, plaster casts and sterile supplies.
- j. Use of operating, delivery, recovery and treatment rooms and equipment.
- k. Routine nursery charges, if the mother is eligible to receive maternity benefits.
- l. Anesthetics and the administration thereof by the hospital's employee anesthesiologist.
- m. Devices or appliances surgically inserted within the body.
- n. Processing and administering of blood and blood plasma.
- o. Children who are born under the coverage type (2), (3), or (5), as outlined in G.S. 135-40.3(d), and who remain continuously covered are entitled to benefits for treatment of illnesses or congenital defect, incubation or isolette care, and treatment of prematurity or postmaturity.

If the mother is a covered individual, benefits are provided for the newborn's circumcision and routine nursery care.

- p. When a covered individual is admitted to or transferred to a section of a hospital providing ambulant, convalescent, or rehabilitative care, benefits are provided up to the average number of days of service for treatment of the particular diagnosis or condition involved, or more if medical necessity requires.
  - q. The Plan pays benefits for laboratory testing and administration of blood provided to a covered individual. When a covered individual is the recipient of transplanted organs or bones, benefits are provided for services to the donor which are directly and specifically related to the transplantation.
  - r. Thirty days per fiscal year are provided for inpatient treatment of mental illness. Readmission for this condition within 365 days of last discharge shall be considered a single confinement. When furnished to a patient in a skilled nursing facility, 30 days less the days of care already provided for the same illness in a hospital are provided. Additional inpatient treatment, based on individual consideration, maybe provided if prior approval is obtained from the Plan Administrator.
  - s. The use of nebulizers when authorized as medically necessary by the attending physician.
- (2) Limitations and Exclusions to In-Hospital Benefits. —
- a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.
  - b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at ninety percent (90%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.
  - c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.
  - d. Hospitalization for custodial, domiciliary or sanitarium care, or rest cures, is not covered.
  - e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.

f. Prior to admission for scheduled inpatient hospitalization and following admission for unscheduled inpatient hospitalization, the admitting physician shall contract the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective July 1, 1986, failure to secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate and maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees.

- (3) Skilled Nursing Facility Benefits. — The Plan will pay benefits in a skilled nursing facility which qualifies for delivery of benefits under Title XVIII of the Social Security Act (Medicare), as follows:

After discharge from a hospital for which inpatient hospital benefits were provided by this Plan for a period of not less than three days, and treatment consistent with the same illness or condition for which the covered individual was hospitalized, the daily charges will be paid for room and board in a semiprivate room or any multibed unit up to the maximum benefit specified in subsection (1) of this section, less the days of care already provided for the same illness in a hospital.

Credit will be allowed toward private room charges in an amount equal to the facility's most prevalent charge for semiprivate accommodations. Charges will also be paid for general nursing care and other services which would ordinarily be covered in a general hospital. In order to be eligible for these benefits, admission must occur within 14 days of discharge from the hospital.

In order to qualify for benefits provided by a skilled nursing facility, the following stipulations apply:

- a. The services are medically required to be given on an inpatient basis because of the covered individual's need for skilled nursing care on a continuing basis for any of the conditions for which he or she was receiving inpatient hospital services prior to transfer from a hospital to the skilled nursing facility or for a condition requiring such services which arose after such transfer and while he or she was still in the facility for treatment of the condition or conditions for which he or she was receiving inpatient hospital services, and

- b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor.

- (4) Outpatient Hospital Benefits. — The Plan pays for services rendered in the outpatient department of a hospital, in a doctor's office, in an ambulatory surgical facility, or elsewhere, as follows:

- a. Accidental injury: When services are furnished within 30 days of the actual occurrence of injury and provided treatment is initiated within five days of injury occurrence. Dental services are excluded except for oral surgery specifically listed in subsection (5)c of this section.

- b. All hospital services for operative procedures.

- c. All hospital services for radiation therapy, treatment by use of x-rays, radium, cobalt and other radioactive substances.

- d. All hospital services in connection with pathological examinations of tissue removed by resection or biopsy. Routine Pap smears are not covered.

- e. Charges for diagnostic x-rays, clinical laboratory tests, and other diagnostic tests and procedures such as electrocardiograms and electroencephalograms.

No benefits are provided for screening examinations and routine physical examinations to assess general health status in the absence of specific symptoms of active illness, routine office visits or for doctor's services for diagnostic procedures covered under surgical benefits.

- (5) Surgical Benefits. — The Plan pays the usual, customary and reasonable charges for covered surgical services as follows:

- a. Surgery: Cutting procedures, treatment of fractures, transfusions, operative preparation for diagnostic x-ray examinations, surgical implantation radiation sources, major endoscopic examinations, biopsies, surgical sterilization, other standard services and operations.

For the purpose of this subdivision, the term "standard services and operations" includes the following organ transplants: corneal, bone marrow, and kidney. All other organ transplants shall be considered nonreimbursable under the Plan. Benefits for the above listed organ transplants shall be payable only in accordance with rules established by the Executive Administrator and Board of Trustees.

- b. Anesthesia: Administration of general, spinal block or local anesthesia. Covered services include pre- and postoperative visits, the administration of the anesthetic, fluids and/or blood provided by the anesthesiologist and incidental to the anesthesia, and necessary drugs and materials provided by the anesthesiologist. No benefits are provided for administration of local anesthesia or for anesthesia administered by the operating surgeon or surgical assistant(s).
- c. Oral Surgery: Services which are within the scope of practice of both a doctor of medicine and a dentist, such as excision of tumors and lesions of the mouth, treatment of jaw fractures and surgery to correct injuries of the mouth structure other than teeth and their supporting structure. Developmental and congenital orthognathic surgery procedures will be covered under the Plan, provided such surgery is medically necessary, is the only method of treatment which will correct the patient's deformity, is not performed for cosmetic reasons, and is approved in advance by the Plant Administrator on the basis of the surgeon's documentation that the correction of the deformity is medically necessary for the maintenance of good physical health.
- d. Maternity Care: independent operative procedures in connection with pregnancy, such as: manipulative obstetrical delivery, delivery by Caesarean section, removal of ectopic pregnancy, dilation and curettage. Benefits for manipulative obstetrical delivery include use of forceps and/or episiotomy. No benefits are provided for antepartum or postpartum care, except for direct surgical procedures of delivery and surgical treatment.
- e. Surgical Assistants: Services of an assistant surgeon when medical judgment requires the services of an assistant surgeon and no hospital-employed doctor in training is available.
- f. Multiple Procedures: When multiple or bilateral surgical procedures are performed by the same doctor through separate incisions or approaches during the same session, the surgical benefits will be the greater UCR allowance, plus fifty percent (50%) of

the lesser UCR allowance. Anesthesia benefits will be the greater UCR allowance.

When multiple surgical procedures are performed by the same doctor through the same incision or operative approach, the surgical benefits are limited to the procedure which has the highest UCR allowance.

When a surgical procedure is performed in two or more stages, the surgical benefit for the entire procedure is the same as it would be were the procedure performed in one stage (except where otherwise provided in the benefit schedule). This limitation does not apply to anesthesia benefits.

- g. Cleft Palate. Notwithstanding G.S. 135-40.6(6)a and G.S. 135-40.7(11), medical treatment and care needed by an individual born with cleft palate, including specialized dental and orthodontic care necessitated by the congenital condition, provided that the individual was covered at the time of birth by the Plan or the Predecessor Plan.

(6) Limitations and Exclusions to Surgical Benefits. —

- a. No benefits are provided for dental prostheses such as crowns, or dentures; orthodontic care; operative restoration of teeth (fillings); dental extractions (whether impacted or not impacted); apicoectomies; treatment of dental caries, gingivitis, or periodontal diseases by gingivectomies or other periodontal surgery; vestibuloplasties, alveoplasties, removal of exostosis and tori preparatory to fitting of dentures; correction of malocclusion by orthognathic surgery or other procedures by repositioning of bone tissue except as permitted pursuant to G.S. 135-40.6(5)c; removal of cysts incidental to apicoectomies or extraction of teeth.
- b. Cosmetic surgery or surgery solely for beautifying purposes is not covered, except for procedures related to injury sustained while the individual is continuously covered under the Plan.
- c. If a covered individual receives both medical and surgical treatment for the same condition, by the same doctor, either medical or surgical care may be paid, whichever is greater, but not both.
- d. When a covered individual is admitted for medical treatment and during the hospital admission is subsequently referred to another doctor for surgery, medical benefits are provided for hospital days prior to the date of referral.
- e. If during hospital admission for necessary medical treatment, surgery is provided for a wholly distinct and unrelated condition, both medical and surgical benefits are payable, however, the same doctor may not be paid both medical and surgical benefits provided on the same day.
- f. If during hospital admission for necessary medical treatment, a covered individual receives related surgical procedures such as paracentesis, biopsy, endoscopy, operative preparation for x-ray examination, or other diagnostic procedures for which benefits are applicable under the surgical benefits section of the Plan, both medical and surgical benefits are payable.
- g. No benefits are provided for concurrent co-attending medical and surgical care by two or more doctors for the same condition other than as provided above.
- h. No benefits will be payable for surgical procedure specifically listed by the American Medical Association or the North Carolina Medical Association as having no medical value.

- i. No benefits are payable for organ transplants not listed in G.S. 135-40.6(5)a, nor will benefits be payable for surgical procedures determined in the opinion of the Plan Administrator to be experimental.
- j. No benefits are payable for radial keratotomy surgical procedures.

(7) Medical Benefits. —

- a. Services of Doctors. — The Plan pays the usual, reasonable and customary charges for covered inpatient medical (nonsurgical) services. Services are covered if the individual is hospital-confined and is eligible for hospitalization benefits as described in this section. Benefits are provided for exactly the same number of days as the individual is entitled to under this section, except that medical benefits are provided on both the day of admission and the day of discharge.

In the event a covered individual is treated by two or more co-attending doctors during the same hospital confinement for a medical (nonsurgical) condition, benefits are limited to payment for services provided by the primary attending doctor, except where need is established for supplementary skills for treatment of separate and distinct diagnoses or conditions.

Home, office, and skilled nursing facility visits including (i) charges for injected medications, (ii) inpatient care by attending medical doctors, radiologists, pathologists, and consultants during such time as hospital benefits are paid under any section of this Plan, (iii) care in the outpatient department of a hospital, and (iv) administration of shock therapy (drug or electric) including the services of anesthesiologists provided on an office or hospital outpatient basis for treatment of acute psychotic reaction or severe depression.

- b. Consultations. — Consultation services are provided when requested by the attending doctor and the consultation is necessary in conjunction with and directly related to care and treatment of the condition for which admitted. No benefits are provided for staff consultation required by hospital rules and regulations. When a covered individual is admitted for oral surgery, a single consultation allowance will be provided for medical examination and pre-anesthesia evaluation.
- c. Newborn Care. — When a child is eligible at birth, benefits are provided for treatment of illness, injury, prematurity, or congenital condition as a registered inpatient. When delivery is by Caesarean section, a single consultation allowance will be provided for standby, resuscitation, and infant care in the operating room provided by a doctor other than the operating surgeon.

When a mother receives maternity benefits under the Plan for a child's delivery, benefits are provided for examination and supervision of a normal newborn infant.

- d. Outpatient Psychiatric Care. — The Plan will pay eighty percent (80%) UCR for outpatient psychiatric care, not to exceed 50 visits and two thousand two hundred dollars (\$2,200) per fiscal year. This benefit is subject to the one hundred dollar (\$100.00) deductible. Payments made for this benefit are not eligible towards the maximum out-of-pocket expenditure.

(8) Other Covered Charges. —

- a. Prescription Drugs: Prescription legend drugs for use outside of a hospital or skilled nursing facility. A prescription legend drug is defined as an article the label of which, under the Federal Food,

Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though prescription is not required.

- b. **Private Duty Nursing:** Services of licensed nurses (not immediate relatives or members of the participant's household or private duty nursing used in lieu of or as a substitute for hospital staff nurses) ordered by the attending doctor for a condition requiring skilled nursing services.
- c. **Home Health Agency Services:** Services provided in a covered individual's home, when ordered by the attending physician. Services may include medical supplies, equipment, appliances, therapy services (when provided by a qualified speech therapist or licensed physiotherapist), and nursing services. Nursing services will be allowed for:
  1. Services of a registered nurse (RN); or
  2. Services of a licensed practical nurse (LPN) under the supervision of a RN; or
  3. Services of a home health aide under the supervision of a RN, limited to four hours a day.

Home health services shall be limited to 60 days per fiscal year, except that additional home health services may be provided on an individual basis if prior approval is obtained from the Plan Administrator.

- d. **Licensed Ambulance Service:** Local ambulance transportation:
  - To or from a hospital for inpatient care or outpatient accident care;
  - From a hospital to the nearest facility able to provide needed services not available at the transferring hospital; or
  - From a hospital to a skilled nursing facility.

The word "local" means ambulance transportation of not more than 50 miles unless the Administrator authorizes ambulance transportation beyond this distance.

- e. **Prosthetic and Orthopedic Appliances and Durable Medical Equipment:** Appliances and equipment including corrective and supportive devices such as artificial limbs and eyes, wheelchairs, traction equipment, inhalation therapy and suction machines, hospital beds, braces, orthopedic corsets and trusses, and other prosthetic appliances or ambulatory apparatus which are provided solely for the use of the participant. Eligible charges include repair and replacement when medically necessary. Benefits will be provided on a rental or purchase basis at the sole discretion of the Administrator and agreements to rent or purchase shall be between the Administrator and the supplier of the appliance.

For the purposes of this subdivision, the term "durable medical equipment" means standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home. Decisions of the Plan Administrator, the Executive Administrator and Board of Trustees as to compliance with this definition and coverage under the Plan shall be final.

- f. **Dental Services:** Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under G.S. 135-40.3. No benefits are provided in connection with injury incurred in the act of chewing, nor for damage or breakage of an appliance such as bridge or denture being cleaned or otherwise not in normal mouth usage at the time of accident, nor for appliances for orthodontic treatment when a class of malocclusion, other than orthognathic, or cross bite has been diagnosed. Benefits for temporomandibular joint (TMJ) disfunction appliance therapy are limited to cases where the TMJ disfunction has been diagnosed as solely resulting from accidental means as certified by the attending practitioner and approved by the Plan Administrator.
- Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances to reasonably restore condition and function to that existing immediately prior to the accident. Injury or breakage of existing appliances such as bridges and dentures is limited to repair of such appliances unless certified as damaged beyond repair.
- g. **Medical Supplies:** Colostomy bags, catheters, dressings, oxygen, syringes and needles, and other similar supplies.
- h. **Blood:** Transfusions including cost of blood, plasma, or blood plasma expanders.
- i. **Physical Therapy:** Recognized forms of physical therapy for restoration of bodily function, provided by a doctor, hospital, or by a licensed professional physiotherapist. No benefits are provided for eye exercises or visual training.
- j. **Inhalation Therapy:** When provided by a doctor, hospital, or other organization.
- k. **Speech Therapy:** Speech therapy provided by certified speech therapist. Benefits are provided only in connection with a condition, illness, or injury arising while continuously covered under this Plan.
- l. **Cataract Lenses:** Cataract lenses prescribed as medically necessary for aphakia persons, including charges for necessary examinations and fittings. Benefits will be limited to one set of cataract lenses every 24 months for persons 18 years of age or older, and one set of cataract lenses every 12 months for persons less than 18 years of age.
- m. **Cardiac Rehabilitation:** Charges, not to exceed six hundred fifty dollars (\$650.00) per fiscal year, for cardiac exercise therapy and cardiac exercise testing when determined medically necessary by an attending physician and approved by the Plan Administrator for patients with a medical history of myocardial infarction, angina pectoris, arrhythmias, cardiovascular surgery, hyperlipidemia, or hypertension, provided such charges are incurred in a hospital.
- n. **Chiropractic Services:** Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143.1. Maximum benefits for x-rays, manipulations, and modalities shall be one thousand dollars (\$1,000) per fiscal year.

- o. Podiatry Services: Surgery performed by a podiatrist on or after October 1, 1985, which charges are in excess of three hundred dollars (\$300.00) shall require a second opinion by a medical doctor. No benefits shall be paid for such surgery performed on or after that date without such a second opinion.
- (9) Limitations and Exclusions to Other Covered Charges. — No benefits are available under this section of the Plan until full utilization is made of similar benefits available under other sections of this Plan. No benefits will be payable for:
- a. Private duty nursing provided by an immediate relative or member of the covered individual's household; or private duty nursing used in lieu of or as a substitute for hospital staff nurses;
  - b. Dental care except as covered under subsection (2)f [subsection (8)f] and other dental services covered by the surgical benefits section of this Plan, subsection (5)c of this section;
  - c. Foot care except in connection with services covered by the surgical or inpatient medical benefits section of this Plan, subsections (1) and (5) of this section;
  - d. Immunizations for prevention of contagious diseases;
  - e. Expenses incurred in the event a covered individual is a bed patient in a hospital, or skilled nursing facility on the effective date of coverage, so long as the covered individual remains so confined;
  - f. Eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons), hearing aids, braces for teeth, dental plates or bridges or other dental prostheses, air-conditioners, vaporizers, humidifiers, mattresses (other than as supplied with a hospital bed) and specially built shoes (other than attached to artificial limbs or orthopedic braces);
  - g. The difference between charges made by doctors and the UCR allowance for covered benefits, and the coinsurance expenses required under this Plan;
  - h. Habit forming drugs to support drug dependency;
  - i. Any other services not specifically outlined in this Plan. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 8-14, 21.3, 21.5, 21.9; 1983 (Reg. Sess., 1984), c. 1110, s. 12; 1985, c. 192, ss. 2, 3, 6, 6.1, 11, 17; c. 732, ss. 1, 14, 15, 20-22, 27-29, 31-33, 35, 65, 66.)

**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered 135-40.6.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 15, provides: "The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

"Subsection (8)f" has been inserted in brackets in paragraph (9)b to correct an erroneous reference in the paragraph as enacted.

Session Laws 1985, c. 192, s. 19, provides: "In administering G.S. 135-40.6 and G.S. 135-40.8 for calendar year 1985, where those sections prior to the enactment of Sections 17 and 18 of this act provided for deductibles and maximum out-of-pocket expenses on a calendar year basis, the period January 1 through June 30 of 1985 shall be considered a calendar year."

Section 58 of Session Laws 1985, c. 732, provides: "Sections 20, 21, 22, and 36 of this act provide for certain limitations to be imposed on a fiscal year rather than a calendar year basis. Notwithstanding the prior law and Section 19 of this act (new G.S. 135-40.1(7a)), January 1, 1985, through July 31, 1985, shall be considered a calendar year and August 1, 1985, through June 30, 1986, shall be considered a

fiscal year for the purpose of Sections 20, 21, 22, and 36 of this act.”

**Effect of Amendments.** — Session Laws 1983, c. 922, ss. 8-14, 21.3 and 21.5, effective retroactive to Oct. 1, 1982, deleted the former second paragraph of subdivision (1), relating to successive admissions; deleted “but not including the supplying of blood or plasma” at the end of paragraph (1)n; added the last sentence of paragraph (1)r; added paragraph (1)s; added the last sentence of paragraph (5)c; inserted “except as permitted pursuant to G.S. 135-40.6(5)c” in paragraph (6)a; rewrote paragraph (8)c; added paragraph (8)l; and substituted “Eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons)” for “Eyeglasses (corrective lenses)” and deleted “nebulizers” following “humidifiers” in paragraph (9)f.

Session Laws 1983, c. 922, s. 21.9, effective Jan. 1, 1984, in the introductory language substituted “an aggregate maximum of three hundred dollars (\$300.00)” for “a maximum of three per family” and inserted “per calendar year” following “per family.”

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, deleted “alcoholism and drug addiction, or any combination thereof” at the end of the first sentence of paragraph (1)r and substituted “this condition” for “any of these conditions” in the second sentence of paragraph (1)r.

The 1985 amendment by c. 192, ss. 2, 3 and 17, effective July 1, 1985, substituted “ninety percent (90%) by the Plan and ten percent (10%) by the covered individual up to a maximum of three hundred dollars (\$300.00) out-of-pocket” for “ninety-five percent (95%) by the Plan and five percent (5%) by the covered individual up to a maximum of one hundred dollars (\$100.00) out-of-pocket” in the introductory language, substituted “ninety percent (90%)” for “ninety-five percent (95%)” in the second sentence of paragraph (2)b, and substituted “per fiscal year” for “per calendar year” in the introductory paragraph.

The 1985 amendment by c. 192, ss. 6 and 6.1, effective with respect to accidental injury occurring on or after July 1, 1985, deleted the former last sentence of paragraph (4)a, which read “The first three hundred dollars (\$300.00) of these charges are covered under the first dol-

lar part of the Plan,” and deleted “nonaccident” preceding “operative procedures” at the end of paragraph (4)b.

The 1985 amendment by c. 192, s. 11, effective January 1, 1986, added paragraph f of subdivision (2).

The 1985 amendment by c. 732, s. 14, effective Jan. 1, 1983, added subdivision (5)g.

The 1985 amendment by c. 732, s. 20, effective July 12, 1985, substituted “fiscal year” for “calendar year” in the first sentence of subdivision (1)r.

The 1985 amendment by c. 732, s. 21, effective July 12, 1985, substituted “fiscal year” for “calendar year” in the first sentence of subdivision (7)d.

The 1985 amendment by c. 732, s. 22, effective July 12, 1985, substituted “fiscal year” for “calendar year” in the last sentence of subdivision (8)c.

The 1985 amendment by c. 732, s. 27, effective July 12, 1985, added the second paragraph of subdivision (5)a.

The 1985 amendment by c. 732, s. 28, effective July 12, 1985, added subdivision (6)i.

The 1985 amendment by c. 732, s. 29, effective July 12, 1985, added the second paragraph of subdivision (8)e.

The 1985 amendment by c. 732, s. 35, effective July 12, 1985, added subdivision (6)j.

The 1985 amendment by c. 732, s. 31, effective Oct. 1, 1985, inserted the language beginning “nor for appliances for orthodontic treatment” at the end of the second sentence of the first paragraph of subdivision (8)f and added the third sentence of the first paragraph of subdivision (8)f.

The 1985 amendment by c. 732, s. 32, effective Oct. 1, 1985, added subdivision (8)n.

The 1985 amendment by c. 732, s. 33, effective Oct. 1, 1985, added subdivision (8)o.

The 1985 amendment by c. 732, s. 66, effective Oct. 1, 1985, added subdivision (8)m.

The 1985 amendment by c. 732, s. 15, effective Jan. 1, 1986, added “Effective July 1, 1986” at the beginning of the second sentence of subdivision (2)f.

The 1985 amendment by c. 732, s. 65, effective Jan. 1, 1986, inserted “Executive Administrator and” preceding “Board of Trustees” in subdivision (2)f, which was added by s. 11 of Session Laws 1985, c. 192.

## § 135-40.6. (Effective July 1, 1986) Benefits subject to deductible and coinsurance (comprehensive benefits).

The following benefits are subject to a deductible of one hundred fifty dollars (\$150.00) per covered individual to an aggregate maximum of four hundred fifty dollars (\$450.00) per family per fiscal year and are payable on the

basis of ninety percent (90%) by the Plan and ten percent (10%) by the covered individual up to a maximum of three hundred dollars (\$300.00) out-of-pocket per calendar year:

(1) In-Hospital Benefits. — The Plan pays in-hospital benefits for each single confinement, when charged by a hospital, for room accommodation, including bed, board and general nursing care, but not to exceed the charge for semiprivate room or ward accommodations.

The Plan will pay the following covered charges, when charged by a hospital, for each confinement.

- a. Intensive and cardiac nursing care.
- b. All recognized drugs and medicines for use in the hospital.
- c. Radiation services, including diagnostic x-rays, x-ray therapy, radiation therapy and treatment.
- d. Clinical and pathological laboratory examinations.
- e. Electrocardiograms and electroencephalograms.
- f. Physical therapy.
- g. Intravenous solutions.
- h. Oxygen and oxygen therapy, plus the use of equipment.
- i. Dressings, ordinary splints, plaster casts and sterile supplies.
- j. Use of operating, delivery, recovery and treatment rooms and equipment.
- k. Routine nursery charges, if the mother is eligible to receive maternity benefits.
- l. Anesthetics and the administration thereof by the hospital's employee anesthesiologist.
- m. Devices or appliances surgically inserted within the body.
- n. Processing and administering of blood and blood plasma.
- o. Children who are born under the coverage type (2), (3), or (5), as outlined in G.S. 135-40.3(d), and who remain continuously covered are entitled to benefits for treatment of illnesses or congenital defect, incubation or isolette care, and treatment of prematurity or postmaturity.

If the mother is a covered individual, benefits are provided for the newborn's circumcision and routine nursery care.

- p. When a covered individual is admitted to or transferred to a section of a hospital providing ambulant, convalescent, or rehabilitative care, benefits are provided up to the average number of days of service for treatment of the particular diagnosis or condition involved, or more if medical necessity requires.
- q. The Plan pays benefits for laboratory testing and administration of blood provided to a covered individual. When a covered individual is the recipient of transplanted organs or bones, benefits are provided for services to the donor which are directly and specifically related to the transplantation.
- r. Thirty days per fiscal year are provided for inpatient treatment of mental illness. Readmission for this condition within 365 days of last discharge shall be considered a single confinement. When furnished to a patient in a skilled nursing facility, 30 days less the days of care already provided for the same illness in a hospital are provided. Additional inpatient treatment, based on individual consideration, may be provided if prior approval is obtained from the Plan Administrator.
- s. The use of nebulizers when authorized as medically necessary by the attending physician.

(2) Limitations and Exclusions to In-Hospital Benefits. —

- a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.
  - b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at ninety percent (90%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.
  - c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.
  - d. Hospitalization for custodial, domiciliary or sanitarium care, or rest cures, is not covered.
  - e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.
  - f. Prior to admission for scheduled inpatient hospitalization and following admission for unscheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective July 1, 1986, failure to secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees.
- (3) Skilled Nursing Facility Benefits. — The Plan will pay benefits in a skilled nursing facility which qualifies for delivery of benefits under Title XVII of the Social Security Act (Medicare), as follows:

After discharge from a hospital for which inpatient hospital benefits were provided by this Plan for a period of not less than three days, and treatment consistent with the same illness or condition for which the covered individual was hospitalized, the daily charges will be paid for room and board in a semiprivate room or any multibed unit up to the maximum benefit specified in subsection (1) of this section, less the days of care already provided for the same illness in a hospital.

Credit will be allowed toward private room charges in an amount equal to the facility's most prevalent charge for semiprivate accommodations. Charges will also be paid for general nursing care and other services which would ordinarily be covered in a general hospital. In order to be eligible for these benefits, admission must occur within 14 days of discharge from the hospital.

In order to qualify for benefits provided by a skilled nursing facility, the following stipulations apply:

- a. The services are medically required to be given on an inpatient basis because of the covered individual's need for skilled nursing care on a continuing basis for any of the conditions for which he or she was receiving inpatient hospital services prior to transfer from a hospital to the skilled nursing facility or for a condition requiring such services which arose after such transfer and while he or she was still in the facility for treatment of the condition or conditions for which he or she was receiving inpatient hospital services, and

- b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor.
- (4) **Outpatient Hospital Benefits.** — The Plan pays for services rendered in the outpatient department of a hospital, in a doctor's office, in an ambulatory surgical facility, or elsewhere, as follows:
- a. **Accidental injury:** When services are furnished within 30 days of the actual occurrence of injury and provided treatment is initiated within five days of injury occurrence. Dental services are excluded except for oral surgery specifically listed in subsection (5)c of this section.
  - b. All hospital services for operative procedures.
  - c. All hospital services for radiation therapy, treatment by use of x-rays, radium, cobalt and other radioactive substances.
  - d. All hospital services in connection with pathological examinations of tissue removed by resection or biopsy. Routine Pap smears are not covered.
  - e. Charges for diagnostic x-rays, clinical laboratory tests, and other diagnostic tests and procedures such as electrocardiograms and electroencephalograms.

No benefits are provided for screening examinations and routine physical examinations to assess general health status in the absence of specific symptoms of active illness, routine office visits or for doctor's services for diagnostic procedures covered under surgical benefits.

- (5) **Surgical Benefits.** — The Plan pays the usual, customary and reasonable charges for covered surgical services as follows:

- a. **Surgery:** Cutting procedures, treatment of fractures, transfusions, operative preparation for diagnostic x-ray examinations, surgical implantation radiation sources, major endoscopic examinations, biopsies, surgical sterilization, other standard services and operations.

For the purpose of this subdivision, the term "standard services and operations" includes the following organ transplants: corneal, bone marrow, and kidney. All other organ transplants shall be considered nonreimbursable under the Plan. Benefits for the above listed organ transplants shall be payable only in accordance with rules established by the Executive Administrator and Board of Trustees.

- b. **Anesthesia:** Administration of general, spinal block or local anesthesia. Covered services include pre- and postoperative visits, the administration of the anesthetic, fluids and/or blood provided by the anesthesiologist and incidental to the anesthesia, and necessary drugs and materials provided by the anesthesiologist. No benefits are provided for administration of local anesthesia or for anesthesia administered by the operating surgeon or surgical assistant(s).
- c. **Oral Surgery:** Services which are within the scope of practice of both a doctor of medicine and a dentist, such as excision of tumors and lesions of the mouth, treatment of jaw fractures and surgery to correct injuries of the mouth structure other than teeth and their supporting structure. Developmental and congenital orthognathic surgery procedures will be covered under the Plan, provided such surgery is medically necessary, is the only method of treatment which will correct the patient's deformity, is not performed for cosmetic reasons, and is approved in advance by the Plan Administrator on the basis of the surgeon's documen-

tation that the correction of the deformity is medically necessary for the maintenance of good physical health.

- d. Maternity Care: Independent operative procedures in connection with pregnancy, such as: manipulative obstetrical delivery, delivery by Caesarean section, removal of ectopic pregnancy, dilation and curettage. Benefits for manipulative obstetrical delivery include use of forceps and/or episiotomy. No benefits are provided for antepartum or postpartum care, except for direct surgical procedures of delivery and surgical treatment.
- e. Surgical Assistants: Services of an assistant surgeon when medical judgment requires the services of an assistant surgeon and no hospital-employed doctor in training is available.
- f. Multiple Procedures: When multiple or bilateral surgical procedures are performed by the same doctor through separate incisions or approaches during the same session, the surgical benefits will be the greater UCR allowance, plus fifty percent (50%) of the lesser UCR allowance. Anesthesia benefits will be the greater UCR allowance.

When multiple surgical procedures are performed by the same doctor thorough the same incision or operative approach, the surgical benefits are limited to the procedure which has the highest UCR allowance.

When a surgical procedure is performed in two or more stages, the surgical benefit for the entire procedure is the same as it would be were the procedure performed in one stage (except where otherwise provided in the benefit schedule). This limitation does not apply to anesthesia benefits.

- g. Cleft Palate. Notwithstanding G.S. 135-40.6(6)a and G.S. 135-40.7(11), medical treatment and care needed by an individual born with cleft palate, including specialized dental and orthodontic care necessitated by the congenital condition, provided that the individual was covered at the time of birth by the Plan or the Predecessor Plan.

(6) Limitations and Exclusions to Surgical Benefits. —

- a. No benefits are provided for dental prostheses such as crowns, or dentures; orthodontic care; operative restoration of teeth (fillings); dental extractions (whether impacted or not impacted); apicoectomies; treatment of dental caries, gingivitis, or periodontal diseases by gingivectomies or other periodontal surgery; vestibuloplasties, alveoplasties, removal of exostosis and tori preparatory to fitting of dentures; correction of malocclusion by orthognathic surgery or other procedures by repositioning of bone tissue except as permitted pursuant to G.S. 135-40.6(5)c; removal of cysts incidental to apicoectomies or extraction of teeth.
- b. Cosmetic surgery or surgery solely for beautifying purposes is not covered, except for procedures related to injury sustained while the individual is continuously covered under the Plan.
- c. If a covered individual is admitted for medical and surgical treatment for the same condition, by the same doctor, either medical or surgical care may be paid, whichever is greater, but not both.
- d. When a covered individual is admitted for medical treatment and during the hospital admission is subsequently referred to another doctor for surgery, medical benefits are provided for hospital days prior to the date of referral.

- e. If during the hospital admission for necessary medical treatment, surgery is provided for a wholly distinct and unrelated condition, both medical and surgical benefits are payable, however, the same doctor may not be paid both medical and surgical benefits provided on the same day.
- f. If during hospital admission for necessary medical treatment, a covered individual receives related surgical procedures such as paracentesis, biopsy, endoscopy, operative preparation for x-ray examination, or other diagnostic procedures for which benefits are applicable under the surgical benefits section of the Plan, both medical and surgical benefits are payable.
- g. No benefits are provided for concurrent co-attending medical and surgical care by two or more doctors for the same condition other than as provided above.
- h. No benefits will be payable for surgical procedure specifically listed by the American Medical Association or the North Carolina Medical Association as having no medical value.
- i. No benefits are payable for organ transplants not listed in G.S. 135-40.6(5)a, nor will benefits be payable for surgical procedures determined in the opinion of the Plan Administrator to be experimental.
- j. No benefits are payable for radial keratotomy surgical procedures.

(7) Medical Benefits. —

- a. Services of Doctors. — The Plan pays the usual, reasonable and customary charges for covered inpatient medical (nonsurgical) services. Services are covered if the individual is hospital-confined and is eligible for hospitalization benefits as described in this section. Benefits are provided for exactly the same number of days as the individual is entitled to under this section, except that medical benefits are provided on both the day of admission and the day of discharge.

In the event a covered individual is treated by two or more co-attending doctors during the same hospital confinement for a medical (nonsurgical) condition, benefits are limited to payment for services provided by the primary attending doctor, except where need is established for supplementary skills for treatment of separate and distinct diagnoses or conditions.

Home, office, and skilled nursing facility visits including (i) charges for injected medications, (ii) inpatient care by attending medical doctors, radiologists, pathologists, and consultants during such time as hospital benefits are paid under any section of this Plan, (iii) care in the outpatient department of a hospital, and (iv) administration of shock therapy (drug or electric) including the services of anesthesiologists provided on an office or hospital outpatient basis for treatment of acute psychotic reaction or severe depression.

- b. Consultations. — Consultation services are provided when requested by attending doctor and the consultation is necessary in conjunction with and directly related to care and treatment of the condition for which admitted. No benefits are provided for staff consultation required by hospital rules and regulations. When a covered individual is admitted for oral surgery, a single consultation allowance will be provided for medical examination and pre-anesthesia evaluation.
- c. Newborn Care. — When a child is eligible at birth, benefits are provided for treatment of illness, injury, prematurity, or congeni-

tal condition as a registered inpatient. When delivery is by Caesarean section, a single consultation allowance will be provided for standby, resuscitation, and infant care in the operating room provided by a doctor other than the operating surgeon.

When a mother receives maternity benefits under the Plan for a child's delivery, benefits are provided for examination and supervision of a normal newborn infant.

- d. **Outpatient Psychiatric Care.** — The Plan will pay eighty percent (80%) UCR for outpatient psychiatric care, not to exceed 50 visits and two thousand two hundred dollars (\$2,200) per fiscal year. This benefit is subject to the one hundred fifty dollars (\$150.00) deductible. Payments made for this benefit are not eligible towards the maximum out-of-pocket expenditure.
- (8) **Other Covered Charges.** —
- a. **Prescription Drugs:** Prescription legend drugs for use outside of a hospital or skilled nursing facility. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though prescription is not required.
- b. **Private Duty Nursing:** Services of licensed nurses (not immediate relatives or members of the participant's household or private duty nursing used in lieu of or as a substitute for hospital staff nurses) ordered by the attending doctor for a condition requiring skilled nursing services.
- c. **Home Health Agency Services:** Services provided in a covered individual's home, when ordered by the attending physician. Services may include medical supplies, equipment, appliances, therapy services (when provided by a qualified speech therapist or licensed physiotherapist), and nursing services. Nursing services will be allowed for:
1. Services of a registered nurse (RN); or
  2. Services of a licensed practical nurse (LPN) under the supervision of a RN; or
  3. Services of a home health aide under the supervision of a RN, limited to four hours a day.
- Home health services shall be limited to 60 days per fiscal year, except that additional home health services may be provided on an individual basis if prior approval is obtained from the Plan Administrator.
- d. **Licensed Ambulance Service:** Local ambulance transportation:  
To or from a hospital for inpatient care or outpatient accident care;  
From a hospital to the nearest facility able to provide needed services not available at the transferring hospital; or  
From a hospital to a skilled nursing facility.  
The word "local" means ambulance transportation of not more than 50 miles unless the Administrator authorizes ambulance transportation beyond this distance.
- e. **Prosthetic and Orthopedic Appliances and Durable Medical Equipment:** Appliances and equipment including corrective and supportive devices such as artificial limbs and eyes, wheelchairs, traction equipment, inhalation therapy and suction machines, hospital beds, braces, orthopedic corsets and trusses, and other

prosthetic appliances or ambulatory apparatus which are provided solely for the use of the participant. Eligible charges include repair and replacement when medically necessary. Benefits will be provided on a rental or purchase basis at the sole discretion of the Administrator and agreements to rent or purchase shall be between the Administrator and the supplier of the appliance.

For the purposes of this subdivision, the term "durable medical equipment" means standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home. Decisions of the Plan Administrator, the Executive Administrator and Board of Trustees as to compliance with this definition and coverage under the Plan shall be final.

- f. **Dental Services:** Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under G.S. 135-40.3. No benefits are provided in connection with injury incurred in the act of chewing, nor for damage or breakage of an appliance such as bridge or denture being cleaned or otherwise not in normal mouth usage at the time of accident, nor for appliances for orthodontic treatment when a class of malocclusion, other than orthognathic, or cross bite has been diagnosed. Benefits for temporomandibular joint (TMJ) dysfunction appliance therapy are limited to cases where the TMJ dysfunction has been diagnosed as solely resulting from accidental means as certified by the attending practitioner and approved by the Plan Administrator.

Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances to reasonably restore condition and function to that existing immediately prior to the accident. Injury or breakage of existing appliances such as bridges and dentures is limited to repair of such appliances unless certified as damaged beyond repair.

- g. **Medical Supplies:** Colostomy bags, catheters, dressings, oxygen, syringes and needles, and other similar supplies.
- h. **Blood:** Transfusions including cost of blood, plasma, or blood plasma expanders.
- i. **Physical Therapy:** Recognized forms of physical therapy for restoration of bodily function, provided by a doctor, hospital, or by a licensed professional physiotherapist. No benefits are provided for eye exercises or visual training.
- j. **Inhalation Therapy:** When provided by a doctor, hospital, or other organization.
- k. **Speech Therapy:** Speech therapy provided by certified speech therapist. Benefits are provided only in connection with a condition, illness, or injury arising while continuously covered under this Plan.
- l. **Cataract Lenses:** Cataract lenses prescribed as medically necessary for aphakia persons, including charges for necessary examinations and fittings. Benefits will be limited to one set of cataract lenses every 24 months for person 18 years of age or older,

and one set of cataract lenses every 12 months for persons less than 18 years of age.

- m. Cardiac Rehabilitation: Charges, not to exceed six hundred fifty dollars (\$650.00) per fiscal year, for cardiac exercise therapy and cardiac exercise testing when determined medically necessary by an attending physician and approved by the Plan Administrator for patients with a medical history of myocardial infarction, angina pectoris, arrhythmias, cardiovascular surgery, hyperlipidemia, or hypertension, provided such charges are incurred in a hospital.
  - n. Chiropractic Services: Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143.1. Maximum benefits for x-rays, manipulations, and modalities shall be one thousand dollars (\$1,000) per fiscal year.
  - o. Podiatry Services: Surgery performed by a podiatrist on or after October 1, 1985, which charges are in excess of three hundred dollars (\$300.00) shall require a second opinion by a medical doctor. No benefits shall be paid for such surgery performed on or after that date without such a second opinion.
- (9) Limitations and Exclusions to Other Covered Charges. — No benefits are available under this section of the Plan until full utilization is made of similar benefits available under other sections of this Plan. No benefits will be payable for:
- a. Private duty nursing provided by an immediate relative or member of the covered individual's household; or private duty nursing used in lieu of or as a substitute for hospital staff nurses;
  - b. Dental care except as covered under subsection (2)f [subsection (8)f] and other dental services covered by the surgical benefits section of this Plan, subsection (5)c of this section;
  - c. Foot care except in connection with services covered by the surgical or inpatient medical benefits section of this Plan, subsections (1) and (5) of this section;
  - d. Immunizations for prevention of contagious diseases;
  - e. Expenses incurred in the event a covered individual is a bed patient in a hospital, or skilled nursing facility on the effective date of coverage, so long as the covered individual remains so confined;
  - f. Eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons), hearing aids, braces for teeth, dental plates or bridges or other dental prostheses, air-conditioners, vaporizers, humidifiers, mattresses (other than as supplied with a hospital bed) and specially built shoes (other than attached to artificial limbs or orthopedic braces);
  - g. The difference between charges made by doctors and the UCR allowance for covered benefits, and the coinsurance expenses required under this Plan;
  - h. Habit forming drugs to support drug dependency;
  - i. Any other services not specifically outlined in this Plan. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 8-14, 21.3, 21.5, 21.9; 1983 (Reg. Sess., 1984), c. 1110, s. 12; 1985, c. 192, ss. 2, 3, 6, 6.1, 11, 16, 17; c. 732, ss. 1, 14, 15, 20-22, 27-29, 31-33, 35, 65, 66.)

**Section Set Out Twice.** — The section above is effective July 1, 1986. For this section as in effect until July 1, 1986, see the preceding section, also numbered 135-40.6.

**Editor's Note.** —

Session Laws 1985, c. 192, s. 19, provides: "In administering G.S. 135-40.6 and G.S. 135-40.8 for calendar year 1985, where those sections prior to the enactment of Sections 17 and 18 of this act provided for deductibles and maximum out-of-pocket expenses on a calendar year basis, the period January 1 through June 30 of 1985 shall be considered a calendar year."

Section 58 of Session Laws 1985, c. 732, provides: "Sections 20, 21, 22, and 36 of this act provide for certain limitations to be imposed on a fiscal year rather than a calendar year basis. Notwithstanding the prior law and Section 19 of this act (new G.S. 135-40.1(7a)), January 1, 1985, through July 31, 1985, shall be considered a calendar year and August 1, 1985, through June 30, 1986, shall be considered a fiscal year for the purpose of Sections 20, 21, 22, and 36 of this act."

**Effect of Amendments.** —

The 1985 amendment by c. 192, ss. 2, 3 and 17, effective July 1, 1985, substituted "ninety percent (90%) by the Plan and ten percent (10%) by the covered individual up to a maximum of three hundred dollars (\$300.00) out-of-pocket" for "ninety-five percent (95%) by the Plan and five percent (5%) by the covered individual up to a maximum of one hundred dollars (\$100.00) out-of-pocket" in the introductory language, substituted "ninety percent (90%)" for "ninety-five percent (95%)" in the second sentence of paragraph (2)b, and substituted "per fiscal year" for "per calendar year" in the introductory paragraph.

The 1985 amendment by c. 192, ss. 6 and 6.1, effective with respect to accidental injury occurring on or after July 1, 1985, deleted the former last sentence of paragraph (4)a, which read "The first three hundred dollars (\$300.00) of these charges are covered under the first dollar part of the Plan," and deleted "non accident" preceding "operative procedures" at the end of paragraph (4)b.

The 1985 amendment by c. 192, s. 11, effective January 1, 1986, added paragraph f of subdivision (2).

The 1985 amendment by c. 192, s. 15, effective July 1, 1986, substituted "one hundred fifty dollars (\$150.00) per covered individual to an aggregate maximum of four hundred fifty dollars (\$450.00) per family" for "one hundred

dollars (\$100.00) per covered individual to an aggregate maximum of three hundred dollars (\$300.00) per family" in the introductory language.

The 1985 amendment by c. 192, s. 16, as amended by c. 732, s. 1, effective July 1, 1986, substituted "one hundred fifty dollars (\$150.00)" for "one hundred dollar (\$100.00)" in subdivision (7)d.

The 1985 amendment by c. 732, s. 14, effective Jan. 1, 1983, added subdivision (5)g.

The 1985 amendment by c. 732, s. 20, effective July 12, 1985, substituted "fiscal year" for "calendar year" in the first sentence of subdivision (1)r.

The 1985 amendment by c. 732, s. 21, effective July 12, 1985, substituted "fiscal year" for "calendar year" in the first sentence of subdivision (7)d.

The 1985 amendment by c. 732, s. 22, effective July 12, 1985, substituted "fiscal year" for "calendar year" in the last sentence of subdivision (8)c.

The 1985 amendment by c. 732, s. 27, effective July 12, 1985, added the second paragraph of subdivision (5)a.

The 1985 amendment by c. 732, s. 28, effective July 12, 1985, added subdivision (6)i.

The 1985 amendment by c. 732, s. 29, effective July 12, 1985, added the second paragraph of subdivision (8)e.

The 1985 amendment by c. 732, s. 31, effective Oct. 1, 1985, inserted the language beginning "nor for appliances for orthodontic treatment" at the end of the second sentence of the first paragraph of subdivision (8)f and added the third sentence of the first paragraph of subdivision (8)f.

The 1985 amendment by c. 732, s. 35, effective July 12, 1985, added subdivision (6)j.

The 1985 amendment by c. 732, s. 32, effective Oct. 1, 1985, added subdivision (8)n.

The 1985 amendment by c. 732, s. 33, effective Oct. 1, 1985, added subdivision (8)o.

The 1985 amendment by c. 732, s. 66, effective Oct. 1, 1985, added subdivision (8)m.

The 1985 amendment by c. 732, s. 15, effective Jan. 1, 1986, added "Effective July 1, 1986" at the beginning of the second sentence of subdivision (2)f.

The 1985 amendment by c. 732, s. 65, effective Jan. 1, 1986, inserted "Executive Administrator and" preceding "Board of Trustees" in subdivision (2)f, which was added by s. 11 of Session Laws 1985, c. 192.

### § 135-40.7. General limitations and exclusions.

The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-40.5 through G.S. 135-40.11 be payable for

- (1) Charges for any services rendered to a person prior to the date coverage under this Plan becomes effective with respect to such person
- (2) Charges for care in a nursing home, home for the aged, or convalescent home for custodial or domiciliary care or for rest cures.
- (3) Charges to the extent paid, or which the individual is entitled to have paid, or to obtain without cost, in accordance with any government laws or regulations except Medicare. If a charge is made to any such person which he or she is legally required to pay, any benefits under this Plan will be computed in accordance with its provisions, taking into account only such charge. "Any government" includes the federal, State, provincial or local government, or any political subdivision thereof, of the United States, Canada or any other country.
- (4) Charges for services rendered in connection with any occupational injury or disease arising out of and in the course of employment with any employer, if (i) the employer furnishes, pays for or provides reimbursement for such charges, or (ii) the employer makes a settlement payment for such charges, or (iii) the person incurring such charges waives or fails to assert his or her rights respecting such charges.
- (5) Charges for any care, treatment, services or supplies other than those which are certified by a physician who is attending the individual as being required for the necessary treatment of the injury or disease.
- (6) Charges for any services rendered as a result of injury or sickness due to an act of war, declared or undeclared, which act shall have occurred after the effective date of a person's coverage under the Plan.
- (7) Charges for personal services such as barber services, guest meals, radio and TV rentals, etc.
- (8) Charges for any services with respect to which there is no legal obligation to pay. For the purposes of this item, any charge which exceeds the charge that would have been made if a person were not covered under this Plan shall, to the extent of such excess, be treated as a charge for which there is no legal obligation to pay; and any charge made by any person for anything which is normally or customarily furnished by such person without payment from the recipient or user thereof shall also be treated as a charge for which there is no legal obligation to pay.
- (9) Charges during a continuous hospital confinement which commenced prior to the effective date of the person's coverage under this Plan.
- (10) Charges in excess of either the usual, customary and reasonable charge for or the fair and reasonable value of the services or supply which gives rise to the expense; provided that in each instance the extent that a particular charge is usual, customary and reasonable or fair and reasonable shall be measured and determined by comparing the charge with charges made for similar things to individuals of similar age, sex, income and medical condition in the locality concerned, and the result of such determination shall constitute the maximum allowable as covered medical expenses unless the Plan Administrator finds that considerations of fairness and equity in a particular set of circumstances require that greater or lesser charges be considered as covered medical expenses in that set of circumstances.
- (11) Charges for or in connection with any dental work or dental treatment except to the extent that such work or treatment is specifically provided for under the Plan. Excluded is payment for surgical bene-

fits for tooth replacement, such as crowns, bridges or dentures; orthodontic care; filling of teeth; extraction of teeth (whether or not impacted); root canal therapy; removal of root tips from teeth; treatment for tooth decay, inflammation of gingiva, or surgical procedures on diseased gingiva or other periodontal surgery; repositioning soft tissue, reshaping bone, and removal of bony projections from the ridges preparatory to fitting of dentures; removal of cysts incidental to removal of root tips from teeth and extraction of teeth; or other dental procedures involving teeth and their bones or tissue supporting structure.

- (12) Charges incurred for any medical observations or diagnostic study when no disease or injury is revealed, unless proof satisfactory to the Plan Administrator is furnished that (i) the claim is in order in all other respects, (ii) the covered individual had a definite symptomatic condition of disease or injury other than hypochondria, and (iii) the medical observation and diagnostic studies concerned were not undertaken as a matter of routine physical examination or health checkup.
- (13) Charges for eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons) and hearing aids or examinations for the prescription or fitting thereof.
- (14) Charges for cosmetic surgery or treatment except that charges for cosmetic surgery or treatment required for correction of damage caused by accidental injury sustained by the covered individual while this insurance or its predecessor plan is in force on his or her account or to correct congenital deformities or anomalies shall not be excluded if they otherwise qualify as covered medical expenses.
- (15) Admissions for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis and inpatient services or supplies which are not consistent with the diagnosis, for which admitted.
- (16) Costs denied by the Plan Administrator as part of its overall program of claim review and cost containment. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 15, 21.4.)

**Effect of Amendments.** — The 1983 amendment, effective retroactive to Oct. 1, 1982, deleted the last sentence of subdivision 11), which read "This exclusion also applies to any orthognathic procedures," and inserted "or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons)" in subdivision (13).

**§ 135-40.7A. (Effective until January 1, 1988) Special provisions for chemical dependency.**

(a) Except as otherwise provided in this section, benefits for treatment of chemical dependency are covered by the Plan and shall be subject to the same deductibles, durational limits, and coinsurance factors as are benefits for physical illness generally.

(b) Notwithstanding any other provisions of this Part, the maximum benefit for each covered individual for treatment for chemical dependency is as follows:

|                           |          |
|---------------------------|----------|
| 30 consecutive day period | \$ 3,000 |
| fiscal year               | 5,000    |
| lifetime                  | 15,000   |

Effective October 1, 1985, daily benefits are limited to one hundred dollars (\$100.00) per day except for medical detoxification treatment under rules to

§ 135-40.7A is set out twice. See section headings for effective dates.

be established by the Executive Administrator and Board of Trustees. Expenditures incurred before January 1, 1985, shall not count toward the maximum imposed by this subsection.

(c) Notwithstanding any other provision of this Part, provisions for benefits for necessary care and treatment of chemical dependency under this Part shall provide for benefit payments for the following providers of necessary care and treatment of chemical dependency:

- (1) The following units of a general hospital licensed under Article 5 of General Statutes Chapter 131E:
  - a. Chemical dependency units in facilities licensed after October 1, 1984;
  - b. Medical units;
  - c. Psychiatric units; and
- (2) The following facilities licensed after July 1, 1984, under Article 1A of General Statutes Chapter 131E:
  - a. Chemical dependency units in psychiatric hospitals;
  - b. Chemical dependency hospitals;
  - c. Residential chemical dependency treatment facilities;
  - d. Social setting detoxification facilities or programs;
  - e. Medical detoxification facilities or programs; and
- (3) Duly licensed physicians and duly licensed practicing psychologists and certified professionals working under the direct supervision of such physicians or psychologists in facilities described in (1) and (2) above and in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency. (1983 (Reg. Sess., 1984), c. 1110, s. 11; 1985, c. 589, s. 43(a); c. 732, s. 36.)

**Section Set Out Twice.** — The section above is effective until Jan. 1, 1988. For this section as amended effective Jan. 1, 1988, see the following section, also numbered § 135-40.7A.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 17, makes this section effective January 1, 1985.

Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 15, provides: "The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

The reference in subdivision (c)(2) of this section to Article 1A of Chapter 131E was probably intended to refer to Article 1A of Chapter 122.

Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are autho-

rized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

Section 58 of Session Laws 1985, c. 732, provides: "Sections 20, 21, 22, and 36 of this act provide for certain limitations to be imposed on a fiscal year rather than a calendar year basis. Notwithstanding the prior law and Section 19 of this act (new G.S. 135-40.1(7a)), January 1, 1985, through July 31, 1985, shall be considered a calendar year and August 1, 1985, through June 30, 1986, shall be considered a fiscal year for the purpose of Sections 20, 21, 22, and 36 of this act."

Session Laws 1985, c. 589, s. 65 is a severability clause.

**Effect of Amendments.** — The 1985 amendment by c. 589, s. 43 (a), effective January 1, 1986, inserted "or Article 2 of General Statutes Chapter 122C" in subdivision (c)(3).

The 1985 amendment by c. 732, s. 36, effective July 12, 1985, rewrote subsection (b).

**§ 135-40.7A. (Effective January 1, 1988) Special provisions for chemical dependency.**

(a) Except as otherwise provided in this section, benefits for treatment of chemical dependency are covered by the Plan and shall be subject to the same deductibles, durational limits, and coinsurance factors as are benefits for physical illness generally.

(b) Notwithstanding any other provisions of this Part, the maximum benefit for each covered individual for treatment for chemical dependency is as follows:

|                           |          |
|---------------------------|----------|
| 30 consecutive day period | \$ 3,000 |
| fiscal year               | 5,000    |
| lifetime                  | 15,000   |

Effective October 1, 1985, daily benefits are limited to one hundred dollars (\$100.00) per day except for medical detoxification treatment under rules to be established by the Executive Administrator and Board of Trustees. Expenditures incurred before January 1, 1985, shall not count toward the maximum imposed by this subsection.

(c) Notwithstanding any other provision of this Part, provisions for benefits for necessary care and treatment of chemical dependency under this Part shall provide for benefit payments for the following providers of necessary care and treatment of chemical dependency:

- (1) The following units of a general hospital licensed under Article 5 of General Statutes Chapter 131E:
  - a. Chemical dependency units in facilities licensed after October 1, 1984;
  - b. Medical units;
  - c. Psychiatric units; and
- (2) The following facilities licensed after July 1, 1984, under Article 1A of General Statutes Chapter 131E:
  - a. Chemical dependency units in psychiatric hospitals;
  - b. Chemical dependency hospitals;
  - c. Residential chemical dependency treatment facilities;
  - d. Social setting detoxification facilities or programs;
  - e. Medical detoxification facilities or programs; and
- (3) Duly licensed physicians and duly licensed practicing psychologists and certified professionals working under the direct supervision of such physicians or psychologists in facilities described in (1) and (2) above and in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under [or] Article 2 of General Statutes Chapter 122C.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency. (1983 (Reg. Sess., 1984), c. 1110, s. 11; 1985, c. 589, s. 43(a), (b); c. 732, s. 36.)

**Section Set Out Twice.** — The section above is effective Jan. 1, 1988. For this section as in effect until Jan. 1, 1988, see the preceding section, also numbered § 135-40.7A.

**Editor's Note.** — Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may

be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

Section 58 of Session Laws 1985, c. 732, provides: "Sections 20, 21, 22, and 36 of this act provide for certain limitations to be imposed on a fiscal year rather than a calendar year basis. Notwithstanding the prior law and Section 19 of this act (new G.S. 135-40.1(7A)), January 1,

§ 135-40.7A is set out twice. See section headings for effective dates.

1985, through July 31, 1985, shall be considered a calendar year and August 1, 1985, through June 30, 1986, shall be considered a fiscal year for the purpose of Sections 20, 21, 22, and 36 of this act."

Session Laws 1985, c. 589, s. 65 is a severability clause.

The word "or" has been bracketed preceding "Article 2 of General Statutes Chapter 122C" in subdivision (c)(3), since Session Laws 1985, c. 589, s. 43(b), effective Jan. 1, 1988, deleted "Article 1A of General Statutes Chapter 122" in that subdivision following "under" but did not delete "or" following the deleted language.

**Effect of Amendments.** — The 1985 amendment by c. 589, s. 43 (a), effective January 1, 1986, inserted "or Article 2 of General Statutes Chapter 122C" in subdivision (c)(3).

The 1985 amendment by c. 589, s. 43(b), effective January 1, 1988, deleted "Article 1A of General Statutes Chapter 122" following "licensed after July 1, 1984, under" in subdivision (c)(3).

The 1985 amendment, effective July 12, 1985, rewrote subsection (b).

## § 135-40.8. Out-of-pocket expenditures.

(a) For the balance of any fiscal year after each eligible employee, retired employee, or dependent satisfies the cash deductible, the Plan pays ninety percent (95%) of the eligible expenses outlined in G.S. 135-40.6. The covered individual is then responsible for the remaining ten percent (10%) until three hundred dollars (\$300.00), in excess of the deductible, has been paid out-of-pocket. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(b) Where a covered individual fails to obtain a second surgical opinion as required under the Plan, the covered individual shall be responsible for fifty percent (50%) of the eligible expenses, provided, however, that no covered individual shall be required to pay out-of-pocket in excess of one thousand dollars (\$1,000).

(c) Notwithstanding any other provision of this Article, on the first day of each confinement the Plan does not pay the first seventy-five dollars (\$75.00) of the room accommodation charge allowable under G.S. 135-40.6(1). Any readmission within 60 days after discharge for the same reason shall be considered the same confinement for the purpose of this subsection. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of out-of-pocket costs. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 16; 1985, c. 192, ss. 4, 8, 10, 18.)

**Editor's Note.** — Session Laws 1985, c. 192, s. 19, provides:

"In administering G.S. 135-40.6 and G.S. 135-40.8 for calendar year 1985, where those sections prior to the enactment of Sections 17 and 18 of this act provided for deductibles and maximum out-of-pocket expenses on a calendar year basis, the period January 1 through June 30 of 1985 shall be considered a calendar year."

**Effect of Amendments.** — The 1983 amendment, effective retroactive to Oct. 1, 1982, designated the first paragraph as subsection (a) and added subsection (b).

The 1985 amendment, effective July 1, 1985, substituted "fiscal year" for "calendar year" near the beginning of the first sentence of subsection (a), substituted "ninety percent (90%)" for "ninety-five percent (95%)" in the first sentence of subsection (a), substituted "ten percent (10%)" for "five percent (5%)" and "three hundred dollars (\$300.00)" for "one hundred dollars (\$100.00)" in the second sentence of subsection (a), substituted "fifty percent (50%)" for "twenty percent (20%)" in subsection (b), and added subsection (c).

## § 135-40.9. Maximum benefits.

The maximum lifetime benefit for each covered individual will be five hundred thousand dollars (\$500,000). (1981 (Reg. Sess., 1982), c. 1398, s. 6.)

**§ 135-40.10. Persons eligible for Medicare.**

(a) Benefits payable for covered expenses under this Plan in G.S. 135-40.5 through G.S. 135-40.9 will be reduced by any benefits payable for the same covered expenses under Medicare, so that Medicare will be the primary carrier.

(b) For those participants eligible for Medicare, the State's new Plan will be administered on a "carve out" basis. The provisions of the new Plan are applied to the charges not paid by Medicare (Parts A & B). In other words, those charges not paid by Medicare would be subject to the deductible and coinsurance of the new Plan just as if the charges not paid by Medicare were the total bill.

All charges for outpatient surgery, preadmission testing and accidents are covered at one hundred percent (100%) subject to the Plan's provisions. Of course all payments are subject to usual, customary, and reasonable charges.

(c) For those individuals eligible for Part A (at no cost to them), benefits under this program will be reduced by the amounts to which the covered individuals would be entitled to under Parts A and B of Medicare, even if they choose not to enroll for Part B. (1981 (Reg. Sess., 1982), c. 1398, s. 6.)

**§ 135-40.11. Cessation of coverage.**

(a) Coverage under this Plan of an employee and his or her dependents or of a retired employee and his or her dependents shall cease on the earliest of the following dates:

- (1) The day after the employee or retired employee dies. Any surviving dependents may then elect to continue the same coverage under the Plan by submitting written application within 30 days after the death of the employee or retired employee, to the Plan Administrator and by paying the cost for such coverage when due at the applicable fees. Such coverage shall cease on the last day of the month in which such surviving dependent dies.
- (2) The last day of the month in which an employee's employment with the State is terminated as provided in subsection (c) of this section.
- (3) The day a divorce becomes final.
- (4) The last day of the month in which an employee or retired employee requests cancellation of coverage.
- (5) The last day of the month in which a covered individual enters active military service.

(b) Coverage under this Plan as a dependent child shall cease as of the last day of the month in which such person marries, attains age 19 and is not a full-time student, ceases to be physically or mentally incapacitated after he or she was certified to be covered beyond age 19, or ceases to be a full-time student.

(c) Termination of employment shall mean termination for any reason, including layoff and leave of absence, except as provided in (a)(1) and (2) of this section, but shall not, for purposes of this Plan, include retirement upon which the employee is granted an immediate service or disability pension under and pursuant to the Teachers' and State Employees' Retirement System of North Carolina.

- (1) In the event of termination for any reason, coverage under this Plan for an employee and his or her dependents may be continued for a period of not more than twelve months, provided that the first three months shall be on a fully contributory basis, and the premium for the remaining nine months shall be fifty percent (50%) of the total

amount calculated by adding the fully contributory premium to the applicable premium for conversion coverage under G.S. 135-40.12 but in any case the premium for the remaining nine months shall not be less than the fully contributory premium. The employee must have been covered under this Part for at least three months in order to be eligible for this extension. The employee must pay in advance to the employer the total cost of the Plan for up to a three-month extension, and if the employee has elected such three-month extension and desires to elect up to three additional extensions of up to three months each as provided in this subdivision, the employee shall pay in advance to the employer the total cost of such extensions in advance of the beginning of each three-month period.

This provision will be preempted when the individual becomes eligible for any other employer-sponsored group coverage.

- (2) In the event of layoff, coverage under this Plan for an employee and his or her dependents may be continued for a period of not more than 12 months by the employee's paying one hundred percent (100%) of the cost.
- (3) In the event of approved leave of absence without pay, other than for active duty in the armed forces of the United States, coverage under this Plan for an employee and his or her dependents may be continued during the period of such leave of absence by the employee's paying one hundred percent (100%) of the cost.
- (4) If employment is terminated in the second half of a calendar month and the covered individual has made the required contribution for any coverage in the following month, that coverage will be continued to the end of the calendar month following the month in which employment was terminated.
- (5) Employees paid for less than 12 months in a year, who are terminated at the end of the work year and who have made contributions for the non-work months, will continue to be covered to the end of the period for which they have made contributions, with the understanding that if they are not employed by another State-covered employer under this Plan at the beginning of the next work year, the employee will refund to the ex-employer the amount of the employer's cost paid for them during the non-paycheck months.
- (6) Any employee receiving disability salary continuation under a program of benefits established under G.S. 135-34, or an employee on leave of absence without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by the employee's paying one hundred percent (100%) of the cost.

(d) No benefits will be paid by this Plan for any expenses incurred or treatment received after cessation of coverage as provided in subsections (a) or (b) of this section, except that in the event of hospital confinement at that time, hospitalization benefits as described in G.S. 135-40.6 will continue to the extent provided therein. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 17, 19-21; 1985, c. 732, ss. 13, 34.)

**Effect of Amendments.** — Session Laws 1983, c. 922, s. 17, effective retroactive to Oct. 1, 1982, substituted "approved" for "approval" in subdivision (c)(3).

Session Laws 1983, c. 922, ss. 19-21, effective July 22, 1983, substituted the language beginning "six months" for "three months" at the end of the first sentence of the first paragraph

of subdivision (c)(1), rewrote the third sentence of the first paragraph of subdivision (c)(1), which read "Also, the employee must pay in advance to the employer the total cost of the Plan for the length of the extension," and inserted "employer-sponsored" in the second paragraph of subdivision (c)(1).

The 1985 amendment by c. 732, s. 13, effective July 1, 1985, substituted "twelve months" for "six months" and substituted "remaining nine months" for "second three months" in two places in the first sentence of the first para-

graph of subdivision (c)(1) and substituted "up to three additional extensions of up to three months each" for "a second extension of up to three months," substituted "such extensions" for "such second extension," and substituted "each three-month period" for "the second three-month period" in the third sentence of the first paragraph of subdivision (c)(1).

The 1985 amendment by c. 732, s. 34, effective July 12, 1985, added subdivision (c)(6).

## § 135-40.12. Conversion.

(a) Upon a cessation of group coverage under the Plan and/or eligibility for group coverage under the Plan, an employee or dependent shall be entitled to a conversion to nongroup coverage without the necessity of a physical examination. Such conversion coverage shall include hospitalization, surgical, and medical benefits as contained in the major medical and alternative plan conversion provisions of Article 26C of Chapter 58 of the General Statutes. The Executive Administrator and Board of Trustees in their sole discretion shall approve the conversion coverage, which shall be administered by the Plan Administrator through an insurance contract arranged by the Plan Administrator, or administered as otherwise directed by the Executive Administrator and Board of Trustees. An eligible employee or dependent must apply for conversion coverage within 30 days after termination of group eligibility.

(b) The Executive Administrator and Board of Trustees shall provide for the continuation of conversion privilege exercised under the predecessor plan, on a fully contributory basis. The Executive Administrator and Board of Trustees shall consult with the Committee on Employee Hospital and Medical Benefits before taking action under this subsection. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 21.6; 1985, c. 732, ss. 30, 56.)

**Editor's Note.** — Session Laws 1983, c. 922, s. 22, provides in part that s. 21.6, which rewrote subsection (a), is effective Oct. 1, 1983, but that any otherwise qualified person covered under the Plan at any time from Oct. 1, 1982 through Sept. 30, 1983 may obtain coverage under that section beginning Oct. 1, 1983.

Session Laws 1983, c. 922, s. 21.12, provides: "In order to provide a Reserve for Conversion pursuant to G.S. 135-40.12, every current employee enrolled in the Plan shall have deducted from his monthly salary the amount of twenty-five cents (25¢) to be paid to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan. Every employing agency of the enrolled employee shall also pay to the Board of Trustees a like monthly amount to be used to provide a Re-

serve for Conversion. Once an employee or dependent converts to nongroup coverage in accordance with G.S. 135-40.12, premiums shall be on a fully contributory basis."

Session Laws 1983, c. 922, s. 22, makes s. 21.12 of the act effective Oct. 1, 1983.

**Effect of Amendments.** — The 1983 amendment, effective Oct. 1, 1983, rewrote subsection (a).

The 1985 amendment, effective July 12, 1985, inserted "and/or eligibility for group coverage under the Plan" in the first sentence of subsection (a), substituted "their sole discretion" for "its sole discretion" in the third sentence of subsection (a) and inserted "Executive Administrator and" preceding "Board of Trustees" throughout the section.

## § 135-40.13. Coordination of benefits.

(a) **Benefits Subject to This Provision.** — All of the benefits provided under this Comprehensive Major Medical Plan.

(b) **Definitions.** —

- (1) "Plan" means any Plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by (i) group, blanket or franchise insured or uninsured coverage, (ii) hospital services prepayment Plan on a group basis, medical service prepayment Plan on a group basis, group practice, or other prepayment coverage on a group basis, (iii) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and (iv) any coverage under governmental programs except Medicare, or any coverage required or provided by any statute, which coverage is not otherwise excluded from the calculation of benefits under this Plan, but the term "Plan" shall not include any individual policies.

The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits and that portion which does not.

- (2) "Covered services" means any necessary, reasonable and customary item of expense at least a portion of which is covered under at least one of the plans covering the person for whom claim is made. To the extent legally possible, it shall be synonymous with allowable expenses. When a Plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid.
- (3) "Claim determination period" means any period of time during which a person covered by this Plan is eligible to receive benefits.

(c) Effect on Benefits. —

- (1) This provision shall apply in determining the benefits as to a person covered under this Plan for any claim determination period if, for the covered services incurred as to such a person during such claim determination period, the sum of:

- a. The benefits that would be payable under this Plan in the absence of this provision, and
- b. The benefits that would be payable under all other plans in the absence therein of provisions of similar purpose of this provision would exceed the usual and customary charges for such covered services.

- (2) As to any claim determination period with respect to which this provision is applicable, the benefits that would be payable under this Plan in the absence of this provision for the covered services incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefit and all the benefits payable for such covered services under all other plans, except as provided in Item (3) immediately below, shall not exceed the total of such covered services. Benefits payable under another Plan include the benefits that would have been payable had claim been duly made therefor. In the case of another Plan which does not contain a provision coordinating its benefits, the benefits of such other Plan shall be determined before the benefits of this Plan. A Plan without a coordination of benefits provision shall be deemed to be the primary carrier within the meaning of this Plan.

- (3) If:
- a. Another Plan which is involved in Item (2) immediately above and which contains provisions coordinating its benefits with those of

this Plan would, according to its rules, determine its benefits after the benefits of this Plan have been determined, and

- b. The rules set forth in Item (4) immediately below would require this Plan to determine its benefits before such other Plan, then the benefits of such other plan will be ignored for the purposes of determining the benefits under this Plan.

(4) For the purposes of Item (3) immediately above, the rules establishing the order of benefit determination are:

- a. The benefits of a Plan which covers the person on whose covered services claim is based other than as a dependent shall be determined before the benefits of a Plan which covers such person as a dependent;
- b. The benefits of a Plan which covers the person on whose covered services claim is based as a dependent of a male person shall be determined before the benefits of a Plan which covers such person as a dependent of a female person;
- c. When rules [rules] a and b immediately above do not establish an order of benefit determination, the benefits of a Plan which has covered the person on whose covered services claim is based for the longer period of time shall be determined before the benefits of a Plan which had covered such person for the shorter period of time.

(5) When this provision operates to reduce the total amount of benefits otherwise payable as to a person covered under this Plan during any claim determination period, each benefit that would be payable in the absence of this provision shall be reduced proportionately, and such reduced amount shall be charged against any applicable benefit limit of this Plan.

(d) Medicare Participants' Eligibility. — In the case of employees eligible under the Plan who are also eligible for Medicare benefits, benefits under the Plan will be paid in coordination with Medicare benefits in a manner consistent with federal law.

(e) Right to Receive and Release Necessary Information. — For the purpose of determining the applicability of and implementing the terms of this provision of this Plan or any provision of similar purpose of any other Plan, the Plan Administrator may, without the consent of or notice to any person, release to or obtain from any insurance company or other organization or person any information, with respect to any person, which the Plan Administrator deems to be necessary for such purposes. Any person claiming benefits under this Plan shall furnish to the Plan Administrator such information as may be necessary to implement the provision.

(f) Facility of Payment. — Whenever payments which should have been made under this Plan, in accordance with this provision, have been made under any other plans, the Plan Administrator shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of this provision, and amounts to be paid shall be deemed to be benefits paid under this Plan, and, to the extent of such payments, the Plan Administrator shall be fully discharged from liability under the Plan.

(g) Right of Recovery. — Whenever payments have been made by the Plan Administrator with respect to covered services in a total amount which is, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this provision, irrespective of to whom paid, the Plan Administrator shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the Plan Administrator shall determine: any persons to or for or with respect to whom

such payments were made, any insurance companies, or any other organizations. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 18.)

**Effect of Amendments.** — The 1983 amendment, effective retroactive to Oct. 1, 1982, rewrote subsection (d), which read "Medicare Participants' Eligibility. — For participants eligible for Medicare, Medicare benefits will be paid in coordination with benefits hereunder so that Medicare benefits will be primary."

**§ 135-40.14. Right to amend.**

The General Assembly reserves the right to alter, amend, or repeal Parts 2 and 3 of this Article. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 62.)

**Effect of Amendments.** — The 1985 amendment, effective July 12, 1985, substituted "Parts 2 and 3 of this Article" for "this Part."

**§§ 135-41 to 135-49:** Reserved for future codification purposes.

**ARTICLE 4.**

*Uniform Judicial Retirement Act of 1973.*

**§ 135-50. Short title and purpose.**

(a) This Article shall be known and may be cited as the "Consolidated Judicial Retirement Act."

(b) The purpose of this Article is to improve the administration of justice by attracting and retaining the most highly qualified talent available within the State to the positions of justice and judge, district attorney and solicitor, and clerk of superior court, within the General Court of Justice. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 2, 3.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1031, ss. 24 and 25, provide:

"Sec. 24. Article 4A and 4B of Chapter 135 of the General Statutes are repealed and the assets and liabilities of the former Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems shall be transferred to the Consolidated Judicial Retirement System in the amounts calculated and in order of precedence as follows: (1) the accumulated contributions of members of the former Systems shall be transferred from the annuity savings funds of the former Systems to the annuity savings fund of the Consolidated Judicial Retirement System to the credit of each individual member; and, (2) all reserves held in the pension accumulation funds of the former Systems shall be transferred to the pension accu-

mulation fund of the Consolidated Judicial Retirement System.

"Sec. 25. Any and all accrued or inchoate rights of members and beneficiaries of the former Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems shall, from and after the effective date of this act, be transferred to the Consolidated Judicial Retirement System and all benefits and allowances shall be payable by the Consolidated Judicial Retirement System."

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted "Consolidated Judicial Retirement Act" for "Uniform Judicial Retirement Act of 1973" in subsection (a) and rewrote subsection (b). The act also changed the title of this Article.

### § 135-51. Scope.

(a) This Article provides consolidated retirement benefits for all justices and judges, district attorneys, and solicitors who are serving on January 1, 1974, and who become such thereafter; and for all clerks of superior court who are so serving on January 1, 1975, and who become such thereafter.

(b) For justices and judges of the appellate and superior court divisions of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Articles 6 and 8, as the case may be, of Chapter 7A of the General Statutes.

For district attorneys and judges of the district court of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

For clerks of superior court of the General Court of Justice who so served prior to January 1, 1975, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

(c) The retirement benefits of any person who becomes a justice or judge, district attorney, or solicitor on and after January 1, 1974, or clerk of superior court on and after January 1, 1975, shall be determined solely in accordance with the provisions of this Article. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 4.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, rewrote this section.

### § 135-53. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (4a) "Clerk of superior court" shall mean the clerk of superior court provided for in G.S. 7A-100(a).
- (5) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for his service as a justice or judge, or district attorney, or clerk of superior court.
- (6a) "District attorney" shall mean the district attorney or solicitor provided for in G.S. 7A-60.
- (12) "Membership service" shall mean service as a judge, district attorney, or clerk of superior court rendered while a member of the Retirement System.
- (13) "Previous system" shall mean, with respect to any member, the retirement benefit provisions of Article 6 and Article 8 of Chapter 7A of the General Statutes, to the extent that such Article or Articles were formerly applicable to the member, and in the case of judges of the district court division, and district attorney, and clerk of superior court of the General Court of Justice, the Teachers' and State Employees' Retirement System.
- (18) "Retirement System" shall mean the "Consolidated Judicial Retirement System" of North Carolina, as established in this Article. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 5-10.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, added subdivision (4a), inserted "or district attorney, or clerk of superior court" in

subdivision (5), added subdivision (6a), rewrote subdivision (12), inserted "and district attorney, and clerk of superior court" in subdivision (13), and substituted "Consolidated Judicial Retirement System" for "Uniform Judicial Retirement System" in subdivision (18).

## § 135-54. Name and date of establishment.

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for justices and judges, district attorneys, and clerks of superior court of the General Court of Justice of North Carolina, and their survivors. The Retirement System so created shall be established as of January 1, 1974.

The Retirement System shall have the power and privileges of a corporation and shall be known as the "Consolidated Judicial Retirement System of North Carolina," and by such name all of its business shall be transacted. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 11.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, inserted "district attorneys, and clerks of

superior court" in the first paragraph and substituted "Consolidated" for "Uniform" in the second paragraph.

## § 135-55. Membership.

(a) The membership of the Retirement System shall consist of:

- (1) All judges and district attorneys in office on January 1, 1974;
- (2) All persons who become judges and district attorneys or reenter service as judges and district attorneys after January 1, 1974;
- (3) All clerks of superior court in office on January 1, 1975; and
- (4) All persons who become clerks of superior court or reenter service as clerks of superior court after January 1, 1975.

(b) The membership of any person in the Retirement System shall cease upon:

- (1) The withdrawal of his accumulated contributions after he is no longer a judge, district attorney or clerk of superior court, or
- (2) His retirement under the provisions of the Retirement System, or
- (3) His death. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, ss. 12, 13.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, inserted "and district attorneys" in subdivisions (a)(1) and (a)(2), deleted "and" at the end of subdivision (a)(1), substituted a

semicolon for a period at the end of subdivision (a)(2), inserted subdivisions (a)(3) and (a)(4), and inserted "district attorney or clerk of superior court" in subdivision (b)(1).

## § 135-56. Creditable service.

(a) Subject to such rules and regulations as the Board of Trustees shall adopt with regard to the verification of a judge's prior service, the prior service of a judge shall consist of his service rendered prior to January 1, 1974, as a justice of the Supreme Court, judge of the Court of Appeals, judge of the superior court, judge of the district court division of the General Court of Justice, as administrative officer of the courts, or as a solicitor or district attorney.

(c) On and after January 1, 1984, the creditable service of a member who was a member of the former Uniform Solicitorial or Uniform Clerks of Superior Court Retirement Systems at the time of merger of those Systems into this Consolidated Judicial Retirement System and whose accumulated contributions are transferred from those Systems to this System, includes service that was creditable in the Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems; and membership service with those Retirement Systems is membership service with this Retirement System.

(d) Any member may purchase creditable service for service as a judge, district attorney, or clerk of superior court, when not otherwise provided for in this section, and as a judge of any lawfully constituted court of this State inferior to the superior court, not to include service as a magistrate, justice of the peace or mayor's court judge. The member, after the transfer of any accumulated contributions from the Teachers' and State Employees' Retirement System or Local Governmental Employees' Retirement System, shall pay an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire with an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary.

(e) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. (1973, c. 640, s. 1; 1977, c. 936; 1983 (Reg. Sess., 1984), c. 1031, ss. 14, 15; 1985, c. 649, s. 1.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective January 1,

1985, substituted "judge's" for "member's" and "judge" for "member" in subsection (a) and added subsections (c) and (d).

The 1985 amendment, effective July 8, 1985, added subsection (e).

**§ 135-56.1:** Repealed by Session Laws 1983 (Regular Session 1984), c. 1031, s. 16, effective January 1, 1985.

**§ 135-56.2. Creditable service for other employment.**

Any member may purchase creditable service for service as a State teacher or employee, as defined under G.S. 135-1(10) and (25), and for service as an employee of local government, as defined under G.S. 128-21(10). A member, upon the completion of 10 years of membership service, may also purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular fed-

eral retirement system to which the member may have belonged while a federal employee. The member, after the transfer of any accumulated contributions from the Teachers' and State Employees' Retirement System or Local Governmental Employees' Retirement System, shall pay an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee as set by the Board of Trustees. As an alternative to transferring any accumulated contributions from the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System to the Consolidated Judicial Retirement System, a member may irrevocably elect to transfer these contributions to the Supplemental Retirement Income Plan of North Carolina as determined by the Plan's Board of Trustees and the Department of State Treasurer in accordance with the provisions of G.S. 135-94(a)(4). (1983 (Reg. Sess., 1984), c. 1041; 1985, c. 348, s. 1; c. 749, s. 2.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1041, s. 2, makes this section effective July 1, 1984.

**Effect of Amendments.** — The 1985 amendment by c. 348, s. 1, effective July 1, 1985, added the last sentence.

The 1985 amendment by c. 749, s. 2, effective July 15, 1985, added the present second sentence.

## § 135-57. Service retirement.

(a) Any member on or after January 1, 1974, who has attained his fiftieth birthday and five years of membership service may retire upon written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(d) Any member who was in service October 8, 1981, who had attained 50 years of age, may retire upon written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. (1973, c. 640, s. 1; 1981, c. 378, s. 6; 1983, c. 761, s. 230.)

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

**Editor's Note.** — Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1981 amendment deleted "in service" following

"Any member" and inserted "and five years of membership service" near the beginning of subsection (a), and substituted "execution and filing" for "execution of and the filing" near the end of subsection (a).

The 1983 amendment, effective July 1, 1983, added subsection (d).

## § 135-58. Service retirement benefits.

(a) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 after he either has attained his sixty-fifth birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each

month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2) and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three fourths of his final compensation:

- (1) Four percent (4%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and one-half percent (3½%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;
- (3) Three percent (3%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court.

(b) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 before he either has attained his sixty-fifth birthday or has completed 24 years of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be determined in the same manner and be subject to the same maximum limitation as provided for in subsection (a) above except that the allowance so computed shall be reduced by one quarter of one percent ( $\frac{1}{4}$  of 1%) thereof for each month by which the member's retirement date precedes the first day of the month coincident with or next following the earlier of

- (1) The member's sixty-fifth birthday or
- (2) The date the member would have completed 24 years of creditable service if he had been in membership service from his retirement date until such date.

For the sole purpose of determining whether a member has completed the required 24 years of creditable service referred to in this subsection (b) or the date on which he would have completed such period of creditable service if he had remained in membership service, in the case of a member of the Teachers' and State Employees' Retirement System who became a member of this Retirement System under circumstances described in G.S. 135-28.1, and who at the time of his retirement hereunder is in service and has retained his membership in the Teachers' and State Employees' Retirement System as provided for in G.S. 135-28.1, his creditable service shall be taken as the sum of his creditable service hereunder plus the amount of creditable service remaining to his credit in such other system as provided for in G.S. 135-28.1.

(c) The foregoing subsections of this section to the contrary notwithstanding, in no event will the retirement allowance payable at any time to a retired member who was a member of a previous system immediately prior to January 1, 1974, prior to any reduction of such allowance in accordance with G.S. 135-61, be less than the retirement allowance to which he would have been entitled under the terms of such previous system if this Article had not been enacted.

(e) Notwithstanding any other provision to the contrary, in no event will the retirement allowance payable at any time to a retired member who was a member of a previous system immediately prior to January 1, 1974, prior to any reduction of such allowance in accordance with G.S. 135-61, be greater than the retirement allowance to which he would have been entitled under

the terms of such previous system if this Article had not been enacted or than the retirement allowance to which he would have been entitled under this Article if he had not been entitled to benefits under the terms of such previous system, whichever is larger. (1973, c. 640, s. 1; 1977, c. 1120, s. 2; 1983 (Reg. Sess., 1984), c. 1031, ss. 17, 18; c. 1109, ss. 13.14, 13.15; 1985, c. 649, s. 7.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment by c. 1031, effective January 1, 1985, rewrote subdivision (a)(3), which read "In addition to time served as a district court judge of the General Court of Justice, creditable service shall also include prior creditable service as provided in G.S. 135-56," and substituted "in membership service" for "in service as a judge" in subdivision (b)(2) and in the last sentence of subsection (b).

The 1983 (Reg. Sess., 1984) amendment by c. 1109, effective July 1, 1984, substituted "payable at any time to a retired member" for "initially payable upon the retirement of any member" in subsection (c) and added subsection (e).

The 1985 amendment, effective July 8, 1985, inserted "the Legislative Retirement System" near the end of the introductory language of subsection (a).

### CASE NOTES

**Differential in percentages used to calculate retirement benefits does not violate the equal protection clause** of U.S. Const., Amend. 14. The objectives sought by the legislature to be obtained from the present retire-

ment system are valid, and the method chosen is reasonably calculated to achieve that end. *Gentry v. Uniform Judicial Retirement Sys.*, 378 F. Supp. 1 (M.D.N.C. 1974).

### § 135-59. Disability retirement.

(a) Upon application by or on behalf of the member, any member in service who has completed five or more years of creditable service and who has not attained his sixty-fifth birthday may be retired by the Board of Trustees, on the first day of any calendar month, not less than 30 and not more than 90 days next following the date of filing such application, on a disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; and, provided further, that if a member is removed by the Supreme Court for mental or physical incapacity under the provisions of G.S. 7A-376, no action is required by the medical board under this section and, provided further, the medical board shall determine if the member is able to engage in gainful employment and, if so, the member shall still be retired and the disability retirement allowance as a result thereof shall be reduced as in G.S. 135-60(d). Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the Retirement System to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of this retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

(b) Notwithstanding the foregoing, the surviving spouse of a deceased member who has met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was due and payable, and who was the designated beneficiary for a return of accumulated contributions and the final compensation death benefit as provided in G.S. 135-63, shall be paid in lieu of the return of accumulated contributions and the final compensation death benefit a monthly allowance equal to a reduced retirement allowance provided by a fifty percent (50%) joint and survivorship option, plus the allowance payable to a former member's surviving spouse, in the manner prescribed under G.S. 135-64 as though the former member had commenced retirement the first day of the month following his death. (1973, c. 640, s. 1; 1981, c. 689, s. 3; c. 940, s. 2; 1985, c. 479, ss. 192(b), 194.)

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

Session Laws 1985, c. 479, s. 192(c) provides: "The provisions of subsections (a) and (b) of this section shall apply equally to the surviving designated beneficiaries of members of the retirement systems who died within five years prior to the ratification of this act so long as such a surviving designated beneficiary returns to the appropriate retirement system any lump-sum benefits paid to the surviving designated beneficiary which are a precondition to the receipt of the monthly allowance. Any benefits due and payable under this section shall be prospective on and after ratification."

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

**Effect of Amendments.** — The first 1981 amendment, effective July 1, 1981, added the last proviso in the first sentence.

The second 1981 amendment added the second sentence, containing subdivisions (1) and (2), and added the second paragraph.

The 1985 amendment by c. 479, s. 192(b), effective July 1, 1985, designated the existing language as subsection (a) and added subsection (b).

The 1985 amendment by c. 479, s. 194, effective retroactive to July 1, 1984, added the last paragraph of subsection (a).

## § 135-60. Disability retirement benefits.

(a) Upon retirement for disability in accordance with G.S. 135-59, a member shall receive a disability retirement allowance computed and payable as provided for service retirement in G.S. 135-58(a) except that the member's creditable service shall be taken as the creditable service he would have had had he continued in service to the earliest date he could have retired on an unreduced service retirement allowance as a member in the same division of the General Court of Justice in which he was serving on his disability retirement date.

(d) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received

on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable. (1973, c. 640, s. 1; 1981, c. 975, s. 4; c. 980, s. 5; 1983 (Reg. Sess., 1984), c. 1031, s. 19.)

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

**Effect of Amendments.** — The first 1981 amendment added subsection (d).

The second 1981 amendment, effective July 1, 1982, substituted, in subsection (a), "had had he continued in service to the earliest date he could have retired on an unreduced service re-

tirement allowance" for "completed at his sixty-fifth birthday if he had continued in service to such birthday."

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted "member" for "judge" following "unreduced service retirement allowance as a" near the end of subsection (a).

## § 135-62. Return of accumulated contributions.

(a) Should a member cease membership service otherwise than by death or retirement under the provisions of this Article, he shall, upon submission of an application, be paid, not earlier than 60 days from the date of termination of service, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service as a judge. Upon payment of such accumulated contributions his membership in the Retirement System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered, except as otherwise provided in G.S. 135-56(b). Any such payment of a member's accumulated contributions shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article.

(b) Any other provision of this Article to the contrary notwithstanding, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this Article, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases membership service, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; and provided further, that such agency or subdivision shall have notified the director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and trans-

mitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions. (1973, c. 640, s. 1; 1981, c. 672, s. 4; 1983, c. 467; 1983 (Reg. Sess., 1984), c. 1031, s. 20.)

**Effect of Amendments.** — The 1981 amendment, in the first sentence of subsection (a), substituted "his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon" for "the amount of his accumulated contributions." Session Laws 1981, c. 672, s. 5, makes the 1981 amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

The 1983 amendment, effective June 8, 1983, substituted "not earlier than 60 days from the date of termination of service" for "not earlier than 60 days from receipt in the Raleigh offices of the Board of Trustees of an acceptable application on a form provided by the Retirement System" in the first sentence of subsection (a).

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted "membership service" for "to be a judge" in subsections (a) and (b).

### § 135-63. Benefits on death before retirement.

(a) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member in service, there shall be paid in a lump sum to such person as the member shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the sum of (i) the member's accumulated contributions, plus (ii) the member's final compensation; provided, however, that if the member has attained his fiftieth birthday with at least five years of membership service at his date of death, and if the designated recipient of the death benefits is the member's spouse who survives him, and if the spouse so elects, then the lump-sum death benefit provided for herein shall consist only of a payment equal to the member's final compensation and there shall be paid to the surviving spouse an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month coinciding with or next following the death of the member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be equal to one half of the amount of the retirement allowance to which the member would have been entitled had he retired under the provisions of G.S. 135-57(a) on the first day of the calendar month coinciding with or next following his date of death, reduced by two percent (2%) thereof for each full year, if any, by which the age of the member at his date of death exceeds that of his spouse. If the retirement allowance to the spouse shall terminate on the remarriage or death of the spouse before the total of the retirement allowance payments made equals the amount of the member's accumulated contributions at date of death, the excess of such accumulated contributions over the total of the retirement allowances paid to the spouse shall be paid in a lump sum to such person as the member shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives.

(d) Notwithstanding the provisions of G.S. 7A-376, there shall be paid to the surviving spouse of any former judge whose death occurred prior to July 1, 1983, who had not withdrawn his contributions pursuant to G.S. 135-62, an annual retirement allowance which shall commence on July 1, 1983, and shall be continued on the first day of each month thereafter until the death or remarriage of the spouse. If the spouse dies or remarries before the total of the retirement allowance paid equals the amount of the former judge's accumu-

lated contributions, the excess of the accumulated contributions over the total of the retirement allowance paid to the spouse shall be paid in a lump sum to the person the spouse has nominated by written designation duly acknowledged and filed with the Board of Trustees, if the person is living at the time the payment falls due, otherwise to the spouse's legal representative. The amount of any such retirement allowance shall be computed in accordance with the provisions of subsection (a) above. This subsection does not authorize allowances to surviving spouses of former judges convicted of crimes related to the performance of their judicial duties. (1973, c. 640, s. 1; c. 1385; 1983, c. 761, ss. 231, 234.)

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

**Editor's Note.** — Session Laws 1983, c. 761, s. 233, provides that s. 231 of the act, which amended subsection (a) of this section, shall not diminish any inchoate or accrued rights of any member in service on the date of ratification of the act. The act was ratified July 15, 1983.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, inserted "with at least five years of membership service" following "his fiftieth birthday" in the first sentence of subsection (a) and added subsection (d).

## § 135-65. Post-retirement increases in allowances.

(d) Increases in Benefits Paid to Members Retired Prior to July 1, 1982. — From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by four percent (4%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (a) of this section.

(e) Increase in Benefits Paid to Members Retired on or before July 1, 1983. — From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by eight percent (8%) of the allowance payable on July 1, 1983.

(f) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984. Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985. (1973, c. 640, s. 1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b).)

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

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

Session Laws 1983, c. 761, s. 259; 1983 (Reg. Sess., 1984), c. 1034, s. 256; and 1985, c. 479, s. 230 are severability clauses.

**Effect of Amendments.** —

The 1983 amendment, effective July 1, 1983, added subsection (d).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added subsection (e).

The 1985 amendment, effective July 1, 1985, added subsection (f).

## § 135-68. Contributions by the members.

(a) Each member shall contribute by payroll deduction for each pay period for which he receives compensation six percent (6%) of his compensation for such period.

(b) Anything within this Article to the contrary notwithstanding, the State, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the members under subsection (a) of this section with respect to the services of such members rendered after the effective date of this subsection.

The members' contributions picked up by the State shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by the State shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State. This deduction, however, shall not reduce a member's compensation as defined in subdivision (5) of G.S. 135-53. Picked up contributions shall be transmitted to the Retirement System monthly for the preceding month by means of a warrant drawn by the State payable to the Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. (1973, c. 640, s. 1; 1983, c. 469, s. 1.)

**Editor's Note.** — Session Laws 1983, c. 469, s. 2, provides: "This act shall become effective as to each of the Uniform Judicial, Solicitorial and Clerks of Superior Court Retirement Systems on the first day of any calendar month within 60 days after the filing with the Secretary of State of North Carolina of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, that such System is a trust qualified under Section 401(a) of the Internal Revenue Code of 1954 as amended, but only if such determination letter or ruling is filed by June 30, 1985."

A favorable Internal Revenue Service determination for the Uniform Judicial and Clerks of Superior Court Retirement Systems was filed on July 29, 1983, and made effective on August 1, 1983. A favorable Internal Revenue Service determination for the Solicitorial Retirement System was filed on August 2, 1983, and made effective on September 1, 1983.

**Effect of Amendments.** — The 1983 amendment designated the first sentence of this section as subsection (a) and added subsection (b). As to the effective date of the amendment, see the Editor's note above.

## § 135-70. Transfer of members to another system.

(a) Any member whose membership service is terminated other than by retirement or death and, who, while still a member of this Retirement System becomes a member of either the Teachers' and State Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System, may elect to retain his membership in this Retirement System by not withdrawing his accumulated contributions hereunder. Any such member shall retain all the rights, credits and benefits obtaining to him under this Retirement System at the time of such termination of service while he is a member of such other system and does not withdraw his contributions hereunder.

(1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 21.)

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

Sess., 1984) amendment, effective January 1, 1985, substituted "whose membership service" for "whose service as a judge" near the beginning of subsection (a).

**Effect of Amendments.** — The 1983 (Reg.

**§ 135-71. Return to membership of retired former member.**

(a) In the event that a retired former member should at any time return to membership service, his retirement allowance shall thereupon cease and he shall be restored as a member of the Retirement System.

(b) In the computation of the amount of any benefits to which he may subsequently become entitled under any of the provisions of this Article, his creditable service shall be taken as the sum of the creditable service rendered by him prior to the date of his previous retirement plus the period of membership service rendered by him subsequent to his restoration to membership, except as otherwise provided in G.S. 135-60(c).

(c) Notwithstanding any other provision in this Chapter, the retirement allowance of a justice or judge shall not be affected by the compensation received as an emergency justice or judge. (1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 22; c. 1106, s. 3.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment by c. 1031, effective January 1, 1985, substituted "return to membership service" for "return to service as a justice or judge" near the beginning of subsection (a).

The 1983 (Reg. Sess., 1984) amendment by c. 1106, effective September 1, 1985, and not applicable to agreements entered into before the effective date of the act, added subsection (c).

**§ 135-72. Benefits of members appointed to serve in United States courts.**

(a) Members who are appointed to serve as a judicial officer in the United States courts shall not be eligible for benefits under this Article while actively serving as a judicial officer in the United States courts.

(b) Should a retired former member be appointed to serve as a judicial officer in the United States courts or be in receipt of a retirement allowance from service as a judicial officer in the United States courts, his retirement allowance provided under the provisions of this Article shall be reduced so that the sum of his retirement allowance and the salary or retirement allowance from service as a judicial officer in the United States courts does not exceed the salary for the office last held by the retired member in the General Court of Justice of North Carolina. Provided, however, that under no circumstances will the retired member's retirement allowance be reduced below the amount of his annuity resulting from his accumulated contributions. (1981, c. 978, s. 7; 1983 (Reg. Sess., 1984), c. 1031, s. 23.)

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted "as a judicial officer" for "as

a justice, judge or magistrate" throughout this section.

**OPINIONS OF ATTORNEY GENERAL**

**Applicability.** — This section is inapplicable to judges retired from the Uniform Judicial Retirement System and serving as judges in the United States Courts prior to October 9,

1981. See opinion of Attorney General to Mr. E.T. Barnes, Director, Retirement and Health Benefits Division, 51 N.C.A.G. 57 (1981).

§§ 135-73 to 135-76: Reserved for future codification purposes.

## ARTICLE 4A.

### *Uniform Solicitorial Retirement Act of 1974.*

§§ 135-77 to 135-83: Repealed by Session Laws 1983 (Regular Session 1984), c. 1031, s. 24, effective January 1, 1985.

**Cross References.** — For the Consolidated Judicial Retirement Act, see now § 135-50 et seq.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1031, ss. 24 and 25, provide:

"Sec. 24. Article 4A and 4B of Chapter 135 of the General Statutes are repealed and the assets and liabilities of the former Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems shall be transferred to the Consolidated Judicial Retirement System in the amounts calculated and in order of precedence as follows: (1) the accumulated contributions of members of the former Systems shall be transferred from the annuity savings funds of the former Systems to the annuity

savings fund of the Consolidated Judicial Retirement System to the credit of each individual member; and, (2) all reserves held in the pension accumulation funds of the former Systems shall be transferred to the pension accumulation fund of the Consolidated Judicial Retirement System.

"Sec. 25. Any and all accrued or inchoate rights of members and beneficiaries of the former Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems shall, from and after the effective date of this act, be transferred to the Consolidated Judicial Retirement System and all benefits and allowances shall be payable by the Consolidated Judicial Retirement System."

## ARTICLE 4B.

### *Uniform Clerks of Superior Court Retirement Act of 1975.*

§§ 135-84 to 135-86: Repealed by Session Laws 1983 (Regular Session 1984), c. 1031, s. 24, effective January 1, 1985.

**Cross Reference.** — For the Consolidated Judicial Retirement Act, see now § 135-50 et seq.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1031, ss. 24 and 25, provide:

"Sec. 24. Article 4A and 4B of Chapter 135 of the General Statutes are repealed and the assets and liabilities of the former Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems shall be transferred to the Consolidated Judicial Retirement System in the amounts calculated and in order of precedence as follows: (1) the accumulated contributions of members of the former Systems shall be transferred from the annuity savings funds of the former Systems to the annuity

savings fund of the Consolidated Judicial Retirement System to the credit of each individual member; and, (2) all reserves held in the pension accumulation funds of the former Systems shall be transferred to the pension accumulation fund of the Consolidated Judicial Retirement System.

"Sec. 25. Any and all accrued or inchoate rights of members and beneficiaries of the former Uniform Solicitorial and Uniform Clerks of Superior Court Retirement Systems shall, from and after the effective date of this act, be transferred to the Consolidated Judicial Retirement System and all benefits and allowances shall be payable by the Consolidated Judicial Retirement System."

## ARTICLE 5.

*Supplemental Retirement Income Act of 1984.***§ 135-90. Short title and purpose.**

(a) This Article shall be known and may be cited as the "Supplemental Retirement Income Act of 1984".

(b) The purpose of the Article is to attract and hold qualified employees and officials of the State of North Carolina and its political subdivisions by permitting them to participate in a profit sharing or salary reduction form of deferred compensation which will provide supplemental retirement income payments upon retirement, disability, termination, hardship, and death as allowed under Section 401(k), or any other relevant section, of the Internal Revenue Code of 1954 as amended. As used in this Article, the term "profit" means the excess revenue over expenditures prior to the expenditure of the amount which may be optionally made available for employees to be placed in trust by the State and its political subdivisions on behalf of the employees and officials covered by this Article. (1983 (Reg. Sess., 1984), c. 975.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 975, s. 2, makes this Article effective upon ratification. The act was ratified June 26, 1984.

Session Laws 1985, c. 379, s. 196(u) provides:  
 "Transfers of Assets of the Law Enforcement Officers' Retirement System to Other Retirement Systems. As of January 1, 1986, assets of the Law Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Employees' Retirement System provided for under Article 3 of Chapter 128 of the General Statutes, and the Supplemental Retirement Income Plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

"(1) The regular accumulated contributions of members of the Law Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.

"(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law Enforcement Officers' Retirement System, as

calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.

"(3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the Local Governmental Employees' Retirement System with the amount of such assets to be taken into account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d)(9).

"(4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.

"(5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1)."

## § 135-91. Administration.

(a) The provisions of this Article shall be administered by the Department of State Treasurer and a Board of Trustees consisting of the Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System. The Department of State Treasurer and the Board of Trustees shall create a Supplemental Retirement Income Plan as of January 1, 1985, to be administered under the provisions of this Article.

(b) The Supplemental Retirement Income Plan shall have the power and privileges of a corporation and shall be known as the "Supplemental Retirement Income Plan of North Carolina" and by this name all of its business shall be transacted.

(c) The Department of State Treasurer and the Board of Trustees shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Article. The Department of State Treasurer and Board of Trustees may appoint those agents, contractors, employees and committees as they deem advisable to carry out the terms and conditions of the Plan.

(d) The Department of State Treasurer and the Board of Trustees shall be charged with a fiduciary responsibility for managing all aspects of the Plan, including the receipt, maintenance, investment, and disposition of all Plan assets.

(e) The administrative costs of the Plan may be charged to members or deducted from members' accounts in accordance with nondiscriminatory procedures established by the Department of State Treasurer and Board of Trustees.

(f) Each institution of The University of North Carolina shall report the data and other information to the Supplemental Retirement Income Plan pertaining to participants in the Optional Retirement Program as shall be required by the Department of State Treasurer and the Board of Trustees. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 403, s. 1.)

**Effect of Amendments.** — The 1985 amendment, effective June 17, 1985, added subsection (f).

## § 135-92. Membership.

(a) The membership eligibility of the Supplemental Retirement Income Plan shall consist of any of the following who voluntarily elect to enroll:

- (1) Members of the Teachers' and State Employees' Retirement System; and
- (2) Members of the Uniform Judicial, Solicitorial and Clerks of Superior Court Retirement Systems; and
- (3) Members of the Legislative Retirement System; and
- (4) Members of the Local Governmental Employees' Retirement System; and
- (5) Members of the Law Enforcement Officers' Retirement System; and
- (6) Participants in the Optional Retirement Program provided for under G.S. 135-5.1.

(b) The membership of any person in the Supplemental Retirement Income Plan shall cease upon:

- (1) The withdrawal of a member's accumulated account; or

- (2) Retirement under the provisions of the Supplemental Income Retirement Plan; or
- (3) Death. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 403, s. 2.)

**Effect of Amendments.** — The 1985 amendment, effective June 17, 1985, substituted a semicolon and “and” for a period at the end of subdivision (5) and added subdivision (6).

### § 135-93. Contributions.

(a) Each member may elect to reduce his compensation by the amount of his contribution to the Supplemental Retirement Income Plan and that amount shall be held in the member’s account. Members electing such a reduction in compensation may authorize payroll deductions for making contributions to the Plan.

(b) The State and any of its political subdivisions may make contributions to the Supplemental Retirement Income Plan on behalf of any of its members, provided these contributions are nondiscriminatory in accordance with the Internal Revenue Code of 1954 as amended, and are duly appropriated by their governing bodies, and the contributions are held in the member’s account. Employer contributions to the Plan are declared expenditures for a public purpose.

(c) The Department of State Treasurer and Board of Trustees shall establish maximum annual additions that may be made to a member’s account and provide for multiple plan reductions in accordance with the Internal Revenue Code of 1954 as amended. (1983 (Reg. Sess., 1984), c. 975.)

### § 135-94. Benefits.

(a) The Department of State Treasurer and the Board of Trustees shall establish a schedule of supplemental retirement income benefits for all members of the Supplemental Retirement Income Plan, subject to the following limitations:

- (1) The balance in each member’s account shall be fully vested at all times and shall not be subject to forfeiture for any reason.
- (2) All amounts maintained in a member’s account shall be invested according to the member’s election, as approved by the Department of State Treasurer and Board of Trustees, including but not limited to, a time deposit account, a fixed investment account, or a variable investment account. Transfers of accumulated funds shall be permitted among the various approved forms of investment.
- (3) The Department of State Treasurer and Board of Trustees shall provide members with alternative payment options, including survivors’ options, for the distribution of benefits from the Plan upon retirement, disability, termination, hardship, and death.
- (4) With the consent of the Department of State Treasurer and the Board of Trustees, amounts may be transferred from other qualified plans to the Supplemental Retirement Income Plan, provided that the trust from which such funds are transferred permits the transfer to be made and, the transfer will not jeopardize the tax status of the Supplemental Retirement Income Plan or create adverse tax consequences for the State.
- (5) At the discretion of the Department of State Treasurer and Board of Trustees, a loan program may be implemented for members which complies with applicable State and federal laws and regulations.

(b) All provisions of the Plan shall be interpreted and applied by the Department of State Treasurer and Board of Trustees in a uniform and nondiscriminatory manner.

(c) All benefits under the Plan shall become payable on and after January 1, 1985.

(d) Contributions under the Plan may be made on and after January 1, 1985. (1983 (Reg. Sess., 1984), c. 975.)

### § 135-95. Exemption from taxes, garnishment, attachment.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, garnishment, and the benefits payable under this Article are hereby exempt from any State and local government taxes. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 402.)

**Effect of Amendments.** — The 1985 amendment, effective June 17, 1985, inserted "Except for the applications of the provisions of

G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20," at the beginning of this section.

## Chapter 136. Roads and Highways.

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- 136-84 to 136-87. [Repealed.]

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- 136-89.56. Commercial enterprises.
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- Sec.  
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- 136-149. Permit required for junkyards.

**ARTICLE 1.**

*Organization of Department of Transportation.*

**§ 136-4. State Highway Administrator.**

There shall be a State Highway Administrator, who shall be a career official and who shall be the administrative officer of the Department of Transportation for highway matters. The State Highway Administrator shall be appointed by the Secretary of Transportation and he may be removed at any time by the Secretary of Transportation. He shall be paid a salary to be set in accordance with Chapter 126 of the General Statutes, the State Personnel Act. The State Highway Administrator shall have such powers and perform such duties as the Secretary of Transportation shall prescribe. (1921, c. 2, ss. 5, 6; C.S., s. 3846(g); 1933, c. 172, s. 17; 1957, c. 65, s. 2; 1961, c. 232, s. 2; 1965, c. 55, s. 3; 1973, c. 507, s. 22; 1975, c. 716, s. 7; 1977, c. 464, s. 11; 1983, c. 717, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1985, c. 757, s. 191.)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

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

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted "General Assembly in the Budget Appropriation Act" for "Secretary of Transportation subject to the approval of the Advisory Budget Commission" at the end of the third sentence.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

The 1985 amendment, effective July 1, 1985, substituted "salary to be set in accordance with Chapter 126 of the General Statutes, the State Personnel Act" for "salary fixed by the General Assembly in the Current Operations Appropriations Act" at the end of the third sentence.

**§ 136-10. Audit.**

The operations of the Department of Transportation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1921, c. 2, s. 24; C.S., s. 3846(m); 1933, c. 172, s. 7; 1957, c. 65, s. 4; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1983, c. 913, s. 25.)

**Effect of Amendments.** — The 1983 amendment, effective July 22, 1983, rewrote this section, which formerly provided for a periodic audit of the Department of Transportation by the State Auditor or a certified public

accountant, such audit to be made part of the report of the Department of Transportation required under § 136-12, and required that the cost of the audit be borne by the State Highway Fund.

CASE NOTES

Stated in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

**§ 136-11. Annual reports to Governor.**

CASE NOTES

Stated in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

**§ 136-12. Reports to General Assembly.**

CASE NOTES

Stated in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

**§ 136-13.2. Falsifying highway inspection reports.**

(a) Any employee or agent employed by the Department of Transportation or by an engineering or consulting firm engaged by the Department of Transportation, who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(b) Any employee, supervisor, or officer of the Department of Transportation who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979. (1979, c. 523; c. 786, s. 2; 1981, c. 793, s. 1.)

**Effect of Amendments.** — 1981, substituted "Class H felony" for "misdemeanor" in subsections (a) and (b).  
The 1981 amendment, effective October 1,

**§ 136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.**

No member of the Board of Transportation shall be eligible to any other employment in connection with the Department of Transportation, and no member of the Board of Transportation or any salaried employee of the Department of Transportation shall furnish or sell any supplies or materials, directly or indirectly, to the Department of Transportation, nor shall any member of the Board of Transportation, directly or indirectly, engage in any transaction involving the sale of or trading of real or personal property with the Department of Transportation, or profit in any manner by reason of his official action or his official position, except to receive such salary, fees and allowances as by law provided. Violation of this section shall be a felony

punishable by fine of not more than twenty thousand dollars (\$20,000), or three times the value of the transaction, or by both fine and imprisonment. (1933, c. 172, s. 10; 1957, c. 65, s. 11; 1965, c. 55, s. 9; 1973, c. 507, s. 8; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10.2; 1979, ch. 298, s. 3; 1985, c. 689, s. 28.)

**Effect of Amendments.** —

The 1985 amendment, effective July 11, 1985, substituted "for" for "to" preceding "other employment" in the first clause of the

catchline and substituted "any salaried employee of the Department of Transportation" for "any salaried employee thereof" near the beginning of the first sentence.

## ARTICLE 2.

### *Powers and Duties of Department and Board of Transportation.*

#### **§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation shall be vested with the following powers:

- (3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.
- (9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a misdemeanor and each day's use shall constitute a separate offense.

- (27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.
- (28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, s. 1.)

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

**Editor's Note.** — Session Laws 1985, c. 718, ss. 4-6, provide:

"Sec. 4. This act shall be set up as a pilot program at six sites statewide; two (2) sites shall be North Carolina Welcome Centers and four (4) sites shall be rest stops.

"Sec. 5. The Department of Human Resources, Division of Services for the Blind, shall report on the implementation and operation of the pilot program to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than May 1, 1986.

"Sec. 6. This act is effective upon ratification and shall expire on June 30, 1987."

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, provided for the correction of an error in subdivision (3) which last appeared in the 1979 cumulative supplement. The error was corrected in the 1981 replacement volume.

The first 1983 amendment, effective March 21, 1983, added subdivision (27).

The second 1983 amendment, effective March 25, 1983, added subdivision (28).

The 1985 amendment, effective July 12, 1985, substituted the present second, third, and fourth sentences of subdivision (9) for the former second sentence thereof.

## CASE NOTES

### I. GENERAL CONSIDERATION

Applied in *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

## § 136-18.5. Wesley D. Webster Highway.

State Highway 704 shall be known as the "Wesley D. Webster Highway". (1983 (Reg. Sess., 1984), c. 974.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 974, s. 2, makes this section effective June 26, 1984.

### § 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,000 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; or (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes. (1983 (Reg. Sess., 1984), c. 1090; 1985, c. 479, s. 186(a).)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1090, s. 3, makes this section effective July 1, 1984. Section 2 provides that the act shall apply to State highway improvement projects let to contract after the effective date.

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

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

**Effect of Amendments.** — The 1985 amendment by c. 479, s. 186(a), effective July 1, 1985, and applicable only to State highway improvement projects let to contract after July 1, 1985, rewrote this section.

### § 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over thirty thousand dollars (\$30,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation.

(b) In those cases in which the amount of the work to be let to contract for highway construction or repair is thirty thousand dollars (\$30,000) or less, at least three informal bids shall be solicited. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time.

(f) The Department of Transportation is required to solicit proposals under rules and regulations published by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction or repair that are over ten thousand dollars (\$10,000). The right to reject any and all proposals is reserved to the Board of Transportation, but the Board of Transportation shall consult with the Advisory Budget Commission before awarding any such contract. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2.)

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

**Editor's Note.** —

Session Laws 1983, c. 761, s. 135, provides that notwithstanding the provisions of this section the Department of Transportation may use on an experimental pilot program basis any method of contracting for highway construction, maintenance or repair work until June 30, 1985. The section also contains limitations and reporting requirements.

Session Laws 1985, c. 122, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1985."

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** —

The first 1981 amendment substituted "thirty thousand dollars (\$30,000)" for "ten

thousand dollars (\$10,000)" in the first sentence of subsection (a) and in the first sentence of subsection (b) and substituted the second and third sentences of subsection (b) for a sentence which permitted waiver of the requirement for solicitation of bids where solicitation of such bids was not feasible and was not in the public interest.

The second 1981 amendment, effective July 1, 1981, rewrote subsection (f).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

The 1985 amendment, effective April 25 1985, substituted "but the Board of Transportation shall consult with the Advisory Budget Commission before awarding any such contract" for "but the award of these contracts, if approved by the Board of Transportation, shall be subject to the approval of the Advisory Budget Commission" at the end of subsection (f)

### CASE NOTES

Quoted in *Allan Miles Cos. v. North Carolina Dep't of Transp.*, 68 N.C. App. 136, 314 S.E.2d 576 (1984).

## § 136-28.4. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors.

It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in the construction, alteration and maintenance of State roads, streets, highways, and bridges and in the procurement of materials for such projects. All State agencies, institutions and political subdivisions shall cooperate with the Department of Transportation and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of small, minority, physically handicapped and women contractors in such State construction, alteration, maintenance and procurement. (1983, c. 692, s. 3.)

**Editor's Note.** — Session Laws 1983, c. 692, s. 4, makes this section effective upon ratification. The act was ratified July 6, 1983.

## § 136-29. Adjustment of claims.

(c1) Alternatively, in lieu of instituting a civil action in superior court pursuant to subsection (b) above, the contractor may, as to the portion of the claim as is denied by the State Highway Administrator, within 30 days from receipt of the decision, appeal the decision to the Board of State Contract Appeals as provided in G.S. 148-135.5.

(d) The submission of the claim to the State Highway Administrator within the time and as set out in subsection (a) of this section and the filing of an action in the superior court within the time as set out in subsection (b) of this section or the filing of a notice of appeal to the Board of State Contract Appeals as set out in subsection (c1) shall be a condition precedent to bringing such an action under this section and shall not be a statute of limitations.

(1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667; 1965, c. 55, s. 11; 1967, c. 873; 1973, c. 507, ss. 5, 17, 18; 1977, c. 464, s. 7.1; 1983, c. 761, s. 191.)

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

**Editor's Note.** —

Session Laws 1983, c. 761, s. 192, provides that s. 191 of the act is effective upon ratification and applies to decisions made by the Secretary of Administration and the State Highway Administrator on or after Jan. 1, 1984. The act was ratified July 15, 1983.

Session Laws 1983, c. 761, s. 259, is a severability clause.

**Effect of Amendments.** — The 1983 amendment, effective July 15, 1983, added subsection (c1), and inserted "or the filing of a notice of appeal to the Board of State Contract Appeals as set out in subsection (c1)" in subsection (d).

### CASE NOTES

**Section Does Not Offend Constitutional Right to Jury.** — The constitutional guarantee of trial by jury applies only where the prerogative existed at common law or by statute at the time the Constitution was adopted. Prior to the enactment of this statute, and certainly at common law, a contractor could not institute this action against the State due to the doctrine of sovereign immunity. The right itself was created by this statute which never intended nor provided for a trial by jury. Therefore, the statute does not offend the constitutional guarantee to trial by jury. *Huyck Corp. v. C.C. Mangum, Inc.*, 309 N.C. 788, 309 S.E.2d 183 (1983).

**Section Constitutes Remedy In Action on Contract.** — Subsection (e) of this section provides that the statute is deemed to be a part of "every contract" between Department of Transportation and "any contractor," and this section is therefore a remedy in an action upon such contract. *Huyck Corp. v. C.C. Mangum, Inc.*, 58 N.C. App. 532, 293 S.E.2d 846 (1982), rev'd in part, 309 N.C. 788, 309 S.E.2d 183 (1983).

**Administrative Remedies Must First Be Pursued.** — Before a party may pursue a judicial action against the state for money claimed to be due under a highway construction contract, it must first pursue its administrative remedies. *Huyck Corp. v. C.C. Mangum, Inc.*, 309 N.C. 788, 309 S.E.2d 183 (1983).

**Third Party Complaint against Department of Transportation.** — This section does not prohibit a contractor from filing a third party complaint against Department of Transportation, arising out of the same transaction

or occurrence, ancillary to an action brought by a party not privy to the contract. To compel a contractor to proceed first upon the settlement procedure of this section before joining the State and Department of Transportation in an action already filed could result in a forfeiture of that remedy under these circumstances. *Huyck Corp. v. C.C. Mangum, Inc.*, 58 N.C. App. 532, 293 S.E.2d 846 (1982), rev'd in part, 309 N.C. 788, 309 S.E.2d 183 (1983).

**Categorization of Claims.** — Where plaintiff contractor submitted in its verified claim letter a claim for increased compensation due to the encountering of changed conditions, and where plaintiff, while identifying and categorizing certain claims for the benefit of the defendant, made it abundantly clear that any such claims not recognized in the separate categories as presented were to be included in an overall "changed conditions" claim, it was held that plaintiff did not pursue or recover at trial on a theory which had not been previously presented to the State Highway Administrator. *S.J. Groves & Sons & Co. v. State*, 50 N.C. App. 1, 273 S.E.2d 465 (1980), cert. denied, 302 N.C. 396, 279 S.E.2d 353 (1981).

**Applied in Propst Constr. Co. v. North Carolina Dep't of Transp.**, 307 N.C. 124, 296 S.E.2d 295 (1982); *Allan Miles Cos. v. North Carolina Dep't of Transp.*, 68 N.C. App. 136, 314 S.E.2d 576 (1984).

**Cited in Middlesex Constr. Corp. v. State ex rel. State Art Museum Bldg. Comm'n**, 307 N.C. 569, 299 S.E.2d 640 (1983); *Barrus Constr. Co. v. North Carolina Dep't of Transp.*, — N.C. App. —, 324 S.E.2d 1 (1984).

## § 136-35. Cooperation with other states and federal government.

It shall also be the duty of the Department of Transportation, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads so as to form a system of intercounty, interstate, and national highways. The Department of Transpor-

tation may enter into reciprocal agreements with other states and the Federal Highway Administration to perform inspection work and to pay reasonable fees for inspection work performed by others in connection with supplies and materials used in highway construction and repair. (1915, c. 113, s. 12; C. S., s. 3584; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1985, c. 127; c. 689, s. 31.)

**Effect of Amendments.** — Session Laws 1985, c. 689, s. 31, effective April 26, 1985, 1985, c. 127, as amended by Session Laws added the last sentence.

### § 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) There is hereby annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-eighths cents ( $1\frac{3}{8}\text{¢}$ ) tax on each gallon of motor fuel as taxed by G.S. 105-434 and 105-435, to be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with the following formula:

Seventy-five percent (75%) of said funds shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds by virtue of G.S. 136-41.1 and 136-41.2 and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

No allocation to cities and towns shall be made under the provisions of this section from the one cent (1¢) per gallon additional tax on gasoline imposed by Chapter 46 of the Session Laws of 1965, unless and until said additional one cent (1¢) per gallon tax produces funds which are not needed for or committed by said Chapter 46 of the Session Laws of 1965, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the

provisions of said Chapter 46 of the Session Laws of 1965. The Department of Transportation is hereby authorized to withhold each year an amount not to exceed one percent (1%) of the total amount appropriated in G.S. 136-41.1 for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under G.S. 136-41.1 and 136-41.2 submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section and of G.S. 136-41.2, the unincorporated area known as Butner qualifies in all respects for allocation of funds under this section and certification of the population and street mileage of Butner by the North Carolina Department of Human Resources is acceptable. Funds allocated to the area for this purpose shall be administered by the member of the State Board of Transportation administering the Highway Fund in Granville County. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54.)

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

**Effect of Amendments.** —

The first 1981 amendment, effective July 1, 1981, substituted "one and three-eighth cents ( $1\frac{3}{8}\%$ )" for "one cent (1%) in the first paragraph of subsection (a).

Session Laws 1981, c. 690, s. 35, provides: "Section 4 [amending this section] shall become effective July 1, 1981, provided that the allocation made on October 1, 1981, shall not be affected."

The second 1981 amendment, effective July 1, 1981, added subsection (c).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

The third 1981 amendment, ratified October 10, 1981 and effective on ratification, substituted "member of the State Board of Transportation administering the Highway Fund in Granville County" for "Department of Human Resources" in subsection (c) as added by the first 1981 amendment.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

## § 136-42.1. Archeological objects on highway right-of-way.

### CASE NOTES

**Quoted** in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Caro-*

*lina Dep't of Transp.*, 46 N.C. App. 350, 265 S.E.2d 890 (1980).

## § 136-42.3. Historical marker program.

The Department of Transportation may spend up to forty thousand dollars (\$40,000) a year to purchase historical markers prepared and delivered to it by the Department of Cultural Resources. The Department of Transportation shall erect the markers on sites selected by the Department of Cultural Resources. This expenditure is hereby declared to be a valid expenditure of State

highway maintenance funds. No provision in this section shall be construed to prevent the expenditure of any federal highway funds that may be available for this purpose. (1935, c. 197; 1943, c. 237; 1951, c. 766; 1955, c. 543, s. 2; 1957, c. 65, s. 11; 1971, c. 345, s. 2; 1973, c. 476, s. 48; c. 507, s. 5; 1977, c. 464, s. 7.1; 1983 (Reg. Sess., 1984), c. 1034, s. 129.)

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

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted the present first and second sentences for a first sentence, which read "The Department of Transportation is hereby autho-

rized to expend not more than ten thousand dollars (\$10,000) a year for the purpose of purchasing historical markers, to be erected by the Department of Transportation on sites selected by the Department of Cultural Resources which Department shall also prepare the inscriptions and deliver the completed markers to the Department of Transportation."

## ARTICLE 2A.

### *State Roads Generally.*

#### § 136-44.1. Statewide road system; policies.

**Legal Periodicals.** — For survey of 1980 administrative law, see 59 N.C.L. Rev. 1026 (1981).

#### CASE NOTES

**Stated in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Caro-**

**lina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).**

#### § 136-44.2. Budget and appropriations.

The Director of the Budget shall include in the "Budget Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, and urban road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Budget Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

In the event receipts and increments to the State Highway Fund shall be more than the appropriations made for the preceding fiscal year, such excesses shall be allocated by the Director of the Budget to the Department of Transportation for school and industrial access roads and unforeseen happenings or state of affairs requiring prompt action, with fifty percent (50%) of the balance to be allocated to the State secondary roads program on the basis of need as determined by the Department of Transportation and the remaining fifty percent (50%) to be allocated in accordance with G.S. 136-44.5. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1981, c. 859, s. 84; 1983, c. 717, ss. 46, 47.)

**Editor's Note.** — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, rewrote the fourth paragraph.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

The 1983 amendment, effective July 11, 1983, substituted "unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations" for "unless the Joint Legislative Commission on Governmental Operations has given its prior approval for that expenditure or has failed to give or deny approval within 60 days of receiving a request for ap-

proval from the Department of Transportation" in the second sentence of the fourth paragraph and deleted the first sentence of the fifth paragraph, which read "The Department of Transportation in its discretion may alter any dollar amount set forth in the 'Budget Appropriations Bill' for any of the foregoing purposes, provided that a report of all alterations, setting forth the reason or reasons for each, shall be submitted to the House and Senate Roads Committee and the House and Senate Appropriations Subcommittee on Roads within three months after the close of the fiscal year, and provided further that no alteration may exceed ten percent (10%) of the original figure without the concurrence of the Advisory Budget Commission."

## § 136-44.2A. Secondary road construction.

There shall be annually allocated out of the State Highway Fund to the Department of Transportation for secondary road construction programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum equal to that allocation made under G.S. 136-41.1(a). Such secondary roads allocation shall be made in accordance with the provisions of G.S. 136-44.5. (1981, c. 690, s. 6.)

**Editor's Note.** — Session Laws 1981, c. 690, s. 36, makes this section effective July 1, 1981.

The section originally codified as § 136-44.2A was recodified by Session Laws 1981, c. 690, s. 5, as § 136-44.2B.

## § 136-44.2B. Reports to appropriations committees of General Assembly.

In each year that an appropriation bill is considered by the General Assembly, the Department of Transportation shall make a report to the appropriations committee of each House on all services provided by the Department to the public for which a fee is charged. The report shall include an analysis of the cost of each service and the fee charged for that service. (1975, c. 875, s. 8; 1981, c. 690, s. 5.)

**Editor's Note.** — This section was originally codified as § 136-44.2A. It was recodified as § 136-44.2B by Session Laws 1981, c. 690, s. 5.

## § 136-44.4. Annual construction program; State primary and urban systems.

### CASE NOTES

**Stated in** *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp.*, 46 N.C. App. 350, 265 S.E.2d 890 (1980).

## § 136-44.5. Secondary roads; mileage study; allocation of funds.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 200, allocates funds to the 14 Highway Divisions for urban construction projects and also allocates additional funds to the Highway Divisions for urban and rural projects upon determination by the Office of State Budget that funds are available. The section further provides that any funds transferred for Division rural road construction shall not be subject to the county formula allocation as provided by § 136-44.5. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

## § 136-44.8. Submission of secondary roads construction programs to the Boards of County Commissioners.

(a) The Department of Transportation shall post in the county courthouse a county map showing tentative secondary road paving projects rated according to the priority of each project in accordance with the criteria and standards adopted by the Board of Transportation. The map shall be posted at least two weeks prior to the public meeting of the county commissioners at which the Department of Transportation representatives are to meet and discuss the proposed secondary road construction program for the county as provided in subsection (c).

(b) The Department of Transportation shall provide a notice to the public of the public meeting of the board of county commissioners at which the annual secondary road construction program for the county proposed by the Department is to be presented to the board and other citizens of the county as provided in subsection (c). The notice shall be published in a newspaper published in the county or having a general circulation in the county once a week for two succeeding weeks prior to the meeting. The notice shall also advise that a county map is posted in the courthouse showing tentative secondary road paving projects rated according to the priority of each project.

(c) Representatives of the Department of Transportation shall meet with the board of county commissioners at a regular or special public meeting of the board of county commissioners for each county and present to and discuss with the board of county commissioners and other citizens present, the proposed secondary road construction program for the county. The presentation and discussion shall specifically include the priority rating of each tentative secondary road paving project included in the proposed construction program, according to the criteria and standards adopted by the Board of Transportation.

At the same meeting after the presentation and discussion of the annual secondary road construction program for the county or at a later meeting, the board of county commissioners may (i) concur in the construction program as proposed, or (ii) take no action, or (iii) make recommendations for deviations in the proposed construction program, except as to paving projects and the priority of paving projects for which the board in order to make recommendations for deviations, must vote to consider the matter at a later public meeting as provided in subsection (d).

(d) The board of county commissioners may recommend deviations in the paving projects and the priority of paving projects included in the proposed secondary road construction program only at a public meeting after notice to the public that the board will consider making recommendations for deviations in paving projects and the priority of paving projects included in the proposed annual secondary road construction program. Notice of the public meeting shall be published by the board of county commissioners in a newspaper published in the county or having a general circulation in the county. After discussion by the members of the board of county commissioners and comments and information presented by other citizens of the county, the board of county commissioners may recommend deviations in the paving projects and in the paving priority of secondary road projects included in the proposed secondary road construction program. Any recommendation made by the board of county commissioners for a deviation in the paving projects or in the priority for paving projects in the proposed secondary road construction program shall state the specific reason for each such deviation recommended.

(e) The Board of Transportation shall adopt the annual secondary construction program for each county after having given the board of county commissioners of each county an opportunity to review the proposed construction program and to make recommendations as provided in this section. The Board of Transportation shall consider such recommendations insofar as they are compatible with its general plans, standards, criteria and available funds, but having due regard to development plans of the county and to the maintenance and improvement needs of all existing roads in the county. However, no consideration shall be given to any recommendation by the board of county commissioners for a deviation in the paving projects or in the priority for paving secondary road projects in the proposed construction program that is not made in accordance with subsection (d).

(f) The secondary road construction program adopted by the Board of Transportation shall be followed by the Department of Transportation unless changes are approved by the Board of Transportation and notice of any changes is given the board of county commissioners. The Department of Transportation shall post a copy of the adopted program, including a map showing the secondary road paving projects rated according to the approved priority of each project, at the courthouse, within 10 days of its adoption by the Board of Transportation. The board of county commissioners may petition the Board of Transportation for review of any changes to which it does not consent and the determination of the Board of Transportation shall be final. Upon request, the most recent secondary road construction programs adopted

shall be submitted to any member of the General Assembly. The Department of Transportation shall make the annual construction program for each county available to the newspapers having a general circulation in the county. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 9; 1981, c. 536.)

**Effect of Amendments.** — The 1981 amendment rewrote this section.

### **§ 136-44.11. Right-of-way acquisitions; preliminary engineering annual report.**

(a) The Department of Transportation shall include in its annual report projects for which preliminary engineering has been performed more than two years but where there has been no right-of-way acquisition, projects where right-of-way has been acquired more than two years but construction contracts have not been let. The report shall include the year or years in which the preliminary engineering was performed and the cost incurred, the number of right-of-way acquisitions for each project, the dates of the first and last acquisition and the total expenditure for right-of-way acquisition. The report shall include the status of the construction project for which the preliminary engineering was performed or the right-of-way acquired and the reasons for delay, if any.

(b) Requests to the Board of Transportation for allocation of funds for the purchase of right-of-way shall include an estimated time schedule to complete all necessary right-of-way purchases related to a specific project, and a proposed date to award construction contracts for that project. If the anticipated construction contract date is more than two years beyond the estimated completion of the related right-of-way purchases, the approval of both the Board of Transportation and the Director of the Budget is required. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1981, c. 859, s. 69.)

**Effect of Amendments.** — The 1981 amendment, effective July 1, 1981, designated the former provisions of this section as subsection (a), and added subsection (b).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

## **ARTICLE 2B.**

### *Public Transportation.*

### **§ 136-44.20. Department of Transportation designated agency to administer and fund public transportation programs; authority of political subdivisions.**

(a) The Department of Transportation is hereby designated as the agency of the State of North Carolina responsible for administering all federal and/or State programs relating to public transportation; and the Department is hereby granted authority to do all things required under applicable federal and/or State legislation to administer properly public transportation programs within North Carolina. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute federal and State financial assistance for inter-city rail or bus passenger service crossing one or more county lines.

(b) The Department of Transportation, upon approval by the Board of Transportation, is authorized to provide the matching share of federal public transportation assistance programs through private resources, local government funds, or State appropriations provided by the General Assembly.

(c) Nothing herein shall be construed to prevent a political subdivision of the State of North Carolina from applying for and receiving direct assistance from the United States government under the provisions of any applicable legislation. (1975, c. 451; 1977, c. 341, s. 2; 1983, c. 616.)

**Effect of Amendments.** — The 1983 amendment, effective June 24, 1983, rewrote this section.

### **§ 136-44.21. Ridesharing arrangement defined.**

Ridesharing arrangement means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of the driver and is not operated or provided for profit. The term shall include ridesharing arrangements such as carpools, vanpools and buspools. (1981, c. 606, s. 1.)

### **§ 136-44.22. Workers' Compensation Act does not apply to ridesharing arrangements.**

Chapter 97 of the General Statutes shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and a place of employment or termini near such place, provided that if the employer owns, leases or contracts for the motor vehicle used in such an arrangement, Chapter 97 of the General Statutes shall apply. (1981, c. 606, s. 1.)

### **§ 136-44.23. Ridesharing arrangement benefits are not income.**

Any benefits, other than salary or wages, received by a driver or a passenger while in a ridesharing arrangement shall not constitute income for the purposes of Article 4 of Chapter 105 of the General Statutes. (1981, c. 606, s. 1.)

### **§ 136-44.24. Ridesharing arrangements exempt from municipal licenses and taxes.**

No county, city, town or other municipal corporation may require a business license for a ridesharing arrangement, nor may they require any additional tax, fee, or registration on a vehicle used in a ridesharing arrangement. (1981, c. 606, s. 1.)

### **§ 136-44.25. Wage and Hour Act inapplicable to ridesharing arrangements.**

The provisions of Article 2A of Chapter 95 of the General Statutes of North Carolina shall not apply to an employee while participating in any ridesharing arrangement as defined in G.S. 136-44.21, as provided in G.S. 95-25.14(b)(6). (1981, c. 606, s. 1; c. 663, s. 14.)

**Effect of Amendments.** — The 1981 amendment, effective October 1, 1981, substituted “G.S. 95-25.14(b)(6)” for “G.S. 95-25.14(b)(5).”

**§ 136-44.26. Use of public motor vehicles for ridesharing.**

Motor vehicles owned or operated by any State or local agency may be used in ridesharing arrangements for public employees, provided the public employees benefiting from said ridesharing arrangements shall pay fees which shall cover all capital operating costs of the ridesharing arrangements. (1981, c. 606, s. 1.)

**§§ 136-44.27 to 136-44.29:** Reserved for future codification purposes.

**ARTICLE 2D.**

*Railroad Revitalization.*

**§ 136-44.37. Department to provide nonfederal matching share.**

The Department of Transportation upon approval by the Board of Transportation and the Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission is authorized to provide for the matching share of federal rail revitalization assistance programs through private resources, county funds or State appropriations as may be provided by the General Assembly. (1979, c. 658, s. 3; 1983, c. 717, s. 48.)

**Editor’s Note.** — Session Laws 1983, c. 717, s. 1, provides: “This act may be cited as the Separation of Powers Act of 1983.”

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substi-

tuted “Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission” for “Advisory Budget Commission.”

**§ 136-44.38. Department to provide State and federal financial assistance to counties for rail revitalization.**

(a) The Department of Transportation is authorized to distribute to counties State financial assistance for local rail revitalization programs provided that every rail revitalization project for which State financial assistance would be utilized must be approved by the Board of Transportation and by the Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission.

(1979, c. 658, s. 3; 1983, c. 717, s. 48.)

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

**Editor’s Note.** — Session Laws 1983, c. 717, s. 1, provides: “This act may be cited as the Separation of Powers Act of 1983.”

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, substituted “Director of the Budget after the Director of the Budget consults with the Advisory Budget Commission” for “Advisory Budget Commission” in subsection (a).

ARTICLE 3.

*State Highway System.*

Part 1. Highway System.

**§ 136-45. General purpose of law; control, repair and maintenance of highways.**

CASE NOTES

This section and § 136-54 were not repealed with respect to municipal streets by enactment of § 136-66.2. This section and § 136-54 have both been amended numerous times since 1959, and there has been no mention of their repeal. Repeal by implication is not favored in the law, and statutes dealing with the same subject matter must be con-

strued in pari materia, and harmonized if possible to give each effect. *Town of Morehead City v. North Carolina Dep't of Transp.*, — N.C. App. —, 327 S.E.2d 602 (1985).

Quoted in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp.*, 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Part 3. Power to Make Changes in Highway System.

**§ 136-54. Power to make changes.**

CASE NOTES

Section 136-45 and this section were not repealed with respect to municipal streets by enactment of § 136-66.2. Section 136-45 and this section have both been amended numerous times since 1959, and there has been no mention of their repeal. Repeal by implication is not favored in the law, and statutes dealing with the same subject matter must be construed in pari materia, and harmonized if possible to give each effect. *Town of Morehead City v. North Carolina Dep't of Transp.*, — N.C. App. —, 327 S.E.2d 602 (1985).

**Judicial Review of Department of Transportation's Discretionary Authority.** — The Department of Transportation's discretionary authority under this section is not subject to judicial review unless its action is so clearly unreasonable as to amount to oppressive and manifest abuse. *Town of Morehead City v. North Carolina Dep't of Transp.*, — N.C. App. —, 327 S.E.2d 602 (1985).

**§ 136-59. No court action against Board of Transportation.**

**Legal Periodicals.** — For survey of 1980 administrative law, see 59 N.C.L. Rev. 1026 (1981).

CASE NOTES

**Two Well-Established Exceptions.** — Review of decision of the State Board of Transportation as to the location of an interstate highway may be sought under two well-established exceptions to the doctrine of sovereign immunity, which would by necessity also be exceptions to this section: (1) when public officers whose duty it is to supervise and direct a state agency attempt to enforce an invalid ordinance or regulation, or invade or threaten to invade

the personal or property rights of a citizen in disregard to law; and (2) where plaintiffs have asserted their status as taxpayers and are trying to prevent the expenditure of money unauthorized by statute or in disregard to law. *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp.*, 46 N.C. App. 350, 265 S.E.2d 890 (1980).

## § 136-62. Right of petition.

### CASE NOTES

Quoted in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp.*, 46 N.C. App. 350, 265 S.E.2d 890 (1980).

## ARTICLE 3A.

### *Streets and Highways in and around Municipalities.*

## § 136-66.1. Responsibility for streets inside municipalities.

### CASE NOTES

**Reasons for Deletion of Street from State Highway System.** — When read together, this section and §§ 136-66.2 and 136-66.3 indicate that a municipal street or road is included within the State highway system because it possesses certain characteristics that distinguish it from other streets in the municipality. From the language in the applicable statutes, these characteristics relate primarily to the function served by the particular street. In contrast, public roads not within municipalities are part of the State highway system not because of their function, but because of their geographic location outside the corporate limits of a municipality. Thus, there is a

qualitative distinction between roads which are a part of the State highway system because they are not within a municipality and roads which are in a municipality but are nevertheless part of the State highway system because of the function they serve. It follows logically that the reasons justifying deletion of a street from the State system and incorporating it into a municipality system will vary according to the reasons why it was in the State system to begin with. *City of Raleigh v. Riley*, 64 N.C. App. 623, 308 S.E.2d 464 (1983).

**Stated** in *General Greene Inv. Co. v. Greene*, 48 N.C. App. 29, 268 S.E.2d 810 (1980).

## § 136-66.2. Development of a coordinated street system.

### CASE NOTES

**Sections 136-45 and 136-54 were not repealed with respect to municipal streets by enactment of this section.** Sections 136-45 and 136-54 have both been amended numerous times since 1959, and there has been no mention of their repeal. Repeal by implication is not favored in the law, and statutes dealing with the same subject matter must be construed in *pari materia*, and harmonized if possible to give each effect. *Town of Morehead City v. North Carolina Dep't of Transp.*, — N.C. App. —, 327 S.E.2d 602 (1985).

**Municipalities Are Subordinate to Department of Transportation.** — The general grant of authority to municipalities over streets is subordinate to the Department of Transportation's rights and duties to maintain the State highway system. *Town of Morehead City v. North Carolina Dep't of Transp.*, — N.C. App. —, 327 S.E.2d 602 (1985).

**Reasons for Deletion of Street from State Highway System.** — When read together, this section and §§ 136-66.1 and 136-66.3 indicate that a municipal street or road is included

within the State highway system because it possesses certain characteristics that distinguish it from other streets in the municipality. From the language in the applicable statutes, these characteristics relate primarily to the function served by the particular street. In contrast, public roads not within municipalities are part of the State highway system not because of their function, but because of their geographic location outside the corporate limits of a municipality. Thus, there is a qualitative distinction between roads which are a part of the State highway system because they are not within a municipality and roads which are in a municipality but are nevertheless part of the State highway system because of the function they serve. It follows logically that the reasons justifying deletion of a street from the State system and incorporating it into a municipality system will vary according to the reasons why it was in the State system to begin with. *City of Raleigh v. Riley*, 64 N.C. App. 623, 308 S.E.2d 464 (1983).

§ 136-66.3. Acquisition of rights-of-way.

CASE NOTES

**Section does not apply to streets within municipalities that are not part of the State highway system** or that have been properly deleted therefrom. *City of Raleigh v. Riley*, 64 N.C. App. 623, 308 S.E.2d 464 (1983).

**Reasons for Deletion of Street from State Highway System.** — When read together, this section and §§ 136-66.1 and 136-66.2 indicate that a municipal street or road is included within the State highway system because it possesses certain characteristics that distinguish it from other streets in the municipality. From the language in the applicable statutes, these characteristics relate primarily to the function served by the particular street. In contrast, public roads not within municipalities are part of the State highway system not because of their function, but because of their geographic location outside the corporate limits of a municipality. Thus, there is a qualitative distinction between roads which

are a part of the State highway system because they are not within a municipality and roads which are in a municipality but are nevertheless part of the State highway system because of the function they serve. It follows logically that the reasons justifying deletion of a street from the State system and incorporating it into a municipality system will vary according to the reasons why it was in the State system to begin with. *City of Raleigh v. Riley*, 64 N.C. App. 623, 308 S.E.2d 464 (1983).

**City's Request for Deletion of Road from System Presumed in Good Faith.** — Since a city's request for the deletion of a road from the State highway system is a discretionary act, the city is presumed to have acted in good faith. Good faith in this context requires the city to furnish to the Board of Transportation sufficient information to allow it to make a proper decision. *City of Raleigh v. Riley*, 64 N.C. App. 623, 308 S.E.2d 464 (1983).

§ 136-66.7. Authority to include a Municipal Street System street in right-of-way of State Highway System.

(a) Notwithstanding any other provisions of Article 3A of Chapter 136, the provisions of Article 15 of Chapter 160A, or of any other statute, the Department of Transportation may include all or part of a Municipal Street System street as part of the right-of-way of a State Highway System street, highway, or bridge whenever the Board of Transportation determines that inclusion of the Municipal Street System street is necessary to improve, relocate, or construct a State Highway System street, highway, or bridge.

(b) Beginning January 1, 1985, the Department may not exercise such authority unless 90 days written notice to the governing body of the affected municipality is provided; and the Department shall hold a public hearing on the issue with 30 days published notice upon the written official request of the governing body received by the Department no less than 45 days after receipt of the notice to the governing body. (1983 (Reg. Sess., 1984), c. 1020.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1020, s. 2, makes this section

effective upon ratification. The act was ratified June 28, 1984.

## ARTICLE 4.

*Neighborhood Roads, Cartways, Church Roads, etc.*

## § 136-67. Neighborhood public roads.

## CASE NOTES

This statute declares three distinct types of road to be neighborhood public roads. The first part of the statute concerns only those roads which were once a part of the public road system. The second part of the statute declares to be neighborhood public roads all those roads that had been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Public Welfare. The third part of the statute declares to be neighborhood public roads all those roads outside the boundaries of municipal corporations which served a public use and as a means of ingress and egress for one or more families. *West v. Slick*, — N.C. —, 326 S.E.2d 601 (1985).

**Applicable to Roads Constituting "Necessary" Access to Dwelling.** — It is clear that this first part of this section relating to roads which were once a part of the public road system applies only to a road or roads which constitute a "necessary" access to a dwelling house. *West v. Slick*, — N.C. —, 326 S.E.2d 601 (1985).

Under third part of this section, the ele-

ments required to be shown to establish a neighborhood public road are: (1) the road or street or portions thereof are outside the boundaries of any incorporated city or town, (2) serves a public use, and (3) serves as a means of ingress or egress, (4) for one or more families. This third part refers to traveled ways which were established easements or roads or streets in a legal sense at the time of the 1941 Amendment to this section. *West v. Slick*, — N.C. —, 326 S.E.2d 601 (1985).

**In order to create an easement or public roadway,** the evidence must disclose that travel was confined to a definite and specific line. While there may be slight deviations in the line of travel, there must be substantial identity of the easement claimed. *West v. Slick*, 60 N.C. App. 345, 299 S.E.2d 657, cert. granted, 309 N.C. 324, 307 S.E.2d 172 (1983).

**The foreshore is reserved for the use of the public.** *West v. Slick*, — N.C. —, 326 S.E.2d 601 (1985).

**Applied in** *Dotson v. Payne*, — N.C. App. —, 323 S.E.2d 362 (1984).

## § 136-69. Cartways, tramways, etc., laid out; procedure.

If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section (G.S. 136-68), and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than 18 feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P. R.; 1822, c. 1139, s. 1, P. R.; R. C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; c. 282, s. 1; C.S., s. 3836; 1921, c. 135; Ex. Sess., 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71; 1965, c. 414, s. 1; 1981, c. 826, s. 1.)

**Effect of Amendments.** — The 1981 amendment inserted “other than a navigable waterway” near the middle of the first sentence of the first paragraph.

## ARTICLE 5.

### *Bridges.*

#### § 136-76.1. Bridge replacement program.

(a) The Department of Transportation is hereby directed to replace all bridges on the State highway system containing long through truss spans over 125 feet long with less than a 12 feet clear roadway width. The Department shall initiate a bridge replacement program as soon as possible and shall complete the replacement program of all such bridges by June 30, 1980. All such bridges now on the State highway system shall be replaced except those on roads where the traffic volume is low and the elimination of the bridge would be a minimum inconvenience to the public and the replacement cannot be justified. Such bridges not replaced shall be removed and taken off the State highway system. Provided, that the provisions of this subsection shall not apply to any bridge which has not been removed and replaced by June 30, 1980; these bridges shall continue to be included in the State Highway System, and shall be examined, repaired if necessary, updated and put into usable condition with weight limitations as safety may require.

(1975, c. 889; 1977, c. 464, s. 7.1; 1981, c. 861.)

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

**Effect of Amendments.** — The 1981 amendment added the proviso at the end of subsection (a).

## ARTICLE 6.

*Ferries, etc., and Toll Bridges.*

§§ 136-84 to 136-87: Repealed by Session Laws 1983, c. 684, s. 1, effective July 5, 1983.

## ARTICLE 6D.

*Controlled-Access Facilities.*

## § 136-89.49. Definitions.

## CASE NOTES

**"Frontage Road."** —

An access road from old U.S. 29 to the property of a third party did not meet the statutory definition of a "frontage road" as that term is used in this Article, where the disputed access road, located as it was in an area remote from and not connecting to or entering at any point on U.S. 29, did not serve to facilitate access by the public or by the third party to U.S. 29, was not necessary to provide access because all

other access had been denied, and was intended to serve a private and not public purpose. *Pelham Realty Corp. v. Board of Transp.*, 50 N.C. App. 106, 272 S.E.2d 777 (1980), rev'd on other grounds, 303 N.C. 424, 279 S.E.2d 826 (1981).

**Applied** in *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

## § 136-89.52. Acquisition of property and property rights.

## CASE NOTES

**Applied** in *Board of Transp. v. Bryant*, 59 N.C. App. 256, 296 S.E.2d 814 (1982).

**Cited** in *Pelham Realty Corp. v. Board of*

*Transp.*, 50 N.C. App. 106, 272 S.E.2d 777 (1980).

## § 136-89.53. New and existing facilities; grade crossing eliminations.

**Legal Periodicals.** —

For case discussing the right to compensation for the taking of access by the State for a

controlled-access facility, see *Department of Transp. v. Harkey*, 308 N.C. 148, 301 S.E.2d 64 (1983).

## CASE NOTES

North Carolina recognizes the fundamental right to just compensation as so grounded in natural law and justice that it is part of the fundamental law of this State, and imposes upon a governmental agency taking private property for public use a correlative duty to make just compensation to the owner of the property taken. This principle is considered in North Carolina as an integral part of the law of the land within the meaning of N.C. Const., art. I, § 19. The requirement that just compensation be paid for land taken for a pub-

lic use is likewise guaranteed by the Fourteenth Amendment to the federal Constitution. *Department of Transp. v. Harkey*, 308 N.C. 148, 301 S.E.2d 64 (1983).

Although North Carolina does not have an express constitutional provision against the taking of private property without just compensation, it is a prohibition firmly imbedded in State law. *Department of Transp. v. Harkey*, 308 N.C. 148, 301 S.E.2d 64 (1983).

**Abutting Owner, etc.** —

An owner of land abutting a highway or street has the right of direct access from his

property to the traffic lanes of the highway. This is a right in the street beyond that which is enjoyed by the general public, or by himself as a member of the public, and different in kind, since egress from or ingress to his own property is a necessity peculiar to himself. Department of Transp. v. Harkey, 308 N.C. 148, 301 S.E.2d 64 (1983).

**Access Cannot Be Taken, etc. —**

This right of direct access is an easement appurtenant which cannot be damaged or

taken from him without compensation. Department of Transp. v. Harkey, 308 N.C. 148, 301 S.E.2d 64 (1983).

**The elimination of direct access is a taking as a matter of law.** Department of Transp. v. Harkey, 308 N.C. 148, 301 S.E.2d 64 (1983).

**Applied** in Department of Transp. v. Harkey, 57 N.C. App. 172, 290 S.E.2d 773 (1982).

## § 136-89.55. Local service roads.

### CASE NOTES

**Quoted** in Pelham Realty Corp. v. Board of Transp., 303 N.C. 424, 279 S.E.2d 826 (1981). Transp., 50 N.C. App. 106, 272 S.E.2d 777 (1980).

**Cited** in Pelham Realty Corp. v. Board of

## § 136-89.56. Commercial enterprises.

No commercial enterprises or activities shall be authorized or conducted by the Department of Transportation, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this Article, except for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. In order to permit the establishment of adequate fuel and other service facilities by private owners or their lessees for the users of a controlled-access facility, the Department of Transportation shall permit access to service or frontage roads within the publicly owned right-of-way of any controlled-access facility established or designated as provided in this Article, at points which, in the opinion of the Department of Transportation, will best serve the public interest. The location of such fuel and other service facilities may be indicated to the users of the controlled-access facilities by appropriate signs, the size, style, and specifications of which shall be determined by the Department of Transportation.

The location of fuel and other service facilities may be indicated to the users of the controlled access facilities by appropriate logos placed on signs owned, controlled, and erected by the Department of Transportation. The owners, operators or lessees of fuel and other service facilities who wish to place a logo identifying their business or service on a sign shall furnish a logo meeting the size, style and specifications determined by the Department of Transportation and shall pay the Department for the costs of initial installation and subsequent maintenance. The fees for logo sign installation and maintenance shall be set by the Board of Transportation based on cost. (1957, c. 993, s. 9; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1981, c. 481, s. 1; 1983, c. 604, s. 1; 1985, c. 456; c. 718, ss. 2, 3.)

**Editor's Note.** — Session Laws 1985, c. 718, ss. 4-6, provide:

Sec. 4. This act shall be set up as a pilot program at six sites statewide; two (2) sites shall be North Carolina Welcome Centers and four (4) sites shall be rest stops.

"Sec. 5. The Department of Human Resources, Division of Services for the Blind, shall report on the implementation and operation of the pilot program to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than May 1, 1986.

"Sec. 6. This act is effective upon ratification and shall expire on June 30, 1987."

**Effect of Amendments.** — The 1981 amendment added the second paragraph.

Session Laws 1981, c. 481, s. 2, provided that the act should become effective at such time as sufficient money should be appropriated, but in no event until July 1, 1981.

The 1983 amendment, effective July 1, 1983, substituted the language beginning "The fees for logo sign installation and maintenance" at the end of the second paragraph for a former last sentence which read "The Board of Transportation shall have the authority to set an annual fee not less than the estimated cost of installation and maintenance."

The 1985 amendment by c. 456, effective June 24, 1985, substituted the present last sentence for the former last two sentences of this section, regarding maximum fees.

The 1985 amendment by c. 718, ss. 2, 3, effective July 12, 1985, added the language beginning "except for vending machines" in the first sentence of the first paragraph and added the present second sentence of the first paragraph.

## § 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.

### CASE NOTES

**Permit to erect and maintain advertising signs was not subject to revocation** pursuant to a regulation providing for revocation for "unlawful violation of control of access on interstate . . . facilities," where employees of the permit holder had parked their truck on the

shoulder of the interstate and were servicing a sign, but had not crossed any access control fence or other barrier in order to service the sign. *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

## § 136-89.59. Highway rest area refreshments.

All civic, nonprofit, or charitable corporations and organizations are authorized to serve nonalcoholic refreshments to motorists at rest areas and welcome centers located on control-access facilities in accordance with the following conditions:

- (1) Thirty-day permits shall be issued without cost by the Highway Division Engineer. Permits shall be subject to revocation by the State Highway Administrator for violations of this section. The applicant must be a nonprofit organization showing a record of concern for automotive, highway, or driver safety.
- (4) The refreshment and any other service offered must be free of charge to the motorist.

(1973, c. 1346; 1977, c. 464, s. 7.1; 1981, c. 545, ss. 1, 2.)

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

**Effect of Amendments.** — The 1981

amendment added the third sentence of subdivision (1) and deleted "and solicitation of contributions, donations, etc., shall not be permitted" at the end of subdivision (4).

ARTICLE 7.

*Miscellaneous Provisions.*

§ 136-90. Obstructing highways and roads misdemeanor.

CASE NOTES

Cited in *Town of Winterville v. King*, 60 N.C. App. 730, 299 S.E.2d 838 (1983).

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

Local Modification. — *Town of Apex*: 1985, c. 356.

CASE NOTES

**Use by Public Prevents Withdrawal.** — In accord with 1st paragraph in original. See *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

**Declaration of Withdrawal Must Be Filed.** —

Land may not be withdrawn from dedication until the fee owners record in the register's office a declaration withdrawing such land from the use to which it has been dedicated. *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Cited in *Emanuelson v. Gibbs*, 49 N.C. App. 417, 271 S.E.2d 557 (1980).

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

**Cross References.** — As to subdivision regulation in counties, see

§ 153A-330 et seq. As to subdivision regulation in cities, see § 160A-371.

ARTICLE 9.

*Condemnation.*

§ 136-103. Institution of action and deposit.

Local Modification. — (As to Article 9) *Village of Pinehurst*: 1985, c. 379, s. 2.

CASE NOTES

**Legislative Intent.** — Section 136-112 clarifies the legislative intent behind this section. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**Landowner Not Restricted to Procedures to Which City Not Restricted.** — Where a city is authorized, but not required, to proceed under this Article in condemning land for public purposes, failure to dismiss a land-

owner's inverse condemnation action is not error. A landowner is not restricted to procedures to which the city itself is not restricted. *Long v. City of Charlotte*, 306 N.C. 187, 293 S.E.2d 101 (1982).

**Issue of Damages Considered De Novo on Appeal.** — An appeal to superior court from a condemnation proceeding puts the issue of compensation for damages resulting from the taking before the court de novo. *Metropolitan Sewerage Dist. v. Trueblood*, 64 N.C. App. 690, 308 S.E.2d 340 (1983), cert. denied, 311 N.C. 402, 319 S.E.2d 272 (1984).

**Applied** in *Board of Transp. v. Bryant*, 59 N.C. App. 256, 296 S.E.2d 814 (1982); *City of Raleigh v. Riley*, 64 N.C. App. 623, 308 S.E.2d 464 (1983).

**Stated** in *Pelham Realty Corp. v. Board of Transp.*, 303 N.C. 424, 279 S.E.2d 826 (1981); *State v. Williams & Hesse*, 53 N.C. App. 674, 281 S.E.2d 721 (1981); *Lea Co. v. North Carolina Bd. of Transp.*, 308 N.C. 603, 304 S.E.2d 164 (1983).

## § 136-104. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action.

### CASE NOTES

**But such person has nothing, etc.** —

In accord with original. See *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**Stated** in *Pelham Realty Corp. v. Board of Transp.*, 303 N.C. 424, 279 S.E.2d 826 (1981); *Department of Transp. v. Bragg*, 59 N.C. App. 344, 296 S.E.2d 657 (1982).

## § 136-105. Disbursement of deposit; serving copy of disbursing order on Department of Transportation.

### CASE NOTES

**Cited** in *Pelham Realty Corp. v. Board of Transp.*, 303 N.C. 424, 279 S.E.2d 826 (1981).

## § 136-107. Time for filing answer.

Any person named in and served with a complaint and declaration of taking shall have 12 months from the date of service thereof to file answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation; in such event the judge shall enter final judgment in the amount deposited and order disbursement of the money deposited to the owner. Provided, however, at any time prior to the entry of the final judgment the judge may, for good cause shown and after notice to the plaintiff, extend the time for filing answer for 30 days. Provided that when the procedures of Article 9 of Chapter 136 are employed by the Department of Administration, any person named in or served with a complaint and declaration of taking shall have 120 days from the date of service thereof within which to file an answer. (1959, c. 1025, s. 2; 1973, c. 507, s. 5; 1975, c. 625; 1981, c. 245, s. 2.)

**Effect of Amendments.** — The 1981 amendment added the second proviso.

## CASE NOTES

**Court Has No Discretionary Power to Allow Extension, etc. —**

The courts have no discretionary power to allow an extension of time for the filing of an answer under this section. *Pelham Realty Corp. v. Board of Transp.*, 303 N.C. 424, 279 S.E.2d 826 (1981).

**But Parties May Make Reasonable Stipulations. —** A court has no authority to alter

the requirements of this section but there is no reason why parties may not make reasonable stipulations concerning matters to which the section is addressed. *Pelham Realty Corp. v. Board of Transp.*, 303 N.C. 424, 279 S.E.2d 826 (1981).

**Stated** in *Department of Transp. v. Combs*, 71 N.C. App. 372, 322 S.E.2d 602 (1984).

**§ 136-108. Determination of issues other than damages.**

## CASE NOTES

**The State's right to exercise the power of eminent domain is limited** by the constitutional requirements of due process and the payment of just compensation for property condemned. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**A determination of ownership of the area affected is a prerequisite** to a determination of just compensation for the area taken. Limiting the trial court's factfinding to ownership of the area taken alone would deprive the defendants of just compensation. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

A valid exercise of the power of eminent domain presupposes a complete determination of the area affected, including ownership. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**Applied** in *Board of Transp. v. Bryant*, 59 N.C. App. 256, 296 S.E.2d 814 (1982).

**Cited** in *Department of Transp. v. McDarris*, 308, N.C. 367, 302 S.E.2d 227 (1983); *Franders v. Board of Transp.*, 66 N.C. App. 344, 311 S.E.2d 308 (1984); *Ingle v. Allen*, 71 N.C. App. 20, 321 S.E.2d 588 (1984).

**§ 136-109. Appointment of commissioners.**

## CASE NOTES

**Stated** in *Department of Transp. v. Combs*, 71 N.C. App. 372, 322 S.E.2d 602 (1984).

**§ 136-110. Parties; orders; continuances.**

## CASE NOTES

**Where, on the day set for trial, defendant failed to take any of the steps available** to obtain a delay or to request an extension, his "voluntary dismissal without prejudice" would be deemed an acknowledgment that he was un-

able to disprove the Department's valuation of the taken property, and that he would therefore stop contesting the action. *Department of Transp. v. Combs*, 71 N.C. App. 372, 322 S.E.2d 602 (1984).

**§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.**

Any person whose land or compensable interest therein has been taken by an intentional or unintentional act or omission of the Department of Transportation and no complaint and declaration of taking has been filed by said Department of Transportation may, within 24 months of the date of the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later, file a complaint in the

superior court setting forth the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have estates or interests in the said real estate and if any such persons are under a legal disability, it must be so stated, together with a statement as to any encumbrances on said real estate; said complaint shall further allege with particularity the facts which constitute said taking together with the dates that they allegedly occurred; said complaint shall describe the property allegedly owned by said parties and shall describe the area and interests allegedly taken. Upon the filing of said complaint summons shall issue and together with a copy of said complaint be served on the Department of Transportation as provided by G.S. 1A-1, Rule 4(j)(4). The allegations of said complaint shall be deemed denied; however, the Department of Transportation within 60 days of service of summons and complaint may file answer thereto, and if said taking is admitted by the Department of Transportation, it shall, at the time of filing answer, deposit with the court the estimated amount of compensation for said taking and notice of said deposit shall be given to said owner. Said owner may apply for disbursement of said deposit and disbursement shall be made in accordance with the applicable provisions of G.S. 136-105 of this Chapter. If a taking is admitted, the Department of Transportation shall, within 90 days of the filing of the answer to the complaint, file a map or plat of the land taken. The procedure hereinbefore set out shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

The plaintiff at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located, said memorandum to be recorded among the land records of said county. The memorandum of action shall contain

- (1) The names of those persons who the plaintiff is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land allegedly taken for public use; and
- (4) The date on which plaintiff alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action. (1959, c. 1025, s. 2; 1961, c. 1084, s. 6; 1963, c. 1156, s. 8; 1965, c. 514, ss. 1, 1<sup>1</sup>/<sub>2</sub>; 1971, c. 1195; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 29; 1985, c. 182.)

**Effect of Amendments.** — The 1985 amendment, effective May 15, 1985, substituted "Department of Transportation as pro-

vided by G.S. 1A-1, Rule 4(j)(4)" for "Secretary of Transportation" at the end of the second sentence of the first paragraph.

#### CASE NOTES

**Inverse Condemnation.** — Property owners need not seek to recover compensation in ongoing condemnation proceedings for a subsequent further taking by the State. Property owners may choose to bring a separate action for inverse condemnation pursuant to this section when there is a further taking by the State after the initiation of the original

condemnation action. *Lea Co. v. North Carolina Bd. of Transp.*, 308 N.C. 603, 304 S.E.2d 164 (1983).

When choosing to bring a separate action for inverse condemnation, the property owners will not be entitled to damages which are merely a consequence of the taking in the prior condemnation action. Injuries accruing to the

remaining property caused by the original taking by condemnation, including injuries resulting from the condemnor's use of the previously taken portion, are not compensable in an inverse condemnation action unless they are so great as to amount in themselves to a separate taking. *Lea Co. v. North Carolina Bd. of Transp.*, 308 N.C. 603, 304 S.E.2d 164 (1983).

**Relative Liabilities of Department and Contractor For Damages From Blasting Operations.** — Because of the inherently dangerous or ultrahazardous nature of blasting, when a contractor employed by the Department of Transportation uses explosives in the performance of his work, he is primarily and strictly liable for any damages proximately resulting therefrom. *Cody v. North Carolina Dep't of Transp.*, 45 N.C. App. 471, 263 S.E.2d 334 (1980).

A contractor employed by the Department of Transportation cannot be held liable to a property owner for damages resulting from the work done with proper skill and care. The owner's remedy is against the Department of Transportation on the theory of condemnation. *Cody v. North Carolina Dep't of Transp.*, 45 N.C. App. 471, 263 S.E.2d 334 (1980).

An agreement between the Department of Transportation and a contractor that the contractor would indemnify the Department of Transportation for any claims arising out of the performance of a highway reconstruction contract, including any claims caused by the contractor's blasting operations, did not affect plaintiff's right to sue the Department of Transportation or the contractor or both for loss of a building on their property allegedly caused by the contractor's blasting operations. *Cody v. North Carolina Dep't of Transp.*, 45 N.C. App. 471, 263 S.E.2d 334 (1980).

**Applied** in *Long v. City of Charlotte*, 306 N.C. 187, 293 S.E.2d 101 (1982).

**Cited** in *Department of Transp. v. Winston Container Co.*, 45 N.C. App. 638, 263 S.E.2d 830 (1980); *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980); *Lea Co. v. North Carolina Bd. of Transp.*, 57 N.C. App. 392, 291 S.E.2d 844 (1982); *Cody v. Department of Transp.*, 60 N.C. App. 724, 300 S.E.2d 25 (1983); *Department of Transp. v. McDarris*, 308 N.C. 367, 302 S.E.2d 227 (1983).

## § 136-112. Measure of damages.

**Legal Periodicals.** — For survey of 1979 property law, see 58 N.C.L. Rev. 1509 (1980).

### CASE NOTES

#### I. GENERAL CONSIDERATION.

**Legislative Intent.** — This section clarifies the legislative intent behind § 136-103. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**The State's right to exercise the power of eminent domain is limited** by the constitutional requirements of due process and the payment of just compensation for property condemned. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**A determination of ownership of the area affected is a prerequisite** to a determination of just compensation for the area taken. Limiting the trial court's factfinding to ownership of the area taken alone would deprive the defendants of just compensation. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

A valid exercise of the power of eminent domain presupposes a complete determination of the area affected, including ownership. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**Special and General Benefits Distinguished.** — "Special benefits" have been defined as those which arise from the peculiar relation of the land in question to the public improvement. "General benefits" are those accruing to the public at large by reason of increased community property resulting from the project. *Department of Transp. v. McDarris*, 62 N.C. App. 55, 302 S.E.2d 277 (1983).

**Real Estate Appraisers Not Restricted by Subdivision (1).** — Subdivision (1) of this section speaks only to the exclusive measure of damages to be employed by the commissioner, jury or judge. It in no way attempts to restrict expert real estate appraisers to any particular method of determining the fair market value of property. *Department of Transp. v. McDarris*, 62 N.C. App. 55, 302 S.E.2d 277 (1983).

Real estate appraisers are not required to use the before and after formula in determining damages. *Department of Transp. v. McDarris*, 62 N.C. App. 55, 302 S.E.2d 277 (1983).

**The formula in subdivision (1) of this section contemplates a particular date;** that is, the date of taking. It does not contemplate consideration of damages that might later arise

during construction. *Department of Transp. v. Bragg*, 59 N.C. App. 344, 296 S.E.2d 657 (1982), cert. granted, 307 N.C. 576, 299 S.E.2d 646 (1983).

Compensation must be determined as of the time of the taking. Occurrences or events which may affect the value of the property after the date of the taking are not cognizable in an assessment of damages in an eminent domain proceeding. *Department of Transp. v. Bragg*, 59 N.C. App. 344, 296 S.E.2d 657 (1982), cert. granted, 307 N.C. 576, 299 S.E.2d 646 (1983).

In condemnation proceedings, the determinative question is: In its condition on the day of taking, what was the value of the land for the highest and best use to which it would be put by owners possessed of prudence, wisdom and adequate means? The owner's actual plans or hopes for the future are completely irrelevant. Such aspirations are regarded as too remote and speculative to merit consideration. *City of Winston-Salem v. Davis*, 59 N.C. App. 172, 296 S.E.2d 21, cert. denied, 307 N.C. 269, 299 S.E.2d 214 (1982).

**Valid Traffic Regulations Not Amounting to Compensable Taking.** — The enactment of valid traffic regulations which change traffic patterns and cause circuity of travel but do not foreclose reasonable access to the roadway from abutting property are proper exercises of the police power for which no compensation need be made by the State or its agencies. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

The dead-ending and reclassification of the roadway on which property abutted are valid traffic regulations for which no compensation is ordinarily required. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

Noncompensable injuries to property values resulting from enactment of valid traffic regulations do not become compensable merely because some property was coincidentally taken in connection with project which put the regulations into effect. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

**Frequency of flooding is not, in itself, determinative of a taking.** *Lea Co. v. North Carolina Bd. of Transp.*, 59 N.C. App. 392, 291 S.E.2d 844, cert. granted, 306 N.C. 557, 294 S.E.2d 371 (1982), aff'd, 308 N.C. 603, 304 S.E.2d 164 (1983).

**Recurring Flood Is Permanent Invasion If Structure Causing It Is Permanent.** — As a 100-year flood is, by statistical definition, an inevitably recurring event, thus, if the structures causing the overflow are permanent, the overflow which occurs with the 100-year flood constitutes a permanent invasion. *Lea Co. v. North Carolina Bd. of Transp.*, 57 N.C. App.

392, 291 S.E.2d 844, cert. granted, 306 N.C. 557, 294 S.E.2d 371 (1982), aff'd, 308 N.C. 603, 304 S.E.2d 164 (1983).

**Reasonable use rule**, pursuant to which possessor of land incurs liability for interference with flow of surface waters only when such interference is unreasonable and causes substantial damage, governs disposal of surface waters among private parties and has no application in condemnation proceedings, since the principle of reasonable use is superseded by the constitutional mandate that just compensation must be paid when private property is taken for public use. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

**Whether expert testifying from personal knowledge must first relate underlying facts** before giving his opinion is matter left to sound discretion of trial judge. *Board of Transp. v. Terminal Whse. Corp.*, 300 N.C. 700, 268 S.E.2d 180 (1980).

**Inverse Condemnation.** — Property owners need not seek to recover compensation in ongoing condemnation proceedings for a subsequent further taking by the State. Property owners may choose to bring a separate action for inverse condemnation pursuant to § 136-111 when there is a further taking by the State after the initiation of the original condemnation action. *Lea Co. v. North Carolina Bd. of Transp.*, 308 N.C. 603, 304 S.E.2d 164 (1983).

When trial on the issue of damages in the initial condemnation action has not yet occurred, principles of judicial economy dictate that the owners of the taken land may allege a further taking by inverse condemnation in ongoing proceedings. *Lea Co. v. North Carolina Bd. of Transp.*, 308 N.C. 603, 304 S.E.2d 164 (1983).

**Cited in** *City of Winston-Salem v. Tickle*, 53 N.C. App. 516, 281 S.E.2d 667 (1981); *Department of Transp. v. McDarris*, 62 N.C. 55, 302 S.E.2d 227 (1983); *Frandor v. Board of Transp.*, 66 N.C. App. 344, 311 S.E.2d 308 (1984).

## II. DAMAGES WHERE PART OF TRACT TAKEN.

### In General. —

The measure of damages to be used in condemnation cases in which the state does not take the plaintiff's property in its entirety is mandated by this section to be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking less any special or general benefits. *Lea Co. v. North Carolina Bd. of Transp.*, 308 N.C. 603, 304 S.E.2d 164 (1983).

**To recover under subdivision (1) the area affected and the area taken must constitute a single tract.** Unity of ownership is

an important criterion. *State v. Forehand*, 67 N.C. App. 148, 312 S.E.2d 247, cert. denied, 311 N.C. 307, 317 S.E.2d 904 (1984).

**The factors for determining whether the parcels are one tract or several tracts are "unity of ownership, physical unity and unity of use."** *City of Winston-Salem v. Davis*, 59 N.C. App. 172, 296 S.E.2d 21, cert. denied, 307 N.C. 269, 299 S.E.2d 214 (1982).

**Subdivision (1) states the, etc. —**

Subdivision (1) of this section provides a landowner compensation only for damages arising from a taking of property and which flow directly from the use to which the land taken is put. No compensation is awarded for damages which are shared by neighboring property owners and the public, and which arise regardless of whether the landowner's property has been condemned. *Board of Transp. v. Bryant*, 59 N.C. App. 256, 296 S.E.2d 814 (1982).

**Only damages proximately and directly caused by the taking at the time of the taking are recoverable.** *Department of Transp. v. Bragg*, 59 N.C. App. 344, 296 S.E.2d 657 (1982), cert. granted, 307 N.C. 576, 299 S.E.2d 646 (1983).

**But Damage Must Result from, etc. —**

As long as a landowner is afforded reasonable access to an abutting street or highway, he is not entitled to compensation. Mere inconvenience resulting from circuity of travel is not compensable. *Board of Transp. v. Bryant*, 59 N.C. App. 256, 296 S.E.2d 814 (1982).

**Damages Not Resulting from Taking, etc.**

Damages for unreasonable interference with access to defendants' remaining property during construction on a public road project do not arise from the taking of the right-of-way or from the use to which the taken property is put. These damages are noncompensable because they are not unique to defendants. They are shared by defendants in common with the public at large, and the fact that a taking occurs does not make all other damages automatically compensable. *Board of Transp. v. Bryant*, 59 N.C. App. 256, 296 S.E.2d 814 (1982).

### III. PLEADING AND PRACTICE.

**Admissibility of Evidence Generally. —**

When the Department of Transportation takes only a part of a tract of land, the owners may introduce at the jury trial on the issue of compensation any evidence of damage to the remaining property caused by the Department of Transportation before the opening of the jury trial. *Lea Co. v. North Carolina Bd. of Transp.*, 308 N.C. 603, 304 S.E.2d 164 (1983).

**Rules as to Admissibility of Evidence of Purchase Price. —** See *City of Winston-Salem v. Davis*, 59 N.C. App. 172, 296 S.E.2d 21, cert. denied, 307 N.C. 269, 299 S.E.2d 214 (1982).

In general, purchase price is admissible if it is relevant to the value of the land at the time of condemnation. *City of Winston-Salem v. Davis*, 59 N.C. App. 172, 296 S.E.2d 21, cert. denied, 307 N.C. 269, 299 S.E.2d 214 (1982).

Where condemnees bought the property at a voluntary sale only four years before the condemnation action and there was no evidence of extensive changes to the condemned parcel or to the surrounding area, the purchase price was admissible. *City of Winston-Salem v. Davis*, 59 N.C. App. 172, 296 S.E.2d 21, cert. denied, 307 N.C. 269, 299 S.E.2d 214 (1982).

The price paid at voluntary sales of land, similar in nature, location, and condition to the condemnee's land, is admissible as independent evidence of the value of the land taken if the prior sale was not too remote in time. Whether two properties are sufficiently similar to admit evidence of the purchase price of one as a guide to the value of the other is a question to be determined by the trial judge in the exercise of a sound discretion guided by law. *City of Winston-Salem v. Davis*, 59 N.C. App. 172, 296 S.E.2d 21, cert. denied, 307 N.C. 269, 299 S.E.2d 214 (1982).

**Prima facie showing of substantial physical damage measurable in monetary terms is required.** *Lea Co. v. North Carolina Bd. of Transp.*, 57 N.C. App. 392, 291 S.E.2d 844, cert. granted, 306 N.C. 557, 294 S.E.2d 371 (1982), aff'd, 308 N.C. 603, 304 S.E.2d 164 (1983).

**Proof of Monetary Loss Sufficient. —** In inverse condemnation action seeking compensation for a flood easement allegedly taken by defendant when its highway structures foreseeably increased the level of flooding on plaintiff's property, resulting in substantial damage to apartments thereon, plaintiff adequately demonstrated its monetary loss through evidence of repair costs, lost present and future rental income, and an estimate of the value of the property immediately before and immediately after the taking by a person familiar with the property. *Lea Co. v. North Carolina Bd. of Transp.*, 57 N.C. App. 392, 291 S.E.2d 844, cert. granted, 306 N.C. 557, 294 S.E.2d 371 (1982), aff'd, 308 N.C. 603, 304 S.E.2d 164 (1983).

**Right of Action Accrues When Damage Occurs. —** Where there has been a taking of property by the construction and maintenance of a nuisance, the right of action does not accrue until damage has occurred. And ordinarily the applicable statute of limitations begins to run against the landowner at the time the first damage arises from the nuisance. *Lea Co. v. North Carolina Bd. of Transp.*, 57 N.C. App. 392, 291 S.E.2d 844, cert. granted, 306 N.C. 557, 294 S.E.2d 371 (1982), aff'd, 308 N.C. 603, 304 S.E.2d 164 (1983).

### § 136-113. Interest as a part of just compensation.

To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the legal rate as provided in G.S. 24-1 on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article. (1959, c. 1025, s. 2; 1983, c. 812.)

**Effect of Amendments.** — The 1983 amendment, effective 10 days after ratification, substituted "legal rate as provided in G.S.

24-1" for "rate of six percent (6%) per annum." The act was ratified July 19, 1983.

### § 136-117. Payment of compensation.

#### CASE NOTES

Section is directed at adverse and conflicting claims to a specific sum. State Hwy.

Comm'n v. Cape, 49 N.C. App. 137, 270 S.E.2d 555 (1980).

### § 136-119. Costs and appeal.

#### CASE NOTES

**Litigation expenses and costs** incurred by landowner in condemnation proceeding do not constitute part of the "just compensation" required to be paid by the Fifth Amendment and may be taxed as part of the costs only if authorized by statute. Department of Transp. v. Winston Container Co., 45 N.C. App. 638, 263 S.E.2d 830 (1980).

**When Reimbursement For Attorney, Appraisal and Engineering Fees Authorized.** — This section authorizes the court having jurisdiction of a condemnation action instituted by the Department of Transportation to award the landowner reimbursement for reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings only if: (1) "the final judgment is that the Department of Transportation cannot acquire real property by condemnation"; (2) "the proceeding is abandoned by the Department of Transportation"; or (3) judgment is rendered for the plaintiff in an inverse condemnation proceeding brought under § 136-111. Department of Transp. v. Winston Container Co., 45 N.C. App. 638, 263 S.E.2d 830 (1980).

A judgment entered by the trial court dismissing a condemnation action brought by the Department of Transportation because the court was of the opinion that it lacked jurisdic-

tion for the reason that the resolution of the State Board of Transportation authorizing condemnation of defendant's property was insufficient did not constitute a final judgment that the Department of Transportation could not acquire defendant's real property by condemnation within the purview of this section, and this section did not authorize the trial court to award defendant reimbursement for attorney, appraisal and engineering fees incurred because of the condemnation proceeding. Department of Transp. v. Winston Container Co., 45 N.C. App. 638, 263 S.E.2d 830 (1980).

**The award of attorney fees is in the sound discretion of the trial judge and is unappealable** unless there is an abuse of discretion. Cody v. Department of Transp., 60 N.C. App. 724, 300 S.E.2d 25 (1983).

**When a statute provides for attorney fees to be awarded as a part of the costs** to be paid by the governmental authority which is appropriating the property, it is not a contingent fee, but an amount equal to the actual reasonable value of the attorney services. Cody v. Department of Transp., 60 N.C. App. 724, 300 S.E.2d 25 (1983).

**Applied** in Bandy v. City of Charlotte, — N.C. App. —, 325 S.E.2d 17 (1985).

## ARTICLE 11.

*Outdoor Advertising Control Act.*

## § 136-126. Title of Article.

## CASE NOTES

This Article does not affect signs located in areas zoned commercial or industrial and nothing in it prohibits municipalities from regulating advertising which falls outside its provisions. This interpretation is supported by § 160A-174(b) which expressly provides that the fact that "a State or federal law, standing alone, makes a given act, omission or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition." Thus, a town is authorized to outlaw outdoor advertising which is not regulated by State law and to provide compensation by amortization since in such instance this Article's compensation provision has no relevance. *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

**Off-premises advertising restriction is within the police power of a municipal government.** *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

A town's prohibition of off-premise commercial signs, while permitting on-premise signs does not violate equal protection. *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

**"Esthetics" constitute a legitimate consideration in the exercise of police power.** *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

**No individual rights are created under**

**23 U.S.C. § 131, pertaining to control of outdoor advertising,** since it does not impose regulation, but only authorizes federal-State agreements pursuant to which State regulatory statutes may be adopted. Therefore, it does not furnish a basis for an action under 42 U.S.C. § 1983 for violation of a federal statutory right. *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

**Nature of Administrative Appeal to Secretary of Transportation.** — There was no provision within the Outdoor Advertising Control Act or the administrative regulations published pursuant to the act which required or provided for anything other than a written administrative appeal to the Secretary of Transportation, and there is no provision for an administrative hearing by the secretary. *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied and appeal dismissed, 301 N.C. 400, 273 S.E.2d 446 (1980).

**Administrative Procedure Act does not apply to Outdoor Advertising Control Act or regulations** published pursuant to the act because there was no statute or administrative rule which required the Department of Transportation to make an agency decision after providing an opportunity for an adjudicatory hearing, and the subject controversy was therefore not a contested case within the meaning of § 150A-23. *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied and appeal dismissed, 301 N.C. 400, 273 S.E.2d 446 (1980).

## § 136-127. Declaration of policy.

## CASE NOTES

**Regulation for Aesthetic Reasons.** — Police power may be broad enough to include reasonable regulation of property use for aesthetic reasons only. *County of Cumberland v. Eastern Fed. Corp.*, 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

**Applied in** *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980); *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

**Quoted in** *Bracey Adv. Co. v. North Carolina Dep't of Transp.*, 62 N.C. App. 197, 302 S.E.2d 490 (1983).

## § 136-128. Definitions.

### CASE NOTES

**Applied** in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

**Quoted** in *Bracey Adv. Co. v. North Caro-*

*lina Dep't of Transp.*, 62 N.C. App. 197, 302 S.E.2d 490 (1983).

## § 136-130. Regulation of advertising.

### CASE NOTES

**Permit to erect and maintain advertising signs was not subject to revocation** pursuant to a regulation providing for revocation for "unlawful violation of control of access on interstate ... facilities," where employees of the permit holder had parked their truck on the shoulder of the interstate and were servicing a

sign, but had not crossed any access control fence or other barrier in order to service the sign. *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

**Stated** in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

## § 136-131. Removal of existing nonconforming advertising.

### CASE NOTES

**Cash Compensation Required for Removal of Certain Signs Located in Non-commercial or Industrial Areas.** — With respect to advertising signs which are not located in areas zoned commercial or industrial, this section and 23 U.S.C. § 131 specifically require cash compensation to sign owners whose signs are removed pursuant to those acts. *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

**However, in order to be compensable, this section requires that a sign be lawfully erected under State law.** Signs rendered unlawful by local zoning ordinances adopted pur-

suant to the enabling statute, § 160A-381, are not signs "lawfully erected" and therefore are not compensable. *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

**Applied** in *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

**Stated** in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

**Cited** in *Bracey Adv. Co. v. North Carolina Dep't of Transp.*, 62 N.C. App. 197, 302 S.E.2d 490 (1983).

## § 136-131.1. Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

No municipality, county, local or regional zoning authority, or other political subdivision, shall, without the payment of just compensation in accordance with the provisions that are applicable to the Department of Transportation as provided in paragraphs 2, 3, and 4 of G.S. 136-131, remove or cause to be removed any outdoor advertising adjacent to a highway on the National System of Interstate and Defense Highways or a highway on the Federal-aid Primary Highway System for which there is in effect a valid permit issued by the Department of Transportation pursuant to the provisions of Article 11 of Chapter 136 of the General Statutes and regulations promulgated pursuant thereto. (1981 (Reg. Sess., 1982), c. 1147, s. 1.)

**Editor's Note.** — Session Laws 1981 (Reg. Sess., 1982), c. 1147, s. 2, as amended by Session Laws 1983, c. 318, provides that this sec-

tion shall expire June 30, 1989, and shall have no force or effect thereafter.

#### CASE NOTES

**Applied** in *R.O. Givens, Inc. v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E.2d 388 (1982).

### § 136-132. Condemnation procedure.

#### CASE NOTES

**Stated** in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

### § 136-133. Permits required.

No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a twenty dollar (\$20.00) initial fee and a fifteen dollar (\$15.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a twenty dollar (\$20.00) initial fee and a fifteen dollar (\$15.00) annual renewal fee. (1967, c. 1248, s. 8; 1973, c. 507, s. 5; 1975, c. 568, s. 11; 1977, c. 464, ss. 7.1, 32; 1983, c. 604, s. 2.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, deleted "reasonable" preceding "permit fees" in the

fourth sentence and added the last two sentences.

#### CASE NOTES

**Permit to erect and maintain advertising signs was not subject to revocation** pursuant to a regulation providing for revocation for "unlawful violation of control of access on interstate ... facilities," where employees of the permit holder had parked their truck on the shoulder of the interstate and were servicing a

sign, but had not crossed any access control fence or other barrier in order to service the sign. *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

**Stated** in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

## § 136-134. Illegal advertising.

### CASE NOTES

**Stated** in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

### § 136-134.1. Judicial review.

#### CASE NOTES

**This section clearly limits the scope of review** to (1) constitutional violations, (2) statutory or regulatory irregularities or (3) other errors of law. *National Adv. Co. v. Bradshaw*, 60 N.C. App. 745, 299 S.E.2d 817 (1983).

Although the scope of review de novo is broad, the superior court may take action only if the agency decision is (1) in violation of constitutional provisions; (2) not made in accordance with this article or the regulations thereunder; or (3) affected by other error of law. Thus, the superior court has the implied power to reverse when the evidence does not support the decision. *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

**This section preempts § 150A-43** and specifically provides opportunity to have de novo proceeding before trial judge which satisfies due process requirements. *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied and appeal dismissed, 301 N.C. 400, 273 S.E.2d 446 (1980).

**Court Not Bound by Secretary's Find-**

**ings and Conclusions.** — While an interpretation of a statute or rule of an agency administering it is to be accorded some deference, the superior court's review of a decision by the Secretary of Transportation is de novo. Therefore, the superior court is thus not bound by the Secretary's findings of fact and conclusions of law and may arrive at a different conclusion of law based upon the same evidence. *Appalachian Poster Adv. Co. v. Bradshaw*, 65 N.C. App. 117, 308 S.E.2d 764 (1983).

**Appellant Is Not Limited to Administrative Record.** — Under this section, an appellant from decision and order of the Department of Transportation has the right to a hearing de novo in the Superior Court of Wake County; therefore, appellant is not limited to the administrative record. *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

**Cited** in *Bracey Adv. Co. v. North Carolina Dep't of Transp.*, 62 N.C. App. 197, 302 S.E.2d 490 (1983).

## § 136-135. Enforcement provisions.

### CASE NOTES

**Applied** in *Ace-Hi, Inc. v. Department of Transp.*, 70 N.C. App. 214, 319 S.E.2d 294 (1984).

## § 136-140. Availability of federal aid funds.

### CASE NOTES

**Cited** in *National Adv. Co. v. Bradshaw*, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

## ARTICLE 12.

*Junkyard Control Act.***§ 136-141. Title of Article.**

**Legal Periodicals.** — For comment discussing aesthetics-based municipal regulation in light of *State v. Jones*, 305 N.C. 520, 290

S.E.2d 675 (1982), see 18 Wake Forest L. Rev. 1167 (1982).

**§ 136-149. Permit required for junkyards.**

No person shall establish, operate or maintain a junkyard any portion of which is within 1,000 feet of the nearest edge of the right-of-way of the interstate or primary system without obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by the rules and regulations promulgated by the Department of Transportation. No permit shall be issued under the provisions of this section for the establishment, operation or maintenance of a junkyard within 1,000 feet to the nearest edge of the right-of-way of interstate or primary system except those junkyards which conform to one or more of the exceptions of G.S. 136-144. The permit shall be valid until revoked for the nonconformance of this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision upon the agency appeal. The Department of Transportation shall have the authority to charge fees to defray the costs of administering the permit procedures under this Article. The fees for junkyard permits to be issued under this Article shall not exceed a twenty dollar (\$20.00) initial fee and a fifteen dollar (\$15.00) annual renewal fee. (1967, c. 1198, s. 9; 1973, c. 507, s. 5; c. 1439, s. 9; 1977, c. 464, s. 7.1; 1983, c. 604, s. 3.)

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, deleted "reasonable" preceding "fees to defray the

costs" in the next-to-last sentence and added the last sentence.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1985

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1985 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG  
Attorney General of North Carolina



