

THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1989 CUMULATIVE SUPPLEMENT

Volume 3B, Part I

Chapters 117 through 129

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

A. D. KOWALSKY, S. C. WILLARD, K. S. MAWYER,
S. C. GORMAN, AND T. R. TROXELL

Annotated through 379 S.E.2d 161. For complete scope of
annotations, see scope of volume page.

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

THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

1989

North Carolina State Library
Raleigh, N. C.

COPYRIGHT © 1986, 1987, 1988, 1989

BY

THE MICHIE COMPANY

All rights reserved.

Preface

This Cumulative Supplement to Volume 3B, Part I contains the general laws of a permanent nature enacted by the General Assembly through the 1989 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 purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

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

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

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

User's Guide

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

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1989 Regular Session affecting Chapters 117 through 129 of the General Statutes.

Annotations:

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

North Carolina Reports through Volume 324, p. 436.
North Carolina Court of Appeals Reports through Volume 92, p. 757.
South Eastern Reporter 2nd Series through Volume 379, p. 161.
Federal Reporter 2nd Series through Volume 873, p. 1452.
Federal Supplement through Volume 710, p. 802.
Federal Rules Decisions through Volume 124, p. 691.
Bankruptcy Reports through Volume 98, p. 605.
Supreme Court Reporter through Volume 109, p. 2114.
North Carolina Law Review through Volume 67, p. 740.
Wake Forest Law Review through Volume 24, p. 538.
Campbell Law Review through Volume 11, p. 310.
Duke Law Journal through 1988, p. 1271.
North Carolina Central Law Journal through Volume 17, p. 228.
Opinions of the Attorney General.

The General Statutes of North Carolina 1989 Cumulative Supplement

Chapter 117. Electrification.

Article 2.

Electric Membership Corporations.

Sec.

117-12. Execution and filing of certificate of incorporation by residents of territory to be served.

117-20. Encumbrance, sale, etc., of property.

117-24. Dissolution.

Article 4.

Telephone Service and Telephone Membership Corporations.

Sec.

117-34. Dissolution.

Article 6.

Indemnification.

117-46. Indemnification of directors, officers, employees, or agents.

ARTICLE 2.

Electric Membership Corporations.

§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.

The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the Secretary of State, who shall forthwith prepare a certified copy or copies thereof and forward one to the register of deeds in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7; 1967, c. 823, s. 32.)

Editor's Note. — This section has been reprinted to correct a typographical error appearing in the bound volume.

§ 117-20. Encumbrance, sale, etc., of property.

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person by at least two-thirds of its total membership, without proxies, and
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets. (1935, c. 291, s. 15; 1965, c. 287, s. 13; 1969, c. 670, s. 1; 1987, c. 448, s. 1.)

Editor's Note. — This section was amended by Session Laws 1987, c. 448, s. 1, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, with-

out proxies" for "of at least a majority of its members" in subdivision (1), substituted a comma for "and" preceding "(ii)" in the final paragraph, and at the end of that paragraph added "and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

§ 117-24. Dissolution.

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of" (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the pres-

ident or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person by at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years. (1935, c. 291, s. 19; 1965, c. 287, s. 14; 1987, c. 448, s. 2.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, with-

out proxies" for "cast in person or by proxy by a majority of the members of the corporation entitled to vote" at the end of the second paragraph.

ARTICLE 4.

Telephone Service and Telephone Membership Corporations.

§ 117-34. Dissolution.

Any telephone membership corporation created under this Article may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of " (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast

in person by at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1965, c. 345, s. 2; 1987, c. 448, s. 3.)

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, with-

out proxies" for "cast in person or by proxy by a majority of the members of the corporation entitled to vote" at the end of the second paragraph.

ARTICLE 6.

Indemnification.

§ 117-46. Indemnification of directors, officers, employees, or agents.

The powers, authority and requirements as to indemnification, payment of expenses, and purchase of liability insurance for directors, officers, employees and agents, as set out in G.S. 55A-17.1, 55A-17.2 and G.S. 55A-17.3 shall apply to and may be exercised by any corporation formed under this Chapter. The indemnification of a director, officer, employee or agent of a corporation provided by this section shall not be deemed exclusive of any other rights to which such director, officer, employee or agent may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise with respect to any liability or litigation expenses arising out of his activities as director, officer, employee, or agent. (1987, c. 107, s. 1.)

Editor's Note. — Session Laws 1987, c. 107, s. 2 makes this section effective

upon ratification. The act was ratified April 28, 1987.

Chapter 118.

Editor's Note. — The legislation and annotations affecting Chapter 118 have been included in a recently published replacement chapter.

For old to new section correlations, please refer to the table of disposition provided at the end of Chapter 58.

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

Sec.

119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; renaming, etc., of gasoline.

Article 5.

Liquefied Petroleum Gases.

Sec.

119-54. Purpose; definitions; scope of Article.

119-56. Registration of dealers; liability insurance or substitute required.

119-58. Unlawful acts.

ARTICLE 3.

Gasoline and Oil Inspection.

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

Editor's Note. — Session Laws 1989, c. 652, s. 17 as amended by Session Laws 1989, c. 799, s. 31(a), provides: "All sums collected on kerosene and motor fuel pursuant to G.S. 119-18, other than funds allotted by the Office of State Budget and Management to administer and enforce the provisions of Chapter 119 and funds retained by the Department of Revenue for the cost of collection of taxes under Subchapter V of Chapter 105 of the General Statutes shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Underground Petroleum Storage Tank Cleanup Fund as certified on a monthly basis as follows: one-half (1/2)

shall be credited to the Commercial Fund and one-half (1/2) shall be credited to the Noncommercial Fund unless the balance in the Commercial Fund exceeds fifteen million dollars (\$15,000,000), and in that event, all such funds shall be credited to the Noncommercial Fund until the balance of the Commercial Fund falls below five million dollars (\$5,000,000), at which time credits to the Commercial Fund shall resume.

Notwithstanding any other provisions of law, any funds collected pursuant to G.S. 119-18 that are currently being credited to the General Fund shall remain in that fund."

§ 119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; renaming, etc., of gasoline.

In order to more fully carry out the provisions of this Article there is hereby created a Gasoline and Oil Inspection Board of five members, to be composed of the Commissioner of Agriculture, the Director of the Gasoline and Oil Inspection Division, and three

members to be appointed by the Governor, who shall serve at his will. The Commissioner of Agriculture and the Director of the Gasoline and Oil Inspection Division shall serve without additional compensation. Other members of the Board shall each receive the amount provided by G.S. 138-5 for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents (5¢) a mile for the distance to and from Raleigh by the usual direct route for each meeting of the Board which he attends. These expenses shall be paid from the Gasoline and Oil Inspection Fund created by this Article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided, however, that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State; and provided further, that if the Gasoline and Oil Inspection Board should promulgate any regulation which requires that gasoline be labeled, named or branded at the time of its first sale in the State, that such regulation shall provide in addition that any subsequent owner may rename, rebrand, or relabel such gasoline if such subsequent owner first files with the Board a notice of intention to do so, said notice to contain information showing the original brand, name, label, the company or person from whom the gasoline has been or is to be purchased, the minimum specifications registered by the seller, the brand, name, or label that is to be given such gasoline and the minimum specifications of such gasoline as filed with the Board; provided, further, that no labeling, naming or branding of gasoline which may be required by the Gasoline and Oil Inspection Board under the provisions of this Article, shall be construed as permitting gasoline to become the subject of fair trade contracts, as provided in G.S. 66-52. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this State any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167; 1961, c. 961; 1969, c. 445, s. 2.)

Editor's Note. — This section has been reprinted to correct a typographical error appearing in the bound volume.

Section 66-52, referred to in this section, was repealed by Session Laws 1975, c. 172.

ARTICLE 5.

*Liquefied Petroleum Gases.***§ 119-54. Purpose; definitions; scope of Article.**

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

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

(2) "Commissioner" means the Commissioner of Agriculture or his designated agent.

(3) "Dealer" means any person, firm, or corporation who is engaged in or desires to engage in:

a. The business of selling or otherwise dealing in liquefied petroleum gases which require handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or

b. The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances which use liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or his employer's use of liquefied petroleum gas and not as a business shall not be deemed to be a "dealer" for the purposes of this Article.

(4) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butanes or isobutane), butylenes.

(b) This Article does not apply to the design, construction, location, installation, or operation of equipment or facilities covered by the Building Code pursuant to Article 9 of Chapter 143 of the General Statutes. (1955, c. 487; 1959, c. 796, s. 1; 1961, c. 1072; 1981, c. 486, s. 1; 1989, c. 25, s. 1.)

Editor's Note. —

Session Laws 1989, c. 25, s. 4 provides: "All statutory authority, powers, and duties, including rule making and the rendering of findings, orders, and adjudications, of the Department of Agriculture pertaining to the regulation of the design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes, from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utiliza-

tion device within a building or structure covered by the North Carolina Building Code are transferred to the Building Code Council.

Until the Building Code Council adopts rules regarding the entry of liquefied petroleum gas service piping into a building, 2 NCAC 38 .0701(2) shall remain in effect."

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, designated the first paragraph as subsection (a), and added subsection (b).

§ 119-56. Registration of dealers; liability insurance or substitute required.

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

A dealer shall obtain and maintain comprehensive general liability insurance including product liability of one hundred thousand dollars (\$100,000) combined single limits and, when applicable, comprehensive automobile liability insurance of one hundred thousand dollars (\$100,000) combined single limits. Verification of said insurance coverage shall be made in a manner satisfactory to the Commissioner. In lieu of insurance, the dealer may file and maintain a bond, certificate of deposit or irrevocable letter of credit in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling of such containers. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 453.)

Effect of Amendments. — The 1987 amendment, effective June 23, 1987, inserted "certificate of deposit or irrevoca-

ble letter of credit" in the last sentence of the second paragraph.

§ 119-58. Unlawful acts.

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

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

(1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 282, s. 17.)

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 "manufactured home" for "mobile home" in subdivision (a)(2).

Chapter 120.

Editor's Note. — The legislation and annotations affecting Chapter 120 have

been included in a recently published replacement chapter.

Chapter 121.

Archives and History.

Article 1.

General Provisions.

Sec.

121-4. Powers and duties of the Department of Cultural Resources.

Sec.

121-4.1. North Carolina Register of Historic Places.

121-7. Historical museums.

121-8. Historic preservation program.

ARTICLE 1.

General Provisions.

§ 121-4. Powers and duties of the Department of Cultural Resources.

The Department of Cultural Resources shall have the following powers and duties:

- (15) To encourage and develop, in cooperation with the Development of Administration and in consultation with the Department of Transportation, the Department of Economic and Community Development, the Department of Environment, Health, and Natural Resources, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, and the Historic Preservation Foundation of North Carolina, Inc., a central clearinghouse for information on historic preservation for the benefit and use of public and private agencies and persons in North Carolina. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C.S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1; 1957, c. 330, s. 1; 1959, c. 68, s. 1; 1971, c. 345, s. 3; 1973, c. 476, s. 48; 1977, c. 464, s. 38; 1981, c. 721; 1989, c. 379; c. 727, s. 218(83); c. 751, s. 11.)

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 1989, c. 379, s. 1, effective June 21, 1989, as amended by Session Laws 1989, c. 751, s. 11, effective July 1, 1989, added subdivision (15).

Session Laws 1989, c. 727, s. 218(83),

effective July 1, 1989, directed the substitution of "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in subdivision (15), which change was also incorporated in Session Laws 1989, c. 379, s. 1, as amended by Session Laws 1989, c. 751, s. 11.

§ 121-4.1. North Carolina Register of Historic Places.

(a) The Department of Cultural Resources may establish, expand, and maintain a North Carolina Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in North Carolina history, architecture, archaeology, engineering, and culture. Until such time as the North Carolina Register of Historic Places is established, all references to it in the General Statutes and in the rules adopted pursuant to it shall be construed to mean properties and districts of North Carolina that are listed in the National Register of Historic Places.

(b) The North Carolina Historical Commission shall establish criteria for properties to be included in the State Register of Historic Places, and, within such criteria, shall provide for levels of significance as necessary and appropriate.

(c) The North Carolina Historical Commission shall promulgate regulations requiring that before any property or district may be included on the North Carolina Register of Historic Places, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the North Carolina Register until such objection has been withdrawn. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property. (1989, c. 60.)

Editor's Note. — Session Laws 1989, c. 60, s. 2, makes this section effective October 1, 1989.

§ 121-7. Historical museums.

(a) The Department of Cultural Resources shall maintain and administer the North Carolina Museum of History for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

(b) Insofar as practicable, the North Carolina Museum of History shall accession and maintain records showing provenance, value,

location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or cultural importance and which are owned by or to be acquired by the State for use in the State Capitol and the Executive Mansion, and, upon request of the Department of Administration, any other state-owned building. When any such item or object has been entered in the accession records of the Museum of History, the custodian of such item or object shall, upon its removal from the premises upon which it was located or when it is otherwise disposed of, submit to the Museum of History sufficient details concerning its removal or disposition to permit an adequate entry in the accession records to the end that its location or disposition, and authority for such change, shall be showed therein.

(c) Title to an artifact whose ownership is unknown or whose owner cannot be located passes to the Division of Archives and History if:

- (1) The artifact was placed on loan with the Division of Archives and History for a period of time exceeding five years or for an indefinite period of time or the artifact's status with the Division of Archives and History as a loan, gift, purchase, or other arrangement is unknown; and
- (2) The artifact has been a part of the inventory of the Division of Archives and History for more than five years; and
- (3) The Department of Cultural Resources makes a reasonable effort, including a diligent search of its own records to locate and inform the owner, his heirs or successors, that the Division of Archives and History is holding the artifact and clarify the artifact's status with the Division of Archives and History.

To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources shall mail, first class postage prepaid, a notice to the last known address of the owner of the artifact or the last known address of the owner's heirs or successors. The Department need not mail a notice, if after exercising due diligence to find a record within the Department of Cultural Resources indicating the owner of the artifact and his latest address, that information is not available. If no claim is made within 90 days from the date that notice is mailed, the Department of Cultural Resources shall publish a notice in three papers of general circulation once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is submitted to the Department of Cultural Resources, the Department may determine that legal title to the artifact is vested in the Division of Archives and History.

(d) Any person claiming legal title to an artifact to which the North Carolina Division of Archives and History also claims title as provided by subsection (c) may file a claim with the Department of Cultural Resources on a form prescribed by the Department. If the claimant is not the owner from whom the museum originally obtained the artifact, the claimant shall state in addition to any other information required by the Department, the facts surrounding the unavailability of the person who originally loaned or bestowed the property to the Division of Archives and History and the basis for the claim to title of the artifact. If the Department of Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of the artifact, the Department shall return the artifact to the owner. If the Department determines that the claim

is not valid and rejects the claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B. (1973, c. 476, s. 48; 1979, c. 861, s. 1; 1987, c. 721, s. 1.)

Effect of Amendments. — The 1987 amendment, effective August 3, 1987, designated the first paragraph as subsection (a), designated the second paragraph as subsection (b), and added subsections (c) and (d).

§ 121-8. Historic preservation program.

(b) **Surveys of Historic Properties.** — The Department of Cultural Resources shall conduct a continuing statewide survey to identify, document, and record properties having historical, architectural, archaeological, or other cultural significance to the State, its communities, and the nation. Upon approval of the North Carolina Historical Commission, the Director of the Division of Archives and History or his designee as the State Historic Preservation Officer, may nominate appropriate properties for entry in the National Register of Historic Places as established by the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. section 470. The Department of Cultural Resources shall maintain a permanent file containing research reports, descriptions, photographs, and other appropriate documentation relating to properties deemed worthy of inclusion in the statewide survey.

(1973, c. 476, s. 48; 1981, c. 215; 1989, c. 65.)

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 1989 amendment, effective April 24, 1989, in subsection (b), in the second sentence,

substituted "Director of the Division of Archives and History" for "Secretary", and "State Historic Preservation Officer" for "State's liaison officer for historic preservation".

ARTICLE 3.

Salvage of Abandoned Shipwrecks and Other Underwater Archaeological Sites.

§ 121-22. Title to bottoms of certain waters and shipwrecks, etc., thereon declared to be in State.

CASE NOTES

Stated in *Riebe v. Unidentified, Wrecked & Abandoned 18th Century*

Shipwreck, 691 F. Supp. 923 (E.D.N.C. 1987).

ARTICLE 4.

Conservation and Historic Preservation Agreements Act.**§ 121-38. Validity of agreements.**

Legal Periodicals. — For article, "Private Land Use Controls: Enforcement Problems with Real Covenants

and Equitable Servitudes in North Carolina," see 22 Wake Forest L. Rev. 749 (1987).

Chapter 122A.

North Carolina Housing Finance Agency.

Sec.

122A-4. North Carolina Housing Finance Agency.

122A-5.8. Distressed multi-family residential rental housing provisions.

Sec.

122A-5.9. Formation of subsidiary corporations to own and operate housing projects.

§ 122A-4. North Carolina Housing Finance Agency.

(f) The Governor shall designate from among the members of the Board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the Board of Directors of the Agency. The Agency shall exercise all of its prescribed statutory powers independently of any principal State Department except as described in this Chapter. The Executive Director of the Agency shall be appointed by the Board of Directors, subject to approval by the Governor. All staff and employees of the Agency shall be appointed by the Executive Director, subject to approval by the Board of Directors; shall be eligible for participation in the State Employees' Retirement System; and shall be exempt from the provisions of the State Personnel Act. All employees other than the Executive Director shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The salary of the Executive Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. The salary of the Executive Director and all staff and employees of the Agency shall not be subject to any limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the State Personnel Act. The Board of Directors shall, subject to the approval of the Governor, elect and prescribe the duties of such other officers as it shall deem necessary or advisable, and the General Assembly shall fix the compensation of such officers in the Budget Appropriation Act. The books and records of the Agency shall be maintained by the Agency and shall be subject to periodic review and audit by the State.

No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Agency shall receive no compensation for their services but shall be entitled to receive, from funds of the Agency, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

The Executive Director shall administer, manage and direct the affairs and business of the Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The Secretary of the Agency shall keep a record of the proceedings of the Agency and shall be custodian of all books, documents and

papers filed with the Agency, the minute book or journal of the Agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Agency and to give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4; 1981, c. 895, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 32; 1983, c. 148, s. 4; c. 717, ss. 36-37; 1985, c. 479, s. 222; 1987, c. 305, 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 8, 1987, deleted a proviso at the end of the fifth sentence of subsection (f), which

read "provided, however, that the Executive Director shall, on or before January 15 of each year, subject to the approval of the Board of Directors, designate those employees of the Agency which are employed in secretarial, clerical or administrative positions."

§ 122A-5.8. Distressed multi-family residential rental housing provisions.

(a) The General Assembly hereby finds and determines that a serious shortage of decent, safe and sanitary multi-family residential rental housing which persons and families of low and moderate income in the State can afford continues to exist; that it is in the best interests of the State to continue to promote and maintain the viability of such housing and to encourage private enterprise to sponsor, build and rehabilitate additional multi-family residential rental housing for such low and moderate income persons and families; that certain multi-family residential rental housing projects financed by the Agency are currently experiencing financial difficulties due to low occupancy levels; that measures to facilitate higher occupancy levels by extending occupancy on a temporary basis to those with incomes in excess of required low and moderate levels will help to maintain certain multi-family residential rental housing for persons and families of low and moderate income to prevent foreclosure and the use of such facilities without regard to income limitations; and that the Agency in providing such temporary assistance is promoting the health, welfare and property of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) "Distressed rental housing project" means any multi-family residential rental housing project heretofore or hereafter financed by the Agency that, as determined by resolution of the Board of

Directors of the Agency, has an occupancy level below that required for sustaining operation and as a result thereof needs to increase its occupancy levels in order to avoid foreclosure and the subsequent use of such facilities without regard to the Agency's income limitations. In determining the foregoing, the Board of Directors of the Agency shall take into consideration (1) occupancy rates of the project, (2) market conditions affecting the project, (3) costs of operation of the project, (4) debt service for the project, (5) management of the project and such other factors as the Board of Directors may deem relevant.

(c) The Board of Directors of the Agency may determine, by resolution, to permit not in excess of ten percent (10%) of the rental units in any distressed rental housing project to be rented to persons or families without regard to income until the project's occupancy levels, in the judgment of the Agency, will sustain operations at a level sufficient to prevent delinquency or default.

(d) The Board of Directors may also determine, by resolution, to permit additional rental units at any such distressed rental housing project, to be rented to persons or families without regard to income, subject to the restriction contained in subsection (c) of this section, provided that: (1) the units therein that have been available for rental without regard to income have been available for a period of time not less than three months, (2) the Agency has determined that permitting additional units, in excess of ten percent (10%), to be rented without regard to income is necessary in order for such distressed rental housing project to avoid foreclosure, and (3) the total number of housing units at any distressed rental housing project rented without regard to income shall not exceed fifteen percent (15%) of the total number of units therein.

(e) Once a distressed rental housing project attains sustaining occupancy at a level satisfactory to the Agency, the Agency will thereafter require the owners of such distressed rental housing project to rent only to persons and families of low and moderate income and will require that any units that were leased without regard to income limitations pursuant to the provisions of this section will next be leased, when such units become vacant, only to persons and families whose incomes fall within the then current Agency income limitations. (1987, c. 305, s. 1; 1989, c. 454, ss. 1, 2.)

Editor's Note. — Session Laws 1987, c. 305, s. 5 makes this section effective upon ratification. The act was ratified June 8, 1987.

Section 4 of Session Laws 1987, c. 305 provided that the provisions of this section would cease to be effective at midnight on June 30, 1989. However, Session Laws 1989, c. 454, s. 3, effective June 26, 1989, repealed Session Laws 1987, c. 305, s. 4. Therefore, the provi-

sions of this section remain in effect.

Effect of Amendments. — The 1989 amendment, effective June 26, 1989, in subsection (c) substituted "projects" for "first of the following occur (1)", and deleted "or (2) June 30, 1989" at the end thereof, and substituted "the restriction contained in subsection (c)" for "the restrictions contained in subsections (e)(1) and (c)(2)" in subsection (d).

§ 122A-5.9. Formation of subsidiary corporations to own and operate housing projects.

(a) The Agency may acquire, by purchase or otherwise, construct, acquire, develop, own, repair, maintain, improve, rehabilitate, renovate, furnish, equip, operate, and manage residential rental housing projects to rent to persons and families of lower and moderate income.

(b) The Agency may form a nonprofit corporation or corporations under the laws of this State which may acquire, construct, develop, repair, improve, rehabilitate, renovate, furnish, equip, operate and manage residential rental housing projects for persons and families of lower and moderate income. All of the stock of a nonprofit corporation formed by the Agency shall be owned by the Agency and its Board of Directors shall be elected or appointed by the Agency.

(c) No statutory provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to the Agency or to any nonprofit corporation formed pursuant to this section. (1987, c. 305, s. 2.)

Editor's Note. — Session Laws 1987, c. 305, s. 5 makes this section effective upon ratification. The act was ratified June 8, 1987.

Chapter 122C.

Editor's Note. — The legislation and annotations affecting Chapter 122C

have been included in a recently published replacement chapter.

Chapter 122D.

North Carolina Agricultural Finance Act.

(This Chapter is repealed effective July 1, 1990.)

Sec.

122D-3. (Repealed effective July 1, 1990) Definitions.

122D-6. (Repealed effective July 1, 1990) General powers of Authority.

Sec.

122D-16. (Repealed effective July 1, 1990) Trust funds.

122D-23. (Repealed effective July 1, 1990) Immunity.

§ 122D-1: Repealed by Session Laws 1989, c. 500, s. 109(e), effective July 1, 1990.

For this section as in effect until July 1, 1990, see the main volume.

Editor's Note. —

Session Laws 1987, c. 335, s. 3 provides:

"Notwithstanding G.S. 150B-13, the North Carolina Agricultural Finance Authority may, until six months from the effective date of this act, adopt temporary rules to carry out the purposes of Chapter 122D of the General Statutes without prior notice or hearing or upon any abbreviated notice or hearing the Authority finds practicable. The Authority shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B at the same time it adopts a temporary rule. Temporary rules adopted under this section shall be published by the Director of the Office of Administrative Hearings in the North Carolina Register

and shall be effective for a period of not longer than 180 days."

Session Laws 1989, c. 500, s. 109(c) and (d), effective July 1, 1990, provide: "(c) The State Treasurer shall assume all the duties and rights of the Authority pursuant to the provisions of Chapter 122D of the General Statutes, specifically those under G.S. 122D-6 regarding the repayment of agricultural loans and any other outstanding obligations due to the Authority, as if that Chapter had not been repealed.

(d) The North Carolina Agricultural Finance Authority is abolished."

Session Laws 1989, c. 500, s. 2 provides: "This act shall be known as 'The Current Operations Appropriations Act of 1989.'"

Session Laws 1989, c. 500, s. 128 contains a severability clause.

§ 122D-2: Repealed by Session Laws 1989, c. 500, s. 109(e), effective July 1, 1990.

For this section as in effect until July 1, 1990, see the main volume.

Editor's Note. — Section 2 of Session

Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

§ 122D-3. (Repealed effective July 1, 1990) Definitions.

As used in this Chapter, the following terms, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Agricultural Loan" means a loan made by a lending institution or by the Authority to any person for the purpose of financing or refinancing land acquisition or improvement; soil conservation; irrigation; construction, renovation or

expansion of buildings and facilities; purchase of farm fixtures, livestock, poultry, and fish of any kind; seeds; fertilizers; pesticides; feeds; machinery; equipment; containers or supplies or any other products employed in the production, cultivation, harvesting, storage, marketing, distribution or export of agricultural products.

(1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 3.)

Section Repealed Effective July 1, 1990. — This section is repealed effective July 1, 1990, by Session Laws 1989, c. 500, s. 109(e).

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

Editor's Note. — Section 2 of Session

Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

Effect of Amendments. — The 1987 amendment, effective April 29, 1987, inserted "or refinancing" near the beginning of subdivision (1).

§§ 122D-4, 122D-5: Repealed by Session Laws 1989, c. 500, s. 109(e), effective July 1, 1990.

For these sections as in effect until July 1, 1990, see the main volume.

Editor's Note. — Section 2 of Session

Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

§ 122D-6. (Repealed effective July 1, 1990) General powers of Authority.

The Authority shall have all the powers necessary to give effect to and carry out the purposes and provisions of this Chapter, including the following powers in addition to all other powers granted by other provisions of this Chapter, to:

- (15) Borrow money, issue bonds, and provide for the rights of the lenders or holders thereof and purchase, discount, sell, negotiate and guarantee, insure, coinsure and reinsure note, drafts, checks, bills of exchange, acceptances, bankers acceptances, cable transfers, letters of credit and other evidence of indebtedness with or without credit enhancement devices;

(1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 4.)

Section Repealed Effective July 1, 1990. — This section is repealed effective July 1, 1990, by Session Laws 1989, c. 500, s. 109(e).

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

Editor's Note. — Section 2 of Session

Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

Effect of Amendments. — The 1987 amendment, effective April 29, 1987, added "with or without credit enhancement devices" at the end of subdivision (15).

§§ 122D-7 to 122D-15: Repealed by Session Laws 1989, c. 500, s. 109(e), effective July 1, 1990.

For these sections as in effect until July 1, 1990, see the main volume.
Editor's Note. — Section 2 of Session

Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

§ 122D-16. (Repealed effective July 1, 1990) Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited, shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested in the following:

- (1) Bonds, notes or treasury bills of the United States;
- (2) Non-convertible debt securities of the following issuers:
 - a. The Federal Home Loan Bank Board;
 - b. The Federal National Mortgage Association;
 - c. The Federal Farm Credit Bank; and
 - d. The Student Loan Marketing Association;
- (3) Any other obligations not listed above which are guaranteed as to principal and interest by the United States or any of its agencies;
- (4) Certificates of deposit and other evidences of deposit at state and federal chartered banks and savings and loan associations; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof be fully collateralized;
- (5) Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested;
- (6) Money market funds whose portfolios consist of any of the foregoing investments;
- (7) A guaranteed investment or similar contract, which provides for the investment of funds at a guaranteed rate of return, with an insurance company or depository financial institution with a claim paying rating of no less than either of the two highest grades given by a nationally recognized rating agency; and
- (8) Any other investment authorized by law for the investment of funds by a unit of local government. (1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 1.)

Section Repealed Effective July 1, 1990. — This section is repealed effective July 1, 1990, by Session Laws 1989, c. 500, s. 109(e).

Editor's Note. — Section 2 of Session Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Opera-

tions Appropriations Act of 1989."

Effect of Amendments. — The 1987 amendment, effective April 29, 1987, substituted "in the following" for "as provided in G.S. 159-28.1" at the end of the introductory paragraph, and added subdivisions (1) through (8).

§§ 122D-17 to 122D-22: Repealed by Session Laws 1989, c. 500, s. 109(e), effective July 1, 1990.

For these sections as in effect until July 1, 1990, see the main volume.

Editor's Note. — Section 2 of Session

Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

§ 122D-23. (Repealed effective July 1, 1990) Immunity.

There shall be no liability on the part of and no cause of action of any nature may arise against the members of the Authority for any acts or omission to act by them in the performance of their powers and duties under this Chapter. The immunity established by this section shall not extend to willful neglect or malfeasance that would otherwise be actionable. The immunity established by this section further shall not extend to any act or omission occurring or arising out of the operation of a motor vehicle. The immunity established herein is waived to the extent of any indemnification by insurance for the liability of the members of the authority for which this act otherwise provides immunity. (1987, c. 335, s. 1.)

Section Repealed Effective July 1, 1990. — This section is repealed effective July 1, 1990, by Session Laws 1989, c. 500, s. 109(e).

Editor's Note. — Session Laws 1987, c. 335, s. 5 makes this section effective

upon ratification. The act was ratified June 10, 1987.

Section 2 of Session Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

Chapter 122E.

North Carolina Housing Trust and Oil Overcharge Act.

Sec.

122E-4. North Carolina Housing Partnership created; compensation; organization.

§ 122E-4. North Carolina Housing Partnership created; compensation; organization.

(b) The Partnership shall consist of 13 members as follows:

- (1) The Executive Director of the North Carolina Housing Finance Agency shall serve ex officio;
- (2) The Secretary of the Department of Economic and Community Development or his designee shall serve ex officio;
- (3) The State Treasurer or his designee shall serve ex officio;
- (4) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the President of the Senate, provided that one member shall be a representative of the homebuilding industry, one member shall be a low income housing advocate, and one member shall be a representative of the League of Municipalities;
- (5) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, provided that one member shall be a representative of the real estate lending industry; one member shall be a representative of a non-profit housing development corporation; and one member shall be a resident of low income housing.

The members of the Partnership shall elect one of their members to serve as Chairman for a term of one year. Seven members of the Partnership shall constitute a quorum. All members shall have the right to vote on all issues before the Partnership.

(i) Members of the Partnership may not receive any direct benefit from, or participate in, the programs of the Fund. Members of the Partnership may be employed by, or serve as a board member of, a nonprofit entity participating in a program of the Fund if the member discloses the employment or the membership in the minutes of the Partnership and does not vote on any matter pertaining to the entity's participation. This policy applies to:

- (1) Individual members of the Partnership;
- (2) Businesses, corporations, or partnerships owned in whole or in part by members of the Partnership; and
- (3) The immediate family members of the members of the Partnership. (1987, c. 841, s. 1; 1989, c. 727, s. 223(c); c. 751, ss. 7(12), 9(c); c. 754, s. 53.)

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 1989,

c. 751, s. 16, effective July 1, 1989, repealed Session Laws 1989, c. 727, s. 218(84), which would have substituted "Environment, Health and Natural Re-

sources" for "Natural Resources and Community Development" in this section.

Effect of Amendments. — Session Laws 1989, c. 754, s. 53, effective July 1, 1989, added subsection (i).

Session Laws 1989, c. 751, s. 7(12), substituted a reference to the Secretary

of the Department of Economic and Community Development for a reference to the Secretary of the Department of Commerce, which replaced a reference to the Secretary of the Department of Natural Resources and Community Development pursuant to Session Laws 1989, c. 727, s. 223(c).

Chapter 125.

Libraries.

Article 1.	Sec.	
State Library Agency.	125-11.7.	State Library designated the official depository for all State publications.
Sec.	125-11.8.	State Publications Clearinghouse created.
125-2. Powers and duties of Department of Cultural Resources.	125-11.9.	Powers and duties of the State Library.
Article 1A.	125-11.10.	Duties of State agencies.
State Depository Library System.	125-11.11.	Advisory Committee.
125-11.5. Purpose.	125-11.12.	Report to the Joint Legislative Commission on Governmental Operations.
125-11.6. Definitions.		

ARTICLE 1.

State Library Agency.

§ 125-2. Powers and duties of Department of Cultural Resources.

The Department of Cultural Resources shall have the following powers and duties:

- (4) To purchase and maintain collections of books, periodicals, newspapers, maps, films, audiovisual and other materials; to subscribe to computerized databases; to provide other resources, services and programs; and to serve as an information distribution center for State government and the people of the State as a means for the promotion of knowledge, education, commerce and business in the State. The scope of the library's collections, resources and services should be determined by the Secretary of Cultural Resources upon consideration of the recommendations of the State Library Commission; and in making these decisions, the Secretary shall take into account the collections, resources and services of other libraries throughout the State and the availability of such collections, resources and services to the general public. All materials owned by the State Library shall be available for free circulation to libraries and to all citizens of the State under rules and regulations fixed by the librarian, except that the librarian may restrict the circulation of books and other materials which, because they are rare or are used intensively in the library for reference purposes or for other good reasons, should be retained in the library at all times. The public schools shall be given equal priority in borrowing all films which are available for circulation.
- (5) To give assistance, advice and counsel to other State agencies maintaining special reference collections as to the best means of establishing and administering such libraries and collections.

- (5a) To provide for the establishment and maintenance of union catalogs.
- (7) Repealed by Session Laws 1987, c. 199, s. 4, effective July 1, 1987.
- (9) To provide library services to blind and physically handicapped readers of North Carolina by making available to them books and other reading materials in braille, or sound recordings or any other medium used by the blind and physically handicapped; to enter into contracts and agreements with appropriate libraries and other organizations for the purposes of serving the blind and physically handicapped; to enter into contracts with library agencies of other states for providing library service to the blind and physically handicapped of those states, provided adequate compensation is paid for such service and such contract is otherwise advantageous to this State.
- (10) To plan and coordinate cooperative programs between the various types of libraries within the State of North Carolina, and to coordinate State development with regional and national cooperative library programs; and to assist nonprofit corporations in organization and operation for the purposes of cooperative programs. (1955, c. 505, s. 3; 1961, c. 1161; 1973, c. 476, s. 84; 1977, c. 645, s. 1; 1981, c. 918, s. 4; 1983, c. 819; 1987, c. 199.)

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, rewrote subdivisions (4) and (5), added subdivision (5a), deleted subdivision (7),

relating to sets of logs and journals of the General Assembly for the use of the members, rewrote subdivision (9), and added the language "and to assist nonprofit corporations in organization and operation for the purposes of cooperative programs" at the end of subdivision (10).

ARTICLE 1A.

State Depository Library System.

§ 125-11.5. Purpose.

The purpose of this Article is to establish a depository system for the distribution of State publications to designated libraries throughout the State in order to facilitate public access to publications issued by State agencies. (1987, c. 771, s. 2.)

Editor's Note. — Session Laws 1987, c. 771, s. 3 makes this Article effective October 1, 1987.

§ 125-11.6. Definitions.

As used in this Article:

- (1) "Depository library" means a library designated to receive and maintain State publications and make them available to the public.
- (2) "Document" means any printed document including any report, directory, statistical compendium, bibliography, map, regulation, newsletter, pamphlet, brochure, periodical, bulletin, compilation, or register, regardless of whether the printed document is in paper, film, tape, disk, or any other format.
- (3) "State agency" means every State department, institution, board, and commission.
- (4) "State publication" means any document prepared by a State agency or private organization, consultant, or research firm, under contract with or under the supervision of a State agency: Provided, however, the term "State publication" does not include administrative documents used only within the issuing agency, documents produced for instructional purposes that are not intended for sale or publication, appellate division reports and advance sheets distributed by the Administrative Office of the Courts, the S.B.I. Investigative "Bulletin", documents that will be reproduced in the Senate or House of Representatives Journals, or documents that are confidential pursuant to Article 17 of Chapter 120 of the General Statutes. (1987, c. 771, s. 2.)

§ 125-11.7. State Library designated the official depository for all State publications.

The State Library shall be the official, complete, and permanent depository for all State publications, and shall receive five copies of all State publications in addition to the copies required for the depository system: Provided, however, the State Library shall receive only five copies of any State publication offered for sale by a State agency at a price at least high enough to recover production costs: Provided, further, the State Library, notwithstanding the definition of "State publication" contained in this Article, shall have authority to exclude from required deposit in the State Library any items or materials which it finds are not appropriate for deposit. (1987, c. 771, s. 2.)

§ 125-11.8. State Publications Clearinghouse created.

(a) A State Publications Clearinghouse is created within the Department of Cultural Resources, the Division of State Library.

(b) The Clearinghouse shall:

- (1) Advise State agencies annually of the number of copies of State publications needed for distribution.
- (2) Advise State agencies annually that they are required to submit only five copies of any State publication offered for sale at a price at least high enough to recover production costs.

- (3) Receive from State agencies promptly after publication the number of copies of State publications specified, and distribute these to the depository libraries.
- (4) Prepare on microfiche one or more copies of each State publication that is printed on paper for reference and interlibrary loan purposes.
- (5) Publish a checklist of State publications and distribute the checklist without charge to all requesting North Carolina libraries.
- (6) Forward two copies of all State publications that are printed on paper to the Library of Congress. (1987, c. 771, s. 2.)

§ 125-11.9. Powers and duties of the State Library.

The State Library:

- (1) Shall carry out the provisions of this act.
- (2) Develop and maintain standards for depository libraries. The standards shall include the ability to receive, process, organize, retain, and make available State publications and the ability to provide reference assistance and interlibrary loan service for depository publications.
- (3) Shall designate depository libraries, taking into account regional distribution and number of persons served, such that State publications will be conveniently accessible to residents in all areas of the State. The State Library may designate at least one library in each congressional district.
- (4) May designate as selective depository libraries those institutions that wish to receive less than the full deposit. Selective depository libraries shall meet the same standards for reference and interlibrary loan service as full depository libraries.
- (5) May enter into depository contracts with public libraries and community, technical, special, college and university libraries that meet the standards for depository eligibility adopted by the Clearinghouse.
- (6) Shall determine how many copies of State publications each State agency must submit for the State depository system. The State Library may permit a State agency to submit fewer copies of a document if the State Library determines that fewer copies are adequate in light of the cost of the document and the projected public interest in the document.
- (7) Shall adopt rules to administer the depository program. These rules may include the State Library's priorities and resulting schedules for collecting, maintaining, and making available State publications in various formats. (1987, c. 771, s. 2.)

§ 125-11.10. Duties of State agencies.

(a) State agencies shall send the requested number of copies of each of their publications to the Clearinghouse within 10 days of issuance.

(b) The head of each State agency shall designate a publications officer who shall be responsible for supplying the requested number of copies of each State publication of that agency to the Clearinghouse. Each agency shall notify the Clearinghouse of the identity of its publications officer before October 1, 1987, and within 30 days of any change of publications officer. The publications officer shall supply the Clearinghouse semiannually a complete list of the agency's State publications issued within the previous six months and any other information regarding the publications of the agency requested by the Clearinghouse.

(c) State agencies may request permission from the State Library to submit fewer than the requested number of copies of a document. The request shall include information on the cost of the document and the projected public interest in the document. (1987, c. 771, s. 2.)

§ 125-11.11. Advisory Committee.

The Secretary of Cultural Resources may appoint an advisory committee of State officials and depository librarians to review and advise on the operation of the depository system. (1987, c. 771, s. 2.)

§ 125-11.12. Report to the Joint Legislative Commission on Governmental Operations.

The Department of Cultural Resources shall report before September 30 each year to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office on the operation of the State depository library system. (1987, c. 771, s. 2.)

Chapter 126.

Editor's Note. — The legislation and annotations affecting Chapter 126 have been included in a recently published replacement chapter.

Chapter 127A.

Militia.

Article 3.

National Guard.

Sec.

127A-40. Pensions for the members of the North Carolina national guard.

127A-50.1. Military judges.

Article 15.

North Carolina National Guard Tuition Assistance Act of 1975.

Sec.

127A-192. Definitions.

127A-194. Eligibility.

ARTICLE 3.

National Guard.

§ 127A-40. Pensions for the members of the North Carolina national guard.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3, effective for taxable years beginning on or after January 1, 1989.

(1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3.)

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

Effect of Amendments. — The 1989 amendment, effective for taxable years

beginning on or after January 1, 1989, repealed subsection (e), which read "Benefits paid under the provisions of this section shall be exempt from the North Carolina income tax."

§ 127A-50.1. Military judges.

The Adjutant General shall appoint military judges to preside over courts-martial of the National Guard not in federal service. Minimum requirements for appointment as a military judge shall be:

- (1) Licensed to practice law in this State or certified as a military judge by the Judge Advocate General of the Army, Air Force, Navy, or Marines;
- (2) Designation as a judge advocate by The Judge Advocate General of the Army, Navy, Air Force, or Marines; and
- (3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of any of the military services. (1987, c. 649, s. 1.)

Editor's Note. — Session Laws 1987, c. 649, s. 2 makes this section effective

upon ratification. The act was ratified July 21, 1987.

ARTICLE 15.

*North Carolina National Guard Tuition Assistance Act of 1975.***§ 127A-192. Definitions.**

(d) "State Educational Institutions". — Any of the constituent institutions of the University of North Carolina, or any community college operated under the provisions of Chapter 115D of the General Statutes of North Carolina.

(1975, c. 917, s. 4; 1977, c. 70, s. 2; c. 228, s. 1; 1987, c. 564, s. 24.)

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 6, 1987, substituted "community college operated

under the provisions of Chapter 115D" for "community college or technical institute operated under the provision of Chapter 115A or Article 3 of Chapter 116" in subsection (d).

§ 127A-194. Eligibility.

(b) This tuition assistance benefit shall be applicable to students in the following categories:

- (1) Students seeking to achieve completion of their secondary school education at a community college [or technical institute].
- (2) Students seeking trade or vocational training or education.
- (3) Students seeking to achieve a two-year associate degree.
- (4) Students seeking to achieve a four-year baccalaureate degree.
- (5) Students seeking to achieve a graduate degree. (1975, c. 917, s. 6; 1977, c. 228, 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.

Editor's Note. — Session Laws 1987, c. 564, s. 12, effective July 6, 1987, directed that "community college" be substituted for "community college or tech-

nical institute" in subdivision (b)(1) of § 127-194. At the direction of the Revisor of Statutes, the phrase "or technical institute" has been placed in brackets at the end of subdivision (b)(1) of this section, which was apparently the section intended to be amended by the 1987 act.

Chapter 127B.

Editor's Note. — The legislation and annotations affecting Chapter 127B have been included in a recently published replacement chapter.

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

Sec.

128-1.1. Dual-office holding allowed.

128-15. Employment preference for veterans and their spouses or surviving spouses.

128-15.1. [Repealed.]

Article 3.

Retirement System for Counties, Cities and Towns.

128-24. Membership.

Sec.

128-26. Allowance for service.

128-27. Benefits.

128-28. Administration and responsibility for operation of System.

128-31. Exemptions from execution.

128-38.1. Termination or partial termination; discontinuance of contributions.

128-38.2. Internal Revenue Code compliance.

ARTICLE 1.

General Provisions.

§ 128-1.1. Dual-office holding allowed.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(1971, c. 697, s. 2; 1975, c. 174; 1987, c. 427, s. 10.)

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

Effect of Amendments. — The 1987 amendment, effective June 19, 1987, inserted "or is commissioned as a special

officer or deputy special officer of the United States Bureau of Indian Affairs" in subsection (c).

Applied in *Ratcliff v. County of Buncombe*, 663 F. Supp. 1003 (W.D.N.C. 1987).

OPINIONS OF ATTORNEY GENERAL

Person holding appointive office as police officer can hold position as elected officer in either State or local government, including as a school board

member. See opinion of Attorney General to Captain Bobby Kilgore, Monroe Public Safety Department, 55 N.C.A.G. 34 (1985).

§ 128-7. Officer to hold until successor qualified.

Editor's Note. — Session Laws 1987, c. 738, s. 29(g) had purported to add a subdivision (e)(6) to this section, effective January 1, 1988. However, this section does not contain a subsection (e).

Subsequently, Session Laws 1989, c. 717, s. 13 amended Session Laws 1987, c. 738, s. 29(g) to clarify that the amendment thereby was intended to affect § 128-27.

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.

CASE NOTES

An action by citizens and taxpayers to recover monetary damages from a State officer for misuse of State property while in office is not recognized

and may not be maintained. *Flaherty v. Hunt*, 82 N.C. App. 112, 345 S.E.2d 426, cert. denied, 318 N.C. 505, 349 S.E.2d 859 (1986).

§ 128-15. Employment preference for veterans and their spouses or surviving spouses.

(a) It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment with every State department, agency, and institution.

(b) As used in this section:

- (1) "A period of war" includes World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.
- (2) "Veteran" means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.
- (3) "Eligible veteran" means:
 - a. A veteran who served during a period of war; or
 - b. The spouse of a disabled veteran; or
 - c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as the result of such service; or
 - d. A veteran who suffered a disabling injury for service-related reasons during peacetime; or
 - e. The spouse of a veteran described in subdivision d. of this subsection; or
 - f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who dies for service-related reasons during peacetime.

(c) Hereafter, in all evaluations of applicants for positions with this State or any of its departments, institutions or agencies, a preference shall be awarded to all eligible veterans who are citizens of the State and who served the State or the United States honorably in either the army, navy, marine corps, nurses' corps, air corps, air force, coast guard, or any of the armed services during a period of war.

(d) The provisions of this section shall be subject to the provisions of Article 1 of Chapter 165 of the General Statutes, and Parts 13 and 19 of Article 9 of Chapter 143B of the General Statutes. (1939, c. 8; 1953, c. 1332; 1967, c. 536; 1987 (Reg. Sess., 1988), c. 1064, s. 2.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective October 1, 1988, rewrote this section.

CASE NOTES

Minimum Requirements for Position Must Be Met. — Although this section awards a preference rating of 10 points to veterans who apply for employment with the state or any of its departments, it does not state that the minimum requirements specified for a position may be ignored. *Davis v. Vance County Dep't of Soc. Servs.*, — N.C. App. —, 372 S.E.2d 88 (1988).

Refusal to Allow Education Equivalencies to Fulfill Requirements Not Error. — The State Personnel Commission's refusal to allow education equivalencies to fulfill the mini-

mum education requirement of graduation from a four-year college for a position opening in the Department of Social Services, was not arbitrary and capricious where petitioning employee's history, including 20 years of clerical/administrative experience and service during the Vietnam conflict, although noteworthy and commendable, failed to meet the requirements under the department's prescribed and published basis. *Davis v. Vance County Dep't of Soc. Servs.*, — N.C. App. —, 372 S.E.2d 88 (1988).

§ 128-15.1: Repealed by 1987 (Reg. Sess., 1988), c. 1064, s. 4, effective October 1, 1988.

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

Local Modification. — (As to Article 3) *City of Charlotte*: 1987, c. 506; 1987 (Reg. Sess., 1988), c. 1033; 1989, c. 248;

c. 770, s. 45; *City of High Point*: 1987, c. 327.

CASE NOTES

This Article creates contractual rights and obligations. *Simpson v. North Carolina Local Gov't Employees'*

Retirement Sys., 88 N.C. App. 218, 363 S.E.2d 90 (1987), *aff'd*, 323 N.C. 362, 372 S.E.2d 559 (1988).

§ 128-24. Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the em-

ploy 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. 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.

- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 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, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b1), provided that such benefits will be computed in accordance with subsection (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969.

- b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any

reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 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.

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 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 re-

tire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

- c. Should a beneficiary who retired on an early or service retirement allowance be reemployed by an employer participating in the Retirement System on a permanent full-time, part-time, temporary, or on fee-for-service basis, whether contractual or otherwise, the retirement allowance shall be suspended if the beneficiary receives or earns any of the following:

1. Salary or fees or both in excess of one thousand five hundred dollars (\$1,500) per month;
2. Salary or fees or both in excess of thirteen thousand five hundred dollars (\$13,500) during any consecutive 12 calendar months;
3. Salary or fees or both during any consecutive 12 calendar months, which is greater than fifty percent (50%) of the reported compensation during the 12 months of service preceding the effective date of retirement; or
4. Salary or fees or both during any month, which when added to the retirement allowance at retirement exceeds the monthly compensation earned immediately prior to retirement, if reemployed by the same employer within 90 days of the effective date of retirement.

The suspension of the retirement allowance shall be effective as of the first day of the month in which the beneficiary meets the conditions set forth in conditions 1 or 4 of this paragraph and effective as of the first day of the next succeeding month following the month in which the beneficiary meets the conditions set forth in conditions 2 or 3 of this paragraph. The retirement allowance shall be reinstated the month following termination of reemployment or the month following the month in which the conditions set forth in this paragraph are no longer met. The Board of Trustees may adjust the monetary limits in this paragraph by an amount equivalent to any across-the-board salary increase granted to employees of the State by the General Assembly. Each employer shall report information monthly to the Board of Trustees on forms provided by the Board on each reemployed beneficiary sufficient for the effective enforcement of this paragraph. Notwithstanding the foregoing, any beneficiary may irrevocably elect to recommence membership in the Retirement System immediately upon being re-

stored to service, whereupon the retirement allowance shall cease.

- d. A beneficiary whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is restored to service shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

(1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2; 1973, c. 243, s. 1; 1977, c. 783, s. 2; 1981, c. 979, s. 2; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1106, ss. 1, 2; 1985, c. 479, s. 196(d)-(g); c. 649, s. 2; 1987, c. 513, s. 1; c. 738, s. 38(a).)

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 that 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 (5)a, (5)b, (5)b1, and (5)b2.

Session Laws 1987, c. 738, s. 38(a), effective July 1, 1987, inserted "excluded from coverage under Title II of the Social Security Act" in two places in the second sentence of subdivision (1) and

added the last sentence of that subdivision.

§ 128-26. Allowance for service.

(a) Each person who becomes a member during the first year of his employer's participation, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him to that employer prior to the date of participation for which he claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when he first entered membership and the employee contribution rate at that time together with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the armed forces of the United States if the person returned to the service of his employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such armed services; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if he submits satisfactory evidence of the military service claimed and the participating unit of which he is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period in the armed services of the United States up to the date he was first eligible to be separated or released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time he entered military service, and either of the following conditions is met:

- (1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he is first eligible to be separated or released from such military service under other than dishonorable conditions.
- (2) He is in service, with the employer by whom he was employed when he entered military service, for a period of not

less than 10 years after he is separated or released from such armed services under other than dishonorable conditions.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof not to exceed one month of credit for each two years of prior and membership service or fraction thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for 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. 128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

On and after July 1, 1973, a member whose account in the Teachers' and State Employees' Retirement System was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the Teachers' and State Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely on account of having attained the age of 62 years, in accordance with former G.S. 128-24(3a), may purchase membership service credits for such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 128-30(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military

service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

(h1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one half of the cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s), provided that he left service prior to July 1, 1975. Any person who leaves service after June 30, 1975, and who withdraws his contributions in accordance with G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover the full cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s). These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.

(j) Repealed by Session Laws 1987, c. 617, s. 3, effective January 1, 1988.

(j1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase

creditable service for service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

- (1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose current membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased with sufficient interest added thereto so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.
- (2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose current membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced 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. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed.

(k) All repayments and purchases of service credits, allowed under the provisions of this section, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are

otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purchases of the actuarial valuation of the System's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(I) 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. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.
- (2) Leaves of Absence Terminating On and After July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

(m) Omitted Membership Service. — A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

- (1) within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or
- (2) after 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the average yield on the pension accumulation fund for the preceding calendar year; or
- (3) after three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service.

(n) 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 Officers' 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. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full

cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(o) Credit at Full Cost for Federal Employment. — Notwithstanding any other provisions of this Chapter, a member, upon the completion of five 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 basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the Retirement System; 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. 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 subsection 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 similar programs that the Board of Trustees may adopt. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(p) Part-Time Service Credit. —

- (1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time employee of a participating employer as defined in G.S. 128-21(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 128-26(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year

of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

- (2) Under all requirements and conditions set forth in the preceding subdivision of this subsection, except for the requirement that the completion of five years of membership service be subsequent to service rendered as a part-time employee, any member with five or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time employee of an employer as defined in G.S. 128-21(11) if (i) the member terminates or has terminated employment in any capacity as an employee, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.

(q) Credit at Full Cost for Probationary Employment. — Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with an employer as defined in this Article when considered to be in a probationary or employer imposed waiting period status and thereby not regularly employed, between date of employment and date of membership service with the retirement system, provided that the employer or former employer of such a member has revoked this probationary employment or waiting period policy.

Provided, 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 liabilities of the retirement system, 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. In no instance shall the amount payable be less than the contributions a member would have made during the employment plus four percent (4%) interest compounded annually.

Nothing contained in this subsection shall prevent an employer from paying all or part of the cost; and, to the extent paid by an employer, payments shall be credited to the Pension Accumulation Fund; and to the extent paid by a member, payments shall be credited to the Annuity Savings Fund; provided, however, an employer may not discriminate against any member or group of members in his employ in paying all or any part of this cost. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allow-

ance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(r) Credit at Full Cost for Temporary Local Government Employment. — Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for local government employment when classified as a temporary employee subject to the conditions that:

- (1) The member was employed by an employer as defined in G.S. 128-21(11);
- (2) The member's temporary employment met all other requirements of G.S. 128-21(10);
- (3) The member has completed five years or more of membership service;
- (4) The member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
- (5) The 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 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 advise [advice] of the actuary, plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(s) Credit at Full Cost for Employment Not Otherwise Creditable. — Notwithstanding any other provision of this Chapter, any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in any other retirement system or plan, upon completion of five years of membership service by making a lump sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on

an unreduced service allowance. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12; 1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4; 1987, c. 533, s. 2; c. 617, ss. 1-4; c. 717, s. 1; 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6; c. 1110, s. 8; 1989, c. 255, ss. 1-10; c. 762, s. 2.)

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

Editor's Note. —

Session Laws 1987, c. 617, s. 3 directed the deletion of the last paragraph of subsection (j). However, subsection (j) only contained one paragraph. Thus it would appear that the intent of the act was to delete all of subsection (j).

Session Laws 1987, c. 617, s. 5 provides, *inter alia*: "For the purposes of Section 3 of this act, members of the Retirement System who are members before January 1, 1988, shall retain all rights and privileges to purchase military and out-of-state service credits under the same conditions that existed prior to the effective date of that section."

Effect of Amendments. —

Session Laws 1987, c. 533, s. 2, effective July 1, 1987, added subsection (n).

Session Laws 1987, c. 617, ss. 1, 2 and 4, effective July 1, 1987, deleted the last sentence of the last paragraph of subsection (a), which read "The provisions of this paragraph shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System"; deleted the last sentences of subsections (i) and (j), which read "The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System"; and substituted "10 years of prior and current membership service" for references to 10 years of membership service and 10 years of current membership service throughout subsections (a), (i) and (j).

Session Laws 1987, c. 617, s. 3, effective January 1, 1988, deleted the last paragraph of subsection (a), which, as amended by c. 617, ss. 1 and 4, read:

"Notwithstanding any other provision of this Chapter, members not otherwise allowed service credit for service in the

armed forces of the United States may, upon completion of 10 years of prior and current membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States. These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made."

Session Laws 1987, c. 617, s. 3, effective January 1, 1988, also deleted subsection (j), which, as amended by c. 617, ss. 2 and 4, read:

"(j) Notwithstanding any other provision of this Chapter, any member may, upon completion of 10 years of prior and current membership service, purchase

credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as the result of the service. Payment shall be permitted only on a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made."

Session Laws 1987, c. 717, s. 1, effective August 3, 1987, added subsection (o).

Session Laws 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6, effective July 8, 1988, substituted "five years" for "10 years" near the beginning of the first sentence

of subsection (o), and added subsections (p), (q), (r), and (s).

Session Laws 1987 (Reg. Sess., 1988), c. 1110, s. 8, effective July 1, 1988, substituted "but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance" for "but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for service retirement, disability retirement, early retirement or for a vested deferred allowance" in the first paragraph of subsection (e).

Session Laws 1989, c. 255, ss. 1 through 10, effective June 7, 1989, added the second sentence of subsection (h1); added the last sentence of subsection (k); added the second sentence of subdivision (l)(1); added the second sentence of subdivision (m)(3); added the second sentence of subsection (n); in subsection (o), substituted "subsection" for "subdivision" in the next to the last sentence, and added the last sentence; added the last sentence of subdivision (p)(1); added the second sentence of the third paragraph of subsection (q); in subdivision (r)(5), substituted "Annuity Savings Fund" for "Annuity Saving Fund" near the beginning of the first sentence and added the second sentence; and added the last sentence of subsection (s).

Session Laws 1989, c. 762, s. 2, effective October 1, 1989, added subsection (j1).

§ 128-27. Benefits.

(a) Service Retirement Benefits. —

- (1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Repealed by Session Laws 1971, c. 325, s. 12.
- (4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as

of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

- (5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than 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 required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

(b8) Service Retirement Allowance of Law Enforcement Officers Retiring on or after January 1, 1986, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after January 1, 1986, but before July 1, 1988, a member who is a law enforcement officer or an eligible former law enforcement officer shall receive the following service retirement allowance:

- (1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent ($\frac{1}{3}$ of 1%) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

- (1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.
- (2) Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1,

1988, but before July 1, 1989, 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 sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (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 upon the completion of five years of creditable service 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 sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3).

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, 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 sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (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 upon the completion of five years of creditable service 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, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final

compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than 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 retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

(e) Reexamination of Beneficiaries Retired on Account of Disability. — Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

- (1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful

occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent ($\frac{1}{10}$ of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The provisions of this subdivision shall not apply to beneficiaries of the Law Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

- (2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.
- (3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.
 - a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the

basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1985, shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee other than as a law enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this 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 reexamination 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.

(f2) **(Effective July 1, 1988, through June 30, 1993)** Upon the submission of an application, there shall be paid to any member at retirement or thereafter or surviving beneficiary of a member a refund of contributions not withdrawn with regular interest thereon, equal to the contributions made by Cooperative Agricultural Extension Service Employees on compensation excluded from coverage under Title II of the Social Security Act representing the difference in the rate applicable to Cooperative Agricultural Extension Service Employees and the rate applicable to other employees of the participating employer during the period January 1, 1955, to June 30, 1965; provided that such return of contributions shall be payable only if such contribution did not in any way benefit the member under any provision of this Article. Provided further that this subsection shall apply to any former Cooperative Agricultural Extension Service employee who obtained a refund and subsequently purchased the creditable service forfeited by paying the contributions withdrawn and interest thereon.

(I) **Death Benefit Plan.** — The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the mem-

ber's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

subject to a maximum of twenty thousand dollars (\$20,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After June 30, 1969 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978, but before January 1, 1987, 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 age 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 pur-

pose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).
- (4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars (\$20,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan.

(12) Death Benefit for Retired Members. — 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 two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained 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 is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

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 (l) 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.

(cc) 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. 128-27(k). 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.

(dd) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) 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, 1987, and June 30, 1988.

(ee) **Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988.** — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in

effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(ff) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) 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, 1988, and June 30, 1989.

(gg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2; 1987 (Reg. Sess., 1988), c. 1061, s. 2; c. 1086, s. 22(c); c. 1108, s. 3; c. 1110, ss. 4-7; 1989, c. 717, ss. 13, 13.1; c. 731, s. 2; c. 752, s. 41(c); c. 792, ss. 3.4-3.6.)

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 that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

Session Laws 1987 (Reg. Sess., 1988), c. 1061, s. 3, effective July 1, 1988, through June 30, 1993, as rewritten by Session Laws 1989, c. 731, s. 3, effective July 1, 1989, provides: "The Board of Trustees of the Teachers' and State Employees' Retirement System shall re-

serve the sum of one million five hundred thousand dollars (\$1,500,000) and the Board of Trustees of the Local Governmental Employees' Retirement System shall reserve the sum of five hundred thousand dollars (\$500,000) from unencumbered actuarial gains in the Retirement Systems for the year ending December 31, 1987, for the purpose of funding this act. Applications for refunds under this act shall be made on or before July 1, 1994."

Session Laws 1987 (Reg. Sess., 1988), c. 1108, s. 2 provides that the provisions of Sections 1 and 3 of the act, which amended G.S. 135-5(1) and 128-27(1)(7), shall be funded through unencumbered

reserves as of December 31, 1987, in the Death Benefit Trust Fund for Teachers and State Employees.

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

Session Laws 1989, c. 731, s. 3 provides: "The Board of Trustees of the Teachers' and State Employees' Retirement System shall reserve the sum of one million five hundred thousand dollars (\$1,500,000) and the Board of Trustees of the Local Governmental Employees' Retirement System shall reserve the sum of five hundred thousand dollars (\$500,000) from unencumbered actuarial gains in the Retirement Systems for the year ending December 31, 1987, for the purpose of funding this act. Applications for refunds under this act shall be made on or before July 1, 1994."

Session Laws 1989, c. 752, s. 41(f) provides: "Notwithstanding the provisions of G.S. 135-5(o) and G.S. 128-27(k), it is the intent of the 1989 Session of the General Assembly that the retirement allowances to or on account of beneficiaries of the Retirement Systems covered by subsections (a), (b), and (c) of this section be increased for fiscal year 1990-91 by six and one-tenth percent (6.1%) of the allowances payable for fiscal year 1989-90, subject to the availability of unencumbered actuarial gains in the Retirement Systems for the year ending December 31, 1988."

Session Laws 1989, c. 792, s. 3.8 provides: "It is the intention of the First Session of the 1989 General Assembly that the benefit accrual rates of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System be further increased as a result of this act, on or after July 1, 1990, for active and retired members and beneficiaries of the Systems upon the availability of unencumbered actuarial gains in the Retirement Systems for the years ending on or after December 31, 1988, subsequent to the application of such unencumbered actuarial gains for the provisions of G.S. 128-27(k) and G.S. 135-5(o)."

Session Laws 1989, c. 752, s. 167 contains 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)(4), and (a)(5), and for "30 and not more than 90 days" near the beginning of subsection (c).

Session Laws 1987, c. 738, s. 27(c), effective July 1, 1987, added subsection (cc).

Session Laws 1987, c. 738, s. 37(b), effective September 1, 1987, substituted "such age" for "the age" and added "or had attained 20 years of creditable service" in subdivision (m)(1).

Session Laws 1987, c. 824, s. 2, effective July 1, 1988, added subsection (12).

Session Laws 1987 (Reg. Sess., 1988), c. 1061, s. 2, effective July 1, 1988, through June 30, 1993, added subsection (f2).

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 22(c), effective July 1, 1988, added subsection (dd).

Session Laws 1987 (Reg. Sess., 1988), c. 1108, s. 3, effective August 1, 1988, inserted "but before July 1, 1988" in the second paragraph in subdivision (1)(7).

Session Laws 1987 (Reg. Sess., 1988), c. 1110, ss. 4-7, effective July 1, 1988, rewrote the subsection catchlines and introductory language of subsections (b8) and (b9), and added new subsections (b10) and (ee).

Session Laws 1987, c. 738, s. 29(g), effective January 1, 1988, as amended by Session Laws 1989, c. 717, s. 13, effective August 13, 1989, added subdivision (e)(6).

Session Laws 1989, c. 717, s. 13.1, effective July 1, 1989, substituted "January 1, 1987" for "July 1, 1988" in subdivision (1)(7).

Session Laws 1989, c. 731, s. 2, effective July 1, 1989, rewrote subsection (f2).

Session Laws 1989, c. 752, s. 41(c), effective July 1, 1989, added subsection (ff).

Session Laws 1989, c. 792, ss. 3.4 through 3.6, effective July 1, 1989, inserted "but before July 1, 1989" in two places in the introductory sentence of subsection (b10); added subsection (b11), and a new subsection (gg).

CASE NOTES

Relationship between public employees and retirement system is one of contract. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Right of Employee to Rely on Retirement Plan. — A public employee has a right to expect that the retirement rights bargained for in exchange for his loyalty and continued services, continually promised him over many years, will not be removed or diminished. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Plaintiffs, as members of the North Carolina Local Governmental Employees' Retirement System, had a contractual right to rely on the terms of the retirement plan as these terms existed at the moment their retirement rights became vested. *Simpson v. North Caro-*

lina Local Gov't Employees' Retirement Sys., 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Impairment of Rights by 1981 Amendment. — Rights arising under this Article were impaired inasmuch as plaintiff employees stood to suffer significant reductions in their retirement allowances as a result of the 1981 legislative amendment of this section adding subsection (d4), and where challenge thereto had been resolved below by grant of summary judgment in defendants' favor, but defendants' affidavit failed to demonstrate or reflect that the changes in question were reasonable and necessary to serve an important state interest, the case would be remanded for further proceedings. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

§ 128-28. Administration and responsibility for operation of System.

(q) 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 and 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. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781; 1969, c. 442, s. 15; 1973, c. 243, s. 8; 1985, c. 479, s. 196(o); 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 (q).

§ 128-31. Exemptions from execution.

Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary. (1939, c. 390, s. 11; 1985, c. 402; c. 649, s. 5; 1989, c. 665, s. 3; c. 792, s. 2.4.)

Effect of Amendments. —

Session Laws 1989, c. 665, s. 3, effective October 1, 1989, and applicable to orders issued on or after that date, inserted "and G.S. 110-136.3 et seq.," in the first sentence.

Session Laws 1989, c. 792, s. 2.4, effective for taxable years beginning on or after January 1, 1989, deleted "hereby exempt from any state or municipal tax, and" following "Article, are" in the first sentence.

§ 128-38. Reservation of power to change.

CASE NOTES

Relationship between public employees and retirement system is one of contract. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Right of Employee to Rely on Retirement Plan. — A public employee has a right to expect that the retirement rights bargained for in exchange for his loyalty and continued services, and continually promised him over many years, will not be removed or diminished. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Plaintiffs, as members of the North Carolina Local Governmental Employees' Retirement System, had a contractual right to rely on the terms of the retirement plan as these terms existed

at the moment their retirement rights became vested. *Simpson v. North Carolina Local Gov't Employees' Retirement Sys.*, 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

Impairment of Rights by 1981 Amendment. — Rights arising under this Article were impaired inasmuch as plaintiff employees stood to suffer significant reductions in their retirement allowances as a result of the 1981 legislative amendment of § 128-27 adding subsection (d4), and where challenge thereto had been resolved below by grant of summary judgment in defendants' favor, but defendants' affidavit failed to demonstrate or reflect that the changes in question were reasonable and necessary to serve an important state interest, the case would be remanded for further proceedings. *Simpson v. North Carolina Local Gov't Em-*

ployees' Retirement Sys., 88 N.C. App. 218, 363 S.E.2d 90 (1987), aff'd, 323 N.C. 362, 372 S.E.2d 559 (1988).

§ 128-38.1. 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) made 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 were qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

§ 128-38.2. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars (\$200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and (e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 $\frac{1}{2}$ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. (1989, c. 276, s. 2.)

Editor's Note. — Session Laws 1989, c. 276, s. 5 makes this section effective January 1, 1989.

Chapter 129.

Public Buildings and Grounds.

Article 7.

North Carolina Capital Building Authority.

Sec.

129-40 to 129-49. [Repealed.]

ARTICLE 7.

North Carolina Capital Building Authority.

§§ 129-40 to 129-49: Repealed by Session Laws 1987, c. 71, s. 2, effective April 14, 1987.

Cross References. — As to the State Building Commission, see § 143-135.25 et seq.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1989

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1989 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

