THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1988 CUMULATIVE SUPPLEMENT

Volume 3B, Part II

Chapters 130 through 136

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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

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

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Preface

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

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

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

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

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

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

User's Guide

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

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1987 (Regular Session, 1988) Session affecting Chapters 130 through 136 of the General Statutes.

Annotations:

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

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

The General Statutes of North Carolina
1988 Cumulative Supplement

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ARTICLE 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-5. Duties of the Secretary.

Editor's Note. —

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

Session Laws 1987, c. 738, s. 82 makes legislative findings and appropriates funds to the Department of Human Resources and the Department of Public Education to meet the needs of the class of children identified in the case of Willie M. et al. vs. Hunt et al. The act calls for continued implementation of the prospective unit cost reimbursement system and sets out reporting requirements. The section further provides that no state funds shall be expended on the placement and services of class members except for those funds appropriated in s. 2 of the act to the Departments of Human Resources and Public Education for programs serving that class, and except for such funds as may be elsewhere appropriated specifically for such purposes, but does not include the use of unexpended funds from prior fiscal years. In addition, this section provides that if the Department of Human Resources determines that a local program is not providing appropriate services to members of the class, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 148.6 amends Session Laws 1987, c. 738, s. 82(e) by setting out reporting requirements to be submitted by May 1, 1989.

Part 2. Remedies.

§ 130A-22. Administrative penalties.

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

(b) The Secretary may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

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

(g) The Secretary may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of the administrative penalty whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

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

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

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

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

Session Laws 1987, c. 704, s. 1, effective July 31, 1987, substituted "twenty-five thousand dollars ($25,000)" for "five thousand dollars ($5,000)" in subsection (b).

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

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

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

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

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

§ 130A-24. Appeals procedure.

(a) Appeals concerning the enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

(b) Appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with subsections (b), (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(d) A person who wishes to contest a decision of the local board of health under subsection (b) of this section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the board. The scope of review in district court shall be the same as in G.S. 150B-51. (1983, c. 891, s. 2; 1987, c. 482; c. 827, s. 248.)

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

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

Session Laws 1987, c. 827, s. 248, effective August 13, 1987, deleted "interpretation and" preceding "enforcement" in the first sentence of subsections (a) and (b) and substituted the present second sentence of subsection (d) for the former last two sentences thereof.

§ 130A-25. Misdemeanor.

(a) A person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

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

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

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

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

ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

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

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the six professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a

licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; c. 940, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1981, c. 104; 1983, c. 891, s. 2; 1985, c. 418, s. 1; 1987, c. 84, s. 1.)

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

Effect of Amendments. —

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

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

OPINIONS OF ATTORNEY GENERAL

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

§ 130A-37. District board of health.

(c) Except as provided in this subsection, members of a district board of health shall serve terms of three years. Two of the original members shall serve terms of one year and two of the original members shall serve terms of two years. No member shall serve more than three consecutive three-year terms unless the member is the only person residing in the district who represents one of the six professions designated in subsection (b) of this section. County commissioner members shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. The county commissioner members may appoint a member for less than a three-year term to achieve a staggered term structure.

(1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; c. 940, s. 1; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1; 1981, cc. 104, 238, 408; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1077; 1985, c. 418, s. 2; 1987, c. 84, s. 2.)

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

Effect of Amendments. —

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

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

OPINIONS OF ATTORNEY GENERAL

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

Part 2. Sanitary Districts.

§ 130A-47. Creation by Commission.

Legal Periodicals. — For note on AIDS and employment discrimination, see 23 Wake Forest L. Rev. 305 (1988).

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

(b1) If a sanitary district:

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

the boards of county commissioners in all counties with territory in the sanitary district may set the sanitary district elections to be held on the same date as general elections in even-numbered years under G.S. 163-1 and may extend the terms of any sanitary district board members who are in office at the ratification of this act until the next even-year general election can been [be] held and successors qualified.

(1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644; 1973, c. 476, s. 128; 1981, c. 186, s. 1; 1983, c. 891, s. 2; 1987, c. 22, s. 1.)

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

Editor's Note. — The bracketed word "be" in subdivision (b1) has been inserted to reflect the language apparently intended.

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

§ 130A-62. Annual budget; tax levy.

(c) For sanitary districts whose taxes are collected by the county, before May 1 of each year, the assessor of each county in which the district is located shall certify to the district board the total assessed value of property in the county subject to taxation by the district, and the county's assessment ratio. By July 1 or upon adoption of its annual budget ordinance, the district board shall certify to the county board of commissioners the rate of ad valorem tax levied by the district on property in that county. If the assessment ratios are not identical in all counties, the district budget ordinance shall levy separate rates of ad valorem taxes for each county. These rates shall be adjusted so that the effective rate is the same for all property located in the district. The "effective rate" is the rate of tax which will produce the same tax liability on property of equal appraised value. Upon receiving the district's certification of its tax levy, the county commissioners shall compute the district tax for each taxpayer and shall separately state the district tax on the county tax receipts for the fiscal year. The county shall collect the district tax in the same manner that county taxes are collected and shall remit these collections to the district at least monthly. Partial payments shall be proportionately divided between the county and the district. The district budget ordinance may include an appropriation to the county for the cost to the county of computing, billing and collecting the district tax. The amount of the appropriation shall be agreed upon by the county and the district, but may not exceed five percent (5%) of the district levy. Any agreement shall remain effective until modified by mutual agreement. The amount due the county for collecting the district tax may be deducted by the county from its monthly remittances to the district or may be paid to the county by the district.

(1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1959, c. 994; 1963, c. 1226; 1965, c. 496, s. 3; 1971, c. 780, s. 29; 1983, c. 891, s. 2; 1987, c. 45, s. 1.)

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

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the first sentence of subsection (c).

§ 130A-80. Merger of district with contiguous city or town; election.

A sanitary district may merge with a contiguous city or town in the following manner:

(6) A majority of all the votes cast by voters of the sanitary district and a majority of all the votes cast by voters of the city or town is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast in either the sanitary district or the city or town vote against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.

(1961, c. 866; 1981, c. 186, s. 7; 1983, c. 891, s. 2; 1987, c. 314, s. 1.)

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

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

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

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

Two contiguous sanitary districts may merge in the following manner:

(6) If a majority of all the votes cast in each sanitary district vote in favor of the merger, the two sanitary districts shall be merged on July 1 following the election. Should the majority of the votes cast in either sanitary district be against the proposition, the sanitary districts shall not be merged. If a majority of the votes cast in either sanitary district are against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.

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

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

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

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

§ 130A-85. Further dissolution procedures.

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

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

(2) The District has no outstanding bonded indebtedness;

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

(4) The Board of Commissioners adopts a plan providing for continued operation and provision of all services previously being performed or rendered to the District. No plan shall be adopted unless at the time of its adoption any water and sewer or sanitary system being operated by the District is in compliance with all local, State, and federal rules and regulations; and

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

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

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

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

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

(1) As a part of county government; or

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

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

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

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

Article 4.

Vital Statistics.

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

CASE NOTES

Statements Regarding Insured's Suicide Properly Excluded. — In case brought by widow of insured to recover under life insurance policy, statements listing suicide as the cause of death in the medical examiner's report were properly excluded at trial. Drain v. United Servs. Life Ins. Co., 85 N.C. App. 174, 354 S.E.2d 269, cert. denied, 320 N.C. 630, 360 S.E.2d 85 (1987).

In case brought by widow of insured to recover under life insurance policy, coroner's statement on death certificate, to the effect that the gunshot wound killing the insured was intentionally self-inflicted, was not based on personal knowledge of the events which took place and could only be described as hearsay and conclusory. The admission of such a statement would thwart the fairness of the trial and in essence shift the burden of proof on the issue of the cause of death from defendant to plaintiff. Therefore, the exclusion of this statement on the death certificate was proper. Drain v. United Servs. Life Ins. Co., 85 N.C. App. 174, 354 S.E.2d 269, cert. denied, 320 N.C. 630, 360 S.E.2d 85 (1987).

Article 5.

Maternal and Child Health.

Part 3. Sickle Cell.

§ 130A-129. Department to establish program.

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

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

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

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

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

ARTICLE 6.

Communicable Diseases.

Part 1. In General.

§ 130A-133. Definitions.

The following definitions shall apply throughout this Article:

(1) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host or vector, or through the inanimate environment.

(2) "Isolation authority" means the authority to limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(3) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

(4) "Quarantine authority" means the authority to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. The term also means the authority to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease listed in G.S. 130A-152 when the local health director determines that such immunizations are required to control an outbreak of that disease.

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

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

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

Legal Periodicals. — For note that addresses the effect of a recent United States Supreme Court decision on sodomy laws and the manner in which society may shape its characterization of Acquired Immune Deficiency Syndrome (AIDS) and homosexuality, see 66 N.C.L. Rev. 226 (1987).

§ 130A-134. Reportable diseases and conditions.

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

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

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

§ 130A-135. Physicians to report.

A physician licensed to practice medicine who has reason to suspect that a person about whom the physician has been consulted professionally has a communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the physician is consulted. (1893, c. 214, s. 11; Rev., s. 3448; 1917, c. 263, s. 7; C.S., s. 7151; 1921, c. 223, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 782, s. 5.)

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

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

§ 130A-136. School principals and day-care operators to report.

A principal of a school and an operator of a day-care facility, as defined in G.S. 110-86(3), who has reason to suspect that a person within the school or day-care facility has a communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the school or facility is located. (1979, c. 192, s. 2; 1983, c. 891, s. 2; 1987, c. 782, s. 6.)

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

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

§ 130A-137. Medical facilities may report.

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

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

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

§ 130A-138. Operators of restaurants and other food or drink establishments to report.

An operator of a restaurant or other establishment where food or drink is prepared or served for pay, as defined in G.S. 130A-247(4) and (5), shall report information required by the Commission to the local health director of the county or district in which the restaurant or food establishment is located when the operator has reason to suspect an outbreak of food-borne illness in its customers or employees or when it has reason to suspect that a food handler at the establishment has a food-borne disease or food-borne condition required by the Commission to be reported. (1917, c. 263, s. 9; C.S., s. 7153; 1921, c. 223, s. 3; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1979, c. 192, s. 3; 1983, c. 891, s. 2; 1987, c. 782, s. 8.)

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

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

§ 130A-139. Persons in charge of laboratories to report.

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

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

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

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

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

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

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

§ 130A-140. Local health directors to report.

A local health director shall report to the Department all cases of diseases or conditions or laboratory findings of residents of the jurisdiction of the local health department which are reported to the local health director pursuant to this Article. A local health director shall report all other cases and laboratory findings reported pursuant to this Article to the local health director of the county or district where the person with the reportable disease or condition or laboratory finding resides. (1919, c. 206, s. 2; C.S., s. 7192; 1957, c. 1357, s. 1; 1961, c. 753; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 782, s. 10.)

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

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

§ 130A-141. Form, content and timing of reports.

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

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

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

§ 130A-142. Immunity of persons who report.

A person who makes a report pursuant to the provisions of this Article shall be immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of making that report. (1983, c. 891, s. 2; 1987, c. 782, s. 12.)

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

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

§ 130A-143. Confidentiality of records.

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

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

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

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

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;

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

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

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

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

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

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

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

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

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

§ 130A-144. Investigation and control measures.

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

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

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

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

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

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

(g) The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions subject to the limitations of G.S. 130A-148. Temporary rules prescribing control measures for communicable diseases and conditions shall be adopted pursuant to G.S. 150B-13. (1893, c. 214, s. 16; Rev., s. 4459; 1909, c. 793, s. 8; C.S., s. 7158; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 782, s. 14.)

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

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

§ 130A-145. Local health director has quarantine and isolation authority.

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

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

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

Legal Periodicals. — For a note that addresses the effect of a recent United States Supreme Court decision on sodomy laws and the manner in which society may shape its characterization of Acquired Immune Deficiency Syndrome (AIDS), and homosexuality, see 66 N.C.L. Rev. 226 (1987).

§ 130A-148. Laboratory tests for AIDS virus infection.

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

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

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

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

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

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

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

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

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

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

Part 2. Immunization.

§ 130A-155.1. Submission of certificate to college or universities.

(a) No person shall attend a college or university, whether public, private, or religious, excluding educational institutions established under Chapter 115D of the General Statutes, excluding students attending night classes only, and excluding students matriculating in off-campus courses at either public or private institutions, unless a certificate of immunization indicating that the person has received immunizations required by G.S. 130A-152 is presented to the college or university. The person shall present a certificate of immunization on or before the first day of matriculation to the registrar of the college or university, provided, however, that if a college or university obtains the certificate of immunization from a high school located in North Carolina, the requirements of this

section are satisfied. If a certificate of immunization is not in the possession of the college or university on the first day of matriculation, the college or university shall present a notice of deficiency to the person. The person shall have 30 calendar days from the first day of attendance to obtain the required immunization. If the administration of vaccine in a series of doses given at medically approved intervals requires a period in excess of 30 calendar days, additional days upon certification by a physician may be allowed to obtain the required immunization. Upon termination of 30 calendar days or the extended period, the college or university shall not permit the person to attend the school unless the required immunization has been obtained.

(b) The college or university shall maintain on file immunization records for all persons attending the school which contain the information required for a certificate of immunization as specified in G.S. 130A-154. These certificates shall be open to inspection by the Department and the local health department during normal business hours. When a person transfers to another college or university, the college or university which the person previously attended shall, upon request, send a copy of the person's immunization record at no charge to the college or university to which the person has transferred.

(c) Within 60 calendar days after the commencement of a new school year, the college or university shall file an immunization report with the Department. The report shall be filed on forms prepared by the Department and shall state the number of persons attending the school of facility, the number of persons who had not obtained the required immunization within 30 days of their first attendance, the number of persons who received a medical exemption and the number of persons who received a religious exemption.

(d) The provisions of this section shall not apply to persons enrolled in a college or university on or before July 1, 1986 unless after July 1, 1986, the person transfers, interrupts study for a period of six months or more, or graduates. (1985, c. 692, s. 1; 1987, c. 782, s. 17.)

Editor's Note. —

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

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

§ 130A-156. Medical exemption.

If a physician licensed to practice medicine in this State certifies that an immunization required by G.S. 130A-152 is or may be detrimental to a person's health due to the presence of a specific contraindication, the person is not required to receive the specified immunization as long as the contraindication persists. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 18.)

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

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

Part 3. Venereal Disease.

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

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

Part 5. Tuberculosis.

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

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

Part 6. Rabies.

CASE NOTES

***Editor's Note.** — The cases below were decided under former statutory provisions relating to vicious animals.*

Purpose. — Former provisions relating to vicious animals were enacted for the specific purpose of protecting the public from dogs which have become vicious or a menace to public health. Swaney v. Shaw, 27 N.C. App. 631, 219 S.E.2d 803 (1975).

Ordinance Valid. — An ordinance of a city making it unlawful to keep a dog which habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, bicycles or vehicles is a valid exercise of the city's police power. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

To safeguard and promote the public health, safety and convenience, municipal power to regulate the keeping and licensing of dogs within the corporate area is generally recognized, and ordinances regulating and requiring them to be registered, licensed, and at times muzzled and prevented from going at large, are within the police powers usually conferred upon the local corporation. Such ordinances are authorized by virtue of general powers and the usual general welfare clause. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

A town ordinance dealing with dogs running at large was not inconsistent with former provisions relating to vi-

cious animals, which were designed to provide minimum protection against vicious dogs in all parts of the State — rural, urban, small villages and large cities. With more concentrated population, cities are justified in adopting stricter regulations for dogs. Thus, a city was authorized to require a higher standard of conduct or condition with respect to the keeping of dogs within its corporate limits than was required for the State generally. Pharo v. Pearson, 28 N.C. App. 171, 220 S.E.2d 359 (1975).

Violation of Safety Statute as Negligence Per Se. — The violation of a statute which imposes a duty upon the defendant in order to promote the safety of others, including the plaintiff, is negligence per se, unless the statute, itself, otherwise provides. Swaney v. Shaw, 27 N.C. App. 631, 219 S.E.2d 803 (1975).

Evidence Insufficient to Show Dog "Vicious". — Evidence that a small dog frequently dashed into the street to bark at and pursue motorcycles, automobiles, and other noisy vehicles was not sufficient to justify classifying him as a "vicious" animal and did not make him "a menace to the public health." Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966); Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

Canine courage in a contest for the championship of the neighborhood, together with determination to remain on possession of the field of battle "whence all but him had fled," was not evidence of a vicious character within the meaning of former statute. Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966).

§ 130A-187. County rabies vaccination clinics.

The local health director shall organize or assist other county departments to organize at least one countywide rabies vaccination clinic per year for the purpose of vaccinating dogs and cats. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area. (1983, c. 891, s. 2; 1987, c. 219.)

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

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

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

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

ARTICLE 8.

Sanitation.

Part 2. Meat Markets.

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

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of markets where meat food products (as defined in G.S. 106-549.15(14)) or poultry products (as defined in G.S. 106-549.51(26)) are prepared and sold. The rules shall also provide a system of grading the markets. A market shall satisfy the minimum sanitation requirements prescribed by the rules in order to operate. The rules shall include, but not be limited to, the establishment of sanitation requirements concerning the preparation and storage of all food at the markets; construction and cleanliness of the building, equipment and utensils; water supply; toilet and handwashing facilities; sewage collection, treatment and disposal facilities; disposal of waste; lighting and ventilation; vermin control; and health of employees.

(b) No market shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued to the owner or operator of the market and shall not be transferable. A permit shall be issued only when the market satisfies all of the requirements of the rules. A permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the market to maintain a minimum grade of C. A permit may otherwise be suspended or revoked in accordance with G.S. 130A-23. (1937, c. 244, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 463, s. 1; 1983, c. 891, s. 2; 1987, c. 438, s. 1.)

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

Part 4. Institutions and Schools.

§ 130A-235. Regulation of sanitation in institutions.

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

shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories. This section shall not apply to State institutions and facilities subject to inspection under G.S. 130A-5(10). (1945, c. 829, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 543, s. 1.)

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

Effect of Amendments. — The 1987 amendment, effective February 1, 1988, substituted the present first five sentences for a former first sentence, which read "For the protection of the public health, the Commission shall adopt rules to establish sanitation requirements for hospitals, psychiatric hospitals, nursing homes, domiciliary homes, residential care facilities, educational institutions and other facilities where patients, residents or students are provided room or board."

Part 5. Migrant Housing.

§ 130A-241. Inspection and reports.

OPINIONS OF ATTORNEY GENERAL

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

Part 6. Regulation of Food and Lodging Facilities.

§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:

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

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

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

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

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

(b) No facility shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued to the owner or operator of the facility and shall not be transferable. A permit shall be issued only when the facility satisfies all of the requirements of the rules. A permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit may otherwise

be suspended or revoked in accordance with G.S. 130A-23. (1941, c. 309, s. 1; 1955, c. 1030, s. 1; 1957, c. 1214, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 438, s. 2.)

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

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted the last two sentences of subsection (d) for a former final sentence, which read "A permit shall be revoked for failure of the facility to maintain a minimum grade of C, and a permit may be revoked for failure to comply with the other provisions of the rules where an imminent health hazard may exist."

§ 130A-249. Inspections; report and grade card.

The Secretary may enter any facility where food or drink is prepared or served for pay or where lodging is provided for pay for the purpose of making inspections. The Secretary shall inspect each restaurant at least quarterly. The person responsible for the management or control of a facility shall permit the Secretary to inspect every part of the facility and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the facility with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the facility or upon picking up food prepared inside but received and paid for outside the facility through delivery windows or other delivery devices. If a single facility has one or more outside delivery service stations and an internal delivery system, that facility shall have a grade card posted where it may be readily visible upon entering the facility and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the facility. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary. (1941, c. 309, s. 2; 1955, c. 1030, s. 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 145; c. 189.)

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

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

Part 8. Bedding.

§ 130A-261. Definitions.

The following definitions shall apply throughout this Part:

(1) "Bedding" means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other item used principally for sleeping. This definition includes only those items which have a thickness of more than one inch. This definition also includes dual purpose furniture such as studio couches and sofa beds. The term "mattress" does not include water bed liners, blad-

ders or cylinders but does include padding or cushioning material which has a thickness of more than one inch.

(1937, c. 298, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 1; 1983, c. 891, s. 2; 1987, c. 456, s. 1.)

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

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, inserted "decorative pillow" in subdivision (1).

§ 130A-262. Sanitizing.

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

(1937, c. 298, s. 2; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 2.)

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

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, deleted "and shall affix to the bedding the adhesive stamp required by G.S. 130A-269" at the end of subsection (c).

§ 130A-265. Tagging requirements.

(a) A tag of durable material approved by the Commission shall be sewed securely to all bedding. The tag shall be at least two inches by three inches in size.

(b) The following shall be plainly stamped or printed upon the tag with ink in English:

(1) The name and kind of material or materials used to fill the bedding which are listed in the order of their predominance;

(2) A registration number obtained from the Department; and

(3) In letters at least one-eighth inch high the words "made of new material", if the bedding contains no previously used material; or the words "made of previously used materials", if the bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.

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

(1937, c. 298, ss. 2, 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476 s. 128; 1983, c. 891, s. 2; 1987, c. 456, ss. 3, 4.)

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

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

§ 130A-267. Selling regulated.

(a) No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, and labeled in the manner required by this Part and which does not otherwise comply with the provisions of this Part.

(1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 5.)

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

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, substituted "tagged, and labeled" for "tagged, labeled and stamped" in subsection (a).

§ 130A-268. Registration numbers.

(a) All persons manufacturing or sanitizing bedding in this State or manufacturing bedding to be sold in this State shall apply for a registration number on a form prescribed by the Secretary. Upon receipt of the completed application and applicable fees, the Department shall issue to the applicant a certificate of registration showing the person's name and address, registration number and other pertinent information required by the rules of the Commission.

(b) to (e) Repealed by Session Laws 1987, c. 456, s. 6, effective January 1, 1988. (1937, c. 298, s. 7; 1951, c. 929, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1971, c. 371, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 6.)

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

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

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

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

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

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

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

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

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

(f) For the sole purpose of computing fees for which a person is responsible, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; one pad is defined as one bedding unit; one sleeping bag is defined as one bedding unit; five comforters, pillows or decorative pillows are defined as one bedding unit, and any other item is defined as one bedding unit.

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

(h) The Commission shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department in order to establish the number of bedding units that were, during the preceding calendar year:

(1) Manufactured and sold in this State;

(2) Manufactured outside of this State and sold in this State; and

(3) Manufactured in this State but not sold in this State.

(i) The Commission may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete, misleading or incorrect. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771; 1971, c. 371, ss. 4-7; 1973, s. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 7.)

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

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

§ 130A-271. Enforcement by the Department.

(b) The Secretary may prohibit sale and place an "off sale" tag on any bedding which is not made, sanitized, or tagged as required by this Part and the rules of the Commission. The bedding shall not be sold or otherwise removed until the violation is remedied and the Secretary has reinspected it and removed the "off sale" tag.

(1937, c. 298, s. 6; 1957, c. 1357, s. 1; 1971, c. 371, s. 8; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 8.)

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

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

§ 130A-272. Exemptions for blind persons and State institutions.

(a) In cases where bedding is manufactured, sanitized or renovated in a plant or place of business which has qualified as a nonprofit agency for the blind or severely handicapped under P.L. 92-28, as amended, the responsible person shall satisfy the provisions of this Part and the rules of the Commission. However, the responsible persons at these plants or places of business shall not be required to pay fees in accordance with G.S. 130A-269.

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

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

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

ARTICLE 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

The following definitions shall apply throughout this Article:

(1b) "Commercial" when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(7b) "Hazardous waste management program" means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(16a) "Septage" means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids and sludge of human or domestic origin which is removed from a septic tank system.

(16b) "Septage management firm" means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community sanitary sewage systems that treat or dispose septage.

(1969, c. 899; 1975, c. 311, s. 2; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 1; 1981, c. 704, s. 4; 1983, c. 795, ss. 1, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 2; 1985, c. 738, s. 1; 1987 (Reg. Sess., 1988), c. 1020, s. 1; c. 1058, s. 1.)

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

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

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

Session Laws 1987 (Reg. Sess., 1988), c. 1020, which added subdivisions (1b) and (7b), provides in s. 3 that the act shall not be construed to affect any obligation to pay fees due under this section as in effect prior to July 1, 1988.

Session Laws 1987 (Reg. Sess., 1988), c. 1058, which added subdivisions (16a) and (16b), provides in s. 2 that the act shall become effective January 1, 1989, except that the provision that requires septage management firms to obtain a permit to operate shall become effective July 1, 1989. Rules adopted pursuant to the act shall not be effective before January 1, 1989.

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988), c. 1020, s. 1, effective July 1, 1988, added subsections (1b) and (7b).

Session Laws 1987 (Reg. Sess., 1988), c. 1058, s. 1, effective January 1, 1989, added subdivisions (16a) and (16b).

Part 2. Solid and Hazardous Waste Management.

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

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

OPINIONS OF ATTORNEY GENERAL

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

§ 130A-291.1. Septage management program.

(a) The Department shall establish and administer a septage management program in accordance with the provisions of this section.

(b) For the protection of the public health, the Commission shall adopt rules governing the management of septage. The rules shall include, but not be limited to, criteria for the sanitary management of septage, including standards for transportation, storage, treatment and disposal; issuance, suspension and revocation of permits; and procedures for payment of annual fees.

(c) No septage management firm shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued only when the septage management firm satisfies all of the requirements of the rules adopted by the Commission.

(d) Septage shall be treated and disposed only at public or community sanitary sewage systems designed to discharge effluent to the surface waters and at sites permitted by the Department. The permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

(e) Every septage management firm operating one septage pumper truck shall pay to the Department an annual fee of three hundred dollars ($300.00) by 1 January for that calendar year. Every septage management firm operating two or more septage pumper trucks shall pay to the Department an annual fee of four hundred dollars ($400.00) by 1 January for that calendar year. All fees collected by the Department under this subsection shall be deposited with the State Treasurer and shall be used, subject to appropriation by the General Assembly, to staff and support the septage management program.

(f) All public or community sanitary sewage systems designed to discharge effluent to the surface waters may accept, treat and dispose septage from permitted septage management firms, unless acceptance of the septage would constitute a violation of the permit conditions of the sanitary sewage system. The sanitary sewage system may charge a reasonable fee for acceptance, treatment and disposal of septage. (1987 (Reg. Sess., 1988), c. 1058, s. 2.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1058, s. 2 provides: "This act shall become effective January 1, 1989, except that the provision that requires septage management firms to obtain a permit to operate shall become effective July 1, 1989. Rules adopted pursuant to this act shall not be effective before January 1, 1989."

§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to preempt local ordinance.

(a) Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, (including but not limited to those imposing taxes, fees, charges, or regulating health, environment, and land use), any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility which the Governor's Waste Management Board (herein called "Board") has preempted pursuant to subsections (b) through (g) of this section, shall be invalid only to the extent necessary to effectuate the purposes of this Chapter and Part 11A of Article 10 of Chapter 143B of the General Statutes. For the purpose of this section, the Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the local governing body of the county in which the facility is or is to be located. If the facility is or is to be located on more than one county, or if the facility is or is to be located within the boundaries of a city, the governing body of each city and county in which any portion of the facility is or is to be located shall have one appointment. Failure of a local governing body to make an appointment within 30 days after receipt of a written notice shall be deemed a vacancy in an unexpired term and shall be filled by appointment of a majority of the Board members. The terms of the members appointed by the local governing body shall end upon the final determination of the Board under this section, and such members shall serve as members of the Board only for the purposes of this section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the operator of the facility or the Hazardous Waste Treatment Commission may petition the Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Board, the Board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality within 60 days after receipt of the petition by the Board. The Board shall give notice of the public hearing by:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and

(2) First class mail to persons who have requested such notice. The Board shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Service by mail is complete upon placing the notice, enclosed in a wrapper addressed to the person to be served with sufficient postage prepaid and addressed to the party at his designated address.

Any interested persons may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any interested persons may submit written evidence to the Board for its consideration. At least 20 days will be allowed for receipt of written comment following the hearing.

(d) The Board shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Board shall preempt a local ordinance only if it makes all five of the following findings:

(1) That there is a local ordinance which would prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility;

(2) That the proposed facility is needed in order to establish adequate capability for the management of hazardous waste generated in this State and therefore serves the interest of the citizens as a whole;

(3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies and that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);

(4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and

(5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator or Treatment Commission has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with and [any] applicable local ordinance(s).

If the Board does not make all five findings set out above, the Board shall not preempt the challenged local ordinance(s). The Board's decision shall be in writing and shall identify the evidence submitted to the Board plus any additional evidence used in arriving at the decision.

(e) The decision of the Board shall be final unless a party to the action shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-29 and this section, file a written appeal within 30 days of the date of such decision. The record on appeal shall consist of all materials and information submitted to or considered by the Board, the Board's written decision, a complete transcript of the hearing, all written material presented to the Board regarding the site location and the specific findings required in subsection (d), and any minority positions on the recommendation and specific findings required in this subsection. The scope of judicial review shall be that the court may affirm the decision of the Board, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedure; or

(4) Affected by other error or law; or
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or
(6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for such reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

(g) The provisions of this section shall not apply to the siting of a hazardous waste landfill facility until the rules for the operation applicable to a hazardous waste landfill have been adopted by the appropriate State agencies. (1981, c. 704, s. 5; 1983, s. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 3-5; 1987, c. 827, s. 249; 1987 (Reg. Sess., 1988), c. 993, s. 28; c. 1082, s. 13.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 9 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

It would appear that the word "and" near the end of subdivision (d)(5) was intended to read "any."

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "in accordance with Article 2 of Chapter 150A of the General Statutes" following "affected locality" in the second sentence of subsection (c).

Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 28, effective June 27, 1988, rewrote this section.

Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 13, effective July 8, 1988, rewrote subdivision (d)(1) of this section, as previously rewritten by Session Laws 1987 (Reg. Sess., 1988), c. 993.

OPINIONS OF ATTORNEY GENERAL

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

§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;
(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;
(3) Develop and adopt rules to establish standards for qualification as a waste "recycling, reduction or resource recovering facility" or as waste "recycling, reduction or resource recovering equipment" for the purpose of special tax classi-

fications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4) Develop a permit system governing the establishment and operation of solid waste management facilities. No permit shall be granted for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, without the Department receiving the prior approval for such permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in. No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit.

The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;

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

(5) Repealed by Session Laws 1983, c. 795, s. 3.

(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such des-

ignation be made and after receipt by the Department of a solid waste management plan which shall include:

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

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) The Department is authorized to charge and collect fees from operators of hazardous waste landfill facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treat-

ment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article.

(f) Within five days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk to the county board of commissioners or, if the facility is located within a city, the city clerk where the facility is proposed to be located. Prior to the issuance of a permit or an amendment of an existing permit for a hazardous waste facility, the Department shall issue public notice and conduct a public hearing in any county in which a hazardous waste facility is to be located. Notice and public hearings shall be in accordance with the appropriate federal regulations adopted pursuant to the federal act and with Chapter 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B of the General Statutes are inconsistent, the federal regulations shall apply.

Within 180 days after receiving a complete application for a permit or for an amendment to an existing permit for a comprehensive hazardous waste treatment facility, the Department shall approve or disapprove the application. In acting upon the application, the Department shall consider land use, zoning, buffer zones, utility availability, proximity to sources of waste, civil defense, fire safety, transportation and access, existing road network, general considerations of the public's health and safety, and any other objective factors reasonably related and relevant to the proper siting and operation of the comprehensive hazardous waste treatment facility. The Department may impose conditions in a permit in response to these factors. The Department's denial of an application shall be in writing, shall state the reasons for the denial, and shall inform the applicant of the right to appeal the denial.

(j) The Commission may adopt rules for financial responsibility (including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures, and for potential liabililty of sudden and nonsudden accidental occurrences), which may permit the use of insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trust, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would have been provided by insurance if insurance were the only mechanism used. Any direct or indirect parent corporation or other parent entity of the operator of a commercial hazardous waste treatment facility shall be deemed to be a guarantor of payment by the operator for closure, monitoring, and corrective measures and for liability incurred by the operator arising from the operation of the commercial hazardous waste treatment facility. The Department may provide a copy of any filing to meet the financial responsibility requirements to the State Treasurer, who shall review the filing and provide written comments on the equivalency of protection provided by the filing, including recommended changes. (1969, c. 899;

1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2; 1981, c. 704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 31; 1987, c. 597; c. 761; c. 773, s. 1; c. 827, ss. 1, 250; c. 848; 1987 (Reg. Sess., 1988), c. 1111, s. 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. 773, which amended subdivision (a)(7), provides in s. 3 that the act does not limit any authority which any city or county may otherwise have to impose local permit application fees.

Effect of Amendments. —

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

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

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

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

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

The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, added the last two sentences of the second paragraph of subsection (f).

OPINIONS OF ATTORNEY GENERAL

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

§ 130A-294.1. Fees applicable to generators and transporters of hazardous waste, and to hazardous waste storage, treatment, and disposal facilities.

(a) It is the intent of the General Assembly that the fee system established by this section is solely to provide funding in addition to federal and State appropriations to support the State's hazardous waste management program.

(b) Funds collected pursuant to this section shall be used for personnel and other resources necessary to:

(1) Provide a high level of technical assistance and waste minimization effort for the hazardous waste management program;

(2) Provide timely review of permit applications;

(3) Insure that permit decisions are made on a sound technical basis and that permit decisions incorporate all conditions necessary to accomplish the purposes of this Part;

(4) Improve monitoring and compliance of the hazardous waste management program,

(5) Increase the frequency of inspections;

(6) Provide chemical, biological, toxicological, and analytical support for the hazardous waste management program; and

(7) Provide resources for emergency response to imminent hazards associated with the hazardous waste management program.

(c) It is the intent of the General Assembly that the total funds collected per year pursuant to this section shall not exceed twenty-five percent (25%) of the total funds budgeted from all sources for the hazardous waste management program. This subsection shall not be construed to limit the obligation of any person to pay any fee imposed by this section.

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

(e) A person who generates either one kilogram or more of any acute hazardous waste as listed in 40 C.F.R. § 261.30(d) or § 261.33(e) as revised 1 July 1987, or 1000 kilograms or more of hazardous waste, in any calendar month during the year beginning 1 July and ending 30 June shall pay an annual fee of five hundred dollars ($500.00).

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

(g) A person who generates one kilogram or more of acute hazardous waste or 1000 kilograms or more of hazardous waste in any calendar month during the calendar year shall pay, in addition to any fee under subsections (e) and (f) of this section, a tonnage fee of fifty cents ($0.50) per ton or any part thereof of hazardous waste generated during that year up to a maximum of 25,000 tons.

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

(i) Hazardous waste generated as a result of any type of remedial action or by collection by a local government of hazardous waste from households shall not be subject to a tonnage fee under subsection (g) and (l) of this section.

(j) A person who transports hazardous waste shall pay an annual fee of six hundred dollars ($600.00).

(k) A storage, treatment, or disposal facility shall pay an annual activity fee of one thousand two hundred dollars ($1,200) for each activity.

(*l*) A commercial hazardous waste storage, treatment, or disposal facility shall pay annually, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities, a single tonnage charge of one dollar and seventy-five cents ($1.75) per ton or any part thereof of hazardous waste stored, treated, or disposed of at the facility.

(m) An applicant for a permit for a hazardous waste storage, treatment, or disposal facility that proposes to operate as a commercial facility shall pay an application fee for each proposed activity as follows:

(1) Storage facility $10,000;

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

(n) The Commission may adopt rules setting fees for modifications to permits. Such fees shall not exceed fifty percent (50%) of the application fee.

(o) Annual fees established under this section are due no later than 31 July for the fiscal year beginning 1 July in the same year. Tonnage fees established under this section are due no later than 31 July for the previous calendar year.

(p) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the hazardous waste management program. The report shall include, but is not limited to, beginning fund balance, fees collected under this section, anticipated revenue from all other sources, total expenditures (by activities and categories) for the hazardous waste management program, ending fund balance, any recommended adjustments in the annual and tonnage fees which may be necessary to assure the continued availability of funds sufficient to pay the State's share of the cost of the hazardous waste management program, and any other information requested by the General Assembly. (1987, c. 773, ss. 2, 4-8; 1987 (Reg. Sess., 1988), c. 1020, s. 2.)

Editor's Note. —

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

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

Session Laws 1987 (Reg. Sess., 1988), c. 1020, which rewrote this section, provides in s. 3 that the act shall not be construed to affect any obligation to pay fees due under this section as in effect prior to July 1, 1988.

Section 4 of Session Laws 1987 (Reg. Sess., 1988), c. 1020, provides: "Notwithstanding any other provision of law, all fees collected but not expended by the Department of Human Resources under Chapter 773 of the 1987 Session Laws shall, as of the effective date of this act, be placed in the fund created pursuant to G.S. 130A-294.1(d) as set out in section 2 of this act." Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 40.6 makes s. 4 of c. 1020 effective June 30, 1988, and applicable to fees collected but not expended during the 1987-88 fiscal year.

Effect of Amendments. — The 1987 amendment by c. 773, ss. 4-8, effective July 1, 1988, in this section as it read prior to amendment by Session Laws 1987 (Reg. Sess., 1988), c. 1020, substituted "five hundred dollars ($500.00)" for "six hundred dollars ($600.00)" in subsection (a), added subsection (b), rewrote subsections (c) and (d), and added subsection (j).

The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, rewrote this section.

§ 130A-295. Additional requirements for hazardous waste facilities.

(a) An applicant for a permit for a hazardous waste facility shall satisfy the Department that:

(1) Any hazardous waste facility constructed or operated by the applicant, or any parent or subsidiary corporation if the applicant is a corporation, has been operated in accordance, with sound waste management practices and in substantial compliance with federal and state laws, regulations and rules; and

(2) The applicant, or any parent or subsidiary corporation if the applicant is a corporation, is financially qualified to operate the proposed hazardous waste facility.

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

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

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

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

(a) As used in this section:

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

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

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

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

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

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

(2) The facility shall not discharge indirectly through a publicly owned treatment works (POTW) a hazardous or toxic substance into a surface water that is upstream from a public drinking water supply intake in North Carolina, unless there is a dilution factor of 1000 or greater, irrespective of any dilution occurring in a wastewater treatment plant, at the point of discharge into the surface water under 7Q10 conditions. (1987, c. 437, s. 1.)

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

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

§ 130A-303. Imminent hazard.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring that immediate action be taken to protect the public health or the environment. This order may be directed to a generator or transporter of solid waste or to the owner or operator of a solid waste management facility. Where the imminent hazard is caused by an inactive hazardous substance or waste disposal site, the Secretary shall follow the procedures set forth in G.S. 130A-310.5. (1977, 2nd Sess., c. 1216; 1981, c. 704, s. 7; 1983, c. 891, s. 2; 1987, c. 574, s. 3.)

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

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

§ 130A-304. Information received pursuant to this Article.

(a) For the purposes of this Article, upon a showing satisfactory to the Department by a person that all or any part of records, reports or information to which the Department has access under G.S. 130A-17, would divulge information entitled to protection under subsection (b), the Department shall consider the information confidential in accordance with the purposes of that subsection, except that the record, report or information may be disclosed to other officers, employees or authorized representatives of the Department

concerned with carrying out this Article or when relevant in any proceeding under this Article.

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

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

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

Part 3. Inactive Hazardous Sites.

§ 130A-310. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If a person violates the requirements or schedules in an order issued pursuant to this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

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

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

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

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

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

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

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

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

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

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

(1) Discharges or deposits; or

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

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

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

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

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

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

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

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

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is located.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.

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

(e) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

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

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

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

§ 130A-310.9. Maximum financial responsibility.

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

§ 130A-310.10. Annual reports.

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

(1) The Inactive Hazardous Waste Sites Priority List;

(2) A list of remedial action plans requiring State funding through the Carolina Clean Drinking Water Fund;

(3) A comprehensive budget to implement these remedial action plans and the adequacy of the Carolina Clean Drinking Water Fund to fund the cost of said plans;

(4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan;

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval;

(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Carolina Clean Drinking Water Fund to fund the possible costs of said plans;

(7) A list of sites which pose an imminent hazard; and

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

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

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

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

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

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

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

ARTICLE 10.

North Carolina Drinking Water Act.

§ 130A-313. Definitions.

The following definitions shall apply throughout this Article:

(10) "Public water system" means a system for the provision to the public of piped water for human consumption if the system serves 15 or more service connections or which regularly serves 25 or more individuals. Two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons is a public water system. The term includes:

a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and

b. Any collection or pretreatment storage facility not under the control of the operator of the system which is used primarily in connection with the system.

A public water system is either a "community water system" or a "noncommunity water system" as follows:

a. "Community water system" means a public water system which serves 15 or more service connections or

which regularly serves at least 25 year-round residents.

b. "Noncommunity water system" means a public water system which is not a community water system.

(1979, c. 788, s. 1; 1983, c. 891, s. 2; 1987, c. 704, s. 2.)

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

Effect of Amendments. — The 1987 amendment, effective July 31, 1987, inserted the present second sentence of subdivision (10).

§ 130A-321. Variances and exemptions; considerations; duration; condition; notice and hearing.

(a) The Secretary may authorize variances from the drinking water rules.

(1) The Secretary may grant one or more variances to a public water system from any requirement respecting a maximum contaminant level of an applicable drinking water rule upon a finding that:

a. Because of characteristics of the raw water sources reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of the drinking water rules after application of the best technology, treatment techniques, or other means which the Secretary finds are available (taking costs into consideration); and

b. The granting of a variance will not result in an unreasonable risk to public health when considering the population exposed, the projected duration of the requested variance and the degree to which the maximum contaminant level is being or will be exceeded.

(2) The Secretary may grant one or more variances to a public water system from any requirement of a specified treatment technique of an applicable drinking water rule upon a finding that the public water system applying for the variance has demonstrated that the treatment technique is not necessary to protect the public health because of the nature of the raw water source of the system.

(3) In consideration of whether the public water system is unable to comply with a contaminant level required by the drinking water rules because of the nature of the raw water sources, the Secretary shall consider factors such as:

a. The availability and effectiveness of treatment methods for the contaminant for which the variance is requested; and

b. Costs of implementing the best treatment(s), improving the quality of the raw water by the best means or using an alternate source.

(4) In consideration of whether a public water system should be granted a variance from a required treatment technique because the treatment is unnecessary to protect the public health, the Secretary shall consider factors such as:

a. Quality of the water source including water quality data and pertinent sources of pollution; and

b. Source protection measures employed by the public water system.

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

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

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

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

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

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

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

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

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

§ 130A-326. Powers of the Secretary.

To carry out the provisions of this Article, the Secretary is authorized to:

(1) Administer and enforce the provisions of this Article, the drinking water rules and orders issued under this Article;

(2) Enter into agreements or cooperative arrangements with, or participate in related programs of other states, other state agencies, federal or interstate agencies, units of local government, educational institutions, local health departments or other organizations or individuals;

(3) Receive financial and technical assistance from the federal government and other public or private agencies;

(4) Require public water systems to take actions or make modifications as necessary to comply with the requirements of this Article or the drinking water rules;

(5) Prescribe policies and procedures necessary or appropriate to carry out the Secretary's function under this Article;

(6) Establish and collect fees to recover the costs of laboratory analyses performed for compliance with this Article. The fees shall not exceed two hundred dollars ($200.00) for each analysis; and

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

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

Article 11.

Sanitary Sewage Systems.

§ 130A-334. Definitions.

The following definitions shall apply throughout this Article:

(11) "Sanitary sewage system" means a complete system of sewage collection, treatment and disposal including approved privies, septic tank systems, connection to public or community sewage systems, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.

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

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

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

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

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

(c) A sanitary sewage system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning sanitary sewage systems; and

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

(3) The Department has found that the rules of the local board of health concerning sanitary sewage collection, treatment and disposal systems are at least as stringent as the Commission's rules, and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

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

(1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c. 857, s. 1; 1979, c. 788, s. 2; 1981, c. 949, s. 3; c. 1127, s. 47; 1983, c. 891, s. 2; 1987, c. 267, ss. 1, 2.)

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

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

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

ARTICLE 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

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

CASE NOTES

Statements Listing Insured's Death as Suicide Excluded. — In case brought by widow of insured to recover under life insurance policy, statements listing suicide as the cause of death in the medical examiner's report were properly excluded at trial. Drain v. United Servs. Life Ins. Co., 85 N.C. App. 174, 354 S.E.2d 269, cert. denied, 320 N.C. 630, 360 S.E.2d 85 (1987).

Part 3. Uniform Anatomical Gift Act.

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

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

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

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

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

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

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

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

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

Part 4. Human Tissue Donation Program.

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

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

Part 5. Disposition of Unclaimed Bodies.

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

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

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

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

Article 17.

Childhood Vaccine-Related Injury Compensation Program.

§ 130A-422. Definitions.

Editor's Note. —

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

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

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

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

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

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

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

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

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

(3) If:

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

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

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

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

(f) Subrogation claims pursued under the National Childhood Vaccine Injury Act of 1986 shall be filed with the appropriate court, not with the Industrial Commission. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, ss. 1, 2.)

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

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

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

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

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

§ 130A-425. Filing of claims.

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

(1) The name and address of the claimant;

(2) The name and address of each respondent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 130A-432. Scope.

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

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

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

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

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

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

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

ARTICLE 18.

Health Assessments for Kindergarten Children in the Public Schools.

§ 130A-440. Health assessment required.

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

(1985 (Reg. Sess., 1986), c. 1017, s. 1; 1987, c. 114, s. 1.)

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

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

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

§ 130A-441. Reporting.

Editor's Note. —

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

§ 130A-442. Religious exemption.

Editor's Note. —

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

§ 130A-443. Rules.

Editor's Note. —

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

Chapter 131C.

Charitable Solicitation Licensure Act.

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

(b) A person other than a professional solicitor or professional fund-raising counsel may solicit charitable contributions after filing the application until the Department notifies him that the application has been denied and he waives or exhausts his administrative and judicial remedies under Chapter 150B.

(c) A person who has been denied a license and has waived or exhausted his administrative and judicial remedies under Chapter 150B shall not solicit charitable contributions until another application has been filed with the Department and a license issued by the Department. (1981, c. 886, s. 1; 1985, c. 497, s. 3; 1987, c. 827, ss. 1, 239.)

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

Effect of Amendments. —

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

CASE NOTES

Unconstitutionally Overbroad. — North Carolina's licensure procedure infringes upon the First Amendment rights of those organizations which, for various reasons, must rely on professional solicitors. The fact that (1) the licensure process is subject to North Carolina's Administrative Procedure Act, and (2) licenses have in the past been considered expeditiously is not enough to save the statute. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

Subsection (b) of this section and §§ 131C-6, 131C-16.1, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

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

CASE NOTES

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

256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

This section and §§ 131C-4(b), 131C-16.1, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

§ 131C-10. Bond.

An applicant under G.S. 131C-6 shall, at the time of making application, file with and have approved by the Department a bond in which the applicant shall be the principal obligor in the sum of twenty thousand dollars ($20,000) with one or more sureties satisfactory to the Department, whose liability in the aggregate as such sureties will at least equal the said sum; and the applicant shall maintain said bond in effect so long as the license is in effect. The bond shall run to the State for the use of said bond for any penalties and to any person who may have a cause of action against the obligor of the bond for any losses resulting from the obligor's conduct of any and all activities subject to this Chapter or arising out of a violation of this Chapter or any rule of the Commission. A bond shall not be required of any applicant who does not personally receive any of the contributions collected and who does not personally handle any of the contributions expended. (1981, c. 886, s. 1; 1985, c. 497, s. 5; 1987, c. 741.)

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

CASE NOTES

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

§ 131C-16. Disclosures upon request.

CASE NOTES

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

§ 131C-16.1. Mandatory disclosures.

CASE NOTES

Unconstitutionally Overbroad. — This section and §§ 131C-4(b), 131C-6, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

§ 131C-17.1. Employment of agents regulated.

CASE NOTES

This section is a reasonable exercise of the State's police power. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

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

CASE NOTES

Unconstitutionally Overbroad. — This section and §§ 131C-4(b), 131C-6, 131C-16.1, and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

§ 131C-21.1. Other remedies.

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

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

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

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

CASE NOTES

Unconstitutionally Overbroad. — Subsection (c) of this section and §§ 131C-4(b), 131C-6, 131C-16.1, and 131C-17.2 are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987).

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1.

Licensing of Facilities.

§ 131D-1. Licensing of maternity homes.

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

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

(d) This section does not apply to any institution which is established, maintained or operated by any unit of government, by any commercial inn or hotel, or to any facility licensed by the Medical Care Commission under the provisions of G.S. 131E-102, entitled "Licensure requirements." If any nursing home licensed under G.S. 131E-102 also functions as a domiciliary home, then the domiciliary home component must comply with rules adopted by the Medical Care Commission.

(1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C.S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 729; 1981, c. 275, s. 2; c. 544, s. 1; 1983, c. 824, ss. 1-12; 1987, c. 827, s. 241.)

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

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

CASE NOTES

Licensing regulation must bear a reasonable relationship to the legitimate state objective of promoting the safety and welfare of the aged or infirm. Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975), decided under former § 108-77.

As to validity of regulation prohibiting use of an attic for sleeping, see Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975), decided under former § 108-77.

§ 131D-3. Domiciliary care facilities; reporting requirements.

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a cost and revenue reporting form for use by all domiciliary care facilities. This form shall be based on the uniform chart of accounts required in G.S. 131D-4. All facilities that receive funds under the State-County Special Assistance for Adults Program shall report total costs and revenues to the Department of Human Resources by March 1 of each year. Facilities licensed under the provisions of G.S. 131D-2(a)(5), facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority, and combination facilities providing either intermediate or skilled care in addition to domiciliary care shall not be required to comply with the reporting requirements in this section. All facilities shall be required to permit access to any requested financial records by representatives of the Department of Human Resources for audit purposes effective July 1, 1981.

The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B. (1981, c. 859, s. 23.2; 1983, c. 611, s. 1; c. 761, s. 35; 1985, c. 479, s. 108; 1987, c. 827, ss. 1, 242.)

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

§ 131D-4. Domiciliary care facilities; uniform chart of accounts.

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a uniform chart of accounts for use by all domiciliary care facilities funded totally or in part through the State-County Special Assistance for Adults Program. The Division shall consult with representatives from the domiciliary care industry in developing the new accounting system. The Division shall require that domiciliary care facilities covered by this section to implement this chart of accounts by January 1, 1983. Facilities licensed under the provisions of G.S. 131D-2(a)(5), facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority, and

combination facilities providing either intermediate or skilled care in addition to domiciliary care, shall not be required to comply with this section.

The Department may take either or both of the following actions to enforce compliance by a facililty with this section or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B. (1981, c. 859, s. 23.3; 1983, c. 611, s. 2; c. 761, s. 35; 1987, c. 827, ss. 1, 242.)

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

Article 1A.

Control Over Child Placing and Child Care.

§ 131D-10.9. Administrative and judicial review.

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

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

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

Article 3.

Domiciliary Home Residents' Bill of Rights.

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

Cross References. — As to penalties, see § 131D-30.

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

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

To the extent that any domiciliary home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance. (1981, c. 923, s. 1; 1983, c. 88, s. 1; 1987, c. 682, s. 2.)

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

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, added subsection (i).

§ 131D-34. Penalties; remedies.

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

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

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

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

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

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified

for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

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

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

Chapter 131E.

Editor's Note. — The legislation and annotations affecting Chapter 131E have been included in a recently published replacement chapter.

Chapter 132.

Public Records.

§ 132-1. "Public records" defined.

Local Modification. — Alamance: 1987 (Reg. Sess., 1988), c. 950, s. 1(c); Caldwell: 1987, c. 472, s. 1(c); Carteret: 1987, c. 375, s. 4(c); Currituck: 1987, c. 209, s. 1(c); Duplin: 1987, c. 317, s. 1(c); Gaston: 1987, c. 618, s. 1(c); Halifax: 1987, c. 377, s. 1(c); Henderson: 1987, c. 172; Hertford: 1987 (Reg. Sess., 1988), c. 979, s. 1(c); Lee: 1987, c. 538, s. 1(c); Lenoir: 1987, c. 561, s. 1(c); Mitchell: 1987, c. 141, s. 1(c); Nash: 1987, c. 32; Pasquotank: 1987, c. 175, s. 1(c); Pender: 1987 (Reg. Sess., 1988), c. 970, s. 1(c); Pitt: 1987, c. 143, s. 1(c); Rowan: 1987, c. 379, s. 1(c); Vance: 1987 (Reg. Sess., 1988), c. 1067, s. 1(c); Wilson: 1987, c. 484, s. 1(c); Yancey: 1987, c. 140, s. 1(c); city of Elizabeth City: 1987, c. 175, s. 1(c); city of Greensboro: 1987, c. 51; cities of Hickory and Conover: 1987, c. 319, s. 1; town of Beech Mountain: 1987, c. 376, s. 2(a); town of Blowing Rock: 1987, c. 171, s. 1(c); town of Boone: 1987, c. 170, s. 1(c); town of Holden Beach: 1987 (Reg. Sess., 1988), c. 963, s. 1(c); town of Sunset Beach: 1987 (Reg. Sess., 1988), c. 956, s. 1(c); Averasboro Township: 1987, c. 142.

Cross References. — As to diaries kept in connection with construction or repair contracts, see § 136-28.5.

Editor's Note. — By virtue of Session Laws 1987, c. 172, the local modification for Henderson by Session Laws 1985 (Reg. Sess. 1986), c. 962 should be deleted from the main volume.

CASE NOTES

Cited in North Carolina Press Ass'n v. Spangler, 87 N.C. App. 169, 360 S.E.2d 138 (1987).

§ 132-6. Inspection and examination of records.

Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. Notwithstanding the foregoing, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. (1935, c. 265, s. 6; 1987, c. 835, s. 1.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, rewrote this section.

§ 132-9. Access to records.

Any person who is denied access to public records for purposes of inspection, examination or copying may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders. In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project. (1935, c. 265, s. 9; 1975, c. 787, s. 3; 1987, c. 835, s. 2.)

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added the last sentence.

Chapter 133.

Public Works.

Article 3.

Regulation of Contractors for Public Works.

ARTICLE 1.

General Provisions.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.

Local Modification. — (As to this Chapter) Tyrell: 1983, c. 208; 1985, c. 120; 1987, c. 58, s. 1; New Hanover: 1983, c. 365; Tyrell County Board of Education: 1983, c. 580; 1985, c. 120; 1987, c. 58, s. 2.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 123(b), provides: "The Office of State Budget and Management may contract for and supervise all aspects of design, construction, or demolition of prison facilities designated in subdivisions (1) through (5) of subsection (a) of this section [s. 123 of c. 1086, which provided for prison facilities construction funds] without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and 133-1.1(g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date.

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

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

Article 3.

Regulation of Contractors for Public Works.

§ 133-32. Gifts and favors regulated.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399, s. 1.)

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

Effect of Amendments. — The 1987 amendment, effective June 17, 1987, added the present second sentence of subsection (d).

Chapter 134A.

Youth Services.

Article 1.

Division of Youth Services in the Department of Human Resources.

§ 134A-1. Legislative intent and purpose.

Editor's Note. —

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

Session Laws 1987, c. 738, s. 82 makes legislative findings and appropriates funds to the Department of Human Resources and the Department of Public Education to meet the needs of the class of children identified in the case of Willie M. et al. vs. Hunt et al. The act calls for continued implementation of the prospective unit cost reimbursement system and sets out reporting requirements. The section further provides that no state funds shall be expended on the placement and services of class members except for those funds appropriated in s. 2 of the act to the Departments of Human Resources and Public Education for programs serving that class, and except for such funds as may be elsewhere appropriated specifically for such purposes, but does not include the use of unexpended funds from prior fiscal years. In addition, this section provides that if the Department of Human Resources determines that a local program is not providing appropriate services to members of the class, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 148.6 amends Session Laws 1987, c. 738, s. 82(e) by setting out reporting requirements to be submitted by May 1, 1989.

Article 3.

Commitment and Care.

§ 134A-21. Authority to provide necessary medical or surgical care.

The Department is authorized to provide such medical and surgical treatment as is necessary to preserve the life and health of students while in care, provided that no surgical operation may be performed except as authorized in G.S. 148-22.2. (1965, c. 1024; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1; 1987, c. 282, s. 21.)

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "G.S. 148-22.2" for "G.S. 130-191."

Article 5.

Detention Services.

§ 134A-36. Legislative intent.

The General Assembly intends to provide an administrative structure for implementation of the study of detention needs in North Carolina done by the National Juvenile Detention Association entitled Juvenile Detention in North Carolina: A Study Report, released in January, 1973. In addition to the authority of the Department under Article 2, Chapter 131D and Article 10, Chapter 153A, the Department shall be responsible for the development and administration of regional detention homes as recommended in the report and for coordination of regional detention services through existing county detention homes. (1973, c. 1230, s. 1; c. 1262, s. 10; 1975, c. 742, s. 1; 1987, c. 282, s. 22.)

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "Article 2, Chapter 131D" for "Part 3, Article 3, Chapter 108" near the beginning of the second sentence.

Chapter 135.

Editor's Note. — The legislation and annotations affecting Chapter 135 have been included in a recently published replacement chapter.

Chapter 136.

Roads and Highways.

Article 1.

Organization of Department of Transportation.

Sec.

Article 2.

Powers and Duties of Department and Board of Transportation.

Article 2A.

State Roads Generally.

Article 2B.

Public Transportation.

Article 2D.

Railroad Revitalization.

Sec.

Article 2E.

Roadway Corridor Official Map Act.

Article 3A.

Streets and Highways in and around Municipalities.

Article 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

Article 7.

Miscellaneous Provisions.

ARTICLE 1.

Organization of Department of Transportation.

§§ 136-16.1 to 136-16.3: Reserved for future codification purposes.

§ 136-16.4. Continuing aviation appropriations.

There is annually appropriated, beginning with the 1987-88 fiscal year, from the General Fund to the Department of Transportation for aviation purposes, a sum equal to the estimated revenue derived from the State's sales and use taxes (exclusive of refunds, penalties, and interest) collected and received on sales made on and after the first day of the fiscal year representing sales and use taxes on aircraft, aircraft parts, accessories, lubricants and aviation fuel. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.5. Purposes for continuing aviation appropriations.

The continuing aviation appropriations authorized by G.S. 136-16.4 shall be used in accordance with the provisions of Article 7 of Chapter 63 of the General Statutes. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.6. Continuing rail appropriations.

There is annually appropriated, beginning with the 1987-88 fiscal year, from the General Fund to the Department of Transportation for rail purposes the greater of one hundred thousand dollars ($100,000) or one hundred percent (100%) of the annual dividends received in the prior fiscal year (less any amounts that are required by Section 13.18 of Chapter 792, Session Laws of 1985 to be paid for the expenses of the Railroad Negotiating Commission) by the State from its ownership of stock in the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.7. Purposes for continuing rail appropriations.

The continuing rail appropriation authorized by G.S. 136-16.6 shall be used in accordance with the provisions of Article 2D of Chapter 136 of the General Statutes. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.8. Continuing appropriations for public transportation.

There is annually appropriated, beginning with the 1987-88 fiscal year, from the Highway Fund to the Department of Transportation for public transportation purposes the greater of one million six hundred forty-five thousand dollars ($1,645,000) or the amount derived by multiplying the number of vehicles estimated to be registered as of the first day of each fiscal year by fifty cents ($.50). (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

§ 136-16.9. Purposes for continuing public transportation appropriations.

The continuing public transportation appropriations authorized by G.S. 136-16.8 shall be used in accordance with the provisions of Article 2B of Chapter 136 of the General Statutes. (1987, c. 738, s. 170(a).)

Editor's Note. — Session Laws 1987, c. 738, s. 170(c) makes §§ 136-16.4 to 136-16.9 effective September 1, 1987, and provides that they shall expire June 30, 1990.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

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

ARTICLE 2.

Powers and Duties of Department and Board of Transportation.

§ 136-17.2. Members of the Board of Transportation represent entire State.

The chairman and members of the Board of Transportation shall represent the entire State in highway matters and not represent any particular person, persons, or area. The Board shall, from time to time, provide that one or more of its members or representatives shall publicly hear any person or persons concerning highway matters in each of said geographic areas of the State. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1987, c. 783, s. 3.)

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, rewrote this section.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any service road route with an average daily traffic volume of 4,000 vehicles per day or more. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, s. 1; 1987, c. 311.)

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

Editor's Note. —

Session Laws 1987, c. 417, s. 1 repealed ss. 4 and 5 of Session Laws 1985, c. 718, as quoted under this section in the main volume.

Session Laws 1987, c. 417, s. 2 amended Session Laws 1985, c. 718, s. 6 so as to delete the expiration provision set out in the main volume.

Effect of Amendments. —

The 1987 amendment, effective June 8, 1987, added subdivision (29).

OPINIONS OF ATTORNEY GENERAL

Regulatory Authority over State Highway System Streets. — The Department of Transportation is vested with general regulatory authority over the use of State Highway System streets. The general grant of authority to municipalities over streets is subordinate to the Department of Transportation's rights and duties to maintain the State Highway System. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N. C., — N.C.A.G. — (Feb. 26, 1988).

§ 136-19.4. Registration of right-of-way plans.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, — N.C. App. —, 365 S.E.2d 694 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-25. Repair of road detour.

CASE NOTES

Selection of Detour Routes Not a Discretionary Governmental Function Immune from Suit. — North Carolina's Tort Claims Act § 143-291 et seq. does not create an exception for negligent performance of duties involving discretion; thus, the selection of suitable highway detour routes by department of transportation employees was not a discretionary governmental function immune from suit. Zimmer v. North Carolina Dep't of Transp., 87 N.C. App. 132, 360 S.E.2d 115 (1987).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400.)

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

Effect of Amendments. — The 1987 amendment, effective June 18, 1987, added subsection (i).

§ 136-28.5. Construction diaries.

Diaries kept in connection with construction or repair contracts entered into pursuant to G.S. 136-28.1 shall not be considered public records for the purposes of Chapter 132 of the General Statutes until the final estimate has been paid. (1987, c. 380, s. 1.)

Editor's Note. — Session Laws 1987, c. 380, s. 2 makes this section effective upon ratification. The act was ratified June 16, 1987.

§ 136-28.6. Private contract participation by the Department of Transportation.

(a) The Department of Transportation may participate in private engineering and construction contracts for State highways.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a street or highway on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a street or highway on a mutually adopted thoroughfare plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the developer furnishes the right-of-way without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let by the developer for the project.

(e) Participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section. (1987, c. 860, s. 1.)

Editor's Note. — Session Laws 1987, c. 860, s. 2 makes this section effective upon ratification, and provides that it shall expire June 30, 1989. The act was ratified August 14, 1987.

§ 136-29. Adjustment and resolution of highway construction contract claim.

(a) A contractor who has completed a contract with the Department of Transportation to construct a State highway and who has not received the amount he claims is due under the contract may submit a verified written claim to the State Highway Administrator for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives his final

statement from the Department and shall state the factual basis for the claim.

The State Highway Administrator shall investigate a submitted claim within 90 days of receiving the claim or within any longer time period agreed to by the State Highway Administrator and the contractor. The contractor may appear before the State Highway Administrator, either in person or through counsel, to present facts and arguments in support of his claim. The State Highway Administrator may allow, deny, or compromise the claim, in whole or in part. The State Highway Administrator shall give the contractor a written statement of the State Highway Administrator's decision on the contractor's claim.

(b) A contractor who is dissatisfied with the State Highway Administrator's decision on the contractor's claim may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the State Highway Administrator's written statement of the decision.

(c) As to any portion of a claim that is denied by the State Highway Administrator, the contractor may, in lieu of the procedures set forth in subsection (b) of this section, within six months of receipt of the State Highway Administrator's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(d) The provisions of this section shall be part of every contract for State highway construction between the Department of Transportation and a contractor. A provision in a contract that conflicts with this section is invalid. (1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667; 1965, c. 55, s. 11; 1967, c. 873; 1973, c. 507, ss. 5, 17, 18; 1977, c. 464, s. 7.1; 1983, c. 761, s. 191; 1987, c. 847, s. 3.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable to actions brought for claims denied by the State Highway Administrator or by the Director of the Office of State Construction of the Department of Administration on or after that date, rewrote this section.

Legal Periodicals. —

For survey of North Carolina construction law, see 21 Wake Forest L. Rev. 633 (1986).

For article on "North Carolina Construction Law Survey II," see 22 Wake Forest L. Rev. 481 (1987).

CASE NOTES

The sole statutory grounds that allow suit against the State Highway Administrator are provided in this section. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

Contractor's Substantive Rights Not Expanded. — Although this section, as amended in 1983, terms the board an alternative to civil suit, the claim allowed to the board is nevertheless a waiver of sovereign immunity, the terms of which are to be strictly construed. The same restrictions on maintaining a claim to the board as those for a claim to superior court will be applied, for there is no language, express or implied, that the creation of this alternative was to expand the substantive rights of the contractor against the sovereign immunity of the State. In re Thompson-Arthur Paving Co., 81 N.C.

App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

Where contractor changed both the theory and the substance of its claim after the claim was denied by the Administrator, these changes divested the Board of jurisdiction to hear its appeal. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

ARTICLE 2A.

State Roads Generally.

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

Local Modification. — Grandfather Village: 1987, c. 419, s. 1.

§ 136-44.2. Budget and appropriations.

The Director of the Budget shall include in the "Budget Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, and urban road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and

136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Budget Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

In the event receipts and increments to the State Highway Fund shall be more than the appropriations made for the preceding fiscal year, such excesses shall be allocated by the Director of the Budget to the Department of Transportation for school and industrial access roads and unforeseen happenings or state of affairs requiring prompt action, with fifty percent (50%) of the balance to be allocated to the State secondary roads program on the basis of need as determined by the Department of Transportation and the remaining fifty percent (50%) to be allocated in accordance with G.S. 136-44.5.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1981, c. 859, s. 84; 1983, c. 717, ss. 46, 47; 1987, c. 830, s. 113(b).)

Editor's Note. — Session Laws 1987, c. 830, s. 1.1 provides that this act shall be known as "The State Aid for Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 121 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, added the last paragraph.

§ 136-44.2A. Secondary road construction.

Editor's Note. —

Session Laws 1987, c. 830, s. 117 provides: "Nine hundred sixty-four thousand dollars ($964,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1987-88 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State maintained county roads in the counties where signing has not already been funded."

§ 136-44.5. Secondary roads; mileage study; allocation of funds.

Editor's Note. — Session Laws 1987, c. 830, s. 117 provides: "Nine hundred sixty-four thousand dollars ($964,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1987-88 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State maintained county roads in the counties where signing has not already been funded."

§ 136-44.15: Expired.

Editor's Note. — This section was enacted by Session Laws 1987, c. 324 s. 1. Section 2 of the act provided that it would expire June 30, 1988.

§§ 136-44.16 to 136-44.19: Reserved for future codification purposes.

ARTICLE 2B.

Public Transportation.

§ 136-44.27. (For effective date see note) North Carolina Elderly and Handicapped Transportation Assistance Program.

(a) There is established the Elderly and Handicapped Transportation Assistance Program that shall provide State financed elderly and handicapped transportation services for counties within the State. The Department of Transportation is designated as the agency of the State responsible for administering State funds appropriated to purchase elderly and handicapped transportation services for counties within the State. The Department shall develop appropriate procedures regarding the distribution and use of these funds and shall adopt rules to implement these procedures. No funds appropriated pursuant to this act may be used to cover State administration costs.

(b) For the purposes of this section, an elderly person is defined as one who has reached the age of 60 or more years, and a handicapped person is defined as one who has a physical or mental impairment that substantially limits one or more major life activities, an individual who has a record of such impairment, or an individual who is regarded as having such an impairment. Certification of eligibility shall be the responsibility of the county.

(c) All funds distributed by the Department under this section are intended to purchase additional transportation services, not to replace funds now being used by local governments for that purpose. These funds are not to be used towards the purchase of transportation vehicles or equipment. To this end, only those counties maintaining elderly and handicapped transportation services at a level consistent with those in place on January 1, 1987, shall be eligible for additional transportation assistance funds.

(d) The Public Transportation Division of the Department of Transportation shall distribute these funds to the counties according to the following formula: fifty percent (50%) divided equally among all counties; twenty-two and one-half percent (22 1/2%) based upon the number of elderly residents per county as a percentage of the State's elderly population; twenty-two and one-half percent (22 1/2%) based upon the number of handicapped residents per county as a percentage of the State's handicapped population; and, the remaining five percent (5%) based upon a population density factor that recognizes the higher transportation costs in sparsely populated counties.

§ 136-44.27 has a delayed effective date. See notes for date.

(e) Funds distributed by the Department under this section shall be used by counties in a manner consistent with transportation development plans which have been approved by the Department and the Board of County Commissioners. To receive funds apportioned for a given fiscal year, a county shall have an approved transportation development plan. Funds that are not obligated in a given fiscal year due to the lack of such a plan will be distributed to the eligible counties based upon the distribution formula prescribed by subsection (d) of this section. (1987 (Reg. Sess., 1988), c. 1095, s. 1(a).)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1095, s. 1(b), as amended by Session Laws 1987 (Reg. Sess., 1988), c. 1101, s. 8.2, makes this section effective only upon the transfer from the Highway Fund to the General Fund of the sum of two million dollars ($2,000,000) for fiscal year 1988-89, to provide funds for the North Carolina Elderly and Handicapped Transportation Assistance Program established by this section.

Session Laws 1987 (Reg. Sess. 1988), c. 1101, s. 8 transfers $2,000,000 of the funds transferred from the General Fund to the Highway Fund under § 105-164.44A back to the General Fund, to be used to fund the North Carolina Elderly and Handicapped Transportation Assistance Program created pursuant to this section.

§§ 136-44.28, 136-44.29: Reserved for future codification purposes.

Article 2D.

Railroad Revitalization.

§ 136-44.36. Department of Transportation designated as agency to administer federal and State railroad revitalization programs.

The General Assembly hereby designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all State and federal railroad revitalization programs. The Department of Transportation is authorized to develop, and the Board of Transportation is authorized to adopt, a State railroad plan, and the Department of Transportation is authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute and expend federal and State funds for rail programs designated to cover the costs of acquiring, by purchase, lease or other manner as the department considers appropriate, a railroad line or other rail property to maintain existing or to provide future rail service; the costs of rehabilitating and improving rail property on railroad lines to the extent necessary to permit safe, adequate and efficient rail service on such line; and the costs of constructing rail or rail related facilities for the purpose of improving the quality, efficiency and safety of rail service. The Department shall also

§ 136-44.27 has a delayed effective date. See notes for date.

have the authority to preserve railroad corridors for future railroad use and interim compatible uses. Such authority shall also include the power to receive and administer federal financial assistance without State financial participation to railroad companies to cover the costs of local rail service continuation payments, of rail line rehabilitation, and of rail line construction as listed above. This Article shall not be construed to grant to the department the power or authority to operate directly any rail line or rail facilities. (1979, c. 658, s. 2; 1987 (Reg. Sess., 1988), c. 1071, s. 1.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 7, 1988, and applicable only to railroad corridors and abandonments after that date, substituted "distribute and expend federal and State funds for rail programs" for "distribute federal and State financial assistance for rail freight assistance programs" near the beginning of the third sentence, deleted "freight" preceding "rail service" at the end of the third sentence, added the present fourth sentence, and substituted "operate directly" for "purchase or operate" in the last sentence.

§ 136-44.36A. Railway corridor preservation.

The North Carolina Department of Transportation is authorized, pursuant to 16 U.S.C.A. § 1247(d), to preserve rail transportation corridors and permit compatible interim uses of such corridors. (1987 (Reg. Sess., 1988), c. 1071, s. 2.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1071, s. 7 makes this section effective upon ratification and applicable only to railroad corridors and abandonments after that date. The act was ratified July 7, 1988.

Session Laws 1987 (Reg. Sess., 1988), c. 1071, ss. 3 through 5, provide:

"Sec. 3. If the Congress of the United States repeals the authorization contained in 16 U.S.C.A. 1247(d) or if a court of competent jurisdiction declares the provisions to be unconstitutional or otherwise invalid, following any appellate review, then Section 2 of this act shall expire upon certification by the Secretary of State that the federal authorization has been repealed or has been invalidated.

"Sec. 4. The Department of Transportation is authorized to proceed under Section 2 of this act, but the payment of just compensation may be provided to the underlying fee owners in accordance with Article 9 of Chapter 136 of the General Statutes, the same as if the railroad had been abandoned rather than preserved for future railroad use and compatible interim uses.

"Sec. 5. The Department of Transportation shall develop a proposed high speed rail corridor plan for North Carolina, in conjunction with the Department's railway corridor preservation program. The Department shall present its plan to the 1989 General Assembly for its review and approval."

§§ 136-44.39 to 136-44.49: Reserved for future codification purposes.

Article 2E.

Roadway Corridor Official Map Act.

§ 136-44.50. Roadway corridor official map act.

(a) A roadway corridor official map may be adopted or amended by the governing board of any city within its corporate limits and the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances or by the Board of Transportation. No roadway corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the city or the Department of Transportation in each county affected by the map, has held a public hearing on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the roadway corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the roadway corridor passes.

c. By posting copies of the proposed roadway corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

(2) A permanent certified copy of the roadway corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(b) Roadway corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk for municipal-adopted maps, or in the office of the district engineer for State-adopted maps.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a roadway corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate descrip-

tion. The register of deeds shall collect a fee of five ($5.00) for each map sheet or page recorded.

(c) No roadway corridor or any portion thereof placed on an official map shall be effective unless:

(1) The roadway corridor or a portion thereof appears on the Transportation Improvement Program adopted by the Board of Transportation under G.S. 143B-350(f)(4); or

(2) The roadway corridor or a portion thereof appears on the street system plan adopted pursuant to G.S. 136-66.2, and the adopting city or town has adopted a capital improvements plan of 10 years or shorter duration which shows the estimated cost of acquisition and construction of the designated roadway corridor and the anticipated financing for that project.

(d) Within one year following the establishment of a roadway corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the roadway corridor. (1987, c. 747, s. 19.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this Article effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

§ 136-44.51. Effect of roadway corridor official map.

(a) After a roadway corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the roadway corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the roadway corridor. The district engineer of the Highway District in which the roadway corridor is located shall be notified within 10 days of all requests for building permits or subdivision approval within the roadway corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the roadway corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) No application for building permit issuance or subdivision plat approval shall be delayed by the provisions of this section for more than three years from the date of its original submittal. (1987, c. 747, s. 19.)

§ 136-44.52. Variance from roadway corridor official map.

(a) The Department of Transportation or the city which initiated the roadway corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S.136-44.51 result in practical difficulties or unnecessary hardships. (1987, c. 747, s. 19.)

§ 136-44.53. Advance acquisition of right-of-way within the roadway corridor.

(a) After a roadway corridor official map is filed with the register of deeds, the Department of Transportation or the city which initiated the roadway corridor official map is authorized to make advanced acquisition of specific parcels of property when such acquisition is determined by the respective governing board to be in the best public interest to protect the roadway corridor from development or when the roadway corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any such advance acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective municipal governing board which initiated the roadway corridor official map shall develop and adopt appropriate policies and procedures to govern such advanced acquisition of right-of-way and to assure such advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a roadway corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of such advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S.136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of

rights-of-way shown on a duly adopted roadway corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits. (1987, c. 747, s. 19.)

ARTICLE 3A.

Streets and Highways in and around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. — The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.

(4) If the governing body of any municipality shall determine that is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:

a. Construction of curbing and guttering;

b. Adding of lanes for automobile parking;

c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;

d. Constructing sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes.

e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the proper-

ties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1; 1987, c. 747, s. 2.)

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

Editor's Note. — Session Laws 1987, c. 747, s. 4 provides: "This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown."

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, deleted "but many of these streets and highways also have varying degrees of benefit of municipalities" at the end of the third sentence of subdivision (1), deleted a former final sentence of that subdivision, which read "therefore, the respective responsibilities of the Department of Transportation and the municipalities for the acquisition and costs of rights-of-way for State highway system street improvement projects shall be determined by neutral agreement between the Department of Transportation and each municipality," substituted "If" for "In the event that" at the beginning of the introductory language of subdivision (4), deleted "Bearing that portion of the cost of" at the beginning of paragraph (4)c, added paragraph (4)e, and rewrote the second sentence of the second paragraph of subdivision (4), which read "Any work authorized by this subdivision may be financed jointly by the municipality and the Department of Transportation pursuant to a cost-sharing agreement entered into by each."

CASE NOTES

Cited in Town of Emerald Isle ex rel. Smith v. State, 320 N.C. App. 640, 360 S.E.2d 756 (1987).

OPINIONS OF ATTORNEY GENERAL

Maintenance of Streets and Highways. — Municipalities have the duty and responsibility of constructing and maintaining streets and highways on the Municipal Street System and the Department of Transportation has the duty and responsibility to maintain streets and highways on the State Highway System. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N. C., — N.C.A.G. — (Feb. 26, 1988).

§ 136-66.3. Municipal participation in improvements to the State highway system.

(a) Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.

(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities may, but shall not be required to, participate in the right-of-way and construction cost of "Small Urban Construction Program" highway improvements.

(c) A municipality is authorized to make improvements to portions of the State highway system lying within the municipal corporate limits utilizing local funds that have been authorized for that purpose by a vote of the citizens of the municipality. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) A municipality may pursuant to an agreement with the Department of Transportation reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that are in addition to those improvements that the Department of Transportation would normally include in the project.

(f) Municipalities having a population of less than 10,000 according to most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State high-

way system improvement project approved by the Board of Transportation under G.S.143B-350(f)(4).

Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:

Municipal Population	Maximum Participation In Right-of-Way Costs
10,000 — 25,000	5%
25,001 — 50,000	10%
50,001 — 100,000	15%
over 100,000	25%

This authority to allow a municipality to participate in the right-of-way costs of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits shall expire on June 30, 1990.

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs of rights-of-way necessary for the project. The Department of Transportation shall not charge a municipality any interest on its agreed upon share of rights-of-way costs. The Secretary shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk." It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then governing body of the municipality may in its discretion proceed in accordance with the provi-

sions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities for right-of-way acquisition by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way. (1959, c. 687, s. 3; 1965, c. 867; 1967, c. 1127; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1987, c. 747, s. 3.)

Editor's Note. — Session Laws 1987, c. 747, s. 4 provides: "This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown."

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, rewrote this section.

§§ 136-66.8, 136-66.9: Reserved for future codification purposes.

Article 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

§ 136-66.10. Dedication of right-of-way under local ordinances.

(a) Whenever a tract of land located within the territorial jurisdiction of a city or county's zoning or subdivision control ordinance or any other land use control ordinance authorized by local act is proposed for subdivision or for use pursuant to a zoning or building permit, and a portion of it is embraced within a corridor for a street or highway on a plan established and adopted pursuant to G.S. 136-66.2 for a street or highway that is included in the Department of Transportation's "Transportation Improvement Program", a city or county zoning or subdivision ordinance may provide for the dedi-

cation of right-of-way within that corridor pursuant to any applicable legal authority, or:

(1) A city or county may require an applicant for subdivision plat approval or for a special use permit, conditional use permit, or special exception, or for any other permission pursuant to a land use control ordinance authorized by local act to dedicate for street or highway purpose, the right-of-way within such corridor if the city or county allows the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant. No dedication of right-of-way shall be required pursuant to this subdivision unless the board or agency granting final subdivision plat approval or the special use permit, conditional use permit, special exception, or permission shall find, prior to the grant, that the dedication does not result in the deprivation of a reasonable use of the original tract and that the dedication is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land or the impact of the dedication is mitigated by measures provided in the local ordinance.

(2) If a city or county does not require the dedication of right-of-way within the corridor pursuant to subdivision (1) of this subsection or other applicable legal authority, but an applicant for subdivision plat approval or a zoning or building permit, or any other permission pursuant to a land use control ordinance authorized by local act elects to dedicate the right-of-way, the city or county may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan or to transfer severable development rights attributable to the dedicated right-of-way to noncontiguous land in designated receiving districts pursuant to G.S. 136-66.11.

(b) When used in this section, the term "density credit" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, and/or other land use control ordinance authorized by local act, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land in that is part of a common development plan. (1987, c. 747, s. 7.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this Article effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

§ 136-66.11. Transfer of severable development rights.

When used in this section and in G.S. 136-66.10, the term "severable development right" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.

(b) A city or county may provide in its zoning and subdivision control ordinances for the establishment, transfer, and exercise of severable development rights to implement the provisions of G.S. 136-66.10 and this section.

(c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or county to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

(d) In order to provide for the transfer of severable development rights pursuant to this section, the governing board shall amend the zoning ordinance to designate severable development rights receiving districts. These districts may be designated as separate use districts or as overlaying other zoning districts. No severable development rights shall be exercised in conjunction with the development of subdivision of any parcel of land that is not located in a receiving district. A city or county may, however, limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district. No plat for a subdivision in conjunction with which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the granting city or county and providing for their subsequent extinguishment. These documents shall also include any other information that the city or county ordinance may prescribe.

(e) In order to implement the purposes of this section a city or county may by ordinance adopt regulations consistent with the provisions of this section.

(f) A severable development right shall be treated as an interest in real property. Once a deed for severable development rights has

been transferred by a city or county to the dedicator and recorded, the severable development rights shall vest and become freely alienable. (1987, c. 747, s. 7.)

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

Legal Periodicals. — For note discussing the acquisition of the public use of roadways by statute and prescriptive easement in North Carolina, in light of West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985), see 21 Wake Forest L. Rev. 807 (1986).

§ 136-69. Cartways, tramways, etc., laid out; procedure.

CASE NOTES

I. GENERAL CONSIDERATION.

"Cutting and removing of any standing timber" as used in this section means cutting and removing standing trees that are suitable for constructing buildings or other object out of; it does not mean cutting and removing trees that are suitable only for firewood. Turlington v. McLeod, — N.C. App. —, 366 S.E.2d 542 (1988).

Construing the statute strictly, as the court must, since it infringes upon the common law rights of adjoining property owners, the court held that trees suitable only for firewood are not "standing timber" within the meaning of the statute. Turlington v. McLeod, — N.C. App. —, 366 S.E.2d 542 (1988).

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.49. Definitions.

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, — N.C. App. —, 365 S.E.2d 694 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.51. Design of controlled-access facility.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, — N.C. App. —, 365 S.E.2d 694 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.52. Acquisition of property and property rights.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, — N.C. App. —, 365 S.E.2d 694 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.53. New and existing facilities; grade crossing eliminations.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, — N.C. App. —, 365 S.E.2d 694 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.56. Commercial enterprises.

Editor's Note. — Session Laws 1987, c. 417, s. 1 repealed ss. 4 and 5 of Session Laws 1985, c. 718, as quoted under this section in the main volume.

Session Laws 1987, c. 417, s. 2 amended Session Laws 1985, c. 718, s. 6 so as to delete the expiration provision set out in the main volume.

ARTICLE 7.

Miscellaneous Provisions.

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by a deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within 15 years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, except where such dedication was made less than 20 years prior to April 28, 1953, such right may be asserted within one year from and after April 28, 1953; provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or some one or more of those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid; provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants, may execute and cause to be registered in the office of the register of deeds of the county where such land is situated the declaration of withdrawal provided for in this section, and, under Chapter 46 of the General Statutes of North Carolina, entitled "Partition," and Chapter 1, Article 29A of the General Statutes of North Carolina, known as the "Judicial Sales Act," and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the court shall thereupon order the same cancelled of record; that where any corporation has dedicated any strip, piece

or parcel of land in the manner herein set out, and said dedicating corporations is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest in said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out herein before in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway. This section shall apply to dedications made after as well as before April 28, 1953.

The provisions of this section shall not apply when the public dedication is part of a future street shown on the street plan adopted pursuant to G.S. 136-66.2. Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2. This resolution shall be attached to the declaration of withdrawal and shall be registered in the office of the register of deeds of the county where the land is situated. (1921, c. 174; C.S., ss. 3846(rr), 3846(ss), 3846(tt); 1939, c. 406; 1953, c. 1091; 1957, c. 517; 1987, c. 428, s. 1.)

Effect of Amendments. —The 1987 amendment, effective June 19, 1987, added the last paragraph.

CASE NOTES

Use by Public Prevents Withdrawal. —

Assuming, arguendo, that this section was applicable, defendant could not withdraw areas designated by subdivision plat as "Park Property" under this section where there was evidence to support the court's finding that the subject area had been used for recreational purposes within 15 years from its dedication and thus had not been abandoned for purposes of the statute. Stines v. Willyng, Inc., 81 N.C. App. 98, 344 S.E.2d 546 (1986).

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has

been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a roadway corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article.

(k) A willful violation of any of the provisions of this section shall be a misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8; 1987, c. 747, s. 21.)

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

Editor's Note. — Subsection (f) is set out above to correct a typographical error in the main volume.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, redesignated former subsection (j) as present subsection (k) and added new subsection (j).

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit.

Local Modification. — (As to Article 9) Grandfather Village: 1987, c. 419, s. 1.

§ 136-108. Determination of issues other than damages.

CASE NOTES

Cited in Department of Transp. v. Higdon, 82 N.C. App. 752, 347 S.E.2d 868 (1986); Department of Transp. v. Quick As A Wink of Asheville West, Inc., 82 N.C. App. 755, 347 S.E.2d 870 (1986); Taylor v. North Carolina Dep't of Transp., 86 N.C. App. 299, 357 S.E.2d 439 (1987).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

"Taking." — Although plaintiffs' property damage caused by the bridge construction does not fit squarely within the definition of a "taking," North Carolina courts have consistently held that such damage does, in fact, constitute a "taking." Robinson v. North Carolina Dep't of Transp., — N.C. App. —, 366 S.E.2d 492 (1988).

Damage to land which inevitably or necessarily flows from a public construction project results in an appropriation of land for public use. The remedy for such property damage is an action against the Department of Transportation on the theory of condemnation. Robinson v. North Carolina Dep't of Transp., — N.C. App. —, 366 S.E.2d 492 (1988).

Tolling of Statute of Limitations. — The 24 month statute of limitations contained in this section was automatically and unconditionally tolled by 50 U.S.C.A. App. § 525 until the plaintiff's retirement from military service. Taylor v. North Carolina Dep't of Transp., 86 N.C. App. 299, 357 S.E.2d 439 (1987).

Laches. — The plaintiff's exemption from the statute of limitations in this section during his military service, established by 50 U.S.C.A. App. § 525, applied apart from and irrespective of the doctrine of laches, and the trial court's findings were sufficient to support its conclusion that laches barred the plaintiff's claim under this section. Taylor v. North Carolina Dep't of Transp., 86 N.C. App. 299, 357 S.E. 439 (1987).

Additional Compensation for Delay in Payment — When Required. — When the taking of property by the State precedes the payment of compensation, the owner is entitled to additional compensation for the delay in payment. The Fifth and Fourteenth Amendments to the Constitution of the United States and N.C. Const., Art. I, § 19 require this additional payment as a part of just compensation. The additional sum awarded for delay in payment of the value for the property taken is not interest eo nomine, but interest is a fair means for measuring the amount to be arrived at of such additional sums. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Determination as Judicial Function. — Since the ascertainment of just compensation is a judicial function, and compensation for delay in payment is a part of just compensation, determining the amount of additional compensation for delay in payment is also a judicial function. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Compound Interest. — Compound interest should be allowed for delayed payment in condemnation cases if the evidence shows that during the pertinent period the "prudent investor" could have obtained compound interest in the market place. The use of compound interest as a measure in calculating additional compensation for delay is a matter which will turn upon the evidence in each case and must be decided on a case-by-case basis. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Cited in Robinson v. North Carolina Dep't of Transp, — N.C. App. —, 366 S.E.2d 494 (1988).

§ 136-112. Measure of damages.

CASE NOTES

II. DAMAGES WHERE PART OF TRACT IS TAKEN.

In General. —

Subdivision (1) of this section provides that the commissioners, jury or judge are restricted to the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking. The judge is

required to instruct the jury to use the above standard—and that standard only—in computing damages. However, a real estate appraiser is given wide latitude regarding permissible bases for opinions on value. Department of Transp. v. Byrum, 82 N.C. App. 96, 345 S.E.2d 416 (1986).

§ 136-113. Interest as a part of just compensation.

CASE NOTES

Additional Compensation for Delay in Payment — When Required. — When the taking of property by the State precedes the payment of compensation, the owner is entitled to additional compensation for the delay in payment. The Fifth and Fourteenth Amendments to the Constitution of the United States and N.C. Const., Art. I, § 19 require this additional payment as a part of just compensation. The additional sum awarded for delay in payment of the value for the property taken is not interest eo nomine, but interest is a fair means for measuring the amount to be arrived at of such additional sums. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Determination as Judicial Function. — Since the ascertainment of just compensation is a judicial function, and compensation for delay in payment is a part of just compensation, determining the amount of additional compensation for delay in payment is also a judicial function. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Legal Rate as Prima Facie Rate. — This section provides for the legal rate as a prima facie rate to be imposed for delay in compensation. This statutory rate is deemed presumptively reasonable. However, the landowner may rebut the rate's reasonableness by introducing evidence of prevailing market rates and demonstrating that the prevailing rates are higher than the statutory rate. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Compound Interest. — Compound interest should be allowed for delayed payment in condemnation cases if the evidence shows that during the pertinent period the "prudent investor" could have obtained compound interest in the market place. The use of compound interest as a measure in calculating additional compensation for delay is a matter which will turn upon the evidence in each case and must be decided on a case-by-case basis. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Cited in Whiteco Metrocom Inc. v. Roberson, 84 N.C. App. 305, 352 S.E.2d 277 (1986).

§ 136-130. Regulation of advertising.

CASE NOTES

Cited in Whiteco Metrocom Inc. v. Roberson, 84 N.C. App. 305, 352 S.E.2d 277 (1986).

§ 136-131.1. Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1024, s. 1 amends Sess. Laws 1983, c. 318, s. 1, which rewrote Sess. Laws 1981 (Reg. Sess., 1982), c. 1147, s. 2, as noted in the main volume, by changing the expiration date of this section to June 30, 1990.

Session Laws 1987 (Reg. Sess., 1988), c. 1024, s. 1.1 provides that the act does not affect litigation pending on the effective date thereof (June 30, 1988), unless the failure to apply the act would cause the loss of any federal highway aid or other federal aid.

§ 136-134.1. Judicial review.

CASE NOTES

Although a review of a final agency decision is de novo, trial court still limited by this section in scope of review. However, this does not circumvent the requirements of § 1A-1, Rule 52(a)(1). This section limits the scope of the findings of fact and conclusions of law which can be made; it does not limit the requirements for properly setting forth such findings and conclusions. Appalachian Poster Adv. Co. v. Harrington, — N.C. —, 366 S.E.2d 705 (1988).

De Novo Review of DOT Decision. — Pursuant to this section petitioner whose signed permit was revoked by DOT was entitled to a non-jury de novo review of the DOT decision by the Superior Court, where the court had to hear the merits of plaintiff's case without any presumption in favor of DOT's decision. Appalachian Poster Adv. Co. v. Harrington, — N.C. App. —, 366 S.E.2d 705 (1988).

Cited in Whiteco Metrocom Inc. v. Roberson, 84 N.C. App. 305, 352 S.E.2d 277 (1986).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1988

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1988 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina