THE GENERAL STATUTES OF NORTH CAROLINA

1987 CUMULATIVE SUPPLEMENT

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

Under the Direction of
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Volume 3B, Part II

Chapters 130 to 136

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

Place Behind Supplement Tab in Binder Volume.

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Preface

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

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

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

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

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

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

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1987 Regular Session affecting Chapters 130 through 136 of the General Statutes.

Annotations:

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

North Carolina Reports through Volume 319, p. 464.
North Carolina Court of Appeals Reports through Volume 85, p. 173.
South Eastern Reporter 2nd Series through Volume 356, p. 26.
Federal Reporter 2nd Series through Volume 817, p. 761.
Federal Supplement through Volume 658, p. 304.
Federal Rules Decisions through Volume 115, p. 78.
Bankruptcy Reports through Volume 72, p. 618.
Supreme Court Reporter through Volume 107, p. 2210.
North Carolina Law Review through Volume 65, p. 847.
Wake Forest Law Review through Volume 22, p. 424.
Campbell Law Review through Volume 9, p. 206.
Duke Law Journal through 1987, p. 190.
North Carolina Central Law Journal through Volume 16, p. 222.
Opinions of the Attorney General.

User's Guide

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

The General Statutes of North Carolina
1987 Cumulative Supplement

VOLUME 3B, PART II

Chapter 130A.
Public Health.

Article 1.

Definitions, General Provisions and Remedies.

Part 2. Remedies.

Article 2.

Local Administration.

Part 1. Local Health Departments.

Part 2. Sanitary Districts.

Article 5.

Maternal and Child Health.

Part 3. Sickle Cell.

Article 6.

Communicable Diseases.

Part 1. In General.

Sec.

Article 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-5. Duties of the Secretary.

Editor's Note. —

Session Laws 1987, c. 4, s. 2 adds language to Session Laws 1985, c. 479, s. 85(h) relating to the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program subject to the approval by the Director of the Budget, and makes such expenditures exempt from the requirements of s. 158 (which rewrote § 143-18) and s. 161 of Session Laws 1985, c. 479.

Session Laws 1987, c. 738, s. 82 makes legislative findings and appropriates funds to the Department of Human Resources and the Department of Public Education to meet the needs of the class of children identified in the case of

Willie M. et al. vs. Hunt et al. The act calls for continued implementation of the prospective unit cost reimbursement system and sets out reporting requirements. The section further provides that no state funds shall be expended on the placement and services of class members except for those funds appropriated in s. 2 of the act to the Departments of Human Resources and Public Education for programs serving that class, and except for such funds as may be elsewhere appropriated specifically for such purposes, but does not include the use of unexpended funds from prior fiscal years. In addition, this section provides that if the Department of Human Resources determines that a local program is not providing appropriate services to members of the class, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

Part 2. Remedies.

§ 130A-22. Administrative penalties.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(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 twenty-five thousand dollars ($25,000) for each day the violation continues.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(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 in accordance with subsection (e) of this section 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 final agency decision.

(1983, c. 891, s. 2; 1987, c. 269, s. 2; c. 656; c. 704, s. 1; c. 827, s. 247.)

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

Effect of Amendments. — Session Laws 1987, c. 269, s. 2, effective June 2, 1987, and applicable to causes of action arising after that date, added subsection (a1).

Session Laws 1987, c. 656, effective July 23, 1987, in subsection (e) inserted "by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action" and substituted "Chapter 150B" for "Chapter 150A" inserted "in accordance with subsection (e) of this section" in subdivision (g)(1), and substituted "G.S. 150B-36" for "G.S. 150A-36" in subdivision (g)(2) as it read prior to the amendment by Session Laws 1987, c. 827.

Session Laws 1987, c. 704, s. 1, effective July 31, 1987, substituted "twenty-five thousand dollars ($25,000)" for "five

thousand dollars ($5,000)" in subsection (b).

Session Laws 1987, c. 827, s. 247, effective August 13, 1987, substituted "final agency decision" for "decision as provided in G.S. 150A-36 of the Administrative Procedure Act" at the end of subdivision (g)(2).

§ 130A-23. Suspension and revocation of permits and program participation.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. Also, a permit issued pursuant to G.S. 130A-228 or 130A-248 shall be revoked immediately for failure of a market or a facility to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or revocation and shall immediately file a petition for a contested case in accordance with G.S. 150B-23. (1983, c. 891, s. 2; 1987, c. 438, s. 3.)

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

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, rewrote subsection (d).

§ 130A-24. Appeals procedure.

(a) Appeals concerning the 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 150B of the General Statutes, the Administrative Procedure Act.

(b) Appeals concerning the 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 aggrieved 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.

(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 scope of review in district court shall be the same as in G.S. 150B-51. (1983, c. 891, s. 2; 1987, c. 482; c. 827, s. 248.)

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

Effect of Amendments. — Session Laws 1987, c. 482, effective June 25, 1987, substituted "Chapter 150B" for "Chapter 150A" in subsection (a) and deleted "except that judicial review of the imposition of administrative penalties shall be de novo by the superior court without a jury" at the end of subsection (a).

Session Laws 1987, c. 827, s. 248, effective August 13, 1987, deleted "interpretation and" preceding "enforcement" in the first sentence of subsections (a)

and (b) and substituted the present second sentence of subsection (d) for the former last two sentences thereof.

§ 130A-25. (Effective February 1, 1988) 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 convicted under this section for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or for violation of G.S. 130A-144(g) or G.S. 130A-145 shall serve any prison sentence in McCain Hospital, Division of Prisons, Department of Correction, McCain, North Carolina; the North Carolina Correctional Center for Women, Division of Prisons, Department of Correction, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Correction after consultation with the State Health Director. The Secretary of Correction shall consult with the State Health Director concerning the medical management of these persons.

(c) In addition to other means of early discharge, a person imprisoned for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or for violation of G.S. 130A-144(g) or G.S. 130A-145 may be discharged before completion of the person's sentence upon determination by the District Court that discharge of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court. (1983, c. 891, s. 2; 1987, c. 782, s. 19.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, substituted subsections (b) and (c) for former subsection (b).

Article 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-35. County board of health; appointment; terms.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve

§ 130A-25 has a delayed effective date. See notes for date.

more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the six professions designated in subsection (b) of this section. 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.

(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; 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; 1987, c. 84, 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 1987 amendment, effective April 23, 1987, added "unless the member is the only person residing in the county who represents one of the six professions designated in subsection (b) of this section" at the end of the second sentence of subsection (c).

§ 130A-36. Creation of district health department.

OPINIONS OF ATTORNEY GENERAL

Department Authorized to Operate Public Transport. — The Pasquotank-Perquimans-Camden-Chowan District Health Department has the authority to operate public transit on a fare paying basis, without establishment of a Transportation Authority. Section 62-260 (a)(1) specifically exempts political subdivisions of this State from regulation by the North Carolina Utilities Commission. See opinion of Attorney General to Mr. David D. King, Director of Division of Public Transportation, North Carolina Department of Transportation, 55 N.C.A.G. 76 (1986).

§ 130A-37. District board of health.

(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 unless the member is the only person residing in the district who represents one of the six professions designated in subsection (b) of this section. 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.

(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; 1987, c. 84, 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 1987 amendment, effective April 23, 1987, added "unless the member is the only person residing in the district who represents one of the six professions designated in subsection (b) of this section" at the end of the third sentence of subsection (c).

§ 130A-40. Appointment of local health director.

OPINIONS OF ATTORNEY GENERAL

Employment and termination of local health director are subject to the provisions of Chapter 126, the State Personnel Act, and termination or discharge of a health director must comply with all statutory provisions and regulations duly adopted by the State Personnel Commission pursuant to Chapter 126. See opinion of Attorney General to Mr. Michael S. Kennedy, Esquire, Attorney for Cleveland County Board of Health, and Mr. Robert W. Yelton, Esquire, Attorney for Cleveland County, 55 N.C.A.G. 113 (1986).

Part 2. Sanitary Districts.

§ 130A-50. Election and terms of office of sanitary district boards.

(b1) If a sanitary district:

1. Does not share territory with any city as defined by G.S. 160A-1(2), and
2. The sanitary district is in more than one county,

the boards of county commissioners in all counties with territory in the sanitary district may set the sanitary district elections to be held on the same date as general elections in even-numbered years under G.S. 163-1 and may extend the terms of any sanitary district board members who are in office at the ratification of this act until the next even-year general election can been [be] held and successors 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; 1987, c. 22, 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. — The bracketed word "be" in subdivision (b1) has been inserted to reflect the language apparently intended.

Effect of Amendments. — The 1987 amendment, effective March 20, 1987, added subsection (b1).

§ 130A-62. Annual budget; tax levy.

(c) For sanitary districts whose taxes are collected by the county, before May 1 of each year, the assessor 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.

(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; 1987, c. 45, 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 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the first sentence of subsection (c).

§ 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:

(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 election on similar propositions of merger may not occur until one year from the date of the last election.

(1961, c. 866; 1981, c. 186, s. 7; 1983, c. 891, s. 2; 1987, c. 314, 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 1987, c. 314, s. 3 provides: "All actions and proceedings heretofore taken pursuant to the provisions of G.S. 130A-80 and 130A-83 with respect to the holding of an election on propositions of merger are in all respects validated."

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "resolution or" preceding "election on similar propositions" in the last sentence of subdivision (6).

§ 130A-83. Merger of two contiguous sanitary districts.

Two contiguous sanitary districts may merge in the following manner:

(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 districts shall not be merged. If a majority of the votes cast in either sanitary district are against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.

(1981, c. 951; 1983, c. 891, s. 2; 1987, c. 314, s. 2.)

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

Editor's Note. — Session Laws 1987, c. 314, s. 3 provides: "All actions and proceedings heretofore taken pursuant to the provisions of G.S. 130A-80 and 130A-83 with respect to the holding of an election on propositions of merger are in all respects validated."

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "resolution or" preceding "election on similar propositions" in the last sentence of subdivision (6).

§ 130A-85. Further dissolution procedures.

(a) The County Board of Commissioners may dissolve a Sanitary District located entirely within one county upon the following conditions:

(1) There are 500 or less resident freeholders residing within the District;

(2) The District has no outstanding bonded indebtedness;

(3) The Board of Commissioners agrees to assume and pay any other outstanding legal indebtedness of the District;

(4) The Board of Commissioners adopts a plan providing for continued operation and provision of all services previously being performed or rendered to the District. No plan shall be adopted unless at the time of its adoption any water and sewer or sanitary system being operated by the

District is in compliance with all local, State, and federal rules and regulations; and

(5) The Board of Commissioners adopts a resolution finding that the interest of the citizens of the Sanitary District and the county will be best served if the operation and the services provided by the District were provided for by the Board of Commissioners.

(b) Prior to taking action to dissolve a Sanitary District, the Board of Commissioners shall hold a public hearing concerning dissolution of the District. The County Board of Commissioners shall give notice of the hearing by publication of notice thereof in a newspaper or newspapers with general circulation in the county, once per week for three consecutive weeks. If, after the hearing, the Board of Commissioners deems it advisable to dissolve the District, they shall thereafter adopt the resolution and plan provided for herein.

During the period commencing with the first publication of notice of the public hearing as herein provided, and for a period of 60 days following the public hearing, the Board of Commissioners of the District may not enter into any contracts, incur any indebtedness or pledge, or encumber any of the District's assets except in the ordinary course of business.

(c) Upon adoption of the resolution provided for herein, all property, real, personal, and mixed, belonging to the District vests in and becomes the property of the county; all judgments, liens, rights of liens and causes of action in favor of the District vests in the county; and all rentals, taxes and assessments and other funds, charges or fees owed to the District may be collected by the county.

(d) Following dissolution of the District, the county may operate, maintain, and extend the services previously provided for by the District either:

(1) As a part of county government; or

(2) As a service district created on or after January 1, 1987, under Article 16 of Chapter 153A of the General Statutes to serve at least the area of the Sanitary District.

In lieu thereof, the services may be provided by any authority or district created after January 1, 1987, under this Article, or Articles 1, 4, 5 or 6 of Chapter 162A of the General Statutes to serve at least the area of the District. In such case, the county may convey the property, including all judgments, liens, rights of liens, causes of action, rentals, taxes and assessments mentioned in subsection (c) of this section, to that authority or District. (1987, c. 521.)

Editor's Note. — Session Laws 1987, c. 521, s. 2 makes this section effective upon ratification. The act was ratified June 30, 1987.

§§ 130A-86, 130A-87: Reserved for future codification purposes.

Article 4.

Vital Statistics.

§ 130A-93. Access to vital records; copies.

CASE NOTES

Statements regarding insured's suicide properly excluded. — In case brought by widow of insured to recover under life insurance policy, statements listing suicide as the cause of death in the medical examiner's report were properly excluded at trial. Drain v. United Servs. Life Ins. Co., — N.C. App. —, 354 S.E.2d 269 (1987).

In case brought by widow of insured to recover under life insurance policy, coroner's statement on death certificate that the gunshot wound killing the insured was intentionally self-inflicted was not based on personal knowledge of the events which took place and could only be described as hearsay and conclusory. The admission of such a statement would thwart the fairness of the trial and in essence shift the burden of proof on the issue of the cause of death from defendant to plaintiff. Therefore, the exclusion of this statement on the death certificate was proper. Drain v. United Servs. Life Ins. Co., — N.C. App. —, 354 S.E.2d 269 (1987).

Article 5.

Maternal and Child Health.

Part 3. Sickle Cell.

§ 130A-129. Department to establish program.

The Department shall establish and administer a Sickle Cell Program. The Commission shall, after consultation with the Council on Sickle Cell Syndrome, adopt rules for the program that shall include, but not be limited to, programs for education, voluntary testing, counseling, and medical reimbursement services for sickle cell syndrome. "Sickle cell syndrome" includes sickle cell disease, sickle cell trait, sickle cell thalassemia and variants. (1987, c. 822, s. 2.)

Editor's Note. — Session Laws 1987, c. 822, s. 4 makes this Part effective upon ratification. The act was ratified August 13, 1987.

§ 130A-130. Duties of local health departments.

Local health departments shall provide sickle cell syndrome testing and counseling at no cost to persons requesting these services. If an individual is found to have any aspect of sickle cell syndrome, the local health department shall inform the individual to that effect. The State Laboratory of Public Health shall, upon request, provide a person's sickle cell screening test results to any local health department or Sickle Cell Program contracting agency which has been requested to provide sickle cell services to that person. (1987, c. 822, s. 2.)

§§ 130A-131, 130A-132: Reserved for future codification purposes.

Article 6.

Communicable Diseases.

Part 1. In General.

§ 130A-133. (Effective February 1, 1988) 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 limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals 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 or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to communicable disease or communicable condition 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 or action of persons who have not received immunizations 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.

(5) "Communicable condition" means the state of being infected with a communicable agent but without symptoms. (1979, c. 192, s. 1; 1983, c. 891, s. 2; 1987, c. 782, ss. 1-3.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote subdivision (2), inserted "or action" and "or communicable condition" in subdivision (4), and added subdivision (5).

§ 130A-133 has a delayed effective date. See notes for date.

§ 130A-134. (Effective February 1, 1988) Reportable diseases and conditions.

The Commission shall establish by rule a list of communicable diseases and communicable conditions to be reported. (1983, c. 891, s. 2; 1987, c. 782, s. 4.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, inserted "and conditions" in the catchline, and inserted "and communicable conditions" in this section.

§ 130A-135. (Effective February 1, 1988) Physicians 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 communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the physician is consulted. (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; 1987, c. 782, s. 5.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 130A-136. (Effective February 1, 1988) 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), who has reason to suspect that a person within the school or day-care facility has a communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the school or facility is located. (1979, c. 192, s. 2; 1983, c. 891, s. 2; 1987, c. 782, s. 6.)

§§ 130A-134 to 130A-136 have delayed effective dates. See notes for dates.

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 130A-137. (Effective February 1, 1988) Medical facilities may report.

A medical facility, in which there is a patient reasonably suspected of having a communicable disease or condition declared by the Commission to be reported, may report information specified by the Commission to the local health director of the county or district in which the facility is located. (1983, c. 891, s. 2; 1987, c. 782, s. 7.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 130A-138. (Effective February 1, 1988) Operators of restaurants and other food or drink establishments to report.

An operator of a restaurant or other establishment where food or drink is prepared or served for pay, as defined in G.S. 130A-247(4) and (5), shall report information required by the Commission to the local health director of the county or district in which the restaurant or food establishment is located when the operator has reason to suspect an outbreak of food-borne illness in its customers or employees or when it has reason to suspect that a food handler at the establishment has a food-borne disease or food-borne condition required by the Commission to be reported. (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; 1987, c. 782, s. 8.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§§ 130A-136 to 130A-138 have delayed effective dates. See notes for dates.

§ 130A-139. (Effective February 1, 1988) Persons in charge of laboratories to report.

A person in charge of a clinical or pathological laboratory providing diagnostic service in this State shall report information required by the Commission to a public health agency specified by the Commission when the laboratory makes any of the following findings:

(1) Sputa, gastric contents, or other specimens which are smear positive for acid fast bacilli or culture positive for Mycobacterium tuberculosis;

(2) Urethral smears positive for Gram-negative intracellular diplococci or any culture positive for Neisseria gonorrhoeae;

(3) Positive serological tests for syphilis or positive darkfield examination;

(4) Any other positive test indicative of a communicable disease or communicable condition for which laboratory reporting is required by the Commission. (1981, c. 81, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 9.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 130A-140. (Effective February 1, 1988) Local health directors to report.

A local health director shall report to the Department all cases of diseases or conditions or laboratory findings of residents of the jurisdiction of the local health department which are reported to the local health director pursuant to this Article. A local health director shall report all other cases and laboratory findings reported pursuant to this Article to the local health director of the county or district where the person with the reportable disease or condition or laboratory finding resides. (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; 1987, c. 782, s. 10.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§§ 130A-139, 130A-140 have delayed effective dates. See notes for dates.

§ 130A-141. (Effective February 1, 1988) Form, content and timing of reports.

The Commission shall adopt rules which establish the specific information to be submitted when making a report required by this Article, time limits for reporting, the form of the reports and to whom reports of laboratory findings are to be made. (1983, c. 891, s. 2; 1987, c. 782, s. 11.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 130A-142. (Effective February 1, 1988) 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 as a result of making that report. (1983, c. 891, s. 2; 1987, c. 782, s. 12.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, added "as a result of making that report" at the end of the section.

§ 130A-143. (Effective February 1, 1988) Confidentiality of records.

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;

(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;

(3) Release is made to health care personnel providing medical care to the patient;

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding

§§ 130A-141 to 130A-143 have delayed effective dates. See notes for dates.

control measures for communicable diseases and conditions;

(5) Release is made pursuant to other provisions of this Article;

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case.

(7) Release is made by the Department or a local health department to a court or a law enforcement officer for the purpose of enforcing the provisions of this Article pursuant to Article 1, Part 2 of this Chapter.

(8) Release is made by the Department or a local health department to another state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition;

(9) Release is made by the Department for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes;

(10) Release is made pursuant to G.S. 130A-144(b); or

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS. (1983, c. 891, s. 2; 1987, c. 782, s. 13.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 130A-144. (Effective February 1, 1988) Investigation and control measures.

(a) The local health director shall investigate, as required by the Commission, cases of communicable diseases and communicable conditions reported to the local health director pursuant to this Article.

(b) Physicians and persons in charge of medical facilities or clinical or pathological laboratories shall, upon request and proper identification, permit a local health director or the State Health Director to examine, review, and obtain a copy of medical records in their possession or under their control which pertain to the diagnosis, treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition.

(c) A physician or a person in charge of a medical facility or clinical or pathological laboratory who permits examination, review or copying of medical records pursuant to subsection (b) shall be immune from any civil or criminal liability that otherwise might

§§ 130A-143, 130A-144 have delayed effective dates. See notes for dates.

be incurred or imposed as a result of complying with a request made pursuant to subsection (b).

(d) The attending physician shall give control measures prescribed by the Commission to a patient with a communicable disease or communicable condition and to patients reasonably suspected of being infected or exposed to such a disease or condition. The physician shall also give control measures to other individuals as required by rules adopted by the Commission.

(e) The local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions and any other communicable disease or communicable condition that represents a significant threat to the public health.

(f) All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission subject to the limitations of G.S. 130A-148.

(g) The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions subject to the limitations of G.S. 130A-148. Temporary rules prescribing control measures for communicable diseases and conditions shall be adopted pursuant to G.S. 150B-13. (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; 1987, c. 782, s. 14.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§ 130A-145. (Effective February 1, 1988) Local health director has quarantine and isolation authority.

A local health director and the State Health Director are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. (1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 15.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

§§ 130A-144, 130A-145 have delayed effective dates. See notes for dates.

§ 130A-148. (For effective date see note) Laboratory tests for AIDS virus infection.

(a) For the protection of the public health, the Commission shall adopt rules establishing standards for the certification of laboratories to perform tests for Acquired Immune Deficiency Syndrome (AIDS) virus infection. The rules shall address, but not be limited to, proficiency testing, record maintenance, adequate staffing and confirmatory testing. Tests for AIDS virus infection shall be performed only by laboratories certified pursuant to this subsection and only on specimens submitted by a physician licensed to practice medicine. This subsection shall not apply to testing performed solely for research purposes under the approval of an institutional review board.

(b) Prior to obtaining consent for donation of blood, semen, tissue or organs, a facility or institution seeking to obtain blood, tissue, semen or organs for transfusion, implantation, transplantation or administration shall provide the potential donor with information about AIDS virus transmission, and information about who should not donate.

(c) No blood or semen may be transfused or administered when blood from the donor has not been tested or has tested positive for AIDS virus infection by a standard laboratory test.

(d) No tissue or organs may be transplanted or implanted when blood from the donor has not been tested or has tested positive for AIDS virus infection by a standard laboratory test unless consent is obtained from the recipient, or from the recipient's guardian or a responsible adult relative of the recipient if the recipient is not competent to give such consent.

(e) Any facility or institution that obtains or tranfuses, implants, transplants, or administers blood, tissue, semen, or organs shall be immune from civil or criminal liability that otherwise might be incurred or imposed for transmission of AIDS virus infection if the provisions specified in subsections (b), (c), and (d) of this section have been complied with.

(f) Specimens may be tested for AIDS virus infection for research or epidemiologic purposes without consent of the person from whom the specimen is obtained if all personal identifying information is removed from the specimen prior to testing.

(g) Persons tested for AIDS virus infection shall be notified of test results and counseled appropriately. This subsection shall not apply to tests performed by or for entities governed by Article 34 of G.S. Chapter 58, the Insurance Information and Privacy Protection Act, provided that said entities comply with the notice requirements thereof.

(h) The Commission may authorize or require laboratory tests for AIDS virus infection when necessary to protect the public health. (1987, c. 782, s. 16.)

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes this section effective February 1, 1988, except that the provision in subsection (a) of this section, which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

§ 130A-148 has a delayed effective date. See notes for date.

§§ 130A-149 to 130A-151: Reserved for future codification purposes.

Part 2. Immunization.

§ 130A-155.1. (Effective February 1 1988) 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 of 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 unless after July 1, 1986, the person transfers, interrupts study for a pe-

§ 130A-155.1 has a delayed effective date. See notes for date.

riod of six months or more, or graduates. (1985, c. 692, s. 1; 1987, c. 782, s. 17.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. —

Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, added "unless after July 1, 1986, the person transfers, interrupts study for a period of six months or more, or graduates" at the end of subsection (d).

§ 130A-156. (Effective February 1, 1988) 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 due to the presence of a specific contraindication, the person is not required to receive the specified immunization as long as the contraindication persists. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 18.)

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, rewrote this section.

Part 3. Venereal Disease.

§ 130A-163: Repealed by Session Laws 1987, c. 782, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

§§ 130A-155.1, 130A-156 have delayed effective dates. See notes for dates.

§ 130A-163 has a delayed repeal date. See notes for date.

Part 5. Tuberculosis.

§ 130A-179: Repealed by Session Laws 1987, c. 782, s. 20, effective February 1, 1988.

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 782, s. 21 makes the act effective February 1, 1988, except that the provision in § 130A-148(a), which requires laboratories to be certified in order to perform tests for AIDS virus infection, shall become effective July 1, 1988. However, upon ratification of the act (Aug. 12, 1987), the Commission for Health Services may adopt rules pursuant to the authority granted under the act. These rules shall not be effective before February 1, 1988.

Part 6. Rabies.

§ 130A-187. County rabies vaccination clinics.

The local health director shall organize or assist other county departments to organize at least one countywide rabies vaccination clinic per year 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; 1987, c. 219.)

Effect of Amendments. — The 1987 amendment, effective May 20, 1987, substituted "at least one countywide rabies vaccination clinic per year" for "quarterly countywide rabies vaccination clinics" in the first sentence.

§ 130A-191. Possession and distribution of rabies vaccine.

It shall be unlawful for persons other than licensed veterinarians, certified rabies vaccinators and persons engaged in the distribution of rabies vaccine to possess rabies vaccine. Persons engaged in the distribution of vaccines may distribute, sell and offer to sell rabies vaccine only to licensed veterinarians and certified rabies vaccinators. (1987, c. 218, s. 1.)

Editor's Note. — Session Laws 1987, c. 218, s. 2 makes this section effective October 1, 1987.

Article 8.

Sanitation.

Part 2. Meat Markets.

§ 130A-228. Regulation of places selling meat.

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of markets where meat food

§ 130A-179 has a delayed repeal date. See notes for date.

products (as defined in G.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.

(b) No market 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 market and shall not be transferable. A permit shall be issued only when the market satisfies all of the requirements of the rules. A permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the market to maintain a minimum grade of C. A permit may otherwise be suspended or revoked in accordance with G.S. 130A-23. (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; 1987, c. 438, s. 1.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, designated the first paragraph as subsection (a) and added subsection (b).

Part 4. Institutions and Schools.

§ 130A-235. (Effective February 1, 1988) Regulation of sanitation in institutions.

For protection of the public health, the Commission shall adopt rules to establish sanitation requirements for all institutions and facilities at which individuals are provided room or board and for which a license to operate is required to be obtained or a certificate for payment is obtained from the Department. The rules shall also apply to facilities that provide room and board to individuals but are exempt from licensure under G.S. 131D-10.4(1). No other State agency may adopt rules to establish sanitation requirements for these institutions and facilities. The Department shall issue a license to operate or a certificate for payment to such an institution or facility only upon compliance with all applicable sanitation rules of the Commission, and the Department may suspend or revoke a license or a certificate for payment for violation of these rules. In adopting rules pursuant to this section, the Commission shall define categories of standards to which such institutions and facilities shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories. 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; 1987, c. 543, s. 1.)

§ 130A-235 has a delayed effective date. See notes for date.

For this section as in effect until February 1, 1988, see the main volume.

Editor's Note. — Session Laws 1987, c. 543, s. 8 makes the act effective February 1, 1988, but provides that upon ratification of the act (July 3, 1987), the Commission for Health Services is authorized to adopt rules pursuant to authority granted under the act, and that these rules shall not be effective before February 1, 1988.

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, substituted the present first five sentences for a former first sentence, which read "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."

Part 5. Migrant Housing.

§ 130A-241. Inspection and reports.

OPINIONS OF ATTORNEY GENERAL

Local sanitation inspectors are serving as officers, employees or agents of the state while acting within the scope of their office, employment, service, agency or authority in performing migrant housing inspections, and the inspectors are covered by the State Tort Claims Act when performing such inspections. See opinion of Attorney General to Mr. Bob Everett, Chairman, North Carolina Farm Worker Council, — N.C.A.G. — (Feb. 4, 1987).

Part 6. Regulation of Food and Lodging Facilities.

§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:

(2) "Private club" means an establishment which maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is not profit oriented.

(1983, c. 891, s. 2; 1987, c. 367.)

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

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, inserted "does not provide food or lodging for pay to anyone who is not a member or a member's guest" in subdivision (2).

§ 130A-248. Regulation of restaurants and hotels.

(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 immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit may otherwise

§ 130A-235 has a delayed effective date. See notes for date.

be suspended or revoked in accordance with G.S. 130A-23. (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; 1987, c. 438, 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 1987 amendment, effective June 22, 1987, substituted the last two sentences of subsection (d) for a former final sentence, which read "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."

§ 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 Secretary shall inspect each restaurant at least quarterly. 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 or cards 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 or upon picking up food prepared inside but received and paid for outside the facility through delivery windows or other delivery devices. If a single facility has one or more outside delivery service stations and an internal delivery system, that facility shall have a grade card posted where it may be readily visible upon entering the facility and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the facility. The grade card or cards 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; 1987, c. 145; c. 189.)

Effect of Amendments. — Session Laws 1987, c. 145, effective January 1, 1988, added "or upon picking up food prepared inside but received and paid for outside the facility through delivery windows or other delivery devices" at the end of the present fifth sentence, inserted the present sixth sentence, and substituted "card or cards" for "card" in the present fourth and final sentences.

Session Laws 1987, c. 189, effective July 1, 1987, added the present second sentence.

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, decorative 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.

(1937, c. 298, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 1; 1983, c. 891, s. 2; 1987, c. 456, 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 1987 amendment, effective January 1, 1988, inserted "decorative pillow" in subdivision (1).

§ 130A-262. Sanitizing.

(c) A person who sanitizes bedding shall attach to the bedding a yellow tag containing information required by the rules of the Commission.

(1937, c. 298, s. 2; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, 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 1987 amendment, effective January 1, 1988, deleted "and shall affix to the bedding the adhesive stamp required by G.S. 130A-269" at the end of subsection (c).

§ 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.

(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; and

(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.

(4) Repealed by Session Laws 1987, c. 456, s. 4, effective January 1, 1988.

(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; 1987, c. 456, 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 1987 amendment, effective January 1, 1988, deleted "and shall have affixed to it the adhesive stamp or have a printed stamp exemption permit number provided for in G.S. 130A-269" at the end of the second sentence of subsection (a), and deleted a former third sentence of that subsection, which read "The stamp shall be affixed so as not to interfere with the wording on the tag," inserted "and" at the end of subdivision (b)(2), deleted "and" at the end of subdivision (b)(3), and deleted former subdivision (b)(4), which read "A stamp exemption permit number when requirements of G.S. 130A-269 are met."

§ 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, and labeled in the manner required by this Part and which does not otherwise comply with the provisions of this Part.

(1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, 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 1987 amendment, effective January 1, 1988, substituted "tagged, and labeled" for "tagged, labeled and stamped" in subsection (a).

§ 130A-268. Registration numbers.

(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 completed application and applicable fees, 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) to (e) Repealed by Session Laws 1987, c. 456, s. 6, effective January 1, 1988. (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; 1987, c. 456, s. 6.)

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, substituted "completed application and applicable fees" for "application" in the second sentence of subsection (a), and deleted former subsections (b) through (e), relating to license fees, transfer and posting of licenses, and suspension of licenses.

§ 130A-269. Payment of fees; licenses.

(a), (b) Repealed by Session Laws 1987, c. 456, s. 7, effective January 1, 1988.

(c) The Department shall administer and enforce this Part. A person who has done business in this State throughout the preceding calendar year shall obtain a license by paying a fee to the Department in an amount determined by the total number of bedding units manufactured, sold, or sanitized in this State by the applicant during the calendar year immediately preceding, at the rate of five and two tenths cents (5.2¢) per bedding unit. However, if this amount is less than fifty dollars ($50.00), a minimum fee of fifty dollars ($50.00) shall be paid to the Department.

(d) A person who has not done business in this State throughout the preceding calendar year shall obtain a license by paying an initial fee to the Department in the amount of seven hundred twenty dollars ($720.00) for the first year in which business is done in this State, prorated in accordance with the quarter of the calendar year in which the person begins doing business. After submission of proof of business volume in accordance with subsection (h) of this section for the part of the preceding calendar year in which the

person did business in this State, the Department shall determine the amount of fee for which the person is responsible for that time period by using a rate of five and two tenths cents (5.2¢) for each bedding unit. However, if this amount is less than fifty dollars ($50.00), then the amount of the fee for which the person is responsible shall be fifty dollars ($50.00). If the person's initial payment is more than the amount of the fee for which the person is responsible, the Department shall make a refund or adjustment to the cost of the fee due for the next year in the amount of the difference. If the initial payment is less than the amount of the fee for which the person is responsible, the person shall pay the difference to the Department.

(d1) Payments, refunds, and adjustments shall be made in accordance with rules adopted by the Commission.

(d2) Upon payment of the fees charged pursuant to subsections (c) and (d), or the first installment thereof as provided by rules adopted by the Commission, the Department shall issue a license to the person. Licenses shall be kept conspicuously posted in the place of business of the licensee at all times. The Secretary may suspend a license for a maximum of six months for two or more serious violations of this Part or of the rules of the Commission, within any 12-month period.

(e) A maximum fee of seven hundred fifty dollars ($750.00) shall be charged for units of bedding manufactured in this State but not sold in this State.

(f) For the sole purpose of computing fees for which a person is responsible, 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, pillows or decorative pillows are defined as one bedding unit, and any other item is defined as one bedding unit.

(g) An application for license must be submitted on a form prescribed by the Secretary. No license may be issued to a person unless the person complies with the rules of the Commission governing the granting of licenses.

(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, s. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 7.)

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, rewrote the catchline to this section; deleted former subsections (a) and (b), relating to stamps and stamp exemption permits; rewrote subsections (c) and (d),

also formerly relating to stamp exemption permits; added subsections (d1) and (d2); substituted "fee of seven hundred fifty dollars ($750.00) shall be charged" for "charge of seven hundred fifty dollars ($750.00) shall be made" in subsection (e); substituted "sole purpose of computing fees for which a person is responsible" for "purpose of computing the cost of stamp exemption permits only" and "pillows or decorative pillows" for "or pillows" in subsection (f); and substituted reference to licenses for reference to stamp exemption permits throughout subsection (g).

§ 130A-271. Enforcement by the Department.

(b) The Secretary may prohibit sale and place an "off sale" tag on any bedding which is not made, sanitized, or tagged 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.

(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; 1987, c. 456, s. 8.)

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

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, substituted "sanitized, or tagged" for "sanitized, tagged or stamped" in the first sentence of subsection (b).

§ 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 pay fees in accordance with G.S. 130A-269.

(1937, c. 298, s. 11; 1957, c. 1357, s. 1; 1971, c. 371, s. 9; 1983, c. 891, s. 2; 1987, c. 456, s. 9.)

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

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, substituted "to pay fees in accordance with G.S. 130A-269" for "to affix stamps or pay a license tax" at the end of the second sentence of subsection (a), and deleted a former third sentence of subsection (a), which read "Bedding made at these plants or places of business may be sold by any dealer without the stamps being affixed."

Article 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

The following definitions shall apply throughout this Article:

(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.)

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

Editor's Note. — Session Laws 1987, c. 574, s. 1 designates this section as Part 1 of Article 9.

The introductory language of this section is set out above to correct a typographical error in the main volume.

Part 2. Solid and Hazardous Waste Management.

§ 130A-291. Solid Waste Unit in Department of Human Resources.

Editor's Note. — Session Laws 1987, c. 574, s. 1 designates §§ 130A-291 through 130A-309 as Part 2 of Article 9.

OPINIONS OF ATTORNEY GENERAL

Governor does not have authority to issue moratorium on granting of permits for hazardous waste facilities in this State. See opinion of Attorney General to Mr. Tom Karnoski, Hazardous Waste Treatment Commission, 55 N.C.A.G. 73 (1986).

§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to establish facility.

(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 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, s. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 3-5; 1987, c. 827, s. 249.)

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

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "in accordance with Article 2 of

Chapter 150A of the General Statutes" following "affected locality" in the second sentence of subsection (c).

OPINIONS OF ATTORNEY GENERAL

Governor does not have authority to issue moratorium on granting of permits for hazardous waste facilities in this State. See opinion of Attorney General to Mr. Tom Karnoski, Hazardous Waste Treatment Commission, 55 N.C.A.G. 73 (1986).

§ 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 sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, without the Department receiving the prior approval for such permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in. 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;

(4a) No permit shall be granted for any public or private sanitary landfill to receive solid non-radioactive waste generated outside the boundaries of North Carolina to be deposited, unless such waste has previously been inspected by the solid waste regulatory agency of that nation, state or territory, characterized in detail as to its contents and certified by that agency to be non-injurious to health and safety. The Commission shall adopt rules to implement this subsection.

(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:

a. The existing and projected population for such area;
b. The quantities of solid waste generated and estimated to be generated in such area;
c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and
e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all 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, or prohibit collectors of solid waste from recycling materials or limit 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 from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(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.

(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 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B 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 consider-

ations 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.

(j) The Commission may adopt rules for financial responsibility (including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures, and for potential liabililty of sudden and nonsudden accidental occurrences), which may permit the use of insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trust, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would have been provided by insurance if insurance were the only mechanism used. Any direct or indirect parent corporation or other parent entity of the operator of a commercial hazardous waste treatment facility shall be deemed to be a guarantor of payment by the operator for closure, monitoring, and corrective measures and for liability incurred by the operator arising from the operation of the commercial hazardous waste treatment facility. The Department may provide a copy of any filing to meet the financial responsibility requirements to the State Treasurer, who shall review the filing and provide written comments on the equivalency of protection provided by the filing, including recommended changes. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2; 1981, c. 704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 31; 1987, c. 597; c. 761; c. 773, s. 1; c. 827, ss. 1, 250; c. 848.)

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

Editor's Note. —

Session Laws 1987, c. 773, which amended subdivision (a)(7), provides in s. 3 that the act does not limit any authority which any city or county may otherwise have to impose local permit application fees.

Effect of Amendments. —

Session Laws 1987, c. 597, effective July 10, 1987, added the second sentence of subdivision (a)(4).

Session Laws 1987, c. 761, effective August 10, 1987, added subdivision (a)(4a).

Session Laws 1987, c. 773, s. 1, effective August 12, 1987, rewrote subdivision (a)(7).

Session Laws 1987, c. 827, s. 250, effective August 13, 1987, deleted the last two sentences of subsection (d), pertaining to right of aggrieved parties to judicial review and deleted the last two sentences of subsection (f), pertaining to conditions on issuance of permits and disapproval of applications.

Session Laws 1987, c. 848, effective August 14, 1987, inserted the present second sentence of subsection (j).

OPINIONS OF ATTORNEY GENERAL

Governor does not have authority to issue moratorium on granting of permits for hazardous waste facilities in this State. See opinion of Attorney General to Mr. Tom Karnoski, Hazardous Waste Treatment Commission, 55 N.C.A.G. 73 (1986).

§ 130A-294.1. (Effective until July 1, 1988) Fees applicable to generators and transporters of hazardous waste, and to hazardous waste storage, treatment, and disposal facilities.

(a) A person who generates 1000 kilograms or more of hazardous waste in any calendar month during the year beginning July 1 and ending June 30 shall pay to the Department an annual fee of six hundred dollars ($600.00) plus fifty cents ($0.50) per ton of hazardous waste generated up to a maximum of 25,000 tons.

(b) [Reserved.]

(c) A generator who generates less than 1000 kilograms of hazardous waste in each calendar month during the year beginning July 1 and ending June 30 shall not be liable for payment of a fee under subsection (a) of this section for that year.

(d) Hazardous waste generated as a result of any type of remedial action shall not be subject to a tonnage fee under subsection (a) of this section.

(e) A generator of hazardous waste also permitted as a hazardous waste storage, treatment, or disposal facility that accepts hazardous waste from the general public or from another person for a fee shall pay, in addition to the fee applicable to generators, the annual fee or fees applicable to storage, treatment, and disposal facilities under subsection (g) of this section; provided that, a generator whose hazardous waste is stored, treated, or disposed of at a facility which is owned or operated by the generator shall be liable for the tonnage fee applicable to generators under subsection (a) of this section, and shall not be liable for the tonnage fees applicable to storage, treatment, or disposal facilities under subsection (g) of this section.

(f) A transporter shall pay a fee of six hundred dollars ($600.00).

(g) A storage, treatment, or disposal facility that accepts hazardous waste from the general public or from another person for a fee shall pay a fee of one thousand two hundred dollars ($1,200) for each permitted activity, plus a single tonnage charge of one dollar and seventy-five cents ($1.75) per ton of hazardous waste stored, treated, and disposed of at the facility.

(h) An applicant for a permit for a hazardous waste storage, treatment, or disposal facility that proposes to accept hazardous waste from the general public or from another person for a fee shall pay an application fee for each proposed activity as follows:

(1) Storage facility	$10,000;
(2) Treatment facility	$15,000;
(3) Disposal facility	$25,000.

(i) All fees collected by the Department under this section shall be deposited in a separate nonreverting fund to be used, subject to appropriation by the General Assembly, to pay the State's share of the cost of the Department's hazardous waste management program.

(j) [Reserved.]

(k) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's

§ 130A-294.1 is set out twice. See headings for effective dates.

hazardous waste management program. The report shall include, but is not limited to, beginning fund balance, fees collected under this section, anticipated revenue from all other sources, interest earned by the fund, expenditures for the hazardous waste management program, ending fund balance, and any other information requested by the General Assembly. (1987, c. 773, s. 2.)

Section Set Out Twice. — The section above is effective until July 1, 1988. For this section as amended effective July 1, 1988, see the following section, also numbered § 130A-294.1.

Editor's Note. — Session Laws 1987, c. 773, s. 13 makes this section effective July 1, 1987, except that the tonnage fees established by the act are effective upon ratification. The act was ratified August 12, 1987.

Session Laws 1987, c. 773, s. 3 provides that the act does not limit any authority which any city or county may otherwise have to impose local permit application fees.

§ 130A-294.1. (Effective July 1, 1988) Fees applicable to generators and transporters of hazardous waste, and to hazardous waste storage, treatment, and disposal facilities.

(A) A person who generates 1000 kilograms or more of hazardous waste in any calendar month during the year beginning July 1 and ending June 30 shall pay to the Department an annual fee of five hundred dollars ($500.00) plus fifty cents ($0.50) per ton of hazardous waste generated up to a maximum of 25,000 tons.

(b) A generator who generates 100 kilograms or more of hazardous waste in any calendar month during the year beginning July 1 and ending June 30 but less than 1000 kilograms of hazardous waste in each calendar month during that year shall pay an annual fee of twenty-five dollars ($25.00).

(c) A generator who generates less than 100 kilograms of hazardous waste in each calendar month during the year beginning July 1 and ending June 30 shall not be liable for payment of a fee under subsections (a) and (b) of this section for that year.

(d) Hazardous waste generated as a result of any type of remedial action shall not be subject to a tonnage fee under subsections (a) and (b) of this section.

(e) A generator of hazardous waste also permitted as a hazardous waste storage, treatment, or disposal facility that accepts hazardous waste from the general public or from another person for a fee shall pay, in addition to the fee applicable to generators, the annual fee or fees applicable to storage, treatment, and disposal facilities under subsection (g) of this section; provided that, a generator whose hazardous waste is stored, treated, or disposed of at a facility which is owned or operated by the generator shall be liable for the tonnage fee applicable to generators under subsection (a) of this section, and shall not be liable for the tonnage fees applicable to storage, treatment, or disposal facilities under subsection (g) of this section.

(f) A transporter shall pay a fee of six hundred dollars ($600.00).

(g) A storage, treatment, or disposal facility that accepts hazardous waste from the general public or from another person for a fee shall pay a fee of one thousand two hundred dollars ($1,200) for

§ 130A-294.1 is set out twice. See headings for effective dates.

each permitted activity, plus a single tonnage charge of one dollar and seventy-five cents ($1.75) per ton of hazardous waste stored, treated, and disposed of at the facility.

(h) An applicant for a permit for a hazardous waste storage, treatment, or disposal facility that proposes to accept hazardous waste from the general public or from another person for a fee shall pay an application fee for each proposed activity as follows:

(1) Storage facility	$10,000;
(2) Treatment facility	$15,000;
(3) Disposal facility	$25,000.

All fees collected by the Department under this section shall be deposited in a separate nonreverting fund to be used, subject to appropriation by the General Assembly, to pay the State's share of the cost of the Department's hazardous waste management program.

(j) The Secretary shall annually adjust the tonnage fees established by this section to assure the continued availability of funds sufficient to pay the State's share of the cost of the Department's hazardous waste management program.

(k) The Department shall make an annual report to the General Assembly and its Fiscal Reserarch Division on the cost of the State's hazardous waste management program. The report shall include, but is not limited to, beginning fund balance, fees collected under this section, anticipated revenue from all other sources, interest earned by the fund, expenditures for the hazardous waste management program, ending fund balance, and any other information requested by the General Assembly. (1987, c. 773, ss. 2, 4-8.)

Section Set Out Twice. — The section above is effective July 1, 1988. For this section as in effect until July 1, 1988, see the preceding section, also numbered § 130A-294.1.

Editor's Note. —

Session Laws 1987, c. 773, s. 13 makes this section effective July 1, 1987, except that the tonnage fees established by the act are effective upon ratification. The act was ratified August 12, 1987.

Session Laws 1987, c. 773, s. 3 provides that the act does not limit any authority which any city or county may otherwise have to impose local permit application fees.

Effect of Amendments. — The 1987 amendment by c. 773, ss. 4-8, effective July 1, 1988, substituted "five hundred dollars ($500.00)" for "six hundred dollars ($600.00)" in subsection (a), added subsection (b), rewrote subsections (c) and (d), and added subsection (j).

§ 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.

(1981, c. 704, s. 7; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 8; 1987, § 461, s. 3.)

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

Effect of Amendments. — The 1987 amendment, effective June 24, 1987, and applicable to any application for a permit made after that date, substituted "state laws" for "State laws" in subdivision (a)(1).

§ 130A-295.01. Additional requirement for commercial hazardous waste treatment facilities.

(a) As used in this section:

(1) "Commercial hazardous waste treatment facility" means any hazardous waste treatment facility which accepts hazardous waste from the general public or from another person for a fee, but does not include any facility owned or operated by a generator of hazardous waste solely for his own use, and does not include any facility owned by the State or by any agency or subdivision thereof solely for the treatment of hazardous waste generated by agencies or subdivisions of the State;

(2) "New", when used in connection with "facility", refers to a planned or proposed facility, or a facility which has not been placed in operation, but does not include facilities which have commenced operations as of June 22, 1987, including facilities operated under interim status;

(3) "Modified", when used in connection with "permit", means any change in any permit in force on or after June 22, 1987, which would either expand the scope of permitted operations, or extend the expiration date of the permit, or otherwise constitute a major modification of the permit as defined in Title 40, Part 270.41 of the Code of Federal Regulations (1 July 1986); and

(4) "7Q10 conditions", when used in connection with "surface water," refers to the minimum average flow for a period of seven consecutive days that has an average occurrence of once in 10 years as referenced in 15 NCAC 2B .0206(a)(3) as adopted February 1, 1976.

(b) No permit for any new commercial hazardous waste treatment facility shall be issued or become effective, and no permit for a commercial hazardous waste treatment facility shall be modified, until the applicant has satisfied the Department that such facility meets, in addition to all other applicable requirements, the following requirements:

(1) The facility shall not discharge directly a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater at the point of discharge into the surface water under 7Q10 conditions.

(2) The facility shall not discharge indirectly through a publicly owned treatment works (POTW) a hazardous or toxic substance into a surface water that is upstream from a

public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater, irrespective of any dilution occurring in a wastewater treatment plant, at the point of discharge into the surface water under 7Q10 conditions. (1987, c. 437, s. 1.)

Editor's Note. — Session Laws 1987, c. 437, s. 3 makes this section effective upon ratification. The act was ratified June 22, 1987.

Session Laws 1987, c. 437, s. 2 provides: "The provisions of this act are severable. If the Administrator of the United States Environmental Protection Agency concludes; pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6926; and Title 40, Part 271, Code of Federal Regulations §§ 271.22 and .23, or in accordance with other applicable law and regulations; that any provision of this act will result in the withdrawal of approval of the North Carolina hazardous waste program, such provision is void. The Secretary, his designee, or other State official shall, upon receipt of notice of a decision by the Administrator that any provision of this act will result in withdrawal of program approval, certify to the Secretary of State that such provision is void. In the event that any provision of this act is voided pursuant to this section, it shall be revived only upon a subsequent reversal by the Administrator of his decision based on his determination that such provision is not in conflict with Environmental Protection Agency requirements for State program approval, or upon a reversal of the Administrator's initial decision by administrative or judicial review. The voiding of any provision of this act shall not affect other provisions of the act which can be given effect without the voided provision."

§ 130A-303. Imminent hazard.

(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 a generator or transporter of solid waste or to the owner or operator of a solid waste management facility. Where the imminent hazard is caused by an inactive hazardous substance or waste disposal site, the Secretary shall follow the procedures set forth in G.S. 130A-310.5. (1977, 2nd Sess., c. 1216; 1981, c. 704, s. 7; 1983, c. 891, s. 2; 1987, c. 574, s. 3.)

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

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, added the last sentence of subsection (b).

§ 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-17, would divulge information entitled to protection under subsection (b), the Department shall consider the information confidential in accordance with the purposes of that 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.

(1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2; 1985, c. 738, s. 5; 1987, c. 282, s. 20.)

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

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "G.S. 130A-17" for "G.S. 130A-16" in subsection (a).

Part 3. Inactive Hazardous Sites.

§ 130A-310. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

(2) "Hazardous substance" means hazardous substance as defined in CERCLA/SARA.

(3) "Inactive hazardous substance or waste disposal site" or "site" means any facility, structure, or area where disposal of any hazardous substance or waste has occurred. Such sites do not include hazardous waste facilities permitted or in interim status under this Article, or sites currently undergoing remedial action under CERCLA/SARA, or sites undergoing voluntary remedial action with the approval of the Department.

(4) "Operator" means the person responsible for the overall operation of an inactive hazardous substance or waste disposal site.

(5) "Owner" means any person who owns an inactive hazardous substance or waste disposal site, or any part thereof.

(6) "Release" means release as defined in the CERCLA/SARA.

(7) "Remedy" or "Remedial Action" means remedy or remedial action as defined in CERCLA/SARA.

(8) "Remove" or "Removal" means remove or removal as defined in CERCLA/SARA.

(9) "Responsible party" means any person who is liable pursuant to G.S. 130A-310.7. (1987, c. 574, s. 2.)

Editor's Note. — Session Laws 1987, c. 574, s. 6 makes this Part effective July 1, 1987.

Section 4 of Session Laws 1987, c. 574, provides:

"This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act; nor shall it be construed to obligate the Secretary to implement any monitoring program, testing program, or inactive hazardous substance or waste disposal site remedial action program for which no funding is available, from appropriations or otherwise."

§ 130A-310.1. Identification, inventory, and monitoring of inactive hazardous substance or waste disposal sites.

(a) Within six months of July 1, 1987, the Department shall develop and implement a program for locating, cataloguing, and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. The Secretary shall compile and maintain an inventory of all such sites based on information submitted by owners, operators, and responsible parties, and on data obtained directly by the Secretary. The inventory shall include any evidence of contamination to the air, surface water, groundwater, surface or subsurface soils, or waste streams. The inventory shall indicate the extent of any actual damage or potential danger to public health or to the environment resulting from such contamination.

(b) Within six months of July 1, 1987, the Commission shall develop and make available a format and checklist for submission of data relevant to inactive hazardous substance or waste disposal sites. Within 90 days thereafter, each owner, operator, or responsible party shall submit to the Secretary all such site data as is known or readily available to him. The owner, operator, or responsible party shall certify under oath that, to the best of his knowledge and belief, such data is complete and accurate.

(c) Whenever the Secretary determines that there is a release, or substantial threat of a release, into the environment of a hazardous substance from an inactive hazardous substance or waste disposal site, the Secretary may, in addition to any other powers he may have, order any responsible party to conduct such monitoring, testing, analysis, and reporting as the Secretary deems reasonable and necessary to ascertain the nature and extent of any hazard posed by the site. Written notice of any order issued pursuant to this section shall be given to all persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to the entry of any such order, shall solicit the cooperation of the responsible party.

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary 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.

(e) Whenever a person ordered to take any action pursuant to this section is unable or fails to do so, or if the Secretary, after making a reasonable attempt, is unable to locate any responsible party, the Secretary may take such action. The cost of any action by the Secretary pursuant to this section may be paid from the Carolina Clean Drinking Water Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of G.S. 130A-310.6 shall apply to any action taken by the Secretary pursuant to this section. (1987, c. 574, s. 2.)

§ 130A-310.2. Inactive Hazardous Waste Sites Priority List.

No later than six months after July 1, 1987, the Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which such sites endanger the public health and the environment. The Secretary shall apply the prioritization system to the inventory of sites to create and maintain an Inactive Hazardous Waste Site Priority List, which shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The first such list shall be published within two years after July 1, 1987, with subsequent lists to be published at intervals of not more than two years thereafter. The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list. The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial action, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available. (1987, c. 574, s. 2.)

§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.

(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

(1) Monitoring the inactive hazardous substance or waste disposal site;

(2) Developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;

(3) Approving an inactive hazardous substance or waste disposal site remedial action program for the site;

(4) Coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and

(5) Ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the Secretary of Natural Resources and Community Development, or the Environmental Management Commission, or the Commissioner of Agriculture, or the Pesticide Board has as-

sumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

(1) To develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and

(2) To implement the program within reasonable time limits specified in the order.

Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and shall seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall consult with the Secretary of Natural Resources and Community Development to assure concurrent compliance with applicable standards set by the Environmental Management Commission. (1987, c. 574, s. 2.)

§ 130A-310.4. Public participation in the development of the remedial action plan.

(a) Within 10 days after the Secretary issues a declaration pursuant to G.S. 130A-310.3, he shall notify in writing the local board of health and the local health director having jurisdiction in the county or counties in which an inactive hazardous substance or waste disposal site is located that the site may endanger the public health or environment and that a remedial action plan is being developed. The Secretary shall involve the local health director in the development of the remedial action plan.

(b) Before approving any remedial action plan, the Secretary shall make copies of the proposed plan available for inspection as follows:

(1) A copy of the plan shall be provided to the local health director.

(2) A copy of the proposed plan shall be filed with the register of deeds in the county or counties in which the site is located.

(3) A copy of the plan shall be provided to each public library located in the county or counties in which the site is located.

(4) The Secretary may place copies of the plan in other locations so as to assure the availability thereof to the public.

In addition, copies of the plan shall be available for inspection and copying at cost by the public during regular business hours in the

offices of the agency within the Department with responsibility for the administration of the remedial action program.

(c) Before approving any remedial action plan, the Secretary shall give notice of the proposed plan as follows:

(1) A notice and summary of the proposed plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

(2) Notice that a proposed remedial action plan has been developed shall be given by first class mail to persons who have requested such notice. Such notice shall state the locations where a copy of the remedial action plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(d) The Secretary may conduct a public meeting to explain the proposed plan and alternatives to the public.

(e) At least 45 days from the latest date on which notice is provided pursuant to subsection (c) of this section shall be allowed for the receipt of written comment on the proposed remedial action plan prior to its approval. If a public hearing is held pursuant to subsection (f) of this section, at least 20 days will be allowed for receipt of written comment following the hearing prior to the approval of the remedial action plan.

(f) If the Secretary determines that significant public interest exists, he shall conduct a public hearing on the proposed plan and alternatives. The Department shall give notice of the hearing at least 30 days prior to the date thereof by:

(1) Publication as provided in subdivision (c)(1) of this section, with first publication to occur not less than 30 days prior to the scheduled date of the hearing; and

(2) First class mail to persons who have requested notice as provided in subdivision (c)(2) of this section.

(g) The Commission on Health Services shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan. (1987, c. 574, s. 2.)

§ 130A-310.5. Authority of the Secretary with respect to sites which pose an imminent hazard.

(a) An imminent hazard exists whenever the Secretary determines, that there exists a condition caused by an inactive hazardous substance or waste disposal site, including a release or a substantial threat of a release into the environment of a hazardous substance from the site, which is causing serious harm to the public health or environment, or which is likely to cause such harm before a remedial action plan can be developed. Whenever the Secretary determines that an imminent hazard exists he may, in addition to any other powers he may have, without notice or hearing, order any known responsible party to take immediately any action necessary to eliminate or correct the condition, or the Secretary, in his discretion, may take such action without issuing an order. Written notice

of any order issued pursuant to this section shall be provided to all persons subject to the order as set out in G.S. 130A-310.3(c). Unless the time required to do so would increase the harm to the public health or the environment, the Secretary shall solicit the cooperation of responsible parties prior to the entry of any such order. The provisions of subdivisions (1) to (3) of G.S. 130A-310.6(a) shall apply to any action taken by the Secretary pursuant to this section, and any such action shall be considered part of a remedial action program, the cost of which may be recovered from any responsible party.

(b) If a person violates the requirements or schedules in an order issued pursuant to this section, the Secretary 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.

(c) The cost of any action by the Secretary pursuant to this section may be paid from the Carolina Clean Drinking Water Fund, or the Emergency Hazardous Waste Site Remedial Fund established pursuant to G.S. 130A-306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. (1987, c. 574, s. 2.)

§ 130A-310.6. State action upon default of responsible parties or when no responsible party can be located.

(a) Whenever a person ordered to develop and implement an inactive hazardous substance or waste disposal site remedial action program is unable or fails to do so within the time specified in the order, the Secretary may develop and implement or cause to be developed and implemented such a program. The cost of developing and implementing a remedial action program pursuant to this section may be paid from the Carolina Clean Drinking Water Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7.

(1) The Department is authorized and empowered to use any staff, equipment or materials under its control or provided by other cooperating federal, State or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement the remedial action program. State agencies shall provide to the maximum extent feasible such staff, equipment, and materials as may be available for developing and implementing a remedial action program.

(2) Upon completion of any inactive hazardous substance or waste disposal remedial action program, any State or local agency that has provided personnel, equipment, or material shall deliver to the Department a record of expenses incurred by the agency. The amount of the incurred expenses shall be disbursed by the Secretary to each such agency. The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(3) As soon as feasible or after completion of any inactive hazardous substance or waste disposal site remedial action program, the Secretary shall prepare a statement of all

expenses and costs of the program expended by the State and issue an order demanding payment from responsible parties. Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing on the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(b) If the Secretary, after declaring that an inactive hazardous substance or waste disposal site may endanger the public health or the environment, is unable, after making a reasonable attempt, to locate any responsible party, the Department may develop and implement a remedial action program for the site as provided in subsection (a)(1) and (2) of this section. If responsible parties are subsequently located, the Secretary may issue an order demanding payment from such persons in the manner set forth in subdivision (a)(3) of this section for the necessary expenses incurred by the Department for developing and implementing the remedial action program. If the persons subject to such an order refuse to pay the sum expended, or fail to pay such sum within the time specified in the order, the Secretary shall bring an action in the manner set forth in G.S. 130A-310.7. (1987, c. 574, s. 2.)

§ 130A-310.7. Action for reimbursement; liability of responsible parties.

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

(1) Discharges or deposits; or

(2) Contracts or arranges for any discharge or deposit; or

(3) Accepts for discharge or deposit any hazardous substance; the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site,

shall be considered a responsible party; except that the following shall not be considered a responsible party: an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred or, a person whose interest or ownership in the active hazardous substance or waste disposal site is based on or derived from a security interest in the property. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Carolina Clean Drinking Water Fund in the name of the State in the superior court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:

(1) An act of God; or
(2) An act of war; or
(3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or
(4) Any combination of the above causes. (1987, c. 574, s. 2.)

§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of the disposal areas with respect to permanently surveyed benchmarks; and
(2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice 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 Notice and index it in the grantor index under the names of the owners of the lands.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file such Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an inactive hazardous substance or waste disposal site 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 hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards

have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name "Secretary of the North Carolina Department of Human Resources". The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which is undergoing voluntary remedial action pursuant to this Part. (1987, c. 574, s. 2.)

§ 130A-310.9. Maximum financial responsibility.

(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of three million dollars ($3,000,000) for the cost of implementing such remedial action program at a single inactive hazardous substance or waste disposal site. The limitation of liability contained in this section applies only to the cost of implementation of the program and does not apply to the cost of the development of the remedial action plan. (1987, c. 574, s. 2.)

§ 130A-310.10. Annual reports.

(a) The Secretary shall present an annual report to the General Assembly which shall include at least the following:

(1) The Inactive Hazardous Waste Sites Priority List;
(2) A list of remedial action plans requiring State funding through the Carolina Clean Drinking Water Fund;
(3) A comprehensive budget to implement these remedial action plans and the adequacy of the Carolina Clean Drinking Water Fund to fund the cost of said plans;
(4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan;
(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval;
(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Carolina Clean Drinking Water Fund to fund the possible costs of said plans;
(7) A list of sites which pose an imminent hazard; and

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Carolina Clean Drinking Water Fund.

(b) The annual reports required by this section shall be made by the Secretary beginning with the next legislative session following July 1, 1987. (1987, c. 574, s. 2.)

§ 130A-310.11. Carolina Clean Drinking Water Fund created.

There is established under the control and direction of the Department the Carolina Clean Drinking Water Fund. This fund shall be a revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, fees, and other monies paid to it or recovered by or on behalf of the Department. (1987, c. 574, s. 2.)

§ 130A-310.12. Administrative procedure; adoption of rules.

Except as may be otherwise specifically provided the provisions of Chapter 150B apply to this Part.

The Commission shall adopt, pursuant to Chapter 150B of the General Studies, administrative rules for the implementation of this Part not later than six months after enactment. Such rules may be the same as or similar to the federal rules for implementation of CERCLA/SARA. (1987, c. 574, ss. 2, 5.)

Article 10.

North Carolina Drinking Water Act.

§ 130A-313. Definitions.

The following definitions shall apply throughout this Article:

(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. Two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons is a public water system. 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.

(1979, c. 788, s. 1; 1983, c. 891, s. 2; 1987, c. 704, 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 1987 amendment, effective July 31, 1987, inserted the present second sentence of subdivision (10).

§ 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 after application of the best technology, treatment techniques, or other means which the Secretary finds are 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.

(5) In order to implement sub-subdivision a. of subdivision (1) of this subsection, the Commission shall adopt by rule a list of the best available technologies, treatment techniques, or other means available, to deal with each contaminant for which a maximum contaminant level is established.

(c) As a condition of issuance of either a variance or an exemption, the Secretary shall issue a schedule of compliance for the public water system, including increments of progress for each drinking water rule for which the variance or exemption was issued. As a further condition of a variance or exemption, the Secretary shall require the public water system to implement any necessary control measures prescribed by the Secretary during the period of the variance or exemption. The compliance schedule for an exemption shall require compliance as expeditiously as practical but no later than June 19, 1987, for existing maximum contaminant levels and treatment techniques, or no later than one year from the issuance of the exemption for any newly adopted maximum contaminant level or treatment technique. The final date for compliance provided in any exemption schedule may be extended up to three years after the date of the issuance of the exemption if the water system establishes:

(1) The water system cannot meet the standard without capital improvements which cannot be completed within the period of exemption, or

(2) The system needs financial assistance for necessary improvements and has entered into an agreement to obtain such assistance, or

(3) The system has entered into an enforceable agreement to become part of a regional public water system and the system is taking all practical steps to meet the standard.

If a public water system serves 500 or fewer service connections and needs financial assistance for necessary improvements, an exemption may be renewed for one or more additional two-year periods if the system establishes it meets the requirements set forth in subdivisions (1) and (2) of this section.

(1979, c. 788, s. 1; 1981, c. 353, ss. 1, 2; 1983, c. 891, s. 2; 1987, c. 704, ss. 3-5.)

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 1987 amendment, effective July 31, 1987, substituted "after application of the best technology, treatment techniques, or other means which the Secretary finds are" for "despite application of the technology, treatment techniques, or other means which the Secretary finds are generally" in paragraph (a)(1)a, added subdivision (a)(5), and rewrote subsection (c).

§ 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;

(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; and

(7) Establish and collect fees for certification and certification renewal of laboratories to perform analyses for compliance under this Article. The fees shall not exceed twenty dollars ($20.00) per analyte certified. The minimum fee for certification or certification renewal shall be two hundred fifty dollars ($250.00) per analyte category. The maximum fee for certification or certification renewal shall be six hundred dollars ($600.00) per analyte category. The fees collected under authority of this subdivision shall be used to administer blind performance evaluation samples to certified laboratories to determine compliance with certification requirements, subject to appropriation for such purpose by the General Assembly. (1979, c. 788, s. 1; 1981, c. 562, s. 9; 1983, c. 891, s. 2; 1987, c. 471.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable to certifications and certification renewals on and after that date, deleted "and" at the end of subdivision (5), added "and" at the end of subdivision (6), and added subdivision (7).

Article 11.

Sanitary Sewage Systems.

§ 130A-334. Definitions.

The following definitions shall apply throughout this Article:

(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.

Properly managed chemical toilets used only for human waste at mass gatherings, construction sites and labor work camps are considered sanitary sewage systems.

(1973, c. 452, s. 4; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 462, s. 18; c. 487, s. 9; 1987, c. 435.)

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

Effect of Amendments. — The 1987 amendment, effective June 19, 1987, added the second paragraph of subdivision (11).

§ 130A-335. Sanitary sewage collection, treatment and disposal; rules.

(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 local board of health has adopted by reference the sanitary sewage system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and

(3) 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.

The Department shall review its findings under subsection (c) of this section upon modification of the Commission's sanitary sewage system rules. The Department may deny, suspend, or revoke the approval of local board of health sanitary sewage system rules upon a finding that the local sewage rules are not as stringent as the Commission's rules, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(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. 1127, s. 47; 1983, c. 891, s. 2; 1987, c. 267, 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.

Editor's Note. — Session Laws 1987, c. 267, s. 3, provides that local board of health sanitary sewage system rules approved by the Department on or before the effective date of the act (June 2, 1987) shall remain approved until approval is suspended or revoked in accordance with the act.

Effect of Amendments. — The 1987 amendment, effective June 2, 1987, in subsection (c) redesignated former subdivision (2) as subdivision (3) and inserted present subdivision (2), and in subsection (d) added the second paragraph.

Article 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

§ 130A-392. Reports and records as evidence.

CASE NOTES

Statements Listing Insured's Death as Suicide Excluded. — In case brought by widow of insured to recover under life insurance policy, statements listing suicide as the cause of death in the medical examiner's report were properly excluded at trial. Drain v. United Servs. Life Ins. Co., — N.C. App. —, 354 S.E.2d 269 (1987).

Part 3. Uniform Anatomical Gift Act.

§ 130A-412.1. Duty of hospitals to establish organ procurement protocols.

(a) In order to facilitate the goals of this Part, each hospital shall be required to establish written protocols for the identification of potential organ and tissue donors that:

(1) Assure that the families of potential organ and tissue donors are made aware of the option of organ or issue donation and their option to decline;

(2) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of such families;

(3) Require that an organ procurement agency be notified of potential organ and tissue donors; and

(4) Assure that procedures are established for identifying and consulting with holders of properly executed donor cards.

(b) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation or any costs of retrieval of the organ or tissue.

(c) The requirements of this section, or of any hospital organ procurement protocols established pursuant to this section shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation. (1987, c. 719, s. 1.)

Editor's Note. — Session Laws 1987, c. 719, s. 3 makes this section effective October 1, 1987.

Part 4. Human Tissue Donation Program.

§ 130A-414: Repealed by Session Laws 1987, c. 719, s. 2, effective October 1, 1987.

Cross References. — As to duty of hospital to establish organ procurement protocols, see § 130A-412.1.

Part 5. Disposition of Unclaimed Bodies.

§ 130A-415. Unclaimed bodies; bodies claimed by the Lifeguardianship Council of the Association for Retarded Citizens of North Carolina; disposition.

(i) In addition to the other duties of the Commission of Anatomy, when the Commission of Anatomy is notified by the Lifeguardianship Council of the Association of Retarded Citizens of North Carolina, Inc., that the Council intends to claim a body, the Commission shall release the body to the Council. The Lifeguardianship Council shall notify the Commission of Anatomy within 24 hours after death of its intent to claim a body for burial or other humane and caring disposition. (1975, c. 694, s. 3; 1977, c. 458; 1983, c. 891, s. 2; 1987, c. 470.)

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

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, inserted "bodies claimed by the Lifeguardianship Council of the Association for Retarded Citizens of North Carolina" in the catchline and added subsection (i).

Article 17.

Childhood Vaccine-Related Injury Compensation Program.

§ 130A-422. Definitions.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1008, s. 5, as amended by Session Laws 1987, c. 215, s. 8, makes this Article effective October 1, 1986. A former provision of s. 5 of Session Laws 1985 (Reg. Sess., 1986), c. 1008, which provided for expiration of the Article on October 1, 1989, was deleted by Session Laws 1987, c. 215, s. 8.

§ 130A-423. North Carolina Childhood Vaccine-Related Injury Compensation Program; exclusive remedy; relationship to federal law; subrogation.

(c) (For effective date see note) Nothing in this Article prohibits any individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if the action is not barred by federal law under subtitle 2 of Title XXI of the Public Health Service Act.

(d) (For effective date see note) If any action is brought against a vaccine manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the plaintiff in the action may recover damages only to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-427. The aggregate amount awarded in any such action may not exceed the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether such an action is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law 99-660, permitting such a claimant to file a civil action for damages for a vaccine-related injury or death, or who is otherwise permitted by federal law to file an action against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain services from the Department of Human Resources pursuant to subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-427.

(e) (For effective date see note) In order to prevent recovery of duplicate damages, or the imposition of duplicate liability, in the event that an individual seeks an award pursuant to G.S. 130A-427 and also files suit against the manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the following provisions shall apply:

(1) If, at the time an award is made pursuant to G.S. 130A-427, an individual has already recovered damages from a manufacturer pursuant to a judgment or settlement, the award shall consist only of a commitment to provide services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.

(2) If, at any time after an award is made to a claimant pursuant to G.S. 130A-427, an individual recovers damages for the same vaccine-related injury from a manufacturer pursuant to a judgment or settlement, the individual who recovers the damages shall reimburse the State for all amounts previously recovered from the State in the prior proceeding. Before a defendant in any action for a vaccine-related injury pays any amount to a plaintiff to discharge a judgment or settlement, he shall request from the Secretary of Human Resources a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if the reimbursement is owed by the plaintiff, the defendant shall pay the reimbursable amounts, as determined by the Secretary, directly to the Department of Human Resources. This payment shall discharge the plain-

§ 130A-423 (c), (d) and (e) have a delayed effective date. See notes for date.

tiff's obligations to the State under this subdivision and any obligation the defendant may have to the plaintiff with respect to these amounts.

(3) If:

a. An award has been made to a claimant for an element of damages pursuant to G.S. 130A-427; and

b. An individual has recovered for the same element of damages pursuant to a judgment in, or settlement of, an action for the same vaccine-related injury brought against a manufacturer, and that amount has not been remitted to the State pursuant to subdivision (2) of this subsection; and

c. The State seeks to recover the amounts it paid in an action it brings against the manufacturer pursuant to G.S. 130A-430;

any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount necessary to prevent the double recovery of any element of damages from the manufacturer. Nothing in this subdivision limits the State's right to obtain reimbursement from a claimant under subdivision (2) of this subsection with respect to any double payment that might be received by the claimant.

(f) Subrogation claims pursued under the National Childhood Vaccine Injury Act of 1986 shall be filed with the appropriate court, not with the Industrial Commission. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, 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.

Editor's Note. — Session Laws 1987, c. 215, s. 9 makes the amendment by s. 2 of the act, which added subsection (f), effective upon ratification (May 19, 1987). Section 9 further provides that the amendment by s. 1 of the act, which amended the catchline and added subsections (c), (d) and (e), shall become effective only on and after the effective date of subtitle 2 of Title XXI of the Public Health Service Act, as enacted into federal law pursuant to Title III of Public Law 99-660, and only if this federal law on its effective date contains language that forbids a state from establishing or enforcing a law prohibiting an individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if this action is not barred by federal law.

Effect of Amendments. — The 1987 amendment by c. 215, s. 1 added "relationship to federal law" in the catchline and added new subsections (c), (d), and (e).

The 1987 amendment by c. 215, s. 2 added "subrogation" in the catchline and added new subsection (f).

For the effective date of the 1987 amendments, see the Editor's note above.

§ 130A-425. Filing of claims.

(b) In all claims filed pursuant to this Article, the claimant or the person in whose behalf the claim is made shall file with the Commission a verified petition in duplicate, setting forth the following information:

(1) The name and address of the claimant;

(2) The name and address of each respondent;

(3) The amount of compensation in money and services sought to be recovered;

(4) The time and place where the injury occurred;

(5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim; and

§ 130A-423 (c), (d) and (e) have a delayed effective date. See notes for date.

(6) Supporting documentation and a statement of the claim that the claimant or the person in whose behalf the claim is made suffered a vaccine-related injury and has not previously collected an award or settlement of a civil action for damages for this injury. This supporting documentation shall include all available medical records pertaining to the alleged injury, including autopsy reports, if any, and if the injured person was under two years of age at the time of injury, all prenatal, obstetrical, and pediatric records of care preceding the injury, and an identification of any unavailable records known to the claimant or the person in whose behalf the claim is made.

Upon receipt of this verified petition in duplicate, the Commission shall enter the case upon its hearing docket and shall determine the matter in the county where the injury occurred unless the parties agree or the Commission directs that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard. Immediately upon receipt of the claim, the Commission shall serve a copy of the verified petition on each respondent by registered or certified mail. The Commission shall also send a copy of the verified petition to the Secretary of Human Resources, who shall be a party to all proceedings involving the claim, and to the Attorney General who shall represent the State's interest in all the proceedings involving the claim.

The Commission shall adopt rules necessary to govern the proceedings required by this Article. The Rules of Civil Procedure as contained in G.S. 1A-1 et seq. and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 apply to claims filed with the Industrial Commission under this Article. The Commission shall keep a record of all proceedings conducted under this Article, and has the right to subpoena any persons and records it considers necessary in making its determinations. The Commission may require all persons called as witnesses to testify under oath or affirmation, and any member of the Commission may administer oaths. If any persons refuse to comply with any subpoena issued pursuant to this Article or to testify with respect to any matter relevant to proceedings conducted under this Article, the Superior Court of Wake County, on application of the Commission, may issue an order requiring the person to comply with the subpoena and to testify. Any failure to obey any such order may be punished by the court as for contempt. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 3.)

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

Effect of Amendments. — The 1987 amendment, effective May 19, 1987, added "and" at the end of subdivision (b)(5), added subdivision (b)(6), inserted the present second sentence of the final paragraph of subsection (b), and substituted "refuse" for "refuses" in the next-to-last sentence of the last paragraph of subsection (b).

§ 130A-430. Right of State to bring action against health care provider and manufacturer.

(b) Manufacturer. — If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the manufacturer who made the vaccine on the ground that the vaccine was a defective product. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department of Human Resources under G.S. 130A-427, the reasonable costs of prosecuting the action, including, but not limited to, attorneys fees, fees charged by witnesses, and costs of exhibits. For purposes of this subsection, a defective product is a covered vaccine that was manufactured, transported, or stored in a negligent manner, or was distributed after its expiration date, or that otherwise violated the applicable requirements of any license, approval, or permit, or any applicable standards or requirements issued under Section 351 of the Public Health Service Act, as amended, or the federal Food, Drug, and Cosmetic Act, as these standards or requirements were interpreted or applied by the federal agency charged with their enforcement. The negligence or other action in violation of applicable federal standards or requirements shall be demonstrated by the State, by a preponderance of the evidence, to be the proximate cause of the injury for which an award was rendered pursuant to G.S. 130A-427, in order to allow recovery by the State against the manufacturer pursuant to this subsection. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 4.)

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

Effect of Amendments. — The 1987 amendment, effective May 19, 1987, added the last two sentences of subsection (b).

§ 130A-431. Certain vaccine diversions made felony.

Any person who (i) receives a vaccine designated by the manufacturer for use in the State, (ii) directly or indirectly diverts the vaccine to a location outside the State, and (iii) directly or indirectly profits as a result of this diversion, is guilty of a Class J felony, punishable by imprisonment up to three years, or a fine, or both. The fine shall be twenty-five dollars ($25.00) per dose of the diverted vaccine or one hundred thousand dollars ($100,000), whichever is less. A health care professional convicted of a Class J felony pursuant to this section who is found by the court to have diverted more than 300 doses of covered vaccine shall have his license suspended for one year. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 5.)

Effect of Amendments. — The 1987 amendment rewrote this section, which formerly read "A health care provider who receives a vaccine from the State and who gives or sells the vaccine to another, other than in the course of administering the vaccine, is guilty of a general misdemeanor."

§ 130A-432. Scope.

This Article applies to all claims for vaccine-related injuries occurring on and after October 1, 1986 and, at the option of the claimant, to claims for vaccine-related injuries that occurred before October 1, 1986 if such claim has not been resolved by final judgment or by settlement agreement or is not barred by a statute of limitations.

This Article applies to all claims for vaccine-related injuries alleged to have been caused by covered vaccines administered within the State, regardless of where an action relating to the injuries is brought and regardless of where the injuries are alleged to have occurred. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 6.)

Effect of Amendments. — The 1987 amendment, effective May 19, 1987, rewrote the second paragraph, which formerly read "This Article applies only to claims for vaccine-related injuries which occur in this State."

§ 130A-433. Contracts for purchase of vaccines; distribution; fee; rules.

Notwithstanding any law to the contrary, the Secretary of Human Resources may enter into contracts with the manufacturers and suppliers of covered vaccines and with other public entities either within or without the State for the purchase of covered vaccines and may provide for the distribution or sale of the covered vaccines to health care providers. Local health departments shall distribute the covered vaccines at the request of the Department of Human Resources. The Secretary may charge a fee for providing a covered vaccine to a health care provider. The fee shall be set at an amount that covers the cost of the vaccine to the Department, plus the cost to the Department of storing and distributing the vaccine. The Secretary shall adopt rules to implement this Article.

A health care provider who receives vaccine from the State may charge no more than the cost of the vaccine and a reasonable fee for the administration of the vaccine. Vaccines provided by the State to local health departments for administration shall be administered at no cost to the patient. (1985 (Reg. Sess., 1986), c. 1008, s. 2; 1987, c. 215, s. 7.)

Effect of Amendments. — The 1987 amendment, effective May 19, 1987, in the first sentence of the first paragraph inserted "and with other public entities either within or without the State," substituted "may provide for the distribution or sale of" for "shall distribute or sell," and deleted "and facilities within the State" at the end of the sentence, and added the second paragraph.

Article 18.

Health Assessments for Kindergarten Children in the Public Schools.

§ 130A-440. Health assessment required.

(c) The health assessment shall be conducted by a physician licensed to practice medicine, a physician's assistant as defined in G.S. 90-18.1(a), a certified nurse practitioner, or a public health nurse meeting the North Carolina Division of Health Services' Standards for Early Periodic Screening, Diagnosis, and Treatment Screening.

(1985 (Reg. Sess., 1986), c. 1017, s. 1; 1987, c. 114, 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 (Reg. Sess., 1986), c. 1017, s. 2, as amended by Session Laws 1987, c. 114, s. 2 makes this Article effective January 1, 1988, and further provides that the Commission for Health Services shall adopt rules pursuant to the authority granted under § 130A-443, but that these rules may not become effective until January 1, 1988.

Effect of Amendments. — The 1987 amendment, effective May 1, 1987, inserted "a physician's assistant as defined in G.S. 90-18.1(a)" in subsection (c).

§ 130A-441. Reporting.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1017, s. 2, as amended by Session Laws 1987, c. 114, s. 2 makes this Article effective January 1, 1988, and further provides that the Commission for Health Services shall adopt rules pursuant to the authority granted under § 130A-443, but that these rules may not become effective until January 1, 1988.

§ 130A-442. Religious exemption.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1017, s. 2, as amended by Session Laws 1987, c. 114, s. 2 makes this Article effective January 1, 1988, and further provides that the Commission for Health Services shall adopt rules pursuant to the authority granted under § 130A-443, but that these rules may not become effective until January 1, 1988.

§ 130A-443. Rules.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1017, s. 2, as amended by Session Laws 1987, c. 114, s. 2 makes this Article effective January 1, 1988, and further provides that the Commission for Health Services shall adopt rules pursuant to the authority granted under this section, but that these rules may not become effective until January 1, 1988.

Chapter 131C.

Charitable Solicitation Licensure Act.

§ 131C-4. Licensure required for charitable solicitation.

(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 and judicial remedies under Chapter 150B.

(c) A person who has been denied a license and has waived or exhausted his administrative and judicial remedies under Chapter 150B 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; 1987, c. 827, ss. 1, 239.)

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

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted reference to Chapter 150B for reference to Chapter 150A, and substituted "and judicial remedies under" for "remedies under Article 3 of" in subsections (b) and (c).

CASE NOTES

Unconstitutionally Overbroad. — North Carolina's licensure procedure infringes upon the First Amendment rights of those organizations which, for various reasons, must rely on professional solicitors. The fact that (1) the licensure process is subject to North Carolina's Administrative Procedure Act, and (2) licenses have in the past been considered expeditiously is not enough to save the statute. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

Subsection (b) of this section and §§ 131C-6, 131C-16.1, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

§ 131C-6. Licensure required for professional fund-raising counsel and professional solicitor.

CASE NOTES

Unconstitutionally Overbroad. — North Carolina's licensure procedure infringes upon the First Amendment rights of those organizations which, for various reasons, must rely on professional solicitors. The fact that (1) the licensure process is subject to North Carolina's Administrative Procedure Act, and (2) licenses have in the past been considered expeditiously is not enough to save the statute. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

This section and §§ 131C-4(b),

131C-16.1, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

§ 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 to any person who may have a cause of action against the obligor of the bond for 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. A bond shall not be required of any applicant who does not personally receive any of the contributions collected and who does not personally handle any of the contributions expended. (1981, c. 886, s. 1; 1985, c. 497, s. 5; 1987, c. 741.)

Effect of Amendments. —
The 1987 amendment, effective October 1, 1987, added the final sentence.

CASE NOTES

Cited in National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

§ 131C-16. Disclosures upon request.

CASE NOTES

Stated in National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

§ 131C-16.1. Mandatory disclosures.

CASE NOTES

Unconstitutionally Overbroad. — This section and §§ 131C-4(b), 131C-6, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

§ 131C-17.1. Employment of agents regulated.

CASE NOTES

This section is a reasonable exercise of the State's police power. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

§ 131C-17.2. Excessive and unreasonable fund-raising fees prohibited.

CASE NOTES

Unconstitutionally Overbroad. — This section and §§ 131C-4(b), 131C-6, 131C-16.1, and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

§ 131C-21.1. Other remedies.

(c) After notice and an opportunity for a hearing in accordance with Chapter 150B of the General Statutes, the Secretary may order a professional fund-raising counsel or a professional solicitor who has charged an unreasonable and excessive fund-raising fee to pay to the charitable organization that was charged the unreasonable and excessive fee the difference between the fee charged and a reasonable and nonexcessive fee.

(1985, c. 497, s. 12; 1987, c. 827, s. 240.)

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

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote subsection (c).

CASE NOTES

Unconstitutionally Overbroad. — Subsection (c) of this section and §§ 131C-4(b), 131C-6, 131C-16.1, and 131C-17.2 are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986).

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1.

Licensing of Facilities.

§ 131D-1. Licensing of maternity homes.

Cross References. — As to criminal provisions for patient abuse and neglect, see § 14-32.2.

§ 131D-2. Licensing of domiciliary homes for the aged and disabled.

(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 rules adopted by the Medical Care Commission.

(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, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 729; 1981, c. 275, s. 2; c. 544, s. 1; 1983, c. 824, ss. 1-12; 1987, c. 827, s. 241.)

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

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted "rules" for "regulations" in subsection (d).

§ 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 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 150B. (1981, c. 859, s. 23.2; 1983, c. 611, s. 1; c. 761, s. 35; 1985, c. 479, s. 108; 1987, c. 827, ss. 1, 242.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987 substituted reference to Chapter 150B for reference to Chapter 150A, and deleted "the Administrative Procedure Act" at the end of subdivision (2).

§ 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 facililty 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 150B. (1981, c. 859, s. 23.3; 1983, c. 611, s. 2; c. 761, s. 35; 1987, c. 827, ss. 1, 242.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted reference to Chapter 150B for reference to Chapter 150A, and deleted "the Administrative Procedure Act" at the end of subdivision (2).

Article 1A.

Control Over Child Placing and Child Care.

§ 131D-10.9. Administrative and judicial review.

(1983, c. 637, s. 2; 1987, c. 827, s. 243.)

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

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the section catchline, which read "Appeals."

Article 3.

Domiciliary Home Residents' Bill of Rights.

§ 131D-30: Repealed by Session Laws 1987, c. 600, s. 1, effective October 1, 1987.

Cross References. — As to penalties, see § 131D-130.

§ 131D-31. Domiciliary home community advisory committees.

(i) Any written communication made by a member of a domiciliary home advisory committee within the course and scope of the member's duties, as specified in G.S. 131D-32, shall be privileged to the extent provided in this subsection. This privilege shall be a defense in a cause of action for libel if the member was acting in good faith and the statements and communications do not amount to intentional wrongdoing.

To the extent that any domiciliary home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance.

(1981, c. 923, s. 1; 1983, c. 88, s. 1; 1987, c. 682, 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 1987 amendment, effective October 1, 1987, added subsection (i).

§ 131D-34. Penalties; remedies.

(a) Violations Classified. — The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5000) for each Type A Violation.

(2) "Type B Violation" means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to two hundred fifty dollars ($250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facililty shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsec-

tion (a) when a facility under the same management, ownership, or control:

a. Has received a citation and paid a fine, or

b. Has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,

for violating the same specific provision of a statute or regulation for which it received a citation during the previous six months or within the time period of the previous licensure inspection, whichever time period is longer.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred 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. 150B-36.

(h) The Secretary shall establish a penalty review committee within the Department. (1987, c. 600, s. 3.)

Editor's Note. — Session Laws 1987, c. 600, s. 4 makes this section effective October 1, 1987.

Chapter 131E.

Health Care Facilities and Services.

Article 1.

General Provisions.

§ 131E-1. Definitions.

Cross References. — As to criminal provisions for patient abuse and neglect, see § 14-32.2.

Article 2.

Public Hospitals.

Part A. Municipal Hospitals.

§ 131E-5. Title and purpose.

CASE NOTES

Cited in Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986).

§ 131E-7. General powers.

CASE NOTES

Cited in Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986).

§ 131E-8. Sale of hospital facilities to nonprofit corporations.

CASE NOTES

Cited in coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986).

Article 3.

North Carolina Specialty Hospitals.

Part A. Lenox Baker Children's Hospital.

§ 131E-55: (For effective date see note) Repealed by Session Laws 1987, c. 856, s. 13.

For this section as in effect until Session Laws 1987, c. 856, ss. 1 to 19 become effective, see the main volume.

Editor's Note. — Session Laws 1987, c. 856, s. 20 provides that ss. 1 through 19 are effective only upon agreement by Duke University to the terms of ss. 21 through 26 of the act and certification of that fact by the Secretary of the Department of Human Resources to the Governor, and that ss. 12 to 17 are effective on the date of the transfer. Section 20 further provides that any disputes arising out of the transfer shall be resolved by the Director of Budget.

Sections 21 through 26 of the act provides terms for the transfer of the Lenox Baker Hospital to Duke University.

§ 131E-56. (For repeal of this section see note) 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. Funds currently being held in the name of the Board and all private funds donated to the Hospital in the future are not required to be deposited with the State Treasurer, are not subject to the provisions of the Executive Budget Act, and may be invested and expended by the Board in its sole discretion. The Board's expenditure of these funds is not subject to approval of the Department of Human Resources or any other executive department or agency. (1983, c. 775, s. 1; 1987, c. 279.)

Repeal of Section. — Session Laws 1987, c. 856, s. 13 repeals this section. Session Laws 1987, c. 856, s. 20 provides that ss. 1 through 19 of the act are effective only upon agreement by Duke University to the terms of ss. 21 through 26 of the act and certification of that fact by the Secretary of the Department of Human Resources to the Governor, and that ss. 12 to 17 are effective on the date of the transfer. Section 20 further provides that any disputes arising out of the transfer shall be resolved by the Director of Budget.

Editor's Note. — Sections 21 through 26 of the act provides terms for the transfer of the Lenox Baker Hospital to Duke University.

Session Laws 1987, c. 856, s. 11 provides: "The Board of Directors for Lenox Baker Hospital is abolished as a State agency effective on the effective date of the transfer provided by Section 18 of this act. Any assets of the Board of Directors of Lenox Baker Hospital, including those provided for by Chapter 279, Session Laws of 1987, shall continue to be held by that board as reconstituted as the Lenox Baker Children's Hospital Foundation, in trust for the same purposes."

Effect of Amendments. — The 1987 amendment by c. 279, effective June 4, 1987, added the second and third sentences of subsection (b).

§§ 131E-57, 131E-58: (For effective date see note) Repealed by Session Laws 1987, c. 856, s. 13.

For this section as in effect until Session Laws 1987, c. 856, ss. 1 to 19 become effective, see the main volume.

Editor's Note. — Session Laws 1987, c. 856, s. 20 provides that ss. 1 through 19 are effective only upon agreement by Duke University to the terms of ss. 21 through 26 of the act and certification of that fact by the Secretary of the Department of Human Resources to the Governor, and that ss. 12 to 17 are effective on the date of the transfer. Section 20 further provides that any disputes arising out of the transfer shall be resolved by the Director of Budget.

Sections 21 through 26 of the act provide terms for the transfer of the Lenox Baker Hospital to Duke University.

Article 5.

Hospital Licensure Act.

§ 131E-76. Definitions.

CASE NOTES

A board of trustees, etc. — A board of trustees of a hospital is not a medical review committee, even though the board may review personnel recommendations of the medical review committees and has ultimate decision-making authority upon these recommendations by virtue both of the hospital's bylaws and § 131E-85. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Part B. Hospital Privileges.

§ 131E-85. Hospital privileges and procedures.

(e) The Department shall not issue or renew a license under this Article unless the applicant has demonstrated that the procedures followed in determining hospital privileges are in accordance with this Part and rules of the Department. (1981, c. 659, s. 10; 1983, c. 775, s. 1; 1987, c. 859, s. 18.)

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

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable to disciplinary actions commenced in suits filed on or after that date, added subsection (e).

CASE NOTES

A board of trustees of a hospital is not a medical review committee, even though the board may review personnel recommendations of the medical review committees and has ultimate decision-making authority upon these recommendations by virtue both of the hospital's bylaws and this section. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Hearing under Subsection (a). — Subsection (a) of this section does not require a hearing if hospital's decision to limit the number of physicians using its equipment is based upon the reasonable objectives required by the statute. Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986).

Immunity of Hospital from Federal Antitrust Liability. — In restricting privileges to its inhouse radiologists,

county hospital complied with this section. If it engaged in anticompetitive activity, it did so under a law passed to promote greater hospital self-governance. The hospital was therefore immune from federal antitrust liability. Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986).

§ 131E-87. Reports of disciplinary action; immunity from liability.

The chief administrative officer of each licensed hospital in the State shall report to the appropriate occupational licensing board the details, as prescribed by the board, of any revocation, suspension, or limitation of privileges of a health care provider 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; 1987, c. 859, s. 16.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable to disciplinary actions commenced in suits filed on or after that date, rewrote the first sentence, which read "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."

Part D. Medical Review Committee.

§ 131E-95. Medical review committee.

CASE NOTES

Purpose. —

This section is designed to encourage candor and objectivity in the internal workings of medical review committees. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Presentation to Review Committee Does Not Render Information Immune. — Under this section, information, in whatever form available, from original sources other than the medical review committee is not immune from discovery or use at trial merely because it was presented during medical review committee proceedings; neither should one who is a member of a medical review committee be prevented from testifying regarding information he learned from sources other than the committee itself, even though that information might have been shared by the committee. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Permitting access to information not generated by the committee itself but merely presented to it does not impinge on the statutory purpose of this section. These kinds of materials may be discovered and used in evidence even though they were considered by the medical review committee. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Documents in the possession of and information known to the hospital's board are not thereby rendered immune from discovery and use as evidence under this section. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

What Section Protects. — This section protects only a medical review committee's (1) proceedings; (2) records and materials it produces; and (3) materials it considers. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

The protection afforded by this section

is not compromised by merely identifying existing documents and giving pertinent information concerning their custodians. It is the contents of the documents which the statute may or may not protect from discovery. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Documents Furnished by Applicants for Hospital Privileges. — This section offers no protection to the records and documents furnished by the individual physicians in their applications for hospital privileges. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Hospital's chief executive officer may be examined about information he received solely in his capacity as CEO so long as this material is not otherwise protected by this section. Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986).

Part E. Risk Management.

§ 131E-96. Risk management programs.

(a) Each hospital shall develop and maintain a risk management program which is designed to identify, analyze, evaluate, and manage risks of injury to patients, visitors, employees, and property through loss reduction and prevention techniques and quality assurance activities, as prescribed in rules promulgated by the Commission.

(b) The Department shall not issue or renew a license under this Article unless the applicant is in compliance with this section. (1987, c. 859, s. 17.)

Editor's Note. — Session Laws 1987, c. 859, s. 20 makes this Part effective October 1, 1987, and applicable to disciplinary actions commenced in suits filed on or after that date.

§§ 131E-97 to 131E-99: Reserved for future codification purposes.

Article 6.

Health Care Facility Licensure Act.

Part B. Nursing Home Patients' Bill of Rights.

§ 131E-117. Declaration of patient's rights.

Legal Periodicals. — For note, "Nurse Malpractice in North Carolina: The Standard of Care," see 65 N.C.L. Rev. 579 (1987).

§ 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.

A revocation shall be effected by mailing to the licensee by registered mail, or by personal service of, a notice setting forth the par-

ticular 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, files a petition for a contested case, in which case the notice shall be deemed to be suspended. 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, files a petition for a contested case, in which case the order shall be deemed to be suspended. 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. 897, s. 1; 1983, c. 143, s. 3; c. 775, s. 1; 1987, c. 827, s. 251.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted "A" for "Such" in the first sentence of the second paragraph of subsection (a), substituted "files a petition for a contested case" for "shall give written notice to the Department requesting a hearing" in the second sentence of the second paragraph of subsection (a) and for "shall give written notice to the Department of Human Resources requesting a hearing" in subsection (b), deleted the third sentence of the second paragraph of subsection (a), pertaining to hearing procedures, and deleted the third sentence of the second paragraph of subsection (b), pertaining to hearing procedures.

§ 131E-126: Repealed by Session Laws 1987, c. 600, s. 1, effective October 1, 1987.

Cross References. — As to penalties, see § 131E-129.

Editor's Note. — Session Laws 1987, c. 827, s. 252, effective August 13, 1987, amended this section as it read prior to its repeal by rewriting subsection (c) to read "A facility may contest a penalty by filing a petition for a contested case under Chapter 150B of the General Statutes," substituting "filed a petition for a contested case" for "requested an administrative hearing" in subdivisions (d)(1) and (d)(2), and substituting "final agency decision" for "decision as provided in G.S. 150A-36" in subdivision (d)(2).

§ 131E-128. Nursing home advisory committees.

(i) Any written communication made by a member of a nursing home advisory committee within the course and scope of the member's duties, as specified in G.S. 131E-128, shall be privileged to the extent provided in this subsection. This privilege shall be a defense in a cause of action for libel if the member was acting in good faith and the statements or communications do not amount to intentional wrongdoing.

To the extent that any nursing home advisory committee or any member thereof is covered by liability insurance, that committee or

member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance.

(1943, c. 780, s. 21; 1971, c. 799; 1973, c. 695, s. 6; 1977, c. 268; 1983, c. 775, s. 1; 1987, c. 682, 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 1987 amendment, effective October 1, 1987, added subsection (i).

§ 131E-129. Penalties.

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5,000) for each Type A Violation.

(2) "Type B Violation" means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to five hundred dollars ($500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the facility a civil penalty in

the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the same management, ownership, or control:

a. Has received a citation and paid a fine, or

b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,

for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred 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. 150B-36. (1987, c. 600, s. 2.)

Editor's Note. — Session Laws 1987, c. 600, s. 4 makes this section effective October 1, 1987.

§§ 131E-130 to 131E-134: Reserved for future codification purposes.

Part C. Home Health Agency Licensure Act.

§ 131E-136. Definitions.

Editor's Note. — Session Laws 1987, c. 34 amends Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, as noted in the main volume, so as to delete the June 30, 1987, expiration date.

Article 7.

Regulation of Ambulance Services.

§ 131E-159. Requirements for certification.

(b1) An individual currently certified as an emergency medical technician by the National Registry of Emergency Medical Technicians or by another state where the training/certification requirements have been approved for reciprocity by the Department of Human Resources, in accordance with rules promulgated by the Medical Care Commission, and who is either currently residing in North Carolina or affiliated with a permitted ambulance provider offering service within North Carolina, may be eligible for certification as an emergency medical technician without examination. This certification shall be valid for a period not to exceed the length of the applicant's original certification or two years, whichever is less.

(1967, c. 343, s. 3; 1973, c. 476, s. 128; c. 725; c. 1224, s. 1; 1975, c. 612; 1983, c. 775, s. 1; 1987, c. 495, s. 2.)

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

Editor's Note. — By virtue of Session Laws 1987, c. 495, the local modification note under this section for Session Laws 1985 (Reg. Sess., 1986), c. 951 should be deleted.

Effect of Amendments. — The 1987 amendment, effective June 29, 1987, added subsection (b1).

Article 9.

Certificate of Need.

§ 131E-175. Findings of fact.

The General Assembly of North Carolina makes the following findings:

(1) That the financing of health care, particularly the reimbursement of health services rendered by health service facilities, limits the effect of free market competition and government regulation is therefore necessary to control costs, utilization, and distribution of new health service facilities and the bed complements of these health service facilities.
(2) That the increasing cost of health care services offered through health service facilities threatens the health and welfare of the citizens of this State in that citizens need assurance of economical and readily available health care.
(3) That, if left to the market place to allocate health service facilities and health care services, geographical maldistribution of these facilities and services would occur and, further, less than equal access to all population groups, especially those that have traditionally been medically underserved, would result.
(4) That the proliferation of unnecessary health service facilities results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services.
(5) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.
(6) That excess capacity of health service 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 need, cost of service, accessibility to services, 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; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on or after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before

that date, rewrote subdivisions (1) to (5), inserted "service" preceding "facilities" near the beginning of subdivision (6), and substituted "as to need, cost of service, accessibility to services" for "as to type, level" in subdivision (7). The 1987 amendment also rewrote the heading to Article 9.

CASE NOTES

The purpose, etc. —

The fundamental purpose of the certificate of need law is to limit the construction of health care facilities in this State to those that the public needs and that can be operated efficiently and economically for their benefit. Humana Hosp. Corp. v. North Carolina Dep't of Human Resources, 81 N.C. App. 628, 345 S.E.2d 235 (1986), decided under former § 131-175.

Discretion of Agency. — In serving the purpose of the certificate of need law adjustments are often needed, and the agency has discretion to make them by granting only some of the things applied for and by imposing conditions not applied for. Humama Hosp. Corp. v. North Carolina Dep't of Human Resources, 81 N.C. App. 628, 345 S.E.2d 235 (1986), decided under former § 131-175.

Cited in Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986); In re Wake Kidney Clinic, — N.C. App. —, 355 S.E.2d 788 (1987).

§ 131E-176. 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's 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 rules of the Department except that single beds in single rooms are counted even if the room contains inadequate square footage. The term "bed capacity" also refers to the number of dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(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 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 the project.

(5) "Change in bed capacity" means (i) any relocation of health service facility beds, or dialysis stations from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176 (9c), or (iii) any increase in the number of health service facillty beds, or dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

(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. 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,

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 of chemically dependent or substance abusing persons, but shall not include halfway houses or recovery farms.

(5b) "Chemical dependency treatment beds" means beds that are licensed for detoxification or for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or substance abuse are chemical dependency treatment beds but those residential treatment beds that were developed and operated without a certificate of need shall not be counted in the inventory of chemical dependency treatment beds in the State Health Plans prepared by the Department pursuant to G.S. 131E-177(4) after July 1, 1987. The State Health Plans prepared after July 1, 1987, shall also contain no limitation on the proportion of the overall inventory of chemical dependency treatment beds located in any of the types of chemical dependency treatment facilities identified in subdivision (5a).

(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), (9) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(9a) "Health service" means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity that is integral to the clinical management of a sick, injured, or disabled person. "Health service" does not include administrative and other activities that are not integral to clinical management.

(9b) "Health service facility" means a hospital; psychiatric facility; rehabilitation facility; long term care facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency; chemical dependency treatment facility; and ambulatory surgical facility.

(9c) "Health service facility bed" means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) intermediate nursing care or skilled nursing care beds; (v) intermediate care beds for the mentally retarded; and (vi) chemical dependency treatment beds.

(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 independent, private, nonprofit corporation, incorporated in this State, that engages in regional health planning and development functions.

(12) "Home health agency" 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 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.

(14) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(14a) "Intermediate care facility for the mentally retarded" means facililties 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.

(14b) "Intermediate nursing care" means the provision of health-related care and services on a regular basis to individuals who do not require the degree of care and treatment that hospitals or skilled nursing care provide, but who because of their mental or physical condition require health-related care and services above the level of room and board.

(14c) "Long term care facility" means a health service facility whose bed complement of health service facility beds is composed principally of skilled nursing beds or intermediate nursing care beds, or both.

(15) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(16) "New institutional health services" means:

a. The construction, development, or other establishment of a new health service facility;

b. The obligation by any person of any capital expenditure on behalf of or for a health service facility as defined in subsection (9b) of this section exceeding two million dollars ($2,000,000), other than one to acquire an existing health service facility or to replace such a facility destroyed or irreparably damaged by accident or natural disaster. 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 two million dollars ($2,000,000);

c. Any change in bed capacity as defined in G.S. 131E-176(5);

d. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility;

e. A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project;

f. The offering of a health service by or on behalf of a health service facililty if the service was not offered by or on behalf of the health service facility in the previous 12 months and if the annual operating costs of the service equal or exceed one million dollars ($1,000,000), or the expansion of an existing health service when an annual operating cost of one million dollars ($1,000,000) is directly associated with the offering of the expanded portion of the service;

g. to k. Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

l. The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180;

m. Any conversion of nonhealth service facility beds to health service facility beds;

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).

(17) "North Carolina State Health Coordinating Council" means the Council that prepares, with the Department of Human Resources, the State Medical Facilities Plan, a component of the State Health Plan.

(18) To "offer," when used in connection with health services, means that the health service 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 service 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 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.

(23) "Skilled nursing care" means the provision of that degree of care to inpatients 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 prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council and approved by the Governor.

(25) "State Medical Facilities Plan" means a component of the State Health Plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, and approved by the Governor.

(26) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1002, s. 9.

(27) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987. (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; 1985 (Reg. Sess., 1986), c. 1001, s. 2; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987). Thus the amendment by Session Laws 1985, c. 589, s. 43(b), as shown in the main volume and scheduled to become effective on January 1, 1988, has been superseded and will not go into effect.

Session Laws 1987, c. 34 amends Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, as noted in the main volume, so as to delete the June 30, 1987 expiration date.

Session Laws 1987, c. 511, s. 2 is a severability clause.

Chapter 122, referred to in this section, has been repealed. See now Chapter 122C.

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, substituted "rules" for "regulations" in the second sentence of subdivision (2), added the third sentence of subdivision (2), deleted "and regulations" following "rules" in subdivision (3), rewrote subdivision (5),

inserted subdivision (5b), deleted subdivisions (8) and (9), inserted subdivisions (9a), (9b), and (9c), rewrote subdivision (11), substituted "Home health agency" for "Home health agencies" at the beginning of the first paragraph of subdivision (12), substituted "with provision" for "within provision" in the first sentence of subdivision (13a), deleted subdivision (14), inserted subdivisions (14b) and (14c), deleted subdivision (15), rewrote subdivisions (16) and (17), substituted "health service facility" for "health care facility" in subdivision (18) and in the last sentence of subdivision (20), rewrote subdivisions (22), (23), (24) and (25), and deleted subdivision (27). In addition, the amendment superseded the amendment by Session Laws 1985, c. 589, s. 43(b), which was to become effective January 1, 1988. This section is set out above as amended by Session Laws 1987, c. 511.

§ 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 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 pursuant to Chapter 150B of the General Statutes, to carry out the purposes and provisions of this Article;

(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 service 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 rule, procedures for submission of periodic reports by persons or health service facilities subject to agency review under this Article;

(4) Develop policy, criteria, and standards for health service facilities planning, conduct statewide inventories of and make determinations of need for health service facilities, and develop a State Health Plan;

(5) Implement, by rule, criteria for project review;

(6) Have the power to grant, deny, or withdraw a certificate of need and to impose such sanctions as are provided for by this Article;

(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; and

(8) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(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; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, substituted "exercise the following powers and duties:" for "fulfill responsibilities defined in Title XV of the Public Health Service Act" at the end of the introductory language of the first paragraph, deleted introductory language of a former second paragraph which preceded subdivision (1); which read "The Department shall exercise the following powers and duties:"; in subdivision (1) deleted "and regulations" following "rules," substituted "Chapter 150B" for "Chapter 150A" and added "to carry out the purposes and provisions of this Article"; substituted "health service facilities" for "health care facilities" in the first sentence of subdivision (2), in subdivision (3) and in two places in subdivision (4); substituted "rule" for "regulation" in subdivisions (3) and (5); substituted "State Health Plan" for "State plan coordinated with other plans of health systems agencies with other pertinent plans and with the State health plan of the Department" at the end of subdivision (4); substituted "or withdraw" for "suspend, or revoke" and added "and to impose such sanctions as are provided for by this Article" in subdivision (6); deleted "and" at the end of subdivision (7); and deleted former subdivision (8), relating to procedures for appeals.

CASE NOTES

Responsibility of Department. — While the hearing officer's recommendations are entitled to consideration, the responsibility for making the decision is that of the Department of Human Resources. Humana Hosp. Corp. v. North Carolina Dep't of Human Resources, 81 N.C. App. 628, 345 S.E.2d 235 (1986), decided under former § 131-177.

Project analyst's request for documentation of petitioner's alleged support by professional groups and individuals was entirely reasonable and within Department of Human Resources' authority, in order to obtain the necessary information to properly review application. Charter Pines Hosp. v. North Carolina Dep't of Human Resources, 83 N.C. App. 161, 349 S.E.2d 639, cert. denied, 319 N.C. 105, 353 S.E.2d 106 (1987), decided under former §§ 131-177, 131-181.

§ 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, however, no hospital licensed pursuant to Article 5 of this Chapter that was established to serve a minority population that would not otherwise have been served and that continues to serve a minority population may be required to obtain a certificate of need for transferring up to 65 beds to skilled nursing home beds.

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a cer-

tificate 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 when:

(1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by a person for the construction, acquisition, lease or financing of a capital asset;

(2) A person takes formal action to commit funds for a construction project undertaken as his 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; 1985 (Reg. Sess., 1986), c. 1001, s. 1; 1987, c. 511, s. 1; c. 768.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

As amended by Session Laws 1987, c. 768, this section was in the coded bill drafting format provided by § 120-20.1 and contained a subsection (b) which has not been set out at the direction of the Revisor of Statutes.

Effect of Amendments. —

Session Laws 1987, c. 511, s. 1, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to

projects for which certificates of need were issued, before that date, deleted the former second and third sentences of subsection (a) and a former second paragraph of that subsection, relating to situations where certificates of need were not required, substituted "Department" for "department" at the end of the first sentence of the introductory paragraph of subsection (c), deleted "by or on behalf of a health care facility" following "incurred" in the second sentence of the introductory paragraph of subsection (c), substituted "by a person" for "by or on behalf of the health care facility" in subdivision (c)(1), and in subdivision (c)(2) substituted "A person" for "The governing body of a health care facility," deleted "its own" preceding "funds for a construction project," and substituted "as his own" for "by the health care facility as its own."

Session Laws 1987, c. 768, effective August 11, 1987, added the proviso at the end of subsection (a) of this section, as rewritten by Session Laws 1987, c. 511. As to the effect of c. 768, see also the Editor's note above.

§ 131E-179. Research activities.

(a) Notwithstanding any other provisions of this Article, a health service facility may offer new 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 service facility files a notice of intent with the Department in accordance with rules promulgated by the Department and if the Department finds that the offering or obligation will not:

(1) Affect the charges of the health service 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 service facililty has received an exemption pursuant to subsection (a) of this section, it shall not offer the new institutional health services, or use a 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 and shall not charge patients for the use of the service for which an exemption has been granted, 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; 1987, c. 511, s. 1.)

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before

that date, substituted "a health service facility may offer new institutional health services" for "a health care facility may acquire major medical equipment to be used solely for research, offer institutional health services" in the first sentence of the introductory language of subsection (a); substituted "health service facility" for "health care facility" in the second sentence of the introductory language of subsection (a), in subdivision (a)(1), and near the beginning of subsection (b); deleted "acquisition" preceding "offering or obligation" on the second sentence of the introductory language of subsection (a); and in subsection (b) deleted "use the major medical equipment" following "it shall not," inserted "new" preceding "institutional health services," substituted "use a facility" for "use the equipment or facility," and inserted "and shall not charge patients for the use of the service for which an exemption has been granted."

§ 131E-180. Health maintenance organization.

(a) Subject to the provisions of subsection (b) of this section, no inpatient health service facility controlled, directly or indirectly, by a health maintenance organization (HMO), or combination of HMOs, shall offer or develop new institutional health services 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 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 service 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 service 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 service 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; 1987, c. 511, s. 1.)

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, substituted "health service facility" for "health care facility" near the beginning of the first sentence of subsection (a), in subdivisions (b)(2) and (b)(3), and near the beginning of subsection (e); substituted "(HMO)" for "hereinafter referred to as HMOs" in the first sentence of subsection (a); deleted a former second sentence of subsection (a), which read "Further, subject to the provisions of subsection (b) of this section, no health care service 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"; and substituted "rules" for "rules and regulations" in the fourth sentence of the introductory paragraph of subsection (b).

§ 131E-181. Nature of certificate of need.

(a) 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.

(b) A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need. The Department may require any recipient of a certificate of need, or its successor, whose service is in operation to submit to the Department evidence that the recipient, or its successor, is in material compliance with the representations made in its application for the certificate of need which granted the recipient the right to operate that service. In determining whether the recipient of a certificate of need, or its successor, is operating a service which materially differs from the representations made in its application for that certificate of need, the Department shall consider cost increases to the recipient, or its successor, including, but not limited to, the following:

(1) Any increase in the consumer price index;

(2) Any increased cost incurred because of Government requirements, including federal, State, or any political subdivision thereof; and

(3) Any increase in cost due to professional fees or the purchase of services and supplies.

(c) Whenever a certificate of need is issued more than 12 months after the application for the certificate of need began review, the Department shall adjust the capital expenditure amount proposed by increasing it to reflect any inflation in the Department of Commerce's Construction Cost Index that has occurred since the date when the application began review; and the Department shall use this recalculated capital expenditure amount in the certificate of need issued for the project. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 5; 1983, c. 775, s. 1; 1985, c. 521, s. 1; 1985 (Reg. Sess., 1986), c. 968, s. 1; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Subsection (a) of this section is set out as it read prior to amendment by Session Laws 1985, c. 521, s. 1, which amendment expired pursuant to s. 2 of Session Laws 1985, c. 521, s. 2, on July 1, 1987.

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, deleted "by rule" following "The Department may" at the beginning of the second sentence of the introductory paragraph of subsection (b); deleted a former third sentence of the introductory paragraph of subsection (b), which read "The Secretary is authorized to adopt, amend, and repeal rules to administer this subsection"; substituted "the Department shall consider" for "the court shall consider" in the present third sentence of the introductory paragraph of subsection (b); and added subsection (c).

§ 131E-182. Application.

(a) The Department in its rules shall establish schedules for submission and review of completed applications. The schedules 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 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 of 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; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, deleted "and regulations" following "rules" in the first sentence of subsection (a) and in the second sentence of subsection (b), deleted "which shall be consistent with federal law and regulations" following "The schedule" at the beginning of the second sentence of subsection (a), substituted "certificate of need" for "certificate-of-need" in the first and second sentences of subsection (c), and inserted "of" following "regardless" in the second sentence of subsection (c).

CASE NOTES

Cited in Charter Pines Hosp. v. North Carolina Dep't of Human Resources, 83 N.C. App. 161, 349 S.E.2d 639 (1986).

§ 131E-183. Review criteria.

(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine if an application is consistent with these criteria and whether a certificate of need for the proposed project shall be issued.

(1) The proposed project shall be consistent with applicable policies and projections in the State Medical Facilities Plan, and the State Health Plan.

(2) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

(3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served 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) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

(5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

(6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

(7) The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided. Further, the applicant shall show that the use of these resources for provision of these services will not preclude alternative uses of these resources to fulfill other more important needs identified by the applicable State Health Plan.

(8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

(9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

(10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates:

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 these providers, the applicant shall consider only whether the services from these providers:

1. Would be available under a contract of at least five years' 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 administratively feasible to the HMO.

(11) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

(13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:

a. The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;

b. Its past performance 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. That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and

d. That 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 applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

(15) to (18) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

(19) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

(21) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(b) The Department is authorized to adopt rules for the review of particular types of applictions that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

(c) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987. (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; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act, which amended this section, shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Session Laws 1987, c. 714, provides that certificates of need received by "Life Care" or "Care for Life" institutions pursuant to Chapter 920 of Session Laws 1983 shall expire on December 31, 1993.

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, rewrote the introductory paragraph of subsection (a); rewrote subdivision (a)(1); deleted subdivision (a)(2); rewrote subdivision (a)(3); substituted "the applicant shall demonstrate that the needs of the population presently served" for "the need that the population presently served has for the service, the extent to which that need" in subdivision (a)(3a); rewrote subdivisions (a)(4) through (a)(9); rewrote the introductory language of subdivision (a)(10); substituted "the applicant shall consider" for "the Department shall consider" in the second sentence of para-

graph (a)(10)b; deleted subdivision (a)(11); rewrote subdivision (a)(12); rewrote the introductory language of subdivision (a)(13); rewrote paragraphs (a)(13)a and (a)(13)c; substituted "Its past performance" for "the performance of the applicant" at the beginning of paragraph (a)(13)b; substituted "That" for "The extent to which" at the beginning of paragraph (a)(13)d; rewrote subdivision (a)(14); deleted subdivisions (a)(15) through (a)(18); added subdivision (a)(18a); deleted subdivision (a)(19); rewrote subdivision (a)(20); deleted subdivision (a)(21); rewrote subsection (b); and deleted former subsection (c).

CASE NOTES

Number of Existing Federal — Approved Dialysis Stations Considered. — Where evidence presented at hearing showed that eighty to ninety persent of the dialysis patients in the area to be served relied on Medicare or Medicaid to pay for dialysis treatment, the agency was justified in concluding that only federally-approved stations should be considered when counting the number of existing stations. In re Wake Kidney Clinic, — N.C. App. —, 355 S.E.2d 788 (1987).

Financial Status of Participating Out-of-State Physician Considered. — The agency did not act in an unfair or illegal manner is considering evidence of the financial status of a listed shareholder who was a licensed physician in several states and needed to meet only pro-forma requirements in order to become licensed in North Carolina, simply because such evidence had not been utilized in the initial decision and because he was not yet a licensed physician in North Carolina, where all the evidence indicated that he would be a licensed physician and thus eligible to participate in the project by the time the Certificate of Need would be issued. In re Wake Kidney Clinic, — N.C. App. —, 355 S.E.2d 788 (1987).

Project analyst's request for documentation of petitioner's alleged support by professional groups and individuals was entirely reasonable and within Department of Human Resources' authority, in order to obtain the necessary information to properly review application. Charter Pines Hosp. v. North Carolina Dep't of Human Resources, 83 N.C. App. 161, 349 S.E.2d 639 (1986), cert. denied, 319 N.C. 105, 353 S.E.2d 106 (1987), decided under former §§ 131-177, 131-181.

Evidence supported department's conclusion that need existed for dialysis facility, and that there were no less costly or more effective alternatives for providing the desired services. In re Wake Kidney Clinic, — N.C. App. —, 355 S.E.2d 788 (1987).

§ 131E-184. Exemptions from review.

(a) Except as provided in subsection (b), the Department shall exempt from certificate of need review a proposed capital expenditure if it receives notice from the entity proposing to make the capital expenditure, which notice includes an explanation of why the expenditure is required:

(1) To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations;

(1a) To comply with State licensure standards;

(1b) 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;

(2) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(3) To provide data processing equipment;

(4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless

these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that is subject to certificate of need review; or

(5) To replace or repair facilities destroyed or damaged by accident or natural disaster.

(b) Those portions of a proposed project which are not proposed for one or more of the purposes under subsection (a) of this section are subject to certificate of need review, if these non-exempt portions of the project are new institutional health services under G.S. 131E-176(16).

(c) The Department shall exempt from certificate of need review any conversion of existing acute care beds to psychiatric beds provided:

(1) The hospital proposing the conversion has executed a contract with the Department's Division of Mental Health, Mental Retardation, and Substance Abuse Services and/or one or more of the Area Mental Health, Mental Retardation, and Substance Abuse Authorities to provide psychiatric beds to patients referred by the contracting agency or agencies; and

(2) The total number of beds to be converted shall not be more than twice the number of beds for which the contract pursuant to subdivision (1) of this subsection shall provide. (1983, c. 775, s. 1; 1987, c. 511, s. 1.)

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, rewrote the introductory language of subsection (a), rewrote former subdivision (a)(1) as present subdivisions (a)(1), (a)(1a) and (a)(1b), deleted former subdivision (a)(2), added subdivisions (a)(3) through (a)(5), rewrote subsection (b), and added subsection (c).

§ 131E-185. Review process.

(a) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

(a1) Except as provided in subsection (c) of this section, there shall be a time limit of 90 days for review of the applications, beginning on the day established by rule as the day on which applications for the particular service in the service area shall begin review.

(1) Any person may file written comments and exhibits concerning a proposal under review with the Department, not later than 45 days after the date on which the application begins review. These written comments may include:

a. Facts relating to the service area proposed in the application;

b. Facts relating to the representations made by the applicant in its application, and its ability to perform or fulfill the representations made;

c. Discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with relevant review criteria, plans, and standards.

(2) At least 15, but no more than 30 days from the conclusion of the written comment period, the Department shall ensure that a public hearing is conducted at a place within the appropriate health service area at which oral presentations may be made regarding the application or applications under review; and this public hearing shall include the following:

a. An opportunity for the proponent of each application under review to respond to the written comments submitted to the Department about its application;

b. An opportunity for any affected person as defined in G.S. 131E-188(c), except one of the proponents, to present comments regarding the applications under review;

c. An opportunity for a representative of the Department, or such other person or persons who are designated by the Department to conduct the hearing, to question each proponent of applications under review with regard to the contents of the application;

The Department shall maintain a recording of the public hearing on each application until such time as the Department's final decision is issued, or until a final agency decision is issued pursuant to a contested case hearing, whichever is later; and any person may submit a written synopsis or verbatim statement that contains the oral presentation made at the hearing.

(3) The Department may contract or make arrangements with a person or persons located within each health service area for the conduct of such public hearings as may be necessary. The Department shall publish, in each health service area, notice of the contracts that it executes for the conduct of those hearings. If a health systems agency is in operation in a health service area, the Department shall use that health systems agency for the conduct of the public hearings in that area. A health systems agency may make recommendations on any matter covered in this Article, but no such recommendation shall interfere with the timetables of the review process contained in this Article.

(4) Within 15 days from the beginning of the review of an application or applications proposing the same service within the same service area, the Department shall publish notice of the deadline for receipt of written comments, of the time and place scheduled for the public hearing regarding the application or applications under review, and of the name and address of the person or agency that will preside.

(5) The Department shall maintain all written comments submitted to it during the written comment stage and any written submissions received at the public hearing as part

of the Department's file respecting each application or group of applications under review by it. The application, written comments, and public hearing comments, together with all documents that the Department used in arriving at its decision, from whatever source, and any documents that reflect or set out the Department's final analysis of the application or applications under review, shall constitute the Department's record for the application or applications under review.

(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 the beginning date of the review period for the 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 applicants. (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, ss. 9, 10; 1983, c. 775, s. 1; 1987, c. 511, s. 1.)

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, deleted subsection (a), inserted subsection (a1) with its subdivisions (1) through (5), and in subsection (c) substituted "the beginning date of the review period for the application" for "receipt of a completed application" at the end of the first sentence, and substituted "all applicants" for "all affected persons" at the end of the second sentence.

CASE NOTES

Department of Human Resources is authorized to approve projects for fewer beds than are proposed by an applicant. The power to make such conditional approvals is discretionary, however, and not mandatory. Charter Pines Hosp. v. North Carolina Dep't of Human Resources, 83 N.C. App. 161, 349 S.E.2d 639 (1986), cert. denied, 319 N.C. 105, 353 S.E.2d 106 (1987), decided under former § 131-182(b).

§ 131E-186. Decision.

(a) Within the prescribed time limits in G.S. 131E-185, the Department shall issue a decision to "approve," "approve with conditions," or "deny," an application for a new institutional health service.

(b) With five days after it makes a decision on an application, the Department shall provide written notice of all the findings and conclusions upon which it based its decision, including the criteria used by the Department in making its decision, to both the appli-

cant and to the appropriate health systems agency. (1977, 2nd Sess., c. 1182, s. 2; 1983, c. 775, s. 1; 1987, c. 511, s. 1.)

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987.)

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, rewrote this section.

CASE NOTES

Cited in In re Wake Kidney Clinic, — N.C. App. —, 355 S.E.2d 788 (1987).

§ 131E-187. Issuance of a certificate of need.

(a) The Department shall issue a certificate of need within 35 days of the date of the decision referenced in G.S. 131E-186, when no request for a contested case hearing has been filed in accordance with G.S. 131E-188, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met.

(b) The Department shall issue a certificate of need within five days after a request for a contested case hearing has been withdrawn or the final agency decision has been made following a contested case hearing, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met. (1977, 2nd Sess., c. 1182, s. 2; 1983, c. 775, s. 1; 1987, c. 511, s. 1.)

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, rewrote this section.

§ 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, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition.

A contested case shall be conducted in accordance with the following timetable:

(1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.

(2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.

(3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.

(4) The administrative law judge or hearing officer shall make his recommended decision within 75 days after the hearing.

(5) The Department shall make its final decision within 30 days of receiving the recommended decision.

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes his recommended decision in the case within 270 days after the petition is filed. The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension.

(a1) As a condition precedent to proceeding with a contested case hearing on the approval of an applicant for a certificate of need, the petitioner shall deposit a bond with the clerk of superior court where the new institutional health service that is the subject of the petition is proposed to be located. The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the petition, but may not be less than five thousand dollars ($5,000) and may not exceed fifty thousand dollars ($50,000). A petitioner who received approval for a certificate of need and is contesting only a condition in the certificate is not required to file a bond under this subsection.

The applicant who received approval for the new institutional health service that is the subject of the petition may bring an action against a bond filed under this subsection in the superior court of the county where the bond was filed. Upon finding that the petition for a contested case was frivolous or filed to delay the applicant, the court may award the applicant part or all of the bond filed under this subsection.

(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 ap-

peal 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 Facility Services, Department of Human Resources and with all other affected persons who were parties to the contested hearing.

(b1) Before filing an appeal of a decision by the Department granting a certificate of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals. The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the appeal, but may not be less than five thousand dollars ($5,000) and may not exceed fifty thousand dollars ($50,000). A holder of a certificate of need who is appealing only a condition in the certificate is not required to file a bond under this subsection.

If the Court of Appeals finds that the appeal was frivolous or filed to delay the applicant, the court shall remand the case to the superior court of the county where a bond was filed for the contested case hearing on the certificate of need. The superior court may award the holder of the certificate of need part or all of the bond. The court shall award the holder of the certificate of need reasonable attorney fees and costs incurred in the appeal to the Court of Appeals.

(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 or 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 service facilities within that geographic area; health service 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 service 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 service 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 service 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; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and

after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, rewrote subsection (a), inserted subdivision (a1), substituted "Division of Facility Services" for "Division of Facilities Services" at the end of the next-to-last sentence of subsection (b), inserted subsection (b1), and substituted "health service facilities" for "health care facilities" throughout subsection (c).

CASE NOTES

To What Courts Appeals May Be Taken. — This section provides for an appeal directly to the Court of Appeals from an adverse decision after a contested case hearing, while all parties aggrieved by any other final agency decision are still required to appeal to the Wake County Superior Court pursuant to § 131E-191(b). Charlotte-Mecklenburg Hosp. Auth. v. North Carolina Dep't of Human Resources, 83 N.C. App. 122, 349 S.E.2d 291 (1986).

Cited in Humana Hosp. Corp. v. North Carolina Dep't of Human Resources, 81 N.C. App. 628, 345 S.E.2d 235 (1986); In re Wake Kidney Clinic, — N.C. App. —, 355 S.E.2d 788 (1987).

§ 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 the Department specifies a different timetable in its decision letter. 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 no progress report is provided or, after reviewing the progress, the Department determines that the holder of the certificate is not meeting the timetable and the holder cannot demonstrate that it is making good faith efforts to meet the timetable, the Department may withdraw the certificate. If the Department determines that the holder of the certificate is making a good faith effort to meet the timetable, the Department may, at the request of the holder, extend the timetable for a specified period.

(b) The Department may withdraw any certificate of need, if the holder of the certificate fails to develop and operate the service consistent with the representations made in the application or with any condition or conditions the Department placed on the certificate of need.

(c) The Department may immediately 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. Any transfer after that time will be subject to the requirement that the service be provided consistent with the representations made in the application and any applicable conditions the Department placed on the certificate of need. 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; 1987, c. 511, s. 1.)

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987). Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, rewrote this section.

§ 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 of 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 person 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 hereunder may include 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) The Medical Care Commission may revoke or suspend the license of any person who proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services.

(f) The Department may assess a civil penalty of not more than twenty thousand dollars ($20,000) 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 pertaining thereto, or in violation of the terms of such a certificate, each time the service is provided in violation of this provision. 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. A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Department shall refer the matter to the Attorney General for collection. For the purpose of this subsection, the word "person" shall not 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 person 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. 150B-2(6), may bring a civil action for injunctive relief, temporary or permanent, against the person offering, developing or operating any new institutional health service. The action may be brought in the superior court of any county in which the health service facility is located or in the superior court of Wake County.

(i) If the Department determines that the recipient of a certificate of need, or its successor, is operating a service which materially differs from the representations made in its application for that certificate of need, the Department may bring an action in Wake County Superior Court or the superior court of any county in which the certificate of need is to be utilized for injunctive relief, temporary or permanent, requiring the recipient, or its successor, to materially comply with the representations in its application. The Department may also bring an action in Wake County Superior Court or the superior court of any county in which the certificate of need is to be utilized to enforce the provisions of this subsection and G.S. 131E-181(b) and the rules adopted in accordance with this subsection and G.S. 131E-181(b). (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 13; 1983, c. 775, s. 1; 1985 (Reg. Sess., 1986), c. 968, s. 2; 1987, c. 511, s. 1.)

Editor's Note. —

Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to all new institutional health services that are proposed on and after that date, but not applicable to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date, substituted "of" following "determination" in the second sentence of subsection (c); substituted "any person" for "any health care facility," deleted "and regulations" following "rules," and substituted "may include" for "is" preceding "the withholding" in subsection (d); rewrote subsections (e) and (f); substituted "any person" for "any health care facility" and "G.S. 150B-2(6)" for "G.S. 150A-2(6)" in the first sentence of subsection (h); added the second sentence of subsection (h); inserted "an" preceding "action" in the first and second sentences of subsection (i); and substituted "rules" for "regulations" in the second sentence of subsection (i).

§ 131E-191: Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

Editor's Note. — Session Laws 1987, c. 511, s. 3 provides that the act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. Section 3 further provides that the act supersedes all previous acts that were to become effective at any time after the effective date of the act (July 1, 1987).

Session Laws 1987, c. 511, s. 2 is a severability clause.

§§ 131E-192 to 131E-199: Reserved for future codification purposes.

Article 10.

Hospice Licensure Act.

§ 131E-200. Title; purpose.

Editor's Note. —

Session Laws 1987, c. 34 amends Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, as noted in the main volume, so as to delete the June 30, 1987 expiration date.

Article 11.

North Carolina Medical Database Commission.

§ 131E-210. Title and purpose.

(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. However, the limited use of the social security numbers of patients as provided in G.S. 131E-212(b)(5) and (6) and G.S. 131E-213 is vital to insuring the degree of accuracy of the information base contemplated by this Article and to achieve the purposes of the General Assembly in enacting this Article. (1985, c. 757, s. 208(a); 1987, c. 592, 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 1987 amendment, effective July 10, 1987, added the last sentence of subsection (b).

§ 131E-212. North Carolina Medical Database Commission; powers.

(a) 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 section; build and maintain the database; analyze the information; and prepare reports.

(b) The Commission may adopt rules 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. In accordance with the findings of the General Assembly set forth in G.S. 131E-210(b), data provided to the Commission may include the patient's social security number but the handling and disclosure of such number shall be in accordance with G.S. 131E-212(b)(5) and (6) and G.S. 131E-213.

(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 patient identifying information shall be

omitted from the database. For purposes of this section, the social security numbers of patients shall not be considered to be patient identifying information, although the further dissemination of such numbers shall be governed by the provisions of G.S. 131E-212(b)(6) and G.S. 131E-213.

(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. In no event may a data provider obtain data regarding the social security number of a patient except in instances when that data was originally submitted by the requesting 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.

(1985, c. 757, s. 208(a); 1987, c. 592, ss. 2, 3; c. 827, s. 253.)

Only Part of Section Set Out. — As subsections (c)-(h) of this section were not affected by the amendment, they are not set out.

Effect of Amendments. — Session Laws 1987, c. 592, ss. 2, 3, effective July 10, 1987, designated the first paragraph of this section as subsection (a), added the last sentence of subdivision (b)(2), substituted "patient identifying information" for "personal identifiers" in the first sentence of subdivision (b)(5) and added the second sentence of that subdivision, and inserted the second sentence of subdivision (b)(6).

Session Laws 1987, c. 827, s. 253, effective August 13, 1987, also designated the first paragraph as subsection (a), substituted "section" for "subsection" in the second sentence of subsection (a), and deleted "after holding required public hearings and complying with the other procedural requirements of Chapter 150A of the General Statutes" following "adopt rules" in the first sentence of subsection (b).

§ 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 identifying information is to be protected and the pertinent statutes, rules, and regulations of the State of North Carolina and of the Federal Government relative to patient confidentiality shall apply. For purposes of this section, patient identifying information means the name, address, social security number or similar information by which the identity of the patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly

available information. The term does not include a patient identifying number assigned by a program. In any event, the patient identifying information (as defined in this section) obtained shall not be further disclosed, and may not be used in connection with any legal, administrative, supervisory, or other action whatsoever with respect to such patient. The Commission shall hold such information in confidence, is prohibited from taking any administrative, investigative, or other action with respect to any individual patient on the basis of such information, and is prohibited from identifying, directly or indirectly, any individual patient in any report of scientific research or long-term evaluation, or otherwise disclosing patient identities in any manner. Further, patient identifying information submitted to the Commission which would directly or indirectly identify any patient may not be disclosed by the Commission either voluntarily or in response to any legal process whether federal or State unless authorized by an appropriate court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure. (1985, c. 757, s. 208(a); 1987, c. 592, s. 4.)

Effect of Amendments. — The 1987 amendment, effective July 10, 1987, rewrote this section.

§ 131E-214: Reserved for future codification purposes.

Article 12.

Disclosure and Contract Requirements for Continuing Care Facilities.

§ 131E-215. Definitions.

As used in this Article, unless otherwise specified:

(1) "Continuing care" means the furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, pursuant to an agreement effective for the life of the individual or for a period in excess of one year.

(2) "Entrance fee" means a payment that assures a resident a place in a facility for a term of years or for life.

(3) "Facility" means the place or places in which a provider undertakes to provide continuing care to an individual.

(4) "Health related services" means, at a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

(5) "Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.
(6) "Provider" means the promoter, developer, or owner of a continuing care retirement community, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract.
(7) "Resident" means a purchaser of, a nominee of, or a subscriber to, a continuing care contract. (1987, c. 83, s. 1.)

Editor's Note. — Session Laws 1987, c. 83, s. 2 makes this Article effective January 1, 1988.

§ 131E-216. Pre-contractual statements of record.

No provider may enter into a contract to provide continuing care in a facility if (i) the contract requires or permits the payment of an entrance fee to any person, and (ii) the facility is, or will be, located in this State unless there has been filed in the office of the Division of Facility Services of the Department of Human Resources:
(1) A current disclosure statement as prescribed by G.S. 131E-217, and
(2) A copy of the agreement establishing the escrow as prescribed by G.S. 131E-220. (1987, c. 83, s. 1.)

§ 131E-217. Disclosure statement.

(a) At the time of, or prior to, the execution of a contract to provide continuing care, or at the time of, or prior to, the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into, the text of which shall contain at least:
(1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.
(2) The names and business addresses of the officers, directors, trustees, managing or general partners, any person having a ten percent (10%) or greater equity or beneficial interest in the provider, and any person who will be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider.
(3) The following information on all persons named in response to subdivision (2) of this section:
a. A description of the business experience of this person, if any, in the operation or management of similar facilities;
b. The name and address of any professional service, firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a ten

percent (10%) or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, of an aggregate value of five hundred dollars ($500.00) or more within any year, including a description of the goods, leases, or services and the probable or anticipated cost thereof to the facility, provider, or residents or a statement that this cost cannot presently be estimated; and

c. A description of any matter in which the person (i) has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (ii) is subject to a currently effective injunctive or restrictive court order, or within the past five years, had any State or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, if the order or action arose out of or related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged, or facility subject to this Article or a similar law in another state.

(4) A statement as to whether the provider is, or is not affiliated with, a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider, and the provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.

(5) The location and description of the physical property or properties of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates, whether construction has begun, and the contingencies subject to which construction may be deferred.

(6) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished, and a clear statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge.

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include:

a. A statement of the fees that will be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry;

b. The circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;

c. The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions, if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

d. The conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the prior resident; and

e. The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any; and, if the facility is already in operation, or if the provider or manager operates one or more similar continuing care locations within this State, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous five years, or such shorter period as the facility or location may have been operated by the provider or manager.

(8) The health and financial conditions required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering a contract for continuing care and the date or initial occupancy of a living unit by that person.

(9) The provisions that have been made or will be made, if any, to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested, and the names and experience of any individuals in the direct employment of the provider who will make the investment decisions.

(10) Certified financial statements of the provider, including (i) a balance sheet as of the end of the most recent fiscal year and (ii) income statements for the three most recent fiscal years of the provider or such shorter period of time as the provider shall have been in existence. If the provider's fiscal year ended more than 120 days prior to the date the disclosure statement is recorded, interim financial statements as of a date not more than 90 days prior to the date of recording the statement shall be included, but need not be certified.

(11) A summary of a report of an actuary, updated every five years, that estimates the capacity of the provider to meet its contract obligation to the residents. Disclosure statements of Continuing Care Facilities established prior to January 1, 1988, do not need an actuary report or summary until January 1, 1993.

(12) If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds

used or to be used in the purchase or construction of the facility, including:

a. An estimate of the cost of purchasing or constructing and equipping the facility including such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs the provider expects to incur or become obligated for prior to the commencement of operations;

b. A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of this financing;

c. An estimate of the total entrance fees to be received from, or on behalf of, residents at, or prior to, commencement of operation of the facility; and

d. An estimate of the funds, if any, that are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care.

(13) Pro forma annual income statements for the facility for a period of not less than five fiscal years, including:

a. A beginning cash balance consistent with the certified income statement required by subdivision (10) of this section or, if operation of the facility has not commenced, consistent with the statement of anticipated source and application of funds required by subdivision (12);

b. Anticipated earnings on cash reserves, if any;

c. Estimates of net receipts from entrance fees, other than entrance fees included in the statement of source and application of funds required by subdivision (12) less estimated entrance fee refunds, if any, and including a description of the actuarial basis and method of calculation for the projection of entrance fee receipts;

d. An estimate of gifts or bequests, if any, that are to be relied on to meet operating expenses;

e. A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to the contracts for continuing care;

f. A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses, and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

g. An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing arrangement relating to the facility.

(14) The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.

(15) Any other material information concerning the facility or the provider as the provider wishes to include.

(b) The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this Article but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set out.

(c) A copy of the standard form of contract for continuing care used by the provider shall be attached to each disclosure statement. (1987, c. 83, s. 1.)

§ 131E-218. Contract for continuing care; specifications.

(a) Each contract for continuing care shall provide that:

(1) The party contracting with the provider may rescind the contract within 30 days following the later of the execution of the contract or the receipt of a disclosure statement that meets the requirements of this section, in which event any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be returned in full, and the resident to whom the contract pertains is not required to move into the facility before the expiration of the 30 day period; and

(2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically canceled and the resident or legal representative of the resident shall receive a refund of all money or property transferred to the provider, less (i) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or an addendum thereto signed by the resident, and (ii) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars ($1,000) or two percent (2%) of the entrance fee.

(b) Each contract shall include provisions that specify the following:

(1) The total consideration to be paid;

(2) Services to be provided;

(3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the residents;

(4) The policies to be implemented if the resident cannot pay the periodic fees;

(5) The terms governing the refund of any portion of the entrance fee in the event of discharge by the provider or cancellation by the resident;
(6) The policy regarding increasing the periodic fees;
(7) The description of the living quarters;
(8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization will be responsible for the financial and contractual obligations of the provider;
(9) Any property rights of the resident;
(10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the facility; and
(11) Any requirement, if any, that the resident apply for Medicaid, public assistance, or any public benefit program. (1987, c. 83, s. 1.)

§ 131E-219. Annual disclosure statement revision.

Within the 150 days following the end of each fiscal year, the provider shall have filed in the Division of Facility Services of the Department of Human Resources a revised disclosure statement setting forth current information required pursuant to G.S. 131E-217. The provider shall also make this revised disclosure statement available to all the residents of the facility. This revised disclosure statement shall include a narrative describing any material differences between (i) the pro forma income statements filed in response to G.S. 131-217 [G.S. 131E-217] as a part of the disclosure statement recorded most immediately subsequent to the start of the provider's most recently completed fiscal year and (ii) the actual results of operations during that fiscal year together with the revised pro forma income statements being filed as a part of the revised disclosure statement. A provider may also revise its disclosure statement and have the revised disclosure statement recorded at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein. Only the most recently recorded disclosure statement, with respect to a facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of this Article or delivered pursuant to G.S. 131E-217. (1987, c. 83, s. 1.)

Editor's Note. — It would appear that the reference in the third sentence to § 131-217 was intended to refer to § 131E-217.

§ 131E-220. Escrow, collection of deposits.

(a) A provider shall establish an escrow account with (i) a bank, (ii) a trust company, or (iii) another person or entity agreed upon by the provider and the resident. The terms of this escrow account shall provide that the total amount of any entrance fee received by the provider prior to the date the resident is permitted to occupy a living unit in the facility be placed in this escrow account. These funds may be released only as follows:

(1) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider when the living unit becomes available for occupancy by the new resident;

(2) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be released to the provider when the escrow agent is satisfied that:

a. Construction or purchase of the living unit has been completed and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue such permits;

b. A commitment has been received by the provider for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and

c. Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety percent (90%) of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than ninety percent (90%) of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as that part of the disclosure statement required by G.S. 131E-217(12)d., to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care retirement community contracts.

(b) Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection (a) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(c) If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

(d) An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee. (1987, c. 83, s. 1.)

§ 131E-221. Civil liability.

A provider who enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of G.S. 131E-217 to the person contracting for this continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, shall be liable to the person contracting for this continuing care for actual damages and repayment of all fees paid to the provider, facility, or person violating this Article, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement, or omission or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments, and court costs and reasonable attorney fees.

(a) Liability under this section exists regardless of whether the provider or person liable had actual knowledge of the misstatement or omission.

(b) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid the provider, facility, or person violating this Article together with interest at the rate established monthly by the Commissioner of Banks pursuant to G.S. 24-1.1(3), less the current contractual value of care and lodging provided prior to receipt of the offer, and if the offer recited the provisions of this section and the recipient of the offer failed to accept it within 30 days of actual receipt.

(c) An action may not be maintained to enforce a liability created under this Article unless brought before the expiration of three years after the execution of the contract for continuing care that gave rise to the violation.

(d) This Article may not limit a liability that may exist by virtue of any other statute or under common law if this Article were not in effect. (1987, c. 83, s. 1.)

§ 131E-222. Investigations and subpoenas.

The Attorney General may make such public or private investigations within or outside of this State as necessary to determine whether any person has violated or is about to violate any provision of this Article or to aid in the enforcement of this Article or to verify statements contained in any disclosure statement filed or delivered hereunder.

(a) For the purpose of any investigation or proceeding under this Article, the Attorney General may require or permit any person to file a statement in writing, under oath or otherwise, as to any of the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or proceeding under this Article, the Attorney General or a designee thereof has all the powers given to him for consumer protection.

He may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records deemed relevant or material to the inquiry, all of which may be enforced in any court of this State which has appropriate jurisdiction. (1987, c. 83, s. 1.)

§ 131E-223. Cease and desist orders and injunctions.

Whenever it appears to the Attorney General or any district attorney, upon complaint or otherwise, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Article or any order hereunder, this officer may bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this Article or any order hereunder. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. (1987, c. 83, s. 1.)

§ 131E-224. Criminal penalties.

Any peson who willfully and knowingly violates any provision of this Article is guilty of a misdemeanor and shall, upon conviction, be fined not more than ten thousand dollars ($10,000) or imprisoned not more than one year, or both. The Attorney General or the district attorney may institute the appropriate criminal proceedings under this Article. Nothing in this Article limits the power of the State to punish any person for any conduct that constitutes a crime under any other statute. (1987, c. 83, s. 1.)

Chapter 132.

Public Records.

§ 132-1. "Public records" defined.

Local Modification. — Caldwell: 1987, c. 472, s. 1(c); Carteret: 1987, c. 375, s. 4(c); Currituck: 1987, c. 209, s. 1(c); Duplin: 1987, c. 317, s. 1(c); Gaston: 1987, c. 618, s. 1(c); Halifax: 1987, c. 377, s. 1(c); Henderson: 1987, c. 172; Lee: 1987, c. 538, s. 1(c); Lenoir: 1987, c. 561, s. 1(c); Mitchell: 1987, c. 141, s. 1(c); Nash: 1987, c. 32; Pasquotank: 1987, c. 175, s. 1(c); Pitt: 1987, c. 143, s. 1(c); Rowan: 1987, c. 379, s. 1(c); Wilson: 1987, c. 484, s. 1(c); Yancey: 1987, c. 140, s. 1(c); city of Elizabeth City: 1987, c. 175, s. 1(c); city of Greensboro: 1987, c. 51; cities of Hickory and Conover: 1987, c. 319, s. 1; town of Beech Mountain: 1987, c. 376, s. 2(a); town of Blowing Rock: 1987, c. 171, s. 1(c); town of Boone: 1987, c. 170, s. 1(c); Averasboro Township: 1987, c. 142.

Cross References. — As to diaries kept in connection with construction or repair contracts, see § 136-28.5.

Editor's Note. — By virtue of Session Laws 1987, c. 172, the local modification for Henderson by Session Laws 1985 (Reg. Sess. 1986), c. 962 should be deleted from the main volume.

§ 132-6. Inspection and examination of records.

Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. Notwithstanding the foregoing, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. (1935, c. 265, s. 6; 1987, c. 835, s. 1.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, rewrote this section.

§ 132-9. Access to records.

Any person who is denied access to public records for purposes of inspection, examination or copying 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 such orders. In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or in-

dustrial project. (1935, c. 265, s. 9; 1975, c. 787, s. 3; 1987, c. 835, s. 2.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added the last sentence.

Chapter 133.

Public Works.

Article 3.

Regulation of Contractors for Public Works.

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) Tyrell: 1983, c. 208; 1985, c. 120; 1987, c. 58, s. 1; New Hanover: 1983, c. 365; Tyrell County Board of Education: 1983, c. 580; 1985, c. 120; 1987, c. 58, s. 2.

Article 3.

Regulation of Contractors for Public Works.

§ 133-32. Gifts and favors regulated.

(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 not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. 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; 1987, c. 399, 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 1987 amendment, effective June 17, 1987, added the present second sentence of subsection (d).

Chapter 134A.

Youth Services.

Article 1.

Division of Youth Services in the Department of Human Resources.

§ 134A-1. Legislative intent and purpose.

Editor's Note. —

Session Laws 1987, c. 4, s. 2 adds language to Session Laws 1985, c. 479, s. 85(h) relating to the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program subject to the approval by the Director of the Budget, and makes such expenditures exempt from the requirements of §§ 158 (which rewrote § 143-18) and 161 of Session Laws 1985, c. 479.

Session Laws 1987, c. 738, s. 82 makes legislative findings and appropriates funds to the Department of Human Resources and the Department of Public Education to meet the needs of the class of children identified in the case of Willie M. et al. vs. Hunt et al. The act calls for continued implementation of the prospective unit cost reimbursement system and sets out reporting requirements. The section further provides that no state funds shall be expended on the placement and services of class members except for those funds appropriated in s. 2 of the act to the Departments of Human Resources and Public Education for programs serving that class, and except for such funds as may be elsewhere appropriated specifically for such purposes, but does not include the use of unexpended funds from prior fiscal years. In addition, this section provides that if the Department of Human Resources determines that a local program is not providing appropriate services to members of the class, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

Article 3.

Commitment and Care.

§ 134A-21. Authority to provide necessary medical or surgical care.

The Department is authorized to provide such medical and surgical treatment as is necessary to preserve the life and health of students while in care, provided that no surgical operation may be performed except as authorized in G.S. 148-22.2. (1965, c. 1024; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1987, c. 282, s. 21.)

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "G.S. 148-22.2" for "G.S. 130-191."

Article 5.

Detention Services.

§ 134A-36. Legislative intent.

The General Assembly intends to provide an administrative structure for implementation of the study of detention needs in North Carolina done by the National Juvenile Detention Association entitled Juvenile Detention in North Carolina: A Study Report, released in January, 1973. In addition to the authority of the Department under Article 2, Chapter 131D and Article 10, Chapter 153A, the Department shall be responsible for the development and administration of regional detention homes as recommended in the report and for coordination of regional detention services through existing county detention homes. (1973, c. 1230, s. 1; c. 1262, s. 10; 1975, c. 742, s. 1; 1987, c. 282, s. 22.)

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "Article 2, Chapter 131D" for "Part 3, Article 3, Chapter 108" near the beginning of the second sentence.

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

Article 3.

Other Teacher, Employee Benefits.

Part 1. General Provisions.

Part 2. Administrative Structure.

Part 3. Comprehensive Major Medical Plan.

Article 4.

Consolidated Judicial Retirement Act.

Article 5.

Supplemental Retirement Income Act of 1984.

Article 6.

Disability Income Plan of North Carolina.

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. In the event a member is or has been in receipt of a benefit under the provisions of G.S. 135-105 or G.S. 135-106, the compensation used in the calculation of "average final compensation" shall be the higher of compensation of the member under the provisions of this Article or compensation used in calculating the payment of benefits under Article 6 of this Chapter as adjusted for percentage increases in the post disability benefit.

(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 al-

lowed 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. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(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. 8½; 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; 1987, c. 738, ss. 29(a), 36(a).)

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

Editor's Note. —

Session Laws 1987, c. 738, s. 29(r) provides that s. 29 of the act shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —

Session Laws 1987, c. 738, s. 29(a), effective January 1, 1988, added the last sentence of subdivision (5).

Session Laws 1987, c. 738, s. 36(a), effective September 1, 1987, added the last sentence of subdivision (10).

CASE NOTES

Cited in Bradshaw v. Administrative Office of Courts, 83 N.C. App. 122, 349 S.E.2d 621 (1986).

§ 135-3. 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 excluded from coverage under Title II of the Social Security Act 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 excluded from coverage under Title II of the Social Security Act 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 excluded from coverage under Title II of the Social Security Act 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 excluded from coverage under Title II of the Social Security Act 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. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.

(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 one day 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 one day 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.

Age at Retirement	*Percentage Reduction*
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 one day 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 one day 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 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 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.

(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. 9½; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 2, 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. 1, 2, 4; 1985, c. 520, s. 1; c. 649, ss. 2, 11; 1987, c. 513, s. 1; c. 738, s. 38(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 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —

Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more than 90 days" in paragraphs (8)a, (8)b, (8)b1 and (8)b2.

Session Laws 1987, c. 738, s. 38(b), effective July 1, 1987, inserted "excluded from coverage under Title II of the Social Security Act" in four places in subdivision (1) and added the last sentence of that subdivision.

§ 135-4. Creditable 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 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 12 days of credit for each year 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.

(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, but before January 1, 1988. — 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, but before January 1, 1988, 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.

(3) Leaves of Absence Terminating On and After January 1, 1988. — 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 or before a return to service on and after January 1, 1988, shall be due and payable to the Annuity Savings Fund within six months from return to service and shall be a lump sum amount equal to the employee percentage rate

of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. For members electing to make this payment, the member's employer which granted the leave of absence, or the member's employer upon a return to service, or both, shall make a matching lump sum payment to the Pension Accumulation Fund within six months from return to service equal to the employer percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. Such purchases of creditable service are applicable only when members have membership service credits within 30 days prior to the leave of absence and within 12 months following the leave of absence and such membership service is creditable service at the time of purchase. Notwithstanding any other provision of this subdivision, the cost to a member and to a member's employer or former employer or both employers 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 that the payment is made after 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 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 actuary, plus an administrative expense fee to be determined by the Board of Trustees.

The provisions of this subsection shall also apply to the purchase of creditable service for State employment when classified as a permanent hourly employee in accordance with G.S. 126-5(c4).

(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.

Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subdivision shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt.

(x) Notwithstanding any other provision of this Chapter, any person who withdrew his contribution in accordance with the provisions of G.S. 128-27(f), or G.S. 135-5(f) or the rules and regulations of the Law-Enforcement Officer's Retirement System, and who subsequently returns to service, may, upon completion of five years of membership service, purchase the withdrawn service by making a lump sum amount 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 the calculation of the amount payable 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.

(y) A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be granted creditable service for each month that the member is eligible for and for which a benefit is paid under the provisions of G.S. 135-105 and G.S. 135-106; provided, however, that in no instance shall a member be granted creditable service under this subsection if creditable service is earned or credited for the same month in this retirement system or any other retirement system administered by the State. (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. 516, 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. 1; 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; 1987, c. 533, s. 1; c. 717, s. 2; c. 738, s. 29(b); c. 809, s. 2; c. 821; c. 825.)

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 1987, c. 738, s. 29(r) provides that s. 29 of the act, which added subsection (y), shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1981 (Reg. Sess., 1982), c. 1282, s. 46, as amended by Session Laws 1987, c. 738, s. 32(c), provides: "The State Personnel Commission and the Office of State Personnel, Department of Administration, shall grant aggregate State Service credit to former employees and members of the General Assembly for the amount of service to the General Assembly that those employees and members are authorized, for the purposes of retirement under Chapters 120 and 135 of the North Carolina General Statutes. This section shall not apply to participants in the Legislative Intern program or pages."

Section 32(d) of Session Laws 1987, c. 738 provides that s. 32 shall only effect [sic] longevity payments on and after July 1, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —

Session Laws 1987, c. 533, s. 1, effective July 1, 1987, added subsection (x).

Session Laws 1987, c. 717, s. 2, effective August 3, 1987, added the second paragraph of subsection (w).

Session Laws 1987, c. 738, s. 29(b), effective January 1, 1988, added subsection (y).

Session Laws 1987, c. 809, s. 2, effective October 1, 1987, added the last sentence of subsection (s).

Session Laws 1987, c. 821, effective January 1, 1988, substituted "July 1, 1983 but before January 1, 1988" for "July 1, 1983" in two places in subdivision (r)(2), and added subdivision (r)(3).

Session Laws 1987, c. 825, effective October 1, 1987, and applicable to retirement on and after that date, substituted "12 days of credit for each year of membership service or fraction thereof" for "one month of credit for each two years of membership service or fraction thereof" in the first paragraph of subsection (e).

§ 135-5. (Effective until July 1, 1988) 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 one day 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 one day

§ 135-5 is set out twice. See headings for effective dates.

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 one day 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.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided under G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:

a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, 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, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred

§ 135-5 is set out twice. See headings for effective dates.

dollars ($4,800) plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars ($4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent (5/12 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) 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).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, 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, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (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 sixty-fifth birthday.

(3) 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).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, 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 on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in

§ 135-5 is set out twice. See headings for effective dates.

excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ 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 sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ 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-second birthday.

(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).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, 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 one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ 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) 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).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

§ 135-5 is set out twice. See headings for effective dates.

(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 one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs 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 (¼ 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) 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).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, 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-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 (¼ 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 service 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, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(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

§ 135-5 is set out twice. See headings for effective dates.

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 (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 (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 com-

§ 135-5 is set out twice. See headings for effective dates.

pensation, 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 (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 (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 of Members Retiring Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members on or after January 1, 1988. 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 one day nor 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

§ 135-5 is set out twice. See headings for effective dates.

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.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

§ 135-5 is set out twice. See headings for effective dates.

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

(2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

(2) 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(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) 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(d).

(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

§ 135-5 is set out twice. See headings for effective dates.

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, but prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982 but prior to January 1, 1988, 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. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance prior to January 1, 1988. 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

§ 135-5 is set out twice. See headings for effective dates.

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 ($^1/_{10}$th 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 received 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 enti-

§ 135-5 is set out twice. See headings for effective dates.

tled 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 appen-

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dant 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.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(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

§ 135-5 is set out twice. See headings for effective dates.

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.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, 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 such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such 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, 3, 5, or 6 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 of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963. — If he dies within 10 years from his retirement

§ 135-5 is set out twice. See headings for effective dates.

date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that 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 such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option 1 above.

Option 5. The member may elect:

(1) To receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

(2) To receive a reduced retirement allowance during his life with provision for some other benefit to be paid after his death in accordance with a plan submitted to and approved by the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on

§ 135-5 is set out twice. See headings for effective dates.

account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars ($15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars ($70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%

§ 135-5 is set out twice. See headings for effective dates.

and so on concluding with
Year 1942 ..... 29%

The minimum increase pursuant to this subsection (k) shall be ten dollars ($10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(*l*) 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 (*l*) 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.

§ 135-5 is set out twice. See headings for effective dates.

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.

§ 135-5 is set out twice. See headings for effective dates.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-106 as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112(b) and (c) whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

(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 or had attained 20 years of creditable service.

(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.

For the purpose of this benefit, a member is considered 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 last day of actual service shall be determined as provided in subsection (1) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(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

§ 135-5 is set out twice. See headings for effective dates.

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:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
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.

(p) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who com-

§ 135-5 is set out twice. See headings for effective dates.

menced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars ($75.00) prior to the application of any optional benefit.

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the

§ 135-5 is set out twice. See headings for effective dates.

years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions 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 unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired Prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975. — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1,

§ 135-5 is set out twice. See headings for effective dates.

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.

(cc) Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(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.

§ 135-5 is set out twice. See headings for effective dates.

(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.

(*ll*) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) 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, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) 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, 1986, and June 30, 1987. (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.

§ 135-5 is set out twice. See headings for effective dates.

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; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a).)

Section Set Out Twice. — The section above is effective until July 1, 1988. For this section as amended effective July 1, 1988, see the following section, also numbered § 135-5.

Editor's Note. —

Session Laws 1987, c. 738, s. 29(r) provides that s. 29 of the act shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —

Session Laws 1987, c. 181, s. 1, effective January 1, 1987, added the last paragraph of subsection (m).

Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more than 90 days" in subdivisions (a)(1), (a)(3), and (a)(4) and for "30 and not more than 90 days" near the beginning of the introductory language of subsection (c).

Session Laws 1987, c. 738, s. 27(a), effective July 1, 1987, added subsection (mm).

Session Laws 1987, c. 738, s. 29(c)-(j), effective January 1, 1988, added subdivision (a)(5), added "of Members Retiring Prior to January 1, 1988" in the catchline of subsection (c) and inserted the present first sentence of that subsection, inserted "but prior to January 1, 1988" in the catchline to subsection (d4) and inserted "but prior to January 1, 1988" in the first sentence of that subsection, inserted the present first sentence of subsection (e), added subdivision (e)(6), added the final paragraph of subsection (f), added the final paragraph of subsection (*l*), and added a sentence at the end of subsection (m), as that subsection was amended by Session Laws 1987, c. 181.

Session Laws 1987, c. 738, s. 37(a), effective September 1, 1987, added "or had attained 20 years of creditable service" at the end of subdivision (m)(1).

§ 135-5. (Effective July 1, 1988) 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 one day 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 applica-

§ 135-5 is set out twice. See headings for effective dates.

tion to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day 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 one day 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.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:

a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, 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, such allowance shall be equal to

§ 135-5 is set out twice. See headings for effective dates.

the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800) plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars ($4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent (5/12 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) 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).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, 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, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (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 sixty-fifth birthday.

(3) 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).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, 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 on or after his sixty-second birthday and the completion of 30 years of creditable service, such allow-

§ 135-5 is set out twice. See headings for effective dates.

ance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ 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 sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ 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-second birthday.

(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).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, 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 one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ 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) 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).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after

§ 135-5 is set out twice. See headings for effective dates.

July 1, 1975, but prior to July 1, 1977, 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 one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs 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 (¼ 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) 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).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, 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-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 (¼ 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 service 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, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(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

§ 135-5 is set out twice. See headings for effective dates.

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 (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 (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

§ 135-5 is set out twice. See headings for effective dates.

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 (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 (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 of Members Retiring Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members on or after January 1, 1988. 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 one day nor 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

§ 135-5 is set out twice. See headings for effective dates.

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.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, other-

§ 135-5 is set out twice. See headings for effective dates.

wise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

(2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

(2) 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(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) 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(d).

(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:

§ 135-5 is set out twice. See headings for effective dates.

(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, but prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, but prior to January 1, 1988, 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. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance prior to January 1, 1988. The provisions of this subsection shall be applicable to members retired on a disability retirement allowance prior to January 1, 1988. 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.

§ 135-5 is set out twice. See headings for effective dates.

(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 ($^1/_{10}$th 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 received on account of his service since his

§ 135-5 is set out twice. See headings for effective dates.

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

§ 135-5 is set out twice. See headings for effective dates.

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.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(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 here-

§ 135-5 is set out twice. See headings for effective dates.

under 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.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, 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 such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such 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, 3, 5, or 6 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 of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his

§ 135-5 is set out twice. See headings for effective dates.

legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that 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 such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option 1 above.

Option 5. The member may elect:

(1) To receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

(2) To receive a reduced retirement allowance during his life with provision for some other benefit to be paid after his death in accordance with a plan submitted to and approved by the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

§ 135-5 is set out twice. See headings for effective dates.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars ($15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars ($70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

§ 135-5 is set out twice. See headings for effective dates.

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars ($10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(*l*) 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 (*l*) 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

§ 135-5 is set out twice. See headings for effective dates.

(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

§ 135-5 is set out twice. See headings for effective dates.

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.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the elgibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit under G.S. 135-106 as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112(b) and (c) whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(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 or had attained 20 years of creditable service.

(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.

§ 135-5 is set out twice. See headings for effective dates.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered 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 last day of actual service shall be determined as provided in subsection (1) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(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:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
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.

§ 135-5 is set out twice. See headings for effective dates.

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.

(p) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60

§ 135-5 is set out twice. See headings for effective dates.

with 15 or more years of creditable service shall receive a monthly benefit of no less than seventy-five dollars ($75.00) prior to the application of any optional benefit.

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions 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 unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances

§ 135-5 is set out twice. See headings for effective dates.

as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1, 1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975. — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(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.

(cc) Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(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.

§ 135-5 is set out twice. See headings for effective dates.

(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

§ 135-5 is set out twice. See headings for effective dates.

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.

(*ll*) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) 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, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) 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, 1986, and June 30, 1987. (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; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3.)

Section Set Out Twice. — The section above is effective July 1, 1988. For this section as in effect until July 1, 1988, see the preceding section, also numbered § 135-5.

Editor's Note. —

Session Laws 1987, c. 738, s. 29(r) provides that s. 29 of the act shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. — Session Laws 1987, c. 181, s. 1, effective January 1, 1987, added the last paragraph of subsection (m).

Session Laws 1987, c. 513, s. 1, effec-

§ 135-5 is set out twice. See headings for effective dates.

tive June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more than 90 days" in subdivisions (a)(1), (a)(3), and (a)(4) for "30 and not more than 90 days" near the beginning of the introductory language of subsection (c).

Session Laws 1987, c. 738, s. 27(a), effective July 1, 1987, added subsection (mm).

Session Laws 1987, c. 738, s. 29(c)-(j), effective January 1, 1988, added subdivision (a)(5), added "of Members Retiring Prior to January 1, 1988" in the catchline of subsection (c) and inserted the present first sentence of that subsection, inserted "but prior to January 1, 1988" in the catchline to subsection (d4) and inserted "but prior to January 1, 1988" in the first sentence of that subsection, inserted the present first sentence of subsection (e), added subdivision (e)(6), added the final paragraph of subsection (f), added the next-to-last paragraph of subsection (*l*), and added a sentence at the end of subsection (m), as that subsection was amended by Session Laws 1987, c. 181.

Session Laws 1987, c. 738, s. 37(a), effective September 1, 1987, added "or had attained 20 years of creditable service" at the end of subdivision (m)(1).

Session Laws 1987, c. 824, s. 3, effective July 1, 1988, added the last paragraph of subdivision (*l*).

§ 135-6. Administration.

(p) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained any any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand ($1,000) and/or be imprisoned; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter. (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; 1987, c. 539, 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 1987 amendment, effective July 3, 1987, added subsection (p).

§ 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, any 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 the former Disability Salary Continuation Plan or the Disability Income Plan of North Carolina 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; 1987, c. 738, s. 29(k).)

Editor's Note. — Session Laws 1987, c. 738, s. 29(r) provides that s. 29 of the act shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —

The 1987 amendment, effective January 1, 1988, substituted "the former Disability Salary Continuation Plan or the Disability Income Plan of North Carolina" for "Disability Salary Continuation Plan."

§ 135-18.6. (See editor's note for effective date) Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)

Editor's Note. — Session Laws 1987, c. 177, s. 1(c) makes this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems are qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

§ 135-18.6 has a delayed effective date. See notes for date.

Article 3.

Other Teacher, Employee Benefits.

Part 1. General Provisions.

§ 135-34: Repealed by Session Laws 1987, c. 738, s. 29(*l*), effective January 1, 1988.

Editor's Note. — Session Laws 1987, c. 738, s. 29(*l*) repeals this section in its entirety and provides that all assets and liabilities of the Disability Salary Continuation Plan shall be transferred to the Disability Income Plan of North Carolina as provided in Article 6 of Chapter 135.

Session Laws 1987, c. 738, s. 29(r) provides that s. 29 of the act shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 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) Repealed by Session Laws 1987, c. 61, s. 1, effective April 10, 1987.
(5) A Cochairman of the Senate Committee on Finance designated by the President of the Senate;
(6) Two other members 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.

(c) The Committee shall review programs of hospital, medical and related care provided by Part 3 of this Article as recommended by the Executive Administrator and Board of Trustees of the Plan. The Executive Administrator and the Board of Trustees shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article.

(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; 1987, c. 61; c. 857, 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 1987, c. 738, s. 29(m), effective January 1, 1988, purported to substitute "disability income plan benefits as provided in this Article and Article 6 of this Chapter" for "disability salary continuation benefits as provided in this Article" in the first sentence of subsection (c) and to substitute "Disability Income Plan" for "Disability Salary Continuation Plan" in the second sentence of subsection (c) as it read prior to amendment by Session Laws 1987, c. 857, s. 1. At the direction of the Revisor of Statutes, this amendment has not been given effect.

Effect of Amendments. —

Session Laws 1987, c. 61, effective April 10, 1987, deleted subdivision (a)(4), which read "A Cochairman of the Senate Committee on Base Budget designated by the President of the Senate"; and substituted "Two other members" for "One other member" at the beginning of subdivision (a)(6).

Session Laws 1987, c. 857, s. 1, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, rewrote subsection (c).

Part 2. Administrative Structure.

§ 135-39. Board of Trustees established.

(f) The members of the Board of Trustees shall receive one hundred dollars ($100.00) per day, except employees eligible to enroll in the Plan, 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.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 1; 1985, c. 732, ss. 2-5, 8, 11, 42, 59, 60; 1985 (Reg. Sess., 1986), c. 1020, s. 1; 1987, c. 857, 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 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, inserted "except employees eligible to enroll in the Plan" near the beginning of subsection (f).

§ 135-39.2. Officers, quorum, meetings.

(a) The Board of Trustees shall elect from its own membership such officers as it sees fit.

(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) Meetings may be called by the Chairman, or at the written request of three members. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1987, c. 857, s. 3.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, substituted "such officers as it sees fit" for "for a one-year term a chairman and vice-chairman, and shall elect a secretary" at the end of subsection (a) and deleted the former

first sentence of subsection (c), which read "The Board of Trustees shall meet initially upon the call of the Governor."

§ 135-39.3A: Repealed by Session Laws 1987, c. 857, s. 4, effective July 1, 1987.

Editor's Note. — Session Laws 1987, c. 857, s. 26 provides: "Except as otherwise provided, this act shall become effective July 1, 1987, and shall apply to claims incurred on or after September 1, 1987."

§ 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. The term of employment and salary of the Executive Administrator shall be set by the Commissioner of Insurance upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

The Executive Administrator may be removed from office by the Commissioner of Insurance, upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits, and any vacancy in the office of Executive Administrator may be filled by the Commissioner of Insurance with the term of employment and salary set upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

(c) to (e) Repealed by Session Laws 1987, c. 857, s. 5, effective July 1, 1987.

(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 Claims Processor 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; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1987, c. 857, s. 5.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, applicable to claims incurred on or after September 1, 1987, substituted the present subsection (b) for former subsections (b) and (c) and deleted subsections (d) and (e).

§ 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:

(12) Determining basis of payments to health care providers, including payments in accordance with G.S. 58-260.6.

(18) Authorizing coverage for alternative forms of care not otherwise provided by the Plan in individual cases when medically necessary, medically equivalent to services covered by the Plan, and when such alternatives would be less costly than would have been otherwise. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50; 1985 (Reg. Sess., 1986), c. 1020, ss. 3, 20; 1987, c. 857, ss. 6, 7.)

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

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to all claims incurred on or after September 1, 1987, inserted "including payments in accordance with G.S. 58-260.6" at the end of subdivision (12), and added Subdivision (18).

§ 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 Employee Only basis, with the person selecting an optional plan paying any excess, if necessary. The amount of State funds contributed to such optional plans shall also not exceed the amount of an optional plan's cost for Employee Only coverage. 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. The Executive Administrator and Board of Trustees are authorized to assess and collect fees from participating optional plans provided by this section for administrative purposes and for risk management purposes. Such fees may be based upon the enrollees' risk factors and the number and types of contracts enrolled by each participating optional plan, and may be collected by the Plan in a manner prescribed by the Executive Administrator and Board of Trustees. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, s. 37; 1985 (Reg. Sess., 1986), c. 1020, s. 6; 1987, c. 857, s. 8.)

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, added the last two sentences.

Part 3. Comprehensive Major Medical Plan.

§ 135-40.1. General definitions.

As used in Parts 2 and 3 of this Article, the following terms have the meaning specified as follows:

(6) Employing Unit. — A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System.

(17) Retired Employee (Retiree). — Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled. On and after January 1, 1988, a retired employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree.

(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 Claims Processor upon advice of its medical advisors. The Executive Administrator and Board of Trustees may update usual, customary and reasonable charges, or other such comparable allowances, semi-annually for physicians who accept the Plan's UCR or other comparable allowances as payment in full, other than for the Plan's deductibles, coninsurance, or other amounts to be paid by members of the Plan; otherwise, the Executive Administrator and Board of Trustees shall not update usual, customary and reasonable charges, or other such comparable allowances more frequently than on an annual basis. (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; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(a), 9, 20, 24, 27; 1987, c. 564, s. 17; c. 857, ss. 9, 10.)

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

Effect of Amendments. — Session Laws 1987, c. 564, s. 17, effective July 6, 1987, substituted "Community College" for "Technical Institute; Community College" in subdivision (6).

Session Laws 1987, c. 857, s. 9, effective July 1, 1987, and applicable to

claims incurred on or after September 1, 1987, inserted "(Retiree)" in the catchline to subdivision (17), substituted "State employees, and members of the General Assembly" for "and State employees" at the beginning of the first sentence of subdivision (17), substituted "contributions" for "contribution" near the end of that sentence, and added the second sentence of subdivision (17).

Session Laws 1987, c. 857, s. 10, effective January 1, 1988, added the last two sentences of subdivision (19).

§ 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.

   Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(1a) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

(2) Retired teachers, State employees, and members of the General Assembly.

(2a) Surviving spouses of:
   a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
   b. 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, provided the death of the former plan member occurred prior to October 1, 1986.

(3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(b), effective January 1, 1988.

(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, on a fully 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 who enroll before October 1, 1986.

(2a) For enrollments after September 30, 1986, former members of the General Assembly if covered under the Plan at termination of membership in the General Assembly.

(3) Surviving spouses of deceased former members of the General Assembly who enroll before October 1, 1986.

(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.

(3b) For enrollments after September 30, 1986, surviving spouses of deceased former members of the General Assembly, if covered under the Plan at the time of death of the former member of the General Assembly.

(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, and who are not covered by the provisions of G.S. 135-40.2(a)(1).

(4a) Permanent hourly employees as defined in G.S. 126-5(c4) who work less than one-half of the workdays of each pay period.

(5) The spouses and eligible dependent children of enrolled employees, retirees, and members of the General Assembly.

(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) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(j), effective October 1, 1986.

(8) Surviving spouses of deceased retirees and surviving spouses of deceased teachers, State employees, and members of the General Assembly provided the death of the former Plan member occurred after September 30, 1986, and the surviving spouse was covered under the Plan at the time of death.

(9) Repealed by Session Laws 1987, c. 857, s. 11.1, effective July 1, 1987.

(10) Any eligible dependent child of the deceased retiree, teacher, State employee, or member of the General Assembly, provided the child was covered at the time of death of the retiree, teacher, State employee, or member of the General Assembly (or was in posse at the time and is covered at birth under this Part), or was covered under the Plan on September 30, 1986. Any eligible spouse or dependent child of a person eligible under subdivision (8) of this subsection if the spouse or dependent child was enrolled before October 1, 1986.

(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 or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes, provided the former employee has at least five years of retirement membership service at the time of disability, 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 or disability income benefits pursuant to Article 6 of this Chapter.

(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.

(g) An eligible surviving spouse and any eligible dependent child of a deceased retiree, teacher, State employee, or member of the General Assembly shall be eligible for group benefits under this section without waiting periods for preexisting conditions provided coverage is elected within 90 days after the death of the former plan 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; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(*l*); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12.)

Editor's Note. — Session Laws 1987 c. 738, s. 29(r) provides that s. 29 of the act shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —

Session Laws 1987, c. 738, s. 29(n), effective January 1, 1988, rewrote subsection (d).

Session Laws 1987, c. 738, s. 36(a) and (b), effective September 1, 1987, added the last sentence of subdivision (a)(1) and added "and who are not covered by the provisions of G.S. 135-40.2(a)(1)" in subdivision (b)(4).

Session Laws 1987, c. 809, ss. 3 and 4, effective October 1, 1987, added subdivisions (a)(1a) and (b)(4a).

Session Laws 1987, c. 857, ss. 11(a), 11.1, 11.2 and 12, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, added subdivision (a)(2a), deleted subdivision (b)(9), substituted "in posse" for "in esse" in the

first sentence of subdivision (b)(10), substituted "subdivision (8)" for "subdivisions (8) or (9)" in the second sentence of subdivision (b)(10), and added subsection (g).

§ 135-40.3. Effective dates of coverage.

(d) Types of Coverage Available. — There are three 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),(5) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 5(b), effective January 1, 1987. (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; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(b), 20; 1987, c. 857, s. 13.)

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

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, substituted "three" for "five" in the introductory language of subsection (d).

§ 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 charges for surgery performed in an ambulatory surgical facility as defined by G.S. 131E-176(1) and (1a), or charges negotiated by the Plan, if that surgery is not normally performed on an outpatient basis.

(c) Preadmission Testing. — The Plan will pay one hundred percent (100%) of 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 usual, reasonable and customary charges for one presurgical consultation by a second surgeon or other qualified physician as determined by the Claims Processor and Executive Administrator 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 reason-

able 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: hysterectomy, revision of the nasal structure, coronary artery bypass surgery and surgery on the knee (except in procedures involving orthoscopic surgery when the diagnosis and the surgery can be performed in the same procedure and through the same incision). Second surgical opinions for coronary bypass 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 Claims Processor 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; 1985 (Reg. Sess., 1986), c. 1020, ss. 10, 20; 1987, c. 857, s. 14.)

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, substituted "surgeon charges" for "surgeon's charges" and inserted "as defined by G.S. 131E-176(1) and (1a), or charges negotiated by the Plan" in subsection (b), deleted a former second sentence of subsection (b), which read "Medical supplies, drugs, laboratory and other ancillary services and physicians' services will be covered under the comprehensive section of the Plan," substituted "of reasonable and customary charges" for "if reasonable and customary charges" in subsection (c), inserted "usual" preceding "reasonable and customary charges" and inserted "or other qualified physician as determined by the Claims Processor and Executive Administrator" in the first sentence of the first paragraph of subsection (d), substituted "hysterectomy, revision of the nasal structure, coronary artery bypass surgery" for "transurethral resection of the prostate, hemorrhoidectomy, hysterectomy, tonsillectomy and adenoidectomy, cholecystectomy, revision of the nasal structure, coronary artery bypass surgery, thyroid surgery" in the first sentence of the second paragraph of subsection (b).

§ 135-40.6. 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, or the rate negotiated for the Plan.

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 Claims Processor.
s. The use of nebulizers when authorized as medically necessary by the attending physician.

(3) Skilled Nursing Facility Benefits. — The Plan will pay benefits in a skilled nursing facility which qualifies for deliv-

ery 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. Plan allowances for total daily charges may be negotiated but will not exceed the daily semiprivate hospital room rate as determined by the Plan.

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,

b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor who certifies that continual hospital confinement would be required without the care and treatment of the skilled nursing facility, and

c. Approved in advance by the Claims Processor.

(4) Outpatient 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 determined by the Executive Administrator, as follows:

a. Accidental injury: All covered services. Dental services are excluded except for oral surgery specifically listed in subsection (5)c. of this section.

b. Operative procedures.

c. All hospital services for radiation therapy, treatment by use of x-rays, radium, cobalt and other radioactive substances.

d. 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 sta-

tus in the absence of specific symptoms of active illness, routine office visits or for doctor's services for diagnostic procedures covered under surgical benefits.

(8) Other Covered Charges. —

a. Prescription Drugs: Prescription legend drugs in excess of the first two dollars ($2.00) per prescription for generic drugs and brand name drugs without a generic equivalent and in excess of the first three dollars ($3.00) per prescription for brand name 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. Private Duty Nursing ordered must be approved in advance by the Claims Processor as medically necessary. Allowances for Private Duty Nursing shall not exceed the Plan's usual, customary and reasonable allowances or ninety percent (90%) of the daily semiprivate rate at skilled nursing facilities as determined by the Plan.

c. Home Health Agency Services: Services provided in a covered individual's home, when ordered by the attending physician who certifies that hospital or skilled nursing facility confinement would be required without such treatment and cannot be readily provided by family members. 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 Claims Processor. Plan allowances for home health services shall be limited to licensed or Medicare certified home health agencies and shall not exceed ninety percent (90%) of the skilled nursing facility semiprivate rates as determined by the Plan, or charges negotiated by the Plan.

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 Claims Processor 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 Claims Processor, 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 Claims Processor.

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 testing and exercise therapy, when determined medically necessary by an attending physician and approved by the Claims Processor for patients with a medical history of myocardial infarction, angina pectoris, arrhythmias, cardiovascular surgery, hyperlipidemia, or hypertension, provided such charges are incurred in a medically supervised facility fully certified by the North Carolina Department of Human Resources.

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. Maximum benefits for x-rays, manipulations, and modalities shall be one thousand dollars ($1,000) per fiscal year.

o. Foot Surgery: All foot surgery on bones and joints in excess of one thousand dollars ($1,000), except for emergencies, shall require prior approval from the Claims Processor.

p. Outpatient Diabetes Self-Care Programs: Charges, not to exceed three hundred dollars ($300.00) per fiscal year, when determined to be medically necessary by an attending physician and approved by the Executive Administrator and Claims Processor as meeting the standards of the National Diabetes Advisory Board for patients with a medical history of diabetes, provided such charges are incurred in a medically supervised facility.

q. Necessary medical services provided to terminally ill patients by duly licensed hospice organizations, when directed by the attending physician and approved in advance by the Claims Processor and the Executive Administrator.

(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 (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; 1985 (Reg. Sess., 1986), c. 1020, ss. 4, 11-15, 20, 23; 1987, c. 282, ss. 23, 24; c. 857, ss. 15-18.)

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

Effect of Amendments. —

Session Laws 1987, c. 282, ss. 23 and 24, effective June 4, 1987, substituted "G.S. 90-143" for "G.S. 90-143.1" in paragraph (8)n, and substituted "subsection (8)f" for "subsection (2)f" in paragraph (9)b.

Session Laws 1987, c. 857, ss. 15-18, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, added "or the rate negotiated for the Plan" at the end of the first paragraph of subdivision (1), added the second sentence of the second paragraph of subdivision (3), deleted "and" at the end of paragraph (3)a, added "who certifies that continual hospital confinement would be required without the care and treatment of the skilled nursing facility, and" at the end of paragraph (3)b, added paragraph (3)c, substituted "Outpatient Benefits" for "Outpatient Hospital Benefits" in the catchline for subdivision (4), inserted "as determined by the Executive Administrator" in the introductory

language of subdivision (4), deleted "All hospital services for" at the beginning of paragraph (4)c, deleted "All hospital services in connection with" at the beginning of paragraph (4)d, added the last two sentences of paragraph (8)b, added "who certifies that hospital or skilled nursing facilities confinement would be required without such treatment and cannot be readily provided by family members" at the end of the first sentence of paragraph (8)c, added the last sentence of paragraph (8)c, substituted "Claims Processor" for "Administrator" in the sentence between paragraphs (8)c and (8)d, substituted "G.S. 90-143" for "G.S. 90-143.1" at the end of the first sentence of paragraph (8)n, and added paragraph (8)q.

§ 135-40.6A. Prior approval procedures.

(b) The Executive Administrator and Board of Trustees may establish procedures to require prior medical approvals for the following services:

(1) Skilled Nursing Facility Care (after the initial 30 days);
(2) Private Duty Nursing;
(3) Speech Therapy (unless rendered in an inpatient hospital);
(4) Physical Therapy (in the home);
(5) Argon Laser Trabeculoplasty;
(6) Radioallergosorbent Test (RAST);
(7) Surgical Procedures:
    a. Elepharoplasties
    b. Surgery for Hermaphroditism
    c. Excision of Keloids
    d. Reduction Mammoplasty
    e. Morbid Obesity Surgery
    f. Penile Prosthesis
    g. Excision of Gynecomastia
    h. Cochlear Implants
    i. Revision of the Nasal Structure
    j. Abdominoplasty
    k. Fimbrioplasty
    l. Tubotubal Anastomasis.
(8) Subcutaneous injection of "filling" material (Example: zyderm, silicone); and
(9) Suction Lipectomy.

(1985 (Reg. Sess., 1986), c. 1020, s. 22; 1987, c. 857, s. 19.)

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

Editor's Note. —

Subsection (b) was amended by Session Laws 1987, c. 857, s. 19, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, added paragraphs (b)(7)j, (b)(7)k, and (b)(7)l.

§ 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:

(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 medically necessary treatment of the injury or disease.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 15, 21.4; 1985 (Reg. Sess., 1986), c. 1020, ss. 16, 20, 21, 25, 26; 1987, c. 282, s. 35.)

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. —

Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 26, effective July 1, 1986, directed that subdivision (5) of this section be "amended in the last line between the words 'the' and 'necessary' the word 'medically'."

The 1987 amendment, effective June 4, 1987, rewrote Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 26, to read: "G.S. 135-40.7(5) is amended by inserting between the words 'the' and 'necessary' the word 'medically'."

The amendment has been effectuated in subdivision (5).

§ 135-40.7A. 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 of chemical dependency is as follows:

30 Consecutive Days	$ 3,900
Fiscal Year	6,500
Lifetime	20,000

Daily benefits are limited to one hundred thirty dollars ($130.00) except for medical detoxification treatment under rules established by the Executive Administrator and Board of Trustees.

(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 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; 1987, c. 282, s. 25; c. 857, s. 24.)

Editor's Note. — The reference in subdivision (c)(2) of this section to Article 1A of Chapter 131E was apparently intended to refer to Article 1A of former Chapter 122. See now Article 2 of Chapter 122C.

Effect of Amendments. — Session Laws 1987, c. 282, s. 25, effective January 1, 1988, deleted "or" preceding "Article 2" near the end of subdivision (c)(3).

Session Laws 1987, c. 857, s. 24, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, rewrote subsection (b).

§ 135-40.8. Out-of-pocket expenditures.

(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 five hundred dollars ($500.00) per fiscal year. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 16; 1985, c. 192, ss. 4, 8, 10, 18; 1985 (Reg. Sess., 1986), c. 1020, s. 17; 1987, c. 857, s. 20.)

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

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, added "per fiscal year" at the end of subsection (b).

§ 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 except where compliance with federal law specifies otherwise.

(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.

(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.

(d) Notwithstanding the foregoing provisions of this section or any other provisions of the Plan, the Executive Administrator and Board of Trustees may enter into negotiations with the Health Care Financing Administration, U.S. Department of Health and Human Services, in order to secure a more favorable coordination of the Plan's benefits with those provided by Medicare, including but not limited to, measures by which the Plan would provide Medicare

benefits for all of its Medicare-eligible members in return for adequate payments from the federal government in providing such benefits. Should such negotiations result in an agreement favorable to the Plan and its Medicare-eligible members, the Executive Administrator and Board of Trustees may, after consultation with the Committee on Employee Hospital and Medical Benefits, implement such an agreement which shall supersede all other provisions of the Plan to the contrary related to its payment of claims for Medicare-eligible members. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985 (Reg. Sess., 1986), c. 1020, s. 18; 1987, c. 857, s. 21.)

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to claims incurred on or after September 1, 1987, added "except where compliance with federal law specifies otherwise" at the end of subsection (a), and deleted a former second paragraph of subsection (b), which read "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."

§ 135-40.11. Cessation of coverage.

(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 a State-supported Retirement System.

(1) In the event of termination for any reason other than death, coverage under the Plan for an employee and his or her eligible spouse or dependent children, provided the eligible spouse or dependent children were covered under the Plan at termination of employment or were covered on September 30, 1986, may be continued for a period of not more than 18 months following termination of employment on a fully contributory basis.

(2) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(r), effective October 1, 1986.

(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 benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service at the time of disability, 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.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 17, 19-21; 1985, c. 732, ss. 13, 34; 1985 (Reg. Sess., 1986), c. 1020, ss. 19, 29(m)-(x); 1987, c. 738, s. 29(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 1987, c. 738, s. 29(r) provides that s. 29 of the act shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with the section effective upon ratification but in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —

The 1987 amendment, effective January 1, 1988, substituted "benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service at the time of disability" for "disability salary continuation under a program of benefits established under G.S. 135-34" in subdivision (c)(6).

Article 4.

Consolidated Judicial Retirement Act.

§ 135-55. Membership.

CASE NOTES

Cited in Bradshaw v. Administrative Office of Courts, 83 N.C. App. 122, 349 S.E.2d 621 (1986).

§ 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 one day 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 one day nor more than 90 days subse-

quent 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; 1987, c. 513, 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 1987 amendment, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more than 90 days" in subsections (a) and (d).

§ 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 one day nor 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.

(1973, c. 640, s. 1; 1981, c. 689, s. 3; c. 940, s. 2; 1985, c. 479, ss. 192(b), 194; 1987, c. 513, 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 1987 amendment, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 and not more than 90 days" near the beginning of the first sentence of subsection (a).

135-64. Benefits on death after retirement.

(g) (Effective July 1, 1988) Upon the death of a retired member on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees. (1973, c. 640, s. 1; 1987, c. 824, s. 4.)

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

Effect of Amendments. — The 1987 amendment, effective July 1, 1988, added subsection (g).

§ 135-65. Post-retirement increases in allowances.

(h) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986. Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) 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, 1986, and June 30, 1987. (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); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b).)

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

Editor's Note. — Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 135-64(g) has a delayed effective date. See notes for date.

Effect of Amendments. —
The 1987 amendment, effective July 1, 1987, added subsection (h).

§ 135-71. Return to membership of retired former member.

(b) 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.

(3) Subdivision (2) of this section shall apply only to restored members whose initial retirement lasted for more than four calendar months. For restored members whose initial retirement lasted for four or fewer calendar months, subdivision (1) shall apply.

(1973, c. 640, s. 1; 1983 (Reg. Sess., 1984), c. 1031, s. 22; c. 1106, s. 3; 1987, c. 738, s. 39(b).)

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

Editor's Note. — Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Effect of Amendments. —
The 1987 amendment, effective September 1, 1987, rewrote subsection (b).

§ 135-73. (See editor's note for effective date) Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)

Editor's Note. — Session Laws 1987, c. 177, s. 1(c) makes this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems are qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

§§ 135-74 to 135-76: Reserved for future codification purposes.

Article 5.

Supplemental Retirement Income Act of 1984.

§§ 135-96 to 135-99: Reserved for future codification purposes.

Article 6.

Disability Income Plan of North Carolina.

§ 135-100. Short title and purpose.

(a) This Article shall be known and may be cited as the "Disability Income Plan of North Carolina".

(b) The purpose of this Article is to provide equitable replacement income for eligible teachers and employees who become temporarily or permanently disabled for the performance of their duty prior to retirement, and to encourage disabled teachers and employees who are able to work to seek gainful employment after a reasonable period of rehabilitation, and to provide for the accrual of retirement and ancillary benefits to the date the eligible teacher or employee meets the requirements for retirement under the provisions of this Chapter. (1987, c. 738, s. 29(q).)

Editor's Note. — Session Laws 1987, c. 738, s. 29(r) provides that this Article shall become effective January 1, 1988, except that the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System may commence rule-making procedures for the adoption of rules consistent with this section effective upon ratification but that in no event shall such rules and regulations become effective prior to January 1, 1988. The act was ratified August 7, 1987.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

§ 135-73 has a delayed effective date. See notes for date.

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

§ 135-101. 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:

(1) "Base rate of compensation" shall mean the regular monthly rate of compensation not including pay for shift premiums, overtime, or other types of extraordinary pay; in all cases of doubt, the Board of Trustees shall determine what is "base rate of compensation".

(2) "Beneficiary" shall mean any person in receipt of a disability allowance or other benefit as provided in this Article.

(3) "Benefits" shall mean the monthly disability income payments made pursuant to the provisions of this Article. In the event of death or termination of benefits on or after the first day of a month, the monthly benefit shall not be prorated and shall equal the benefits paid in the previous month.

(4) "Board of Trustees" shall mean the Board of Trustees of the Teachers' and State Employees' Retirement System as provided in G.S. 135-6.

(5) "Compensation" shall mean any compensation as the term is defined in G.S. 135-1(7a).

(6) "Disability" or "Disabled" shall mean the mental or physical incapacity for the further performance of duty of a participant or beneficiary; provided that such incapacity was not the result of war, whether declared or not, armed or unarmed military or paramilitary conflict, terrorist activity, active participation in a riot, committing or attempting to commit a felony, or intentionally self-inflicted injury.

(7) "Earnings" shall mean all income for personal services rendered or otherwise receivable, including, but not limited to, salaries and wages, fees, commissions, royalties, awards and other similar items and self-employment; in all cases of doubt, the Board of Trustees shall determine what are "earnings".

(8) "Employee" shall mean any employee as the term is defined in G.S. 135-1(10).

(9) "Employer" shall mean any employer as the term is defined in G.S. 135-1(11).

(10) "Medical Board" shall mean the board of physicians as provided in G.S. 135-102(d).

(11) "Member" shall mean any member as the term is defined in G.S. 135-1(13).

(12) "Membership service" shall mean any service as defined in G.S. 135-1(14).

(13) "Participant" shall mean any teacher or employee eligible to participate in the Plan as provided in G.S. 135-103.

(14) "Plan" shall mean the Disability Income Plan of North Carolina as provided in this Article.

(15) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of Article 1 of this Chapter.
(16) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.
(17) "Service" shall mean service as a teacher or employee as defined in G.S. 135-1(10) or G.S. 135-1(25).
(18) "State" shall mean the State of North Carolina.
(19) "Teacher" shall mean any teacher as the term is defined in G.S. 135-1(25). (1987, c. 738, s. 29(q).)

§ 135-102. Administration.

(a) The provisions of this Article shall be administered by the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System and all expenses in connection with the administration of the Plan, except for expenses incurred by and properly charged to the employer, shall be charged against and paid from the trust fund as created and provided in this Article.

(b) The Plan shall have the power and privileges of a corporation and under the name of Disability Income Plan of North Carolina shall all of its business be transacted, all of its funds invested and all of its cash, securities and other property be held.

(c) The Department of State Treasurer and the Board of Trustees shall have the full power and authority to adopt rules for the administration of the Plan not inconsistent with the provisions of this Article. The Department of State Treasurer and the Board of Trustees may appoint those agents, contractors, and employees 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 designate a Medical Board to be composed of not fewer than three nor more than five physicians not eligible for benefits under the Plan. Other physicians, medical clinics, institutions or agencies may be employed to conduct such medical examinations and tests necessary to provide the Medical Board with clinical evidence as may be needed to determine eligibility for benefits under the Plan. The Medical Board shall investigate the results of medical examinations, clinical evidence, all essential statements and certifications by and on behalf of applicants for benefits and shall report in writing to the Board of Trustees the conclusions and recommendations upon all matters referred to it.

(e) The Department of State Treasurer and the Board of Trustees may provide the benefits according to the terms and conditions of the Plan as provided in this Article either by purchasing a contract or contracts with any insurance company licensed to do business in this State or by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1986. (1987, c. 738, s. 29(q).)

§ 135-103. Eligible participants.

(a) The eligible participants of the Disability Income Plan shall consist of:

(1) All teachers and employees in service and members of the Teachers' and State Employees' Retirement System or participants of the Optional Retirement Program on January 1, 1988.

(2) All persons who become teachers and employees or re-enter service as teachers or employees and are in service and members of the Teachers' and State Employees' Retirement System or participants of the Optional Retirement Program after January 1, 1988.

(b) The participation of any person in the Disability Income Plan shall cease upon:

(1) The termination of the participant's employment as a teacher or State employee, or

(2) The participant's retirement under the provisions of the Teachers' and Employees' Retirement System or the Optional Retirement Program, or

(3) The participant's becoming a beneficiary under the Plan, or

(4) The participant's death. (1987, c. 738, s. 29(q).)

§ 135-104. Salary continuation.

(a) A participant shall receive no benefits from the Plan for a period of 60 continuous calendar days from the onset of disability determined as the last actual day of service or the day succeeding at least 365 calendar days after service as a teacher or employee, whichever is later. These 60 continuous calendar days may be considered the waiting period before benefits are payable from the Plan. During this waiting period, a participant may be paid such continuation of salary as provided by an employer through the use of sick leave, vacation leave or any other salary continuation.

(b) During the waiting period a participant may return to service for trial rehabilitation for periods of not greater than five continuous days of service. Such return to service will not cause a new waiting period to begin but shall extend the waiting period by the number of days of service. (1987, c. 738, s. 29(q).)

§ 135-105. Short-term disability benefits.

(a) Any participant who becomes disabled and is no longer able to perform his usual occupation may, after at least 365 calendar days succeeding his date of initial employment as a teacher or employee and at least one year of contributing membership service, receive a benefit commencing on the first day succeeding the waiting period; provided that the participant's employer and attending physician shall certify that such participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred while the participant was a teacher or employee and has been continuous thereafter; provided further that the requirement for one year of contributing membership service must have been earned within 36 calendar months immediately preceding the date of disability and further, salary continuation used during the period as provided in G.S. 135-104 shall count toward the aforementioned one year requirement.

(b) The benefits as provided for in subsection (a) of this section shall commence on the first day following the waiting period and shall be payable for a period of 365 days as long as the participant continues to meet the definition of disability. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of short-term disability benefits; provided further, such election shall not extend the 365 days duration of short-term payments.

(c) The monthly benefit as provided in subsection (a) of this section shall be equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last payable to the participant prior to the beginning of the short-term benefit plus fifty percent (50%) of 1/12th of the annual longevity payment to which the participant would be eligible, to a maximum of three thousand dollars ($3,000) per month reduced by monthly payments for Workers' Compensation to which the participant may be entitled. Provided, that should a participant have earnings in an amount greater than the short-term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit.

(d) The provisions of this section shall be administered by the employer and further, the benefits during the first six months of the short-term disability period shall be the full responsibility of and paid by the employer; Provided, further, that upon the completion of the initial six months of the short-term disability period, the employer will continue to be responsible for the short-term benefits to the participant, however, such employer shall notify the Plan on a quarterly basis of the amount of short-term benefits paid and the Plan shall reimburse the employer the amounts so paid.

(e) During the short-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 40 continuous days of service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence unless a different incapacity occurs. The period of rehabilitative employment shall not extend the period of the short-term disability benefits.

(f) A participant or beneficiary of short-term disability benefits or his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, or the employer of the participant or beneficiary, may request the Board of Trustees to have the Medical Board make a determination of eligibility for the short-term disability benefits as provided in this section or to make a preliminary determination of eligibility for the long-term disability benefits as provided in G.S. 135-106. A preliminary determination of eligibility for long-term disability benefits shall not preclude the requirement that the Medical Board make a determination of eligibility for long-term disability benefits.

(g) The Board of Trustees may extend the short-term disability benefits of a beneficiary beyond the benefit period of 365 days for an additional period of not more than 365 days; provided the Medical Board determines that the beneficiary's disability is temporary and likely to end within the extended period of short-term disability benefits. During the extended period of short-term disability benefits, payment of benefits shall be made by the Plan directly to the beneficiary. (1987, c. 738, s. 29(q).)

§ 135-106. Long-term disability benefits.

(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases or after salary continuation payments cease, whichever is later; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred while a teacher or employee and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacited for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

(b) After the commencement of benefits under this section, the benefits payable under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the long-term benefit plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars ($3,900) per month reduced by any primary Social Security disability benefits and by Workers' Compensation, if any. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period.

Notwithstanding the foregoing, upon the completion of four years from the conclusion of the waiting period as provided in G.S. 135-104, the beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled.

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan.

(c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability benefits who has earnings during the first 36 consecutive calendar months of the long-term disability period shall have his long-term disability benefit reduced when the sum of the net long-term disability benefit and the earnings equals one hundred percent (100%) of monthly compensation adjusted as provided under G.S. 135-108. The long-term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one hundred percent (100%) monthly limit. Provided further, after the first 36 months of the long-term disability period, a beneficiary's earnings will not result in any reduction of the monthly long-term disability benefit until the monthly earnings equal the net monthly long-term disability benefit. The monthly long-term disability benefit will be reduced by one dollar ($1.00) for each three dollars ($3.00) of monthly earnings in excess of the net long-term disability benefit until the sum of the monthly net long-term benefit and monthly earnings reach one hundred percent (100%) of monthly compensation adjusted as provided under G.S. 135-108, at which point the monthly long-term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one hundred percent (100%) monthly limit. Any beneficiary exceeding the earnings limitations shall notify the Plan by the fifth of the month succeeding the month in which the earnings were received of the amount of earnings in excess of the limitations herein provided. Failure to report excess earnings may result in a suspension or termination of benefits as determined by the Board of Trustees. (1987, c. 738, s. 29(q).)

§ 135-107. Optional Retirement Program.

Any participant of the Optional Retirement Program who becomes a beneficiary under the Plan shall be eligible to receive long-term disability benefits until the time the beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary elected to be a member of the Teachers' and State Employees' Retirement System, and shall receive no service accruals as otherwise provided members of the Retirement System under the provisions of G.S. 135-4(v). (1987, c. 738, s. 29(q).)

§ 135-108. Post disability benefit adjustments.

The compensation upon which the short-term or long-term disability benefit is calculated under the provisions of G.S. 135-105(c) or G.S. 135-106(b) may be increased by any percentage across-the-board salary increase granted to employees of the State by the General Assembly and the benefits payable to beneficiaries shall be recalculated based upon the increased compensation, reduced by any percentage increase in Social Security benefits granted by the Social Security Administration times the amount used in the reduction of benefits for primary Social Security disability or retirement benefit as provided in G.S. 135-106(b). The provisions of this section shall be subject to future acts of the General Assembly. (1987, c. 738, s. 29(q).)

§ 135-109. Reports of earnings.

The Department of State Treasurer and Board of Trustees shall require each beneficiary to annually provide a copy of the beneficiary's federal income tax return certified by the beneficiary to be a true and exact copy of such tax return filed with the United States Internal Revenue Service and shall require such other statements of earnings as may be necessary to administer the provisions of this Article. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 60 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 180 days after such request the right of a beneficiary to a benefit under the Article shall be terminated. (1987, c. 738, s. 29(q).)

§ 135-110. Funding and management of funds.

(a) A trust fund is hereby created to which all receipts, transfers, appropriations, contributions, investment earnings and other income belonging to the Plan shall be deposited, and from which all benefits, expenses, and other charges against the Plan shall be disbursed. The Board of Trustees shall be the trustee of the funds created by this Article.

(b) The Board of Trustees shall on the basis of such economic and demographic assumptions duly adopted, determine and adopt a uniform percentage of compensation as is defined in Article 1 of this Chapter which would be sufficient to fund the benefits payable under this Article on a term cost method basis as recommended by an actuary engaged by the Board of Trustees. Such uniform per-

centage of compensation shall not be inconsistent with acts of the General Assembly as may be thereafter adopted.

(c) Each employer shall contribute monthly to the Plan an amount determined by applying the uniform percentage of compensation adopted by the Board of Trustees multiplied by the compensation of teachers and employees reportable to the Retirement System or the Optional Retirement Program. Such monthly contribution shall be paid by the employer from the same source of funds from which the compensation of teachers and employees are paid.

(d) The State Treasurer shall be the custodian of the funds and shall invest the assets of the fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. (1987, c. 738, s. 29(q).)

§ 135-111. Applicability of other pension laws.

Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled "Exemption from taxes, garnishment, attachment, etc."; G.S. 135-10, entitled "Protection against fraud"; and G.S. 135-17, entitled "Facility of payment" shall be applicable to this Article and to benefits paid pursuant to the provisions of this Article. (1987, c. 738, s. 29(q).)

§ 135-112. Transition provisions.

(a) Any participant in service as of the date of ratification of this Article and who becomes disabled after one year of membership service will be eligible for all benefits provided under this Article notwithstanding the requirement of five years' membership service to receive the long-term benefit; provided, however, any beneficiary who receive benefits as a result of this transition provision before completing five years of membership service shall receive lifetime benefits in lieu of service accruals under the Retirement System as otherwise provided in G.S. 135-4(y).

(b) All benefit recipients under the former Disability Salary Continuation Plan provided for in G.S. 135-34 and the rules adopted thereto shall become beneficiaries under this Plan under the same provisions and conditions including the benefit amounts payable as were provided under the former Disability Salary Continuation Plan.

(c) Any person who retired on a disability retirement allowance from the Teachers' and State Employees' Retirement System prior to the effective date of this Article shall be entitled to apply for and receive any benefits that would have otherwise been provided under the Disability Salary Continuation Plan provided for in G.S. 135-34 and shall become beneficiaries under this Plan, under the same provisions and conditions, including the benefit amounts payable, as were provided under the former Disability Salary Continuation Plan. (1987, c. 738, s. 29(q).)

§ 135-113. Reservation of power to change.

The benefits provided in this Article as applicable to a participant who is not a beneficiary under the provisions of this Article shall not be considered as a part of an employment contract, either written or implied, and the General Assembly reserves the right at any time and from time to time to modify, amend in whole or in part or repeal the provisions of this Article. (1987, c. 738, s. 29(q).)

Chapter 136.

Roads and Highways.

Article 1.

Organization of Department of Transportation.

Sec.

136-16.1 to 136-16.3. [Reserved.]

136-16.4. Continuing aviation appropriations.

136-16.5. Purposes for continuing aviation appropriations.

136-16.6. Continuing rail appropriations.

136-16.7. Purposes for continuing rail appropriations.

136-16.8. Continuing appropriations for public transportation.

136-16.9. Purposes for continuing public transportation appropriations.

Article 2.

Powers and Duties of Department and Board of Transportation.

136-17.2. Members of the Board of Transportation represent entire State.

136-18. Powers of Department of Transportation.

136-28.1. Letting of contracts to bidders after advertisement; exceptions.

136-28.5. Construction diaries.

136-28.6. Private contract participation by the Department of Transportation.

136-29. Adjustment and resolution of highway construction contract claim.

Article 2A.

State Roads Generally.

136-44.2. Budget and appropriations.

136-44.15. Uneconomic land remnant exchange.

136-44.16 to 136-44.19. [Reserved.]

Article 2D.

Railroad Revitalization.

136-44.39 to 136-44.49. [Reserved.]

Article 2E.

Roadway Corridor Official Map Act.

Sec.

136-44.50. Roadway corridor official map act.

136-44.51. Effect of roadway corridor official map.

136-44.52. Variance from roadway corridor official map.

136-44.53. Advance acquisition of right-of-way within the roadway corridor.

Article 3A.

Streets and Highways in and around Municipalities.

136-66.1. Responsibility for streets inside municipalities.

136-66.3. Municipal participation in improvements to the State highway system.

Article 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

136-66.10. Dedication of right-of-way under local ordinances.

136-66.11. Transfer of severable development rights.

Article 7.

Miscellaneous Provisions.

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.

136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

Article 1.

Organization of Department of Transportation.

§§ 136-16.1 to 136-16.3: Reserved for future codification purposes.

§ 136-16.4. Continuing aviation appropriations.

There is annually appropriated, beginning with the 1987-88 fiscal year, from the General Fund to the Department of Transportation for aviation purposes, a sum equal to the estimated revenue derived from the State's sales and use taxes (exclusive of refunds, penalties, and interest) collected and received on sales made on and after the first day of the fiscal year representing sales and use taxes on aircraft, aircraft parts, accessories, lubricants and aviation fuel. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.5. Purposes for continuing aviation appropriations.

The continuing aviation appropriations authorized by G.S. 136-16.4 shall be used in accordance with the provisions of Article 7 of Chapter 63 of the General Statutes. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.6. Continuing rail appropriations.

There is annually appropriated, beginning with the 1987-88 fiscal year, from the General Fund to the Department of Transportation for rail purposes the greater of one hundred thousand dollars ($100,000) or one hundred percent (100%) of the annual dividends received in the prior fiscal year (less any amounts that are required by Section 13.18 of Chapter 792, Session Laws of 1985 to be paid for the expenses of the Railroad Negotiating Commission) by the State from its ownership of stock in the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.7. Purposes for continuing rail appropriations.

The continuing rail appropriation authorized by G.S. 136-16.6 shall be used in accordance with the provisions of Article 2D of Chapter 136 of the General Statutes. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.8. Continuing appropriations for public transportation.

There is annually appropriated, beginning with the 1987-88 fiscal year, from the Highway Fund to the Department of Transportation for public transportation purposes the greater of one million six hundred forty-five thousand dollars ($1,645,000) or the amount derived by multiplying the number of vehicles estimated to be registered as of the first day of each fiscal year by fifty cents ($.50). (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.9. Purposes for continuing public transportation appropriations.

The continuing public transportation appropriations authorized by G.S. 136-16.8 shall be used in accordance with the provisions of Article 2B of Chapter 136 of the General Statutes. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Article 2.

Powers and Duties of Department and Board of Transportation.

§ 136.17.2. Members of the Board of Transportation represent entire State.

The chairman and members of the Board of Transportation shall represent the entire State in highway matters and not represent any particular person, persons, or area. The Board shall, from time to time, provide that one or more of its members or representatives shall publicly hear any person or persons concerning highway matters in each of said geographic areas of the State. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1987, c. 783, s. 3.)

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, rewrote this section.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any service road route with an average daily traffic volume of 4,000 vehicles per day or more. (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; 1987, c. 311.)

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

Editor's Note. —

Session Laws 1987, c. 417, s. 1 repealed ss. 4 and 5 of Session Laws 1985, c. 718, as quoted under this section in the main volume.

Session Laws 1987, c. 417, s. 2 amended Session Laws 1985, c. 718, s. 6 so as to delete the expiration provision set out in the main volume.

Effect of Amendments. —

The 1987 amendment, effective June 8, 1987, added subdivision (29).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities. (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; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400.)

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

Effect of Amendments. — The 1987 amendment, effective June 18, 1987, added subsection (i).

§ 136-28.5. Construction diaries.

Diaries kept in connection with construction or repair contracts entered into pursuant to G.S. 136-28.1 shall not be considered public records for the purposes of Chapter 132 of the General Statutes until the final estimate has been paid. (1987, c. 380, s. 1.)

Editor's Note. — Session Laws 1987, c. 380, s. 2 makes this section effective upon ratification. The act was ratified June 16, 1987.

§ 136-28.6. Private contract participation by the Department of Transportation.

(a) The Department of Transportation may participate in private engineering and construction contracts for State highways.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a street or highway on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a street or highway on a mutually adopted thoroughfare plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the developer furnishes the right-of-way without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let by the developer for the project.

(e) Participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineer-

ing and construction contracts under this section. (1987, c. 860, s. 1.)

Editor's Note. — Session Laws 1987, c. 860, s. 2 makes this section effective upon ratification, and provides that it shall expire June 30, 1989. The act was ratified August 14, 1987.

§ 136-29. Adjustment and resolution of highway construction contract claim.

(a) A contractor who has completed a contract with the Department of Transportation to construct a State highway and who has not received the amount he claims is due under the contract may submit a verified written claim to the State Highway Administrator for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives his final statement from the Department and shall state the factual basis for the claim.

The State Highway Administrator shall investigate a submitted claim within 90 days of receiving the claim or within any longer time period agreed to by the State Highway Administrator and the contractor. The contractor may appear before the State Highway Administrator, either in person or through counsel, to present facts and arguments in support of his claim. The State Highway Administrator may allow, deny, or compromise the claim, in whole or in part. The State Highway Administrator shall give the contractor a written statement of the State Highway Administrator's decision on the contractor's claim.

(b) A contractor who is dissatisfied with the State Highway Administrator's decision on the contractor's claim may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the State Highway Administrator's written statement of the decision.

(c) As to any portion of a claim that is denied by the State Highway Administrator, the contractor may, in lieu of the procedures set forth in subsection (b) of this section, within six months of receipt of the State Highway Administrator's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(d) The provisions of this section shall be part of every contract for State highway construction between the Department of Transportation and a contractor. A provision in a contract that conflicts with this section is invalid. (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; 1987, c. 847, s. 3.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable to actions brought for claims denied by the State Highway Administrator or by the Director of the Office of State Construction of the Department of Administration on or after that date, rewrote this section.

Legal Periodicals. —

For survey of North Carolina con-

struction law, see 21 Wake Forest L. Rev. 633 (1986).

CASE NOTES

The sole statutory grounds that allow suit against the State Highway Administrator are provided in this section. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

Contractor's Substantive Rights Not Expanded. — Although this section, as amended in 1983, terms the board an alternative to civil suit, the claim allowed to the board is nevertheless a waiver of sovereign immunity, the terms of which are to be strictly construed. The same restrictions on maintaining a claim to the board as those for a claim to superior court will be applied, for there is no language, express or implied, that the creation of this alternative was to expand the substantive rights of the contractor against the sovereign immunity of the State. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

Where contractor changed both the theory and the substance of its claim after the claim was denied by the Administrator, these changes divested the board of jurisdiction to hear its appeal. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

Article 2A.

State Roads Generally.

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

Local Modification. — Grandfather Village: 1987, c. 419, s. 1.

§ 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.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1981, c. 859, s. 84; 1983, c. 717, ss. 46, 47; 1987, c. 830, s. 113(b).)

Editor's Note. — Session Laws 1987, c. 830, s. 1.1 provides that this act shall be known as "The State Aid for Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 121 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, added the last paragraph.

§ 136-44.2A. Secondary road construction.

Editor's Note. —
Session Laws 1987, c. 830, s. 117 provides: "Nine hundred sixty-four thousand dollars ($964,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1987-88 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State maintained county roads in the counties where signing has not already been funded."

§ 136-44.5. Secondary roads; mileage study; allocation of funds.

Editor's Note. — Session Laws 1987, c. 830, s. 117 provides: "Nine hundred sixty-four thousand dollars ($964,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1987-88 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State maintained county roads in the counties where signing has not already been funded."

§ 136-44.15. Uneconomic land remnant exchange.

For the purpose of lessening the adverse impact to tracts of land divided by the construction of a highway project on right-of-way donated by the abutting property owner, the Department of Transportation is authorized to acquire in fee simple the remnants of such divided tracts which cannot feasibly be used with the principal tract of land, for the purpose of exchange with other such property owners. The sole consideration for the acquisition of any remnant acquired pursuant to this act shall be the exchange of another remnant acquired for the same purpose without additional monetary consideration. (1987, c. 324, s. 1.)

Editor's Note. — Session Laws 1987, c. 324, s. 2 makes this section effective upon ratification and provides that it shall expire June 30, 1988.

§§ 136-44.16 to 136-44.19: Reserved for future codification purposes.

Article 2D.

Railroad Revitalization.

§§ 136-44.39 to 136-44.49: Reserved for future codification purposes.

Article 2E.

Roadway Corridor Official Map Act.

§ 136-44.50. Roadway corridor official map act.

(a) A roadway corridor official map may be adopted or amended by the governing board of any city within its corporate limits and the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances or by the Board of Transportation. No roadway corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the city or the Department of Transportation in each county affected by the map, has held a public hearing on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the roadway corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the roadway corridor passes.

c. By posting copies of the proposed roadway corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

(2) A permanent certified copy of the roadway corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(b) Roadway corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk for municipal-adopted maps, or in the office of the district engineer for State-adopted maps.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a roadway corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate descrip-

tion. The register of deeds shall collect a fee of five ($5.00) for each map sheet or page recorded.

(c) No roadway corridor or any portion thereof placed on an official map shall be effective unless:

(1) The roadway corridor or a portion thereof appears on the Transportation Improvement Program adopted by the Board of Transportation under G.S. 143B-350(f)(4); or

(2) The roadway corridor or a portion thereof appears on the street system plan adopted pursuant to G.S. 136-66.2, and the adopting city or town has adopted a capital improvements plan of 10 years or shorter duration which shows the estimated cost of acquisition and construction of the designated roadway corridor and the anticipated financing for that project.

(d) Within one year following the establishment of a roadway corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the roadway corridor. (1987, c. 747, s. 19.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this Article effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

§ 136-44.51. Effect of roadway corridor official map.

(a) After a roadway corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the roadway corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the roadway corridor. The district engineer of the Highway District in which the roadway corridor is located shall be notified within 10 days of all requests for building permits or subdivision approval within the roadway corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the roadway corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) No application for building permit issuance or subdivision plat approval shall be delayed by the provisions of this section for more than three years from the date of its original submittal. (1987, c. 747, s. 19.)

§ 136-44.52. Variance from roadway corridor official map.

(a) The Department of Transportation or the city which initiated the roadway corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S.136-44.51 result in practical difficulties or unnecessary hardships. (1987, c. 747, s. 19.)

§ 136-44.53. Advance acquisition of right-of-way within the roadway corridor.

(a) After a roadway corridor official map is filed with the register of deeds, the Department of Transportation or the city which initiated the roadway corridor official map is authorized to make advanced acquisition of specific parcels of property when such acquisition is determined by the respective governing board to be in the best public interest to protect the roadway corridor from development or when the roadway corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any such advance acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective municipal governing board which initiated the roadway corridor official map shall develop and adopt appropriate policies and procedures to govern such advanced acquisition of right-of-way and to assure such advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a roadway corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of such advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S.136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of

rights-of-way shown on a duly adopted roadway corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits. (1987, c. 747, s. 19.)

Article 3A.

Streets and Highways in and around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. — The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.

(4) If the governing body of any municipality shall determine that is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:

a. Construction of curbing and guttering;

b. Adding of lanes for automobile parking;

c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;

d. Constructing sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes.

e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the proper-

ties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1; 1987, c. 747, s. 2.)

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

Editor's Note. — Session Laws 1987, c. 747, s. 4 provides: "This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown."

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, deleted "but many of these streets and highways also have varying degrees of benefit of municipalities" at the end of the third sentence of subdivision (1), deleted a former final sentence of that subdivision, which read "therefore, the respective responsibilities of the Department of Transportation and the municipalities for the acquisition and costs of rights-of-way for State highway system street improvement projects shall be determined by neutral agreement between the Department of Transportation and each municipality," substituted "If" for "In the event that" at the beginning of the introductory language of subdivision (4), deleted "Bearing that portion of the cost of" at the beginning of paragraph (4)c, added paragraph (4)e, and rewrote the second sentence of the second paragraph of subdivision (4), which read "Any work authorized by this subdivision may be financed jointly by the municipality and the Department of Transportation pursuant to a cost-sharing agreement entered into by each."

§ 136-66.3. Municipal participation in improvements to the State highway system.

(a) Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.

(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities may, but shall not be required to, participate in the right-of-way and construction cost of "Small Urban Construction Program" highway improvements.

(c) A municipality is authorized to make improvements to portions of the State highway system lying within the municipal corporate limits utilizing local funds that have been authorized for that purpose by a vote of the citizens of the municipality. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) A municipality may pursuant to an agreement with the Department of Transportation reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that are in addition to those improvements that the Department of Transportation would normally include in the project.

(f) Municipalities having a population of less than 10,000 according to most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S.143B-350(f)(4).

Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:

Municipal Population	Maximum Participation In Right-of-Way Costs
10,000 — 25,000	5%
25,001 — 50,000	10%
50,001 — 100,000	15%
over 100,000	25%

This authority to allow a municipality to participate in the right-of-way costs of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is lo-

cated within the municipal corporate limits shall expire on June 30, 1990.

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs of rights-of-way necessary for the project. The Department of Transportation shall not charge a municipality any interest on its agreed upon share of rights-of-way costs. The Secretary shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk." It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities for right-of-way acquisition by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way. (1959, c. 687, s. 3; 1965, c. 867; 1967, c. 1127; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1987, c. 747, s. 3.)

Editor's Note. — Session Laws 1987, c. 747, s. 4 provides: "This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown."

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, rewrote this section.

Article 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

§ 136-66.10. Dedication of right-of-way under local ordinances.

(a) Whenever a tract of land located within the territorial jurisdiction of a city or county's zoning or subdivision control ordinance or any other land use control ordinance authorized by local act is proposed for subdivision or for use pursuant to a zoning or building permit, and a portion of it is embraced within a corridor for a street or highway on a plan established and adopted pursuant to G.S. 136-66.2 for a street or highway that is included in the Department of Transportation's "Transportation Improvement Program", a city or county zoning or subdivision ordinance may provide for the dedication of right-of-way within that corridor pursuant to any applicable legal authority, or:

(1) A city or county may require an applicant for subdivision plat approval or for a special use permit, conditional use permit, or special exception, or for any other permission pursuant to a land use control ordinance authorized by local act to dedicate for street or highway purpose, the right-of-way within such corridor if the city or county allows the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant. No dedication of right-of-way shall be required pursuant to this subdivision unless the board or agency granting final subdivision plat approval or the special use permit, conditional use permit, special exception, or permission shall find, prior to the grant, that the dedication does not result in the deprivation of a reasonable use of the original tract and that the dedication is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land or the impact of the dedication is mitigated by measures provided in the local ordinance.

(2) If a city or county does not require the dedication of right-of-way within the corridor pursuant to subdivision (1) of

this subsection or other applicable legal authority, but an applicant for subdivision plat approval or a zoning or building permit, or any other permission pursuant to a land use control ordinance authorized by local act elects to dedicate the right-of-way, the city or county may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan or to transfer severable development rights attributable to the dedicated right-of-way to noncontiguous land in designated receiving districts pursuant to G.S. 136-66.11.

(b) When used in this section, the term "density credit" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, and/or other land use control ordinance authorized by local act, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land in that is part of a common development plan. (1987, c. 747, s. 7.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this Article effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

§ 136-66.11. Transfer of severable development rights.

When used in this section and in G.S. 136-66.10, the term "severable development right" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.

(b) A city or county may provide in its zoning and subdivision control ordinances for the establishment, transfer, and exercise of severable development rights to implement the provisions of G.S. 136-66.10 and this section.

(c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or county to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

(d) In order to provide for the transfer of severable development rights pursuant to this section, the governing board shall amend the zoning ordinance to designate severable development rights receiving districts. These districts may be designated as separate use districts or as overlaying other zoning districts. No severable development rights shall be exercised in conjunction with the development of subdivision of any parcel of land that is not located in a receiving district. A city or county may, however, limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district. No plat for a subdivision in conjunction with which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the granting city or county and providing for their subsequent extinguishment. These documents shall also include any other information that the city or county ordinance may prescribe.

(e) In order to implement the purposes of this section a city or county may by ordinance adopt regulations consistent with the provisions of this section.

(f) A severable development right shall be treated as an interest in real property. Once a deed for severable development rights has been transferred by a city or county to the dedicator and recorded, the severable development rights shall vest and become freely alienable. (1987, c. 747, s. 7.)

Article 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

Legal Periodicals. — For note discussing the acquisition of the public use of roadways by statute and prescriptive easement in North Carolina, in light of West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985), see 21 Wake Forest L. Rev. 807 (1986).

Article 6D.

Controlled-Access Facilities.

§ 136-89.56. Commercial enterprises.

Editor's Note. — Session Laws 1987, c. 417, s. 1 repealed ss. 4 and 5 of Session Laws 1985, c. 718, as quoted under this section in the main volume.

Session Laws 1987, c. 417, s. 2 amended Session Laws 1985, c. 718, s. 6 so as to delete the expiration provision set out in the main volume.

Article 7.

Miscellaneous Provisions.

§ 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.

Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by a deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within 15 years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, except where such dedication was made less than 20 years prior to April 28, 1953, such right may be asserted within one year from and after April 28, 1953; provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or some one or more of those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid; provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants, may execute and cause to be registered in the office of the register of deeds of the county where such land is situated the declaration of withdrawal provided for in this section, and, under Chapter 46 of the General Statutes of North Carolina, entitled "Partition," and Chapter 1, Article 29A of the General Statutes of North Carolina, known as the "Judicial Sales Act," and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the court shall thereupon order the same cancelled of record; that where any corporation has dedicated any strip, piece or parcel of land in the manner herein set out, and said dedicating corporations is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest in said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested

in those persons, firms or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out herein before in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway. This section shall apply to dedications made after as well as before April 28, 1953.

The provisions of this section shall not apply when the public dedication is part of a future street shown on the street plan adopted pursuant to G.S. 136-66.2. Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2. This resolution shall be attached to the declaration of withdrawal and shall be registered in the office of the register of deeds of the county where the land is situated. (1921, c. 174; C.S., ss. 3846(rr), 3846(ss), 3846(tt); 1939, c. 406; 1953, c. 1091; 1957, c. 517; 1987, c. 428, s. 1.)

Effect of Amendments. —The 1987 amendment, effective June 19, 1987, added the last paragraph.

CASE NOTES

Use by Public Prevents Withdrawal. —

Assuming, arguendo, that this section was applicable, defendant could not withdraw areas designated by subdivision plat as "Park Property" under this section where there was evidence to support the court's finding that the subject area had been used for recreational purposes within 15 years from its dedication and thus had not been abandoned for purposes of the statute. Stines v. Willyng, Inc., 81 N.C. App. 98, 344 S.E.2d 546 (1986).

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to

maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a roadway corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article.

(k) A willful violation of any of the provisions of this section shall be a misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8; 1987, c. 747, s. 21.)

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

Editor's Note. — Subsection (f) is set out above to correct a typographical error in the main volume.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, redesignated former subsection (j) as present subsection (k) and added new subsection (j).

Article 9.

Condemnation.

§ 136-103. Institution of action and deposit.

Local Modification. — (As to Article 9) Grandfather Village: 1987, c. 419, s. 1.

§ 136-108. Determination of issues other than damages.

CASE NOTES

Cited in Department of Transp. v. Higdon, 82 N.C. App. 752, 347 S.E.2d 868 (1986); Department of Transp. v. Quick As A Wink of Asheville West, Inc., 82 N.C. App. 755, 347 S.E.2d 870 (1986).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

Additional Compensation for Delay in Payment — When Required. — When the taking of property by the State precedes the payment of compensation, the owner is entitled to additional compensation for the delay in payment. The Fifth and Fourteenth Amendments to the Constitution of the United States and N.C. Const., Art. I, § 19 require this additional payment as a part of just compensation. The additional sum awarded for delay in payment of the value for the property taken is not interest eo nomine, but interest is a fair means for measuring the amount to be arrived at of such additional sums. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Determination as Judicial Function. — Since the ascertainment of just compensation is a judicial function, and compensation for delay in payment is a part of just compensation, determining the amount of additional compensation for delay in payment is also a judicial function. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Compound Interest. — Compound interest should be allowed for delayed payment in condemnation cases if the evidence shows that during the pertinent period the "prudent investor" could have obtained compound interest in the market place. The use of compound interest as a measure in calculating additional compensation for delay is a matter which will turn upon the evidence in each case and must be decided on a case-by-case basis. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

§ 136-112. Measure of damages.

CASE NOTES

II. DAMAGES WHERE PART OF TRACT IS TAKEN.

In General. —

Subdivision (1) of this section provides that the commissioners, jury or judge are restricted to 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. The judge is required to instruct the jury to use the above standard—and that standard only—in computing damages. However, a real estate appraiser is given wide latitude regarding permissible bases for opinions on value. Department of Transp. v. Byrum, 82 N.C. App. 96, 345 S.E.2d 416 (1986).

§ 136-113. Interest as a part of just compensation.

CASE NOTES

Additional Compensation for Delay in Payment — When Required. — When the taking of property by the State precedes the payment of compensation, the owner is entitled to additional compensation for the delay in payment. The Fifth and Fourteenth Amendments to the Constitution of the United States and N.C. Const., Art. I, § 19 require this additional payment as a part of just compensation. The additional sum awarded for delay in payment of the value for the property taken is not interest eo nomine, but interest is a fair means for measuring the amount to be arrived at of such additional sums. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

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Function. — Since the ascertainment of just compensation is a judicial function, and compensation for delay in payment is a part of just compensation, determining the amount of additional compensation for delay in payment is also a judicial function. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Legal Rate as Prima Facie Rate. — This section provides for the legal rate as a prima facie rate to be imposed for delay in compensation. This statutory rate is deemed presumptively reasonable. However, the landowner may rebut the rate's reasonableness by introducing evidence of prevailing market rates and demonstrating that the prevailing rates are higher than the statutory rate. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Compound Interest. — Compound interest should be allowed for delayed payment in condemnation cases if the evidence shows that during the pertinent period the "prudent investor" could have obtained compound interest in the market place. The use of compound interest as a measure in calculating additional compensation for delay is a matter which will turn upon the evidence in each case and must be decided on a case-by-case basis. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Article 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Cited in Whiteco Metrocom Inc. v. Roberson, — N.C. App. —, 352 S.E.2d 277 (1986).

§ 136-130. Regulation of advertising.

CASE NOTES

Cited in Whiteco Metrocom Inc. v. Roberson, — N.C. App. —, 352 S.E.2d 277 (1986).

§ 136-134.1. Judicial review.

CASE NOTES

Cited in Whiteco Metrocom Inc. v. Roberson, — N.C. App. —, 352 S.E.2d 277 (1986).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1987

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina