THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1988 CUMULATIVE SUPPLEMENT

Volume 3B, Part I

Chapters 117 through 129

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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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 I 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 117 through 129 of the General Statutes.

Annotations:

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

North Carolina Reports through Volume 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.

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Chapter 117.

Electrification.

Article 2.

Electric Membership Corporations.

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

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

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

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

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

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

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

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

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, without proxies" for "of at least a majority of its members" in subdivision (1), substituted a comma for "and" preceding "(ii)" in the final paragraph, and at the end of that paragraph added "and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

§ 117-24. Dissolution.

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

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

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

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

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

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

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, without proxies" for "cast in person or by proxy by a majority of the members of the corporation entitled to vote" at the end of the second paragraph.

Article 4.

Telephone Service and Telephone Membership Corporations.

§ 117-34. Dissolution.

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

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(3) That the corporation elects to dissolve.

(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

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

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

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

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

Effect of Amendments. — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, without proxies" for "cast in person or by proxy by a majority of the members of the corporation entitled to vote" at the end of the second paragraph.

Article 6.

Indemnification.

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

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

Editor's Note. — Session Laws 1987, c. 107, s. 2 makes this section effective upon ratification. The act was ratified April 28, 1987.

Chapter 118.

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

Chapter 119.

Gasoline and Oil Inspection and Regulation.

ARTICLE 3.

Gasoline and Oil Inspection.

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

In order to more fully carry out the provisions of this Article there is hereby created a Gasoline and Oil Inspection Board of five members, to be composed of the Commissioner of Agriculture, the Director of the Gasoline and Oil Inspection Division, and three members to be appointed by the Governor, who shall serve at his will. The Commissioner of Agriculture and the Director of the Gasoline and Oil Inspection Division shall serve without additional compensation. Other members of the Board shall each receive the amount provided by G.S. 138-5 for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents (5¢) a mile for the distance to and from Raleigh by the usual direct route for each meeting of the Board which he attends. These expenses shall be paid from the Gasoline and Oil Inspection Fund created by this Article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided, how-

ever, that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State; and provided further, that if the Gasoline and Oil Inspection Board should promulgate any regulation which requires that gasoline be labeled, named or branded at the time of its first sale in the State, that such regulation shall provide in addition that any subsequent owner may rename, rebrand, or relabel such gasoline if such subsequent owner first files with the Board a notice of intention to do so, said notice to contain information showing the original brand, name, label, the company or person from whom the gasoline has been or is to be purchased, the minimum specifications registered by the seller, the brand, name, or label that is to be given such gasoline and the minimum specifications of such gasoline as filed with the Board; provided, further, that no labeling, naming or branding of gasoline which may be required by the Gasoline and Oil Inspection Board under the provisions of this Article, shall be construed as permitting gasoline to become the subject of fair trade contracts, as provided in G.S. 66-52. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this State any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167; 1961, c. 961; 1969, c. 445, s. 2.)

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

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

Article 5.

Liquefied Petroleum Gases.

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

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

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

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

Effect of Amendments. — The 1987 amendment, effective June 23, 1987, inserted "certificate of deposit or irrevocable letter of credit" in the last sentence of the second paragraph.

§ 119-58. Unlawful acts.

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

(1) Sell any gas burning appliance designed or built for domestic use which has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Commissioner of Agriculture;

(2) Install any unvented space heating appliance in a manufactured home as defined in G.S. 143-145(7);

(3) Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;

(4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, said tank or container may be filled by weight if the tank or container is weighed before and after filling;

(5) Disconnect an appliance from a gas supply line without capping or plugging said line before leaving the premises;

(6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets;

(7) Violate any provisions of this Article or any rules and regulations promulgated thereunder.

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

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

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "manufactured home" for "mobile home" in subdivision (a)(2).

Chapter 120.
General Assembly.

Article 1.

Apportionment of Members; Compensation and Allowances.

Sec.

Article 1A.

Legislative Retirement System.

Article 5A.

Committee Activity.

Article 6.

Acts and Journals.

Sec.

Article 6D.

Local Government Fiscal Information Act.

Article 7.

Legislative Services Commission.

Article 8.

Elected Officers.

Article 9A.

Lobbying.

Article 12B.

Commission on Children and Youth.

Article 12C.

Joint Select Committee on Low-Level Radioactive Waste.

ARTICLE 1.

Apportionment of Members; Compensation and Allowances.

§ 120-1. Senators.

Legal Periodicals. — For article, "Political Gerrymandering After Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

CASE NOTES

As to the vote diluting effect of a multimember electoral structure, see Thornburg v. Gingles, — U.S. —, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

§ 120-2. House apportionment specified.

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

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

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

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

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

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

District 6 shall elect one Representative and shall consist of Colerain, Merry Hill, Mitchells, Whites, and Windsor Townships of Bertie County; Ahoskie Township of Hertford County; Beargrass, Cross Roads, Giffins, Jamesville, Poplar Point, Williams, and Williamston Townships of Martin County; and Bethel and Carolina Townships of Pitt County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District 23 shall elect three Representatives and shall consist of Durham County.

District 24 shall elect two Representatives and shall consist of Orange County; and Baldwin, Cape Fear, Center, Hadley, Haw

River, Hickory Mountain, Matthews, New Hope, Oakland, and Williams Townships of Chatham County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District 40 shall elect three Representatives and shall consist of Alleghany, Ashe, and Surry Counties; Big Creek, Danbury, Meadows, Peters Creek, Quaker Gap, Sauratown, and Yadkin

Townships of Stokes County; and Bald Mountain, Blowing Rock, Blue Ridge, Boone, Brushy Fork, Cove Creek, Elk, Meat Camp, New River, North Fork, Stony Fork, and Watauga Townships of Watauga County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District 56 shall elect one Representative and shall consist of the following precincts of Mecklenburg County: Charlotte Precincts 20, 21, 37, 38, 49, 51, 52, 78, 79, and 80, Berryhill Precinct, Long Creek Precinct 1, Oakdell Precinct, Paw Creek Precincts 1 and 2, and Steel Creek Precinct 1.

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

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

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

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

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

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

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

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

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

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

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

Districts 68 and 69: Not set out — See Editor's Note.

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

(1) In Edgecombe County: Enumeration District 1154 of Census Tract 207 in Township 6 (Upper Fishing Creek); Census Tract 205 in Township 7 (Swift Creek); Enumeration Districts 1155, 1156, 1160, 1161, and 1162 of Census Tract 206 in Township 7 (Swift Creek); Census Blocks 101 through 106 and 121 through 128 in Census Tract 201 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Blocks 112 through 139, Census Blocks 202 and 205 through 226, Census Block Group 3, and Census Block Group 4 of Census Tract 202 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Block Group 1, Census Blocks 201 through 210 and 216 through 228, Census Blocks 301 through 318, 334, and 335, and Census Block Group 4 of Census Tract 204 in the City of Rocky Mount in Township 12 (Rocky Mount); Census Tracts 202, 203, 204, and 214 in Township 12 (Rocky Mount); Enumeration Districts 1191 and 1193 of Census Tract 213 in Township 12 (Rocky Mount); and Enumeration Districts 1223 and 1224 of Census Tract 202 and Enumeration Districts 1226A and 1226B of Census Tract 214 in Township 14 (Upper Town Creek).

(2) In Nash County: Census Tract 107 in North Whitakers Township; Census Block Groups 1, 2, and 3 and Census Blocks 403, 429, and 430 of Census Tract 102 in the City of Rocky Mount in Rocky Mount Township; and Census Tracts 106 and 107 in South Whitakers Township.

(3) In Wilson County: Enumeration District 743 of Census Tract 7 in Gardner Township; Enumeration Districts 700, 701, 702, 703A, and 703B of Census Tract 13 in Toisnot Township; Census Tract 2, Enumeration District 736A and Census Blocks 422, 423, and 424 of Census Tract 4, and Census Tracts 7, 8.01, and 8.02 in Wilson Township.

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

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

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

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

Editor's Note. —

This section, as set out above at the direction of the Revisor of Statutes, reflects the decision in Gingles v. Edmisten, 590 F. Supp. 345 (E.D.N.C. 1984) and the decision on appeal therefrom in Thornburg v. Gingles, ___ U.S. ___, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

In response to the district court's holding that the apportionment plan violated § 2 of the Voting Rights Acts, this

section was amended, by Session Laws 1984, Ex. Sess., cc. 1 and 6. The amendments provided that if the U.S. Supreme Court reversed the district court, the prior law would be revived with respect to any districts found not to violate the Voting Rights Act (see the Editor's Note under this section in the main volume). Since the Supreme Court reversed the district court with respect to House District 23, that district is set out above as it existed prior to the amendment of this section by Session Laws 1984, Ex. Sess., cc. 1 and 6. See Session Laws 1982, 1st Ex. Sess., c. 4, s. 1. House Districts 68 and 69 have not been set out since they consisted of portions of the area now comprising House District 23.

Legal Periodicals. — For article, "Political Gerrymandering After Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

CASE NOTES

As to the vote diluting effect of a multimember electoral structure, see Thornburg v. Gingles, — U.S. —, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

§ 120-3. (Effective until the convening of the 1989 Regular Session) Pay of members and officers of the General Assembly.

(a) The Speaker of the House shall be paid an annual salary of twenty-eight thousand four hundred fifty-two dollars ($28,452) payable monthly and an expense allowance of nine hundred twenty-nine dollars ($929.00) per month. The President Pro Tempore of the Senate shall be paid an annual salary of seventeen thousand four hundred dollars ($17,400) payable monthly and an expense allowance of six hundred three dollars ($603.00) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of fourteen thousand six hundred fifty-two dollars ($14,652) payable monthly and an expense allowance of three hundred thirty-seven dollars ($337.00) per month. The minority leader in the House and the majority and minority leader in the Senate shall each be paid an annual salary of twelve thousand four hundred fifty-six dollars ($12,456) payable monthly, and an expense allowance of three hundred thirty-seven dollars ($337.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary and expense allowances only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next regular session of the General Assembly after enactment of these increased amounts. Accordingly, upon convening of the 1987 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of ten thousand one hundred forty dollars ($10,140) payable monthly, and an expense allowance of two hundred fifty-two dollars ($252.00) per month.

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

§ 120-3 is set out twice. See headings for effective dates.

c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29.)

Section Set Out Twice. — The section above is effective until the convening of the 1989 Regular Session of the General Assembly. For this section as amended effective upon the convening of the 1989 Regular Session of the General Assembly, see the following section, also numbered § 120-3.

§ 120-3. (Effective upon the convening of the 1989 Regular Session) Pay of members and officers of the General Assembly.

(a) The Speaker of the House shall be paid an annual salary of thirty-one thousand two hundred twenty-four dollars ($31,224), payable monthly, and an expense allowance of one thousand one hundred seventy-five dollars ($1,175) per month. The President Pro Tempore of the Senate shall be paid an annual salary of nineteen thousand one hundred four dollars ($19,104), payable monthly, and an expense allowance of eight hundred thirty-three dollars ($833.00) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of seventeen thousand five hundred ninety-two dollars ($17,592), payable monthly, and an expense allowance of six hundred ninety-four dollars ($694.00) per month; and the Deputy President Pro Tempore of the Senate shall be paid an annual salary of sixteen thousand eighty dollars ($16,080), payable monthly, and an expense allowance of five hundred fifty-four dollars ($554.00) per month. The minority leader in the House and the majority and minority leaders in the Senate shall be paid an annual salary of thirteen thousand six hundred eighty-eight dollars ($13,688), payable monthly, and an expense allowance of five hundred fifty-four dollars ($554.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts. Accordingly, upon convening of the 1989 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of eleven thousand one hundred twenty-four dollars ($11,124), payable monthly, and an expense allowance of four hundred sixty-five dollars ($465.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29; 1987, c. 738, s. 15; c. 830, s. 70; 1987 (Reg. Sess., 1988), c. 1086, s. 9.)

§ 120-3 is set out twice. See headings for effective dates.

Section Set Out Twice. — The section above is effective upon the convening of the 1989 Regular Session of the General Assembly. For this section as in effect until the convening of the 1989 Regular Session, see the preceding section, also numbered § 120-3.

Cross References. — As to the time of the convening of the Regular Session of the Senate and House of Representatives, see § 120-11.1.

Editor's Note. —

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

Session Laws 1987, c. 738, s. 237 and c. 830, s. 121 are severability clauses.

Session Laws 1987, c. 830, s. 1.1 provides that c. 830 shall be known as "The State Aid for Nonstate Agencies Act of 1987."

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

Effect of Amendments. —

The 1987 amendment by c. 738, s. 15, effective upon the convening of the 1989 Regular Session of the General Assembly, rewrote subsections (a) and (b).

The 1987 amendment by c. 830, s. 70, effective upon the convening of the 1989 Regular Session of the General Assembly, rewrote the third sentence of subsection (a).

The 1987 (Reg. Sess., 1988) amendment, effective upon the convening of the 1989 Regular Session of the General Assembly, in this section as amended by Session Laws 1987, c. 738, s. 15 and c. 830, s. 70, increased the salaries and expense allowances in subsection (a), deleted "and expense allowances" following "increases in annual salary" in the first sentence of subsection (b) and in the second sentence of subsection (b) increased the salary stated therein from $10,644 to $11,124 and the expense allowance stated therein from $265 to $465.

§ 120-3.1. Subsistence and travel allowances for members of the General Assembly.

(a) **(Effective upon convening of the 1989 Regular Session)** In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

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

(2) A travel allowance at the rate allowed by statute for State employees whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.

(3) A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at 52 Federal Register 26644 (July 15, 1987), while the General Assembly is in session and, except as otherwise provided in this subdivision, while the General Assembly is not in session when, with the approval of the Speaker of the House in the case of Representatives or the President Pro Tempore of the Senate in case of Senators, the member is:

a. Traveling as a representative of the General Assembly or of its committees or commissions, or

b. Otherwise in the service of the State.

§ 120-3.1(a) has a delayed effective date. See notes for date.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of twenty dollars ($20.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the Legislative Administrative Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at 52 Federal Register 26630-26648 (July 15, 1987) and at 52 Federal Register 33616-33617 (September 4, 1987).

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

(1957, c. 8; 1959, c. 939; 1961, c. 889; 1965, c. 86, s. 1; 1969, c. 1257, s. 1; 1971, c. 1200, ss. 1-4; 1973, c. 1482, s. 2; 1977, 2nd Sess., c. 1249, ss. 3, 4; 1979, 2nd Sess., c. 1137, s. 30; 1983, c. 761, ss. 25, 26; 1983 (Reg. Sess., 1984), c. 1034, ss. 184, 186; 1985, c. 479, s. 206; 1985 (Reg. Sess., 1986), c. 1014, s. 40(a); 1987 (Reg. Sess., 1988), c. 1086, s. 30(c).)

For subsection (a) of this section as in effect until the convening of the 1989 Regular Session of the General Assembly, see the main volume.

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

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment effective upon the convening of the 1989 Regular Session of the General Assembly, substituted "52 Federal Register 26644 (July 15, 1987)" for "51 Federal Register 19683 (May 30, 1986)" and "is in session" for "as in session" in the introductory language of subdivision (a)(3), and substituted "52 Federal Register 26630-26648 (July 15, 1987) and at 52 Federal Register 33616-33617 (September 4, 1987)" for "51 Federal Register 19677-19686 (May 30, 1986) and at 51 Federal Register 16885-16886 (May 7, 1986)" at the end of subdivision (a)(3).

ARTICLE 1A.

Legislative Retirement System.

§ 120-4.8. Definitions.

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

(7) "Highest annual salary" means the twelve consecutive months of compensation authorized during a member's final legislative term for the highest position that a member ever held as a member of the General Assembly.

(1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 198; 1987, c. 738, s. 31(a).)

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

Editor's Note. —

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

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

Session Laws 1987, c. 738, s. 31(a) provides: "The provisions of this subsection

§ 120-3.1(a) has a delayed effective date. See notes for date.

shall only effect [sic] benefits payable on and after September 1, 1987."

Effect of Amendments. — The 1987 amendment, effective July 1, 1984, rewrote subdivision (7), which formerly defined the term "highest annual salary" as the twelve consecutive months of compensation paid to a legislator which yields the highest total amount.

§ 120-4.11. (Effective July 1, 1989) Membership.

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

(1) Members of the General Assembly who serve on and after June 15, 1983; and

(2) Former members of the General Assembly who served prior to June 15, 1983; and

a. Who elect to transfer current and future entitlements, or contributions, from the Legislative Retirement Fund established by Chapter 1269 of the 1969 Session Laws; or

b. Who have five or more years of service as a member of the General Assembly. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 188, 189; 1985, c. 400, ss. 1, 7; 1987 (Reg. Sess., 1988), c. 1109.)

For this section as in effect until July 1, 1989, see the main volume.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1989, substituted "five" for "eight" in paragraph (2)(b).

§ 120-4.16. Repayments and purchases.

All repayments and purchases of service credit, allowed under this Article, shall be made within two years after the member first becomes eligible to make such repayments and purchases. All such repayments and purchases not made within two years after the member becomes eligible shall equal the full actuarial cost of the additional service credit as defined in G.S. 135-4(m). (1983, c. 761, s. 238; 1987, c. 738, s. 31(b).)

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

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

Effect of Amendments. — The 1987 amendment, effective July 1, 1984, substituted "to make such repayments and purchases" for "for membership in the System" in the first sentence and deleted "for membership in the System" following "becomes eligible" in the second sentence.

§ 120-4.11 has a delayed effective date. See notes for date.

§ 120-4.19. Contributions by the members.

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

Anything within this Article to the contrary notwithstanding, the State, pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the members under this section with respect to the services of such members rendered after the effective date of this paragraph. The members' contributions picked up by the State shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the Annuity Savings Fund and accumulated within the Fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions. Member contributions picked up by the State shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State. This deduction, however, shall not reduce a member's compensation as defined in G.S. 120-4.8(1). Picked-up contributions shall be transmitted to the Retirement System monthly for the preceding month by means of a warrant drawn by the State payable to the Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. (1983, c. 761, s. 238; 1985, c. 400, s. 8.)

Editor's Note. — This version of this section, as amended by Session Laws 1985, c. 400, s. 8, became effective on November 1, 1986, following the receipt on August 18, 1986, of the favorable ruling from the Internal Revenue Service that the fund is a qualified trust under Section 401(a) of the Internal Revenue Code of 1954.

§ 120-4.21. Service retirement benefits.

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

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

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his "highest annual salary," multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (1/4 of 1%) for each month his retirement date precedes his 65th birthday.

(1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 193, 194, 196; 1987, c. 513, s. 1; c. 738, ss. 31(c), (d).)

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

Editor's Note. —

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

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

Effect of Amendments. — Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 nor more than 90 days" in the fourth sentence of subsection (a).

Session Laws 1987, c. 738, s. 31(c), (d), effective September 1, 1987, substituted "five years" for "eight years" in the first and second sentences of subsection (a) and in subdivisions (b)(1) and (b)(2).

§ 120-4.22. Disability retirement benefits.

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

(1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 195, 196; 1987, c. 513, s. 1; c. 738, s. 31(d).)

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

Editor's Note. —

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

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

Effect of Amendments. — Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 nor more than 90 days" in the second sentence of subsection (a).

Session Laws 1987, c. 738, s. 31(d), effective September 1, 1987, substituted "five years" for "eight years" in subsection (a).

§ 120-4.22A. Post-retirement increases in allowances.

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of

beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ll) and (mm). (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d).)

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

Editor's Note. —

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

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

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

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, added subsection (c).

The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, added subsection (d).

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

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

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

(1) For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions.

(2) For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service. (1983, c. 761, s. 238; 1987, c. 738, s. 39(a).)

Editor's Note. —

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

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

Effect of Amendments. — The 1987 amendment, effective September 1, 1987, rewrote the second paragraph.

§ 120-4.25. Return of accumulated contributions.

If a member ceases to be a member of the General Assembly except by death or retirement, he shall, upon submission of an application, be paid not earlier than 60 days following the date of termination of service, the sum of his contributions if he has less than five years of creditable service, or the sum of his accumulated contributions if he has five or more years of creditable service, provided he has not in the meantime returned to service. Upon payment of this sum his membership in the System ceases. If he becomes a member afterwards, no credit shall be allowed for any service previously rendered except as provided in G.S. 120-4.14 and the payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member, there shall be paid to the person or persons he nominated by written designation duly acknowledged and filed with the Board of Trustees, if the person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of G.S. 120-4.28. There shall be deducted from any amount otherwise payable any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by any other reason. Even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a member of the General Assembly, any amount due the agency or subdivision by reason of any outstanding overpayment of salary or any other reason shall be paid to the agency or subdivision by the Retirement System upon demand. After the agency or subdivision has notified the executive director of any amount due. The Retirement System has no liability for amounts deducted and transmitted to the agency or subdivision nor for any failure by the Retirement System for any reason to make the deductions. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 197; 1987, c. 738, s. 31(e).)

Editor's Note. —

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

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

Effect of Amendments. — The 1987 amendment, effective September 1, 1987, substituted "five" for "eight" in two places in the first sentence.

§ 120-4.27. Death benefit.

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

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall par-

ticipate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees. (1983, c. 761, s. 238; 1985, c. 400, s. 9; 1987, c. 824, s. 1.)

Effect of Amendments. —
The 1987 amendment, effective July 1, 1988, added the last paragraph.

§ 120-4.28. Survivor's alternate benefit.

The designated beneficiary of a member who dies in service before retirement but after age 60 and after completing five years of creditable service or after completing 12 years of creditable service is entitled to Option 2 prescribed by G.S. 120-4.26. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 199; 1985, c. 400, s. 3; 1987, c. 738, ss. 31(d), 37(c).)

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

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

Effect of Amendments. —
The 1987 amendment, effective September 1, 1987, substituted "five years" for "eight years" and inserted "or after completing 12 years of creditable service."

§ 120-4.30. Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)

Editor's Note. — Session Laws 1987, c. 177, s. 1(c) made this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems were qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

ARTICLE 5A.

Committee Activity.

§ 120-19.4A. Requests to State Bureau of Investigation for background investigation of a person who must be confirmed by legislative action.

The President of the Senate or the Speaker of the House may request that the State Bureau of Investigation perform a background investigation on a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives. The person being investigated shall be given written notice by regular mail at least 10 days prior to the date that the State Bureau of Investigation is requested to perform the background investigation by the presiding officer of the body from which the request originated. There is a rebuttable presumption that the person being investigated received the notice if the presiding officer has a copy of the notice. The State Bureau of Investigation shall perform the requested background investigation and shall provide the information, including criminal records, to the presiding officer of the body from which the request originated. A copy of the information also shall be provided to the person being investigated. The term "background investigation" shall be limited to an investigation of a person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). (1987, c. 867, s. 2.)

Editor's Note. — Session Laws 1987, c. 867, s. 5, makes this section effective upon ratification. The act was ratified August 14, 1987.

§ 120-19.9. Local acts affecting State highway system to be considered by transportation committees.

Any local bill affecting the State highway system shall, prior to its passage, be referred to a committee of either the House or Senate charges with the responsibility of examining bills or issues related to transportation or to the State highway system. (1987, c. 747, s. 24.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this section 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.

ARTICLE 6.

Acts and Journals.

§ 120-20.1. Coded bill drafting.

(a) Whenever in any act:

(1) It is stated that a law "reads as rewritten:"; and

(2) The law is set out showing material struck through or underlined, or both

the material struck through is being deleted from the existing law, and the material underlined is being added to the existing law.

(b) Notwithstanding subsection (a) of this section, underlining in a column heading is existing law, and a double underline shows a column heading being added to existing law.

(b1) In any part of a law enacted in the format provided by this section, the material deleted from existing law and the material being added to existing law are the only changes made, the setting out of material not deleted or added is for illustration only, and the fact that two different acts amend the same law, when one or more of those is in the format provided by this section, does not in itself create a conflict.

(c) As used in this section "act" and "law" also includes joint and simple resolutions.

(d) This section applies to acts ratified on or after February 9, 1987. (1987, c. 138; c. 485, s. 4.)

Editor's Note. — Session Laws 1987, c. 138, s. 2 makes this section effective upon ratification. The act was ratified May 5, 1987.

Effect of Amendments. — Session Laws 1987, c. 485, s. 4, effective June 26, 1987, added subsection (b1).

ARTICLE 6D.

Local Government Fiscal Information Act.

§ 120-30.48. Fiscal impact of administrative actions.

(a) An agency subject to Article 2 of Chapter 150B of the General Statutes shall file a fiscal note for a proposed new rule, or a proposed amendment or repeal of an existing rule, that can affect the expenditures or revenues of a unit of local government. The fiscal note shall be filed with the Fiscal Research Division, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note shall be filed with the entities listed no later than the date specified in G.S. 150B-11.

(1979, 2nd Sess., c. 1262, s. 8; 1987, c. 827, s. 55.)

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 (a).

ARTICLE 7.

Legislative Services Commission.

§ 120-32.02. Legislative commissions' and committees' employees and consultants.

(a) In the construction of a statute creating, continuing, or modifying a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the creation, continuation, or modification of the commission or committee shall not be construed as a grant of authority to the commission or committee to hire its own employees or to contract for consultant or other services.

(b) Notwithstanding any other provision of law, a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement and which has the power to contract for consultants or hire employees, or both, may contract for consultants, or hire employees, or both, only upon the prior approval of the Legislative Services Commission. A contract for employment or consultant services by such a commission or committee is void and unenforceable unless approved by the Legislative Services Commission prior to the contract being entered into.

(c) This section shall not apply to contracts of employment or for consultant services for standing or select committees of either house of the General Assembly, or subcommittees thereof, which shall be entered into by either the Speaker of the House or the President Pro Tempore of the Senate, as appropriate, and governed

by the provisions of G.S. 120-35. (1987 (Reg. Sess., 1988), c. 1100, s. 9.1.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 49 makes this section effective July 1, 1988. Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 48 is a severability clause.

§ 120-32.03. Grants and contributions to legislative commissions and committees.

(a) In the construction of a statute creating, continuing, or modifying a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the creation, continuation, or modification of the commission or committee shall not be construed as a grant of authority to the commission or committee to apply for, receive or accept grants, loans, and advances of non-State funds, or to receive and accept contributions from any source, of money, property, labor, or any other thing of value in order for it to conduct its work.

(b) Notwithstanding any other provision of law, a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement may, only with specific approval of the Legislative Services Commission, apply for, receive, or accept grants and contributions, from any source, of money, property, labor, or any other thing of value, to be held and used for the purposes set forth in the act creating the commission or committee. Any thing of value remaining at the termination of the commission or committee shall be deposited with the Legislative Services Commission to be employed for the use of the General Assembly. (1987 (Reg. Sess., 1988), c. 1100, s. 9.1.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 49 makes this section effective July 1, 1988. Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 48 is a severability clause.

ARTICLE 8.

Elected Officers.

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

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of one hundred eighty-five dollars ($185.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of forty-one thousand seventy-six dollars ($41,076), payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c).)

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

Editor's Note. —

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

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

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 and c. 1100, s. 48 are severability clauses.

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, substituted "one hundred seventy-seven dollars ($177.00)" for "one hundred sixty-eight dollars ($168.00)" in the first sentence of subsection (b), and rewrote the second sentence of subsection (c), which read "Each principal clerk shall be paid an annual salary of thirty-seven thousand four hundred forty dollars ($37,440), payable monthly."

Session Laws 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11, effective July 1, 1988, increased the salary of the sergeant-at-arms and reading clerk in the first sentence of subsection (b) from $177 to $185; and increased the salary of the principal clerk in subsection (c) from $39,312 to $41,076.

Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 16(c), effective July 1, 1988, substituted "permanent legislative employees" for "State employees" in the second sentence of subsection (c).

ARTICLE 9A.

Lobbying.

§ 120-47.10. Enforcement of Article by Attorney General.

The Secretary of State shall report apparent violations of this Article to the Attorney General. The Attorney General shall, upon complaint made to him of violations of this Article, make an appropriate investigation thereof, and he shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Article. (1975, c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 112.)

Effect of Amendment. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "prosecutorial district as defined in G.S. 7A-60" for "judicial district" in the second sentence.

ARTICLE 12B.

Commission on Children and Youth.

§ 120-70.7. Creation; appointment of members.

There is created a Commission on Children and Youth with 15 members to be appointed as follows: five members by the President of the Senate, five members by the Speaker of the House of Representatives, and five by the Governor. Of the members appointed by the President of the Senate, three shall be members of the Senate at the time of their appointment, one shall be an attorney, and one shall be a parent of a child under 16. Of the members appointed by the Speaker of the House of Representatives, three shall be members of the House of Representatives at the time of their appointment, one shall be a physician licensed to practice in North Carolina and actively involved in the private practice of pediatrics, and one educator actively involved in special education. Of the five appointed by the Governor, one shall be an attorney, one shall be an educator actively involved in the education of children, one shall be a parent of a child with special needs, one shall be a physician, and one shall be a member of the public. (1987, c. 873, s. 25.1.)

Editor's Note. — Session Laws 1987, c. 873, s. 31 makes this Article effective July 1, 1987.

Session Laws 1987, c. 873, s. 1 provides that c. 873 shall be known as "The Study Commissions and Committees Act of 1987."

§ 120-70.8. Time of appointments; terms of office.

Appointments to the Commission shall be made within 15 days subsequent to the close of each regular session of the General Assembly. The term of office shall begin on the day of appointment, and shall end on the date when the next appointments are made. Terms shall be for two years. Members may be appointed for two consecutive terms and may be reappointed after being off the Commission for two years. Vacancies occurring during a term shall be filled for the unexpired term by the officer who made the original appointment. (1987, c. 873, s. 25.1.)

§ 120-70.9. Organization of Commission.

Upon its appointment, the Commission shall organize by electing from its membership a chairman and a vice-chairman. The Commission shall meet at such times and places as the chairman shall designate. With the approval of the Legislative Services Commission, the facilities of the State Legislative Building and the Legislative Office Building shall be available to the Commission. The Commission is authorized to conduct hearings and to contract for and employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties, with the approval of the Legislative Services Commission. (1987, c. 873, s. 25.1.)

§ 120-70.10. Members to serve without compensation; subsistence and travel expenses.

Members of the Commission shall serve without compensation but they shall be paid such subsistence, per diem, and travel expenses as are provided for members of State boards and commissions generally pursuant to G.S. 138-5 and G.S. 138-6. The Commission shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. (1987, c. 873, s. 25.1.)

§ 120-70.11. Assistance to Commission.

The Commission, in the performance of its duties, may request and shall receive from every department, board, bureau, agency, commission, or institution of this State, or from any political subdivision of the State, information, cooperation, and assistance. (1987, c. 873, s. 25.1.)

§ 120-70.12. Duties of Commission.

The Commission is hereby authorized to:

(1) Pursue an in-depth study of the services provided by other states for children.

(2) Collect and evaluate for comprehensiveness existing legislation in North Carolina that is relevant to programs for children as well as pertinent reports, studies and findings from other states, national bodies, State agencies, advocacy groups, and other interested persons.

(3) Collect and evaluate for comprehensiveness the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect services for children.

(4) Monitor on a continuing basis the progress of the State as it moves toward meeting the service requirements for children with special needs.

(5) Recommend legislation.

(6) Evaluate budget trends. (1987, c. 873, s. 25.1.)

§ 120-70.13. Reports to General Assembly.

The Commission shall make a written report to the General Assembly not later than February 1 of each odd-numbered year. This report shall include an analysis of the Commission's study, including any legislative recommendations. (1987, c. 873, s. 25.1.)

§ 120-70.14. Assistance of State Departments.

The Department of Human Resources, the Department of Public Education, the Department of Justice, and the Department of Crime Control and Public Safety are declared vital departments of State government to especially assist the Commission and to furnish it with information, and to the extent permitted by the Commission, to actively participate in the work and deliberations of the Commission. (1987, c. 873, s. 25.1.)

ARTICLE 12C.

Joint Select Committee on Low-Level Radioactive Waste.

§ 120-70.31. Committee established.

The Joint Select Committee on Low-Level Radioactive Waste is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term "Joint Select Committee" means the Joint Select Committee on Low-Level Radioactive Waste. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 49 makes this Article effective July 1, 1988.

Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 48 is a severability clause.

§ 120-70.32. Membership; cochairmen; vacancies; quorum.

The Joint Select Committee shall consist of six Senators appointed by the President of the Senate and six Representatives appointed by the Speaker of the House of Representatives who shall serve at the pleasure of their appointing officer. The President of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Any vacancy which occurs on the Joint Select Committee shall be filled in the same manner as the original appointment. A quorum of the Joint Select Committee shall consist of seven members. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.33. Powers and duties.

The Joint Select Committee shall have the following powers and duties:

(1) To study alternatives available to the State for dealing with low-level radioactive waste and the ramifications of each of those alternatives;

(2) To evaluate actions of the North Carolina Low-Level Radioactive Waste Management Authority, its operator, and other persons with whom the Authority contracts;

(3) To evaluate actions of the Governor's Waste Management Board, the Radiation Protection Commission, and the Ra-

diation Protection Section of the Department of Human Resources, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;

(4) To receive, review, and evaluate reports and recommendations submitted to the General Assembly by the North Carolina Low-Level Radioactive Waste Management Authority and the Inter-Agency Committee on Low-Level Radioactive Waste;

(5) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting low-level radioactive waste management;

(6) To review existing and proposed State law and rules affecting low-level radioactive waste management and to determine whether any modification of law or rules is in the public interest;

(7) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(8) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, or the Joint Legislative Utility Review Committee, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.34. Additional powers.

The Joint Select Committee, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Joint Select Committee may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Joint Select Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.35. Compensation and expenses of members.

Members of the Joint Select Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.36. Staffing.

The Legislative Administrative Officer shall assign as staff to the Joint Select Committee professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Joint Select Committee through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Joint Select Committee. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.37. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Select Committee created by this Part. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§§ 120-70.38 through 120-70.40: Reserved for future codification purposes.

Article 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

The Environmental Review Commission is hereby established. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 49 makes this Article effective July 1, 1988.

Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 48 is a severability clause.

§ 120-70.42. Membership; cochairmen; vacancies; quorum.

The Environmental Review Commission shall consist of five Senators appointed by the President of the Senate and five Representatives appointed by the Speaker of the House of Representatives who shall serve at the pleasure of their appointing officer. The President of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Any vacancy which occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment. A quorum of the Environmental Review Commission shall consist of six members. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

§ 120-70.43. Powers and duties.

The Environmental Review Commission shall have the following powers and duties:

(1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:
   a. Benefits of each program relative to costs;
   b. Achievement of program goals;
   c. Use of measures by which the success or failure of a program can be measured; and
   d. Conformity with legislative intent;

(2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:
   a. Improvements in administrative structure, practices, and procedures;
   b. Increased integration and coordination of programs and functions;
   c. Increased efficiency in budgeting and use of resources;
   d. Efficient administration of licensing, permitting, and grant programs;
   e. Prompt, effective response to environmental emergencies;
   f. Opportunities for effective citizen participation; and
   g. Broadening of career opportunities for professional staff;

(3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agencies and the recodification of statutes relating to the environment, including but not limited to:
   a. Ways in which agencies may operate more efficiently and economically;
   b. Ways in which agencies can provide better services to the State and to the people; and
   c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;

(4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;

(5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;

(6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

§ 120-70.44. Additional powers.

The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

§ 120-70.45. Compensation and expenses of members.

Members of the Environmental Review Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

§ 120-70.46. Staffing.

The Legislative Administrative Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

§ 120-70.47. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Environmental Review Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

Article 13A.

Joint Legislative Committee to Review Federal Block Grant Funds.

§§ 120-84.1 to 120-84.5: Repealed by Session Laws 1987, c. 738, s. 120(d), effective August 7, 1987.

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

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

Article 14.

Legislative Ethics Act.

Part 2. State of Economic Interest.

§ 120-91: Repealed by 1987 (Reg. Sess., 1988), c. 1028, s. 3, effective January 1, 1989.

§ 120-92. Filing by candidates not nominated in primary elections.

A person who is nominated pursuant to the provisions of G.S. 163-114 after the primary and before the general election, and a person who qualifies pursuant to the provisions of G.S. 163-122 as an independent candidate in a general election shall file with the county board of elections of each county in the senatorial or representative district a statement of economic interest. A person nominated pursuant to G.S. 163-114 shall file the statement within three days following his nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an independent candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed pursuant to that section. (1975, c. 564, s. 1; 1987 (Reg. Sess., 1988), c. 1028, s. 3.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, deleted the former final sentence of this section, which read "A person elected pursuant to G.S. 163-11 (vacancy in office) shall file a statement of economic interest within 10 days after taking the oath of office."

§ 120-93. County boards of elections to notify candidates of economic-interest-statement requirements.

Each county board of elections shall provide for notification of the economic-interest-statement requirements of G.S. 120-89, 120-96, and 120-98 to be given to any candidate filing for nomination or election to the General Assembly at the time of his or her filing in the particular county. (1975, c. 564, s. 1; 1987 (Reg. Sess., 1988), c. 1081, s. 4.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, amended Session Laws 1987 (Reg. Sess., 1988), c. 1028, by inserting a new section 3.1, effective January 1, 1989, amending this section by substituting "120-89, 120-96, and 120-98" for "120-95 and 120-96" and substituting "General Assembly" for "General bly."

§ 120-95: Repealed by 1987 (Reg. Sess., 1988), c. 1028, s. 3, effective January 1, 1989.

§ 120-97: Repealed by 1987 (Reg. Sess., 1988), c. 1028, s. 3, effective January 1, 1989.

§ 120-98. Penalty for failure to file.

(a) If a candidate does not file the statement of economic interest within the time required by this Article, the county board of elections shall immediately notify the candidate by registered mail, restricted delivery to addressee only, that, if the statement is not received within 15 days, the candidate shall not be certified as the nominee of his party. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114.

(b) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 5, effective January 1, 1989. (1975, c. 564, s. 1; 1987 (Reg. Sess., 1988), c. 1028, ss. 4, 5.)

Editor's Note. — Subsection (a) was amended by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 4, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, rewrote subsection (a), and deleted subsection (b).

Part 3. Legislative Ethics Committee.

§ 120-103. Possible violations; procedures; disposition.

(d) Disposition of Cases. — When the Committee has concluded its inquiries into alleged violations, the Committee may dispose of the matter in one or more of the following ways:

(1) The Committee may dismiss the complaint and take no further action. In such case the Committee shall retain its records and findings in confidence unless the individual under inquiry requests in writing that the records and findings be made public.

(2) The Committee may, if it finds substantial evidence that a criminal statute has been violated, refer the matter to the Attorney General for possible prosecution through appropriate channels.

(3) The Committee may refer the matter to the appropriate House of the General Assembly for appropriate action. That House may, if it finds the member guilty of unethical conduct as defined in this Article, censure, suspend or expel the member. (1975, c. 564, s. 1; 1987, c. 439.)

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, inserted "or more" preceding "of the following ways" at the end of the introductory language of subsection (d).

Article 14A.

Committees on Pensions and Retirement.

§ 120-111.2. Duties.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1091, s. 4 purported to rewrite § 120-112.5(5), by deleting "'The Retirement Systems Actuarial Note Act'" following reference to Article 15 of Chapter 120. However, there is no section numbered § 120-112.5. It would appear that the section intended to be amended was § 120-111.2(5).

§ 120-111.3. Analysis of legislation.

Every bill, which creates or modifies any provision for the retirement of public officers or public employees or for the payment of retirement benefits or of pensions to public officers or public employees, shall, upon introduction in either house of the General Assembly, be referred to the Committee on Pensions and Retirement of each house. When the bill is reported out of committee it shall be accompanied by a written report by the Committee on Pensions and Retirement containing, among other matters which the Committee deems relevant, the actuarial note required by Article 15 of Chapter 120 of the General Statutes, and pursuant to the Rules of the General Assembly, and an evaluation of the proposed legislation's actuarial soundness and adherence to sound retire-

ment and pension policy. Any bill referred to the Committee on Pensions and Retirement cannot be further considered by that house until such bill has received a favorable report, a report without prejudice, or has been recalled from that committee.

Whenever a bill is considered by the Committee on Pensions and Retirement that proposes changes in the benefits of any State-administered retirement or pension plan to be financed by unencumbered actuarial experience gains generated either through a change in actuarial assumptions adopted by the plan for the previous budget year or through a continuation of the actuarial assumptions adopted by the plan for the previous budget year, the Committee shall give equal consideration to the effects that such unencumbered actuarial gains would have upon annual employer or State contributions to the plan and to the amount by which the plan's unfunded accrued liabilities, if any, might be reduced. If such unencumbered actuarial experience gains could be used to modify annual employer or State contributions to the plan resulting in a corresponding effect upon State appropriations, the Committee on Pensions and Retirement shall, upon a favorable report, refer the bill to the Committee on Appropriations of the same house before the bill is considered by that house. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 4; 1985, c. 187; c. 400, s. 10; 1987 (Reg. Sess., 1988), c. 1110, s. 11.1.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, added the last sentence of the first paragraph.

Article 15.

Retirement Systems Actuarial Note Act.

§ 120-112. Title.

This Article may be cited as the "Legislative Actuarial Note Act". (1977, c. 503, s. 1; 1987 (Reg. Sess., 1988), c. 1091, s. 1.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "Legislative" for "Retirement Systems" in the title of this article.

§ 120-113. Duties and functions of Fiscal Research Division.

(a) The Fiscal Research Division of the Legislative Services Commission of the General Assembly shall have authority to evaluate on a continuing basis all aspects of any State, municipal, or other retirement system, funded in whole or in part out of public funds, and all aspects of any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, as to actuarial soundness. The Fiscal Research Division shall make periodic detailed reports to the General Assembly specifically setting forth the findings of such evaluations. In conducting its evaluations the division shall have complete access without charge to all books, accounts, and personnel of the retirement systems, and to all books, accounts, and per-

sonnel of agencies and contractors charged with providing programs of hospital, medical, disability, or related benefits for teachers and State employees.

(b) No provision of this Article shall be deemed or in any way construed to preclude the authority of any retirement system funded in whole or in part out of public funds to hire an actuary for any such retirement system. No provision of this Article shall be deemed or in any way construed to preclude the authority of any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, to hire an actuary for any such program.

(c) The Fiscal Research Division shall, in addition to the powers and functions conferred by this Article, render such assistance as the Legislative Services Commission may require with respect to any other matter requiring actuarial evaluations. (1977, c. 503, s. 2; 1987 (Reg. Sess., 1988), c. 1091, s. 2.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, inserted "and all aspects of any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds" in the first sentence of subsection (a), deleted "both" following "detailed reports" and deleted "and the Governor" following "General Assembly" in the second sentence of subsection (a), and substituted the language beginning "without charge to all books, accounts, and personnel" for "to all books and accounts of the retirement systems" at the end of subsection (a), and added the second sentence of subsection (b).

§ 120-114. Actuarial notes.

(a) Every bill, joint resolution, and simple or concurrent resolution introduced in the General Assembly proposing any change in the law relative to any State, municipal, or other retirement system, funded in whole or in part out of public funds, or any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, shall have attached to it at the time of its consideration by any committee of either house of the General Assembly a brief explanatory statement or note which shall include a reliable estimate of the financial and actuarial effect of the proposed change in any such retirement system or program of hospital, medical, disability, or related benefits. This actuarial note shall be attached to the original of each proposed bill or resolution which is reported favorably by any committee of either house of the General Assembly, but shall be separate therefrom, shall be clearly designated as an actuarial note and shall not constitute a part of the law or other provisions or expression of legislative intent proposed by the bill or resolution.

(b) The author of each bill or resolution shall present a copy of the bill or resolution, with his request for an actuarial note, to the Fiscal Research Division which shall have the duty to prepare said actuarial note as promptly as possible. Actuarial notes shall be prepared and transmitted to the author or authors no later than two weeks after the request for the actuarial note is made, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not

more than five hundred dollars ($500.00) or imprisoned not more than six months, or both.

(c) The author of each bill or resolution shall also present a copy of the bill or resolution to any actuary employed by the retirement system, [or to any actuary employed by] a program of hospital, medical, disability, or related benefits provided for teachers and State employees, affected by the bill or resolution in question. Actuarial notes shall be prepared and transmitted to the author or authors of the measure no later than two weeks after the request for the actuarial note is received, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. The provisions of this subsection may be waived for any local government retirement or pension plans not administered by the State, and for any local government program of hospital, medical, disability, or related benefits for local government employees not administered by the State.

(d) The note shall be factual and shall, if possible, provide a reliable estimate of both the immediate effect and, if determinable or reasonably foreseeable, the long range fiscal and actuarial effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the actuarial note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(e) At any time any committee of either house reports any legislative instrument, to which an actuarial note or notes are attached at the time of committee consideration, with any amendment of such nature as would substantially affect the cost to or the revenues of any retirement system, or program of hospital, medical, disability, or related benefits for teachers and State employees, as stated in the actuarial note or notes attached to the measure at the time of such consideration, it shall be the responsibility of the chairman of the committee reporting such instrument to obtain from the Fiscal Research Division an actuarial note of the fiscal and actuarial effect of the change proposed by the amendment reported. Such actuarial note shall be attached to the report of the committee on the measure as a supplement thereto. A floor amendment to a bill or resolution to which an actuarial note was attached at the time of committee consideration of the bill or resolution shall not be in order, if the amendment affects the costs to or the revenues of a retirement system, or program of hospital, medical, disability, or related benefits provided for teachers and State employees, unless the amendment is accompanied by an actuarial note, prepared by the Fiscal Research Division, as to the actuarial effect of the amendment. (1977, c. 503, s. 3; 1985, c. 189; 1987 (Reg. Sess., 1988), c. 1091, s. 3.)

Editor's Note. — Subsection (c) was amended by Session Laws 1987 (Reg. Sess., 1988), c. 1091, s. 3, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, in-

serted "or any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds" and "or program of hospital, medical, disability, related benefits" in the first sentence of subsection (a), substituted "prepared and transmitted to the author or authors" for "prepared in the order of receipt of request for such notes but shall be transmitted to the author or authors of the measure in quintuplicate" and inserted "unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note" in the second sentence of subsection (b), inserted "or to any actuary employed by a program of hospital, medical, disability, or related benefits provided for teachers and State employees" in the first sentence of subsection (c), substituted "Actuarial notes shall be prepared and transmitted to the author or authors of the measure" for "Such actuary shall prepare an actuarial note and transmit it to the author or authors of the measure in quintuplicate" and inserted "unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note" in the second sentence of subsection (c), added "or for any local government program of hospital, medical, disability, or related benefits for local government employees not administered by the State" at the end of the last sentence of subsection (c), inserted "or program of hospital, medical, disability, or related benefits for teachers and State employees" in the first sentence of subsection (e), and inserted "or program of hospital, medical, disability, or related benefits provided for teachers and State employees" in the last sentence of subsection (e).

ARTICLE 16.

Legislative Appointments to Boards and Commissions.

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(12) Repealed by Session Laws 1987, c. 71, s. 4, effective August 14, 1987.

(33a) Repealed by Session Laws 1987, c. 738, s. 41(d), effective August 7, 1987.

(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.

(39) Repealed by Session Laws 1987, c. 71, s. 4, effective August 14, 1987.

(51) The State Building Commission, as established by G.S. 143-135.25.

(52) The Commission on School Facility Needs, established by G.S. 115C-489.3.

(53) The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.5.

(54) The North Carolina Low-Level Radioactive Waste Management Authority, as established by G.S. 104G-5.

(55) The North Carolina Health Insurance Trust Commission, as established by G.S. 58A-3. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, s. 2; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479,

s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27.)

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. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 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."

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

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

Session Laws 1987, c. 850, s. 27(a) provided that the 1987 act should not be construed as a revenue bill. However, Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23 repealed this provision.

Effect of Amendments. —

Session Laws 1987, c. 71, ss. 4, 5, effective April 14, 1987, deleted subdivisions (12) and (39), relating to the North Carolina Capital Building Authority, and added new subdivision (51), relating to the State Building Commission.

Session Laws 1987, c. 622, s. 15, effective July 16, 1987, added subdivision (52), relating to the Commission on School Facility Needs.

Session Laws 1987, c. 641, s. 21, effective October 1, 1987, added subdivision (53).

Session Laws 1987, c. 738, s. 41(d), effective August 7, 1987, repealed subdivision (33a), relating to the North Carolina Board for Need-Based Student Loans.

Session Laws 1987, c. 765, s. 2, effective August 11, 1987, added subdivision (55), relating to the North Carolina Health Insurance Trust Commission.

Session Laws 1987, c. 841, s. 4, effective August 14, 1987, rewrote subdivision (34d).

Session Laws 1987, c. 850, s. 18, effective August 14, 1987, added subdivision (54), relating to the North Carolina Low-Level Radioactive Waste Disposal Authority.

The 1987 (Reg. Sess., 1988) amendment, effective June 27, 1988, substituted "Management" for "Disposal" in subdivision (54).

ARTICLE 18A.

Review of Proposals to License New Occupations and Professions.

§ 120-149.1. Findings and purpose.

The General Assembly finds that the number of licensed occupations and professions has substantially increased and that licensing boards have occasionally been established without a determination that the police power of the State is reasonably exercised by the establishment of such licensing boards.

The General Assembly further finds that by establishing criteria and procedures for reviewing proposed licensing boards, it will be better able to evaluate the need for new licensing boards. To this end, it is the purpose of this Article to assure that no new licensing board shall be established unless the following criteria are met:

(1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
(2) The profession or occupation possesses qualities that distinguish it from ordinary labor;
(3) Practice of the profession or occupation requires specialized skill or training;
(4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and
(5) The public is not effectively protected by other means; and
(6) Licensure will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services. (1987, c. 180, s. 1.)

Editor's Note. — Session Laws 1987, c. 180, s. 2 makes this Article effective upon ratification. The act was ratified May 13, 1987.

§ 120-149.2. Definitions.

As used in this Article:
(1) "Assessment report" means a report that initially describes the need for and the fiscal impact of a new licensing board.
(2) "Committee" means the Legislative Committee on New Licensing Boards.
(3) "Licensing" means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession, but does not include a regulatory system that imposes certain qualifications as a condition for using or advertising specified titles or descriptions in connection with a particular occupation or profession, unless the restrictions on the use and advertisement of said titles is so broad as to effectively prohibit the practitioner from engaging in the profession or occupation without meeting the qualifications.
(4) "New licensing board" includes each of the following:
  (i) A proposed new board with licensing authority over an occupation or profession; and
  (ii) An existing board with proposed licensing authority over an occupation or profession not previously licensed by the board; provided, however, that the Committee, in reviewing a proposal to license a profession or occupation under an existing board, shall not assess the need for the continued licensing of professions and occupations already within the board's jurisdiction.
(5) "Supplementary report" means a report that assesses the changes proposed by an amendment or committee substitute which would substantially alter a legislative proposal to create a new licensing board and for which an assessment report has already been prepared. (1987, c. 180, s. 1.)

§ 120-149.3. Assessment of new licensing boards.

(a) Any legislative proposal introduced in the General Assembly after the effective date of this act proposing (1) the establishment of a new licensing board, or (2) a study of the need to establish a new licensing board, shall not be eligible for consideration on the floor of either house (other than first reading) or before any committee of either house of the General Assembly until a final assessment report has been issued pursuant to G.S. 120-149.4(e), with a copy of the report accompanying the proposal in accordance with the rules of the appropriate house.

(b) If the proposal to establish a new licensing board is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Boards which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a new licensing board may obtain an assessment report from the Committee only if a legislator requests such a report.

(c) If a legislative proposal receives a favorable report but is not ratified during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(d) A preliminary assessment report shall be prepared and returned to the sponsor or requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the request is received. The Committee shall not consider any request until it has received the information required by G.S. 120-149.4(a).

(e) If an amendment or committee substitute to a legislative proposal is introduced, the appropriate committee chairman, the presiding officer of the appropriate house, or the sponsor of the proposal may request a supplementary report when, in the opinion of any of them, the amendment or committee substitute substantially alters the legislative proposal. The supplementary report shall be prepared and returned to the requesting individual, and to the sponsor, within 30 days after the Committee receives the request.

(f) Each assessment report shall be designated as either preliminary, final, or supplementary and shall not constitute any part of the expression of legislative intent proposed by the formation of a new licensing board. An unfavorable final report shall not bar further consideration of the proposal on the floor or by any committee of either house.

(g) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary, final, and supplementary reports shall be maintained in the Legislative Library for public inspection. (1987, c. 180, s. 1.)

§ 120-149.4. Procedure and criteria to be used in preparation of assessment reports.

(a) The Legislative Committee on New Licensing Boards shall conduct an evaluation of the need for each new licensing board. If a legislator or other person or organization is seeking to establish a new licensing board, that legislator or other person or organization shall have the burden of demonstrating to the Committee that the criteria listed in G.S. 120-149.1 are met, and furnish the Committee additional information to show:

(1) That the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;

(2) The approximate number of people who would be regulated and the number of persons who are likely to utilize the services of the occupation or profession;

(3) That the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;

(4) That other states have regulatory provisions similar to the one proposed;

(5) How the public will benefit from regulation of the occupation or profession;

(6) How the occupation or profession will be regulated, including the qualifications and disciplinary proceedings to be applied to practitioners;

(7) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;

(8) That no other licensing board regulates similar or parallel activities;

(9) That the educational requirements for licensure, if any, are fully justified; and

(10) Any other information the Committee considers relevant to the proposed regulatory plan. The Committee shall adopt an appropriate form for use by applicants. The form shall contain a list of questions to be completed by the person or organization requesting the assessment report and a copy of this Article.

(b) In preparing an assessment report with respect to a legislative proposal to establish a new licensing board, the Committee shall consider, but shall not be limited to considering, the factors listed in subsection (a). The report shall analyze the effects of the new licensing board and shall include the Committee's recommendation on whether the General Assembly should approve the new licensing board. The Committee shall make specific findings in its report on each of the following:

(1) Whether the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

(2) Whether the profession or occupation possesses qualities that distinguish it from ordinary labor;

(3) Whether practice of the profession or occupation requires specialized skill or training;

(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;

(5) Whether the public can be effectively protected by other means; and

(6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

(c) The Committee may also evaluate the legislative proposal itself in terms of its clarity, conciseness, conformity with existing statutes and general principles of administrative law, and specificity of the delegation of authority to promulgate rules and set fees.

(d) The Committee shall furnish a copy of the preliminary assessment report to the requesting legislator or sponsor at least seven days prior to the Committee's final meeting on the proposal, unless the sponsor or requesting legislator waives this requirement. The requesting legislator or sponsor shall have an opportunity at the final meeting to respond to the preliminary report.

(e) The Committee shall adopt a final assessment report on the proposal at the final meeting and shall issue the report within 14 days of the issuance of the preliminary report; provided that if the Committee wishes to further review or consider the sponsor's or requesting legislator's responses to the preliminary assessment report, the final report shall be issued within 21 days of the issuance of the preliminary report. If the Committee recommends against licensure, it may suggest alternative measures for regulation of the occupation or profession. (1987, c. 180, s. 1.)

§ 120-149.5. Hearings.

(a) Before submitting a preliminary or final assessment report, the Committee may, in its discretion, hold one or more public hearings in the Legislative Building or Legislative Office Building.

(b) When assessment reports involving the same or similar occupations or professions are pending before the Committee, the Committee may consider any or all of the matters to be addressed by the reports. (1987, c. 180, s. 1.)

§ 120-149.6. Legislative Committee on New Licensing Boards.

(a) The Legislative Committee on New Licensing Boards is created to consist of a Chairman and eight members, four Senators appointed by the President of the Senate, four members of the House of Representatives appointed by the Speaker of the House and the Chairman to be appointed as provided herein.

(b) The President of the Senate shall appoint a member of the Senate as Chairman upon the effective date of this Article who shall serve a term beginning with the effective date of this Article and expiring upon the organization of the General Assembly in 1989. Thereafter, the Speaker of the House and the President of the Senate shall alternate the appointment of the Chairman to serve during each biennial session of the General Assembly. The Chairman may vote only in the event of a tie vote. The members of the Committee shall likewise serve biennial terms. If the office of

Chairman or any member shall become vacant, the vacancy shall be filled for the unexpired term by the authority making the initial appointment. Five members shall constitute a quorum of the Committee.

(c) The Committee may meet on days when the members of the General Assembly are entitled to subsistence pursuant to G.S. 120-3.1. The Committee is authorized to use the facilities of the State Legislative Building and Legislative Office Building. Clerical and professional staff shall be provided by the Legislative Services Commission. (1987, c. 180, s. 1.)

Article 20.

Joint Legislative Commission on Municipal Incorporations.

Part 2. Procedure for Incorporation Review.

§§ 120-175 to 120-179: Reserved for future codification purposes.

Article 21.

The North Carolina Study Commission on Aging.

§ 120-180. Commission; creation.

The North Carolina Study Commission on Aging is created to study and evaluate the existing system of delivery of State services to older adults and to recommend an improved system of delivery to meet the present and future needs of older adults. This study shall be a continuing one and the evaluation ongoing, as the population of older citizens grows and as old problems faced by older citizens magnify and are augmented by new problems. (1987, c. 873, s. 13.1.)

Editor's Note. — Session Laws 1987, c. 873, s. 31 makes this Article effective July 1, 1987.

Session Laws 1987, c. 873, s. 1 provides that c. 873 shall be known as "The Study Commissions and Committees Act of 1987."

§ 120-181. Commission; duties.

The Commission shall study the issues of availability and accessibility of health, mental health, social, and other services needed by older adults. In making this study the Commission shall:

(1) Study the needs of older adults in North Carolina;

(2) Assess the current status of the adequacy and of the delivery of health, mental health, social, and other services to older adults;

(3) Collect current and long range data on the older adult population and disseminate this data on an ongoing basis to agencies and organizations that are concerned with the needs of older adults;

(4) Develop a comprehensive data base relating to older adults, which may be used to facilitate both short and long range agency planning for services for older adults and for delivery of these services;
(5) Document and review requests of federal, State, regional, and local governments for legislation or appropriations for services for older adults, and make recommendations after review;
(6) Evaluate long-term health care and its non-institutional alternatives;
(7) Propose a plan for the development and delivery of State services for older adults that, if implemented, would, over 10 years, result in a comprehensive, cost-effective system of services for older adults;
(8) Study all issues and aspects of gerontological concerns and problems, including but not limited to Alzheimer's Disease; and
(9) Carry out any other evaluations the Commission considers necessary to perform its mandate. (1987, c. 873, s. 13.1.)

§ 120-182. Commission; membership.

The Commission shall consist of 17 members, as follows:
(1) The Secretary of the Department of Human Resources or his delegate shall serve ex officio as a non-voting member;
(2) Eight shall be appointed by the Speaker of the House of Representatives, five being members of the House of Representatives at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults; and
(3) Eight shall be appointed by the President of the Senate, five being members of the Senate at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults.

Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualifications. All initial appointments shall be made within one calendar month from the effective date of this Article. Members' terms shall last for two years. Members may be reappointed for two consecutive terms and may be appointed again after having been off the Commission for two years. (1987, c. 873, s. 13.1.)

§ 120-183. Commission; meetings.

The Commission shall have its initial meeting no later than October 1, 1987, at the call of the President of the Senate and Speaker of the House. The President of the Senate and the Speaker of the House of Representatives shall appoint a cochairman each from the membership of the Commission. The Commission shall meet upon the call of the cochairmen. (1987, c. 873, s. 13.1.)

§ 120-184. Commission; reimbursement.

The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5 and G.S. 138-6, as applicable. (1987, c. 873, s. 13.1.)

§ 120-185. Commission; public hearings.

The Commission may hold public meetings across the State to solicit public input with respect to the issues of aging in North Carolina. (1987, c. 873, s. 13.1.)

§ 120-186. Commission; authority.

The Commission has the authority to obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duties, pursuant to the provisions of G.S. 120-19, as if it were a committee of the General Assembly. The Commission shall also have the authority to call witnesses, compel testimony relevant to any matter properly before the Commission, and subpoena records and documents, provided that any patient record shall have patient identifying information removed. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this section, the subpoena shall also be signed by the cochairmen of the Commission. Any cost of providing information to the Commission not covered by G.S. 120-19.3 may be reimbursed by the Commission from funds appropriated to it for its continuing study. (1987, c. 873, s. 13.1.)

§ 120-187. Commission; reports.

The Commission shall report to the General Assembly and the Governor the results of its study and recommendations. A written report shall be submitted to each biennial session of the General Assembly at its convening. (1987, c. 873, s. 13.1.)

§ 120-188. Commission; staff; meeting place.

The Commission may contract for clerical or professional staff or for any other services it may require in the course of its on-going study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission considers appropriate.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building. (1987, c. 873, s. 13.1.)

Chapter 121.

Archives and History.

Article 1.

General Provisions.

ARTICLE 1.

General Provisions.

§ 121-7. Historical museums.

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

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

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

(1) The artifact was placed on loan with the Division of Archives and History for a period of time exceeding five years or for an indefinite period of time or the artifact's status with the Division of Archives and History as a loan, gift, purchase, or other arrangement is unknown; and

(2) The artifact has been a part of the inventory of the Division of Archives and History for more than five years; and

(3) The Department of Cultural Resources makes a reasonable effort, including a diligent search of its own records to locate and inform the owner, his heirs or successors, that the Division of Archives and History is holding the artifact and clarify the artifact's status with the Division of Archives and History.

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

(d) Any person claiming legal title to an artifact to which the North Carolina Division of Archives and History also claims title as provided by subsection (c) may file a claim with the Department of Cultural Resources on a form prescribed by the Department. If the claimant is not the owner from whom the museum originally obtained the artifact, the claimant shall state in addition to any other information required by the Department, the facts surrounding the unavailability of the person who originally loaned or bestowed the property to the Division of Archives and History and the basis for the claim to title of the artifact. If the Department of Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of the artifact, the Department shall return the artifact to the owner. If the Department determines that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B. (1973, c. 476, s. 48; 1979, c. 861, s. 1; 1987, c. 721, s. 1.)

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

ARTICLE 4.

Conservation and Historic Preservation Agreements Act.

§ 121-38. Validity of agreements.

Legal Periodicals. — For article, "Private Land Use Controls: Enforcement Problems with Real Covenants and Equitable Servitudes in North Carolina," see 22 Wake Forest L. Rev. 749 (1987).

Chapter 122A.

North Carolina Housing Finance Agency.

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

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

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

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

papers filed with the Agency, the minute book or journal of the Agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Agency and to give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4; 1981, c. 895, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 32; 1983, c. 148, s. 4; c. 717, ss. 36-37; 1985, c. 479, s. 222; 1987, c. 305, s. 3.)

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

Effect of Amendments. —

The 1987 amendment, effective June 8, 1987, deleted a proviso at the end of the fifth sentence of subsection (f), which read "provided, however, that the Executive Director shall, on or before January 15 of each year, subject to the approval of the Board of Directors, designate those employees of the Agency which are employed in secretarial, clerical or administrative positions."

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

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

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

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

(c) The Board of Directors of the Agency may determine, by resolution, to permit not in excess of ten percent (10%) of the rental units in any distressed rental housing project to be rented to persons or families without regard to income until the first of the following occur (1) occupancy levels, in the judgment of the Agency, will sustain operations at a level sufficient to prevent delinquency or default, or (2) June 30, 1989.

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

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

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

Section 4 of Session Laws 1987, c. 305 provides that the provisions of this section shall cease to be effective at midnight on June 30, 1989.

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

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

(b) The Agency may form a nonprofit corporation or corporations under the laws of this State which may acquire, construct, develop, repair, improve, rehabilitate, renovate, furnish, equip, operate and

manage residential rental housing projects for persons and families of lower and moderate income. All of the stock of a nonprofit corporation formed by the Agency shall be owned by the Agency and its Board of Directors shall be elected or appointed by the Agency.

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

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

Chapter 122C.

Mental Health, Mental Retardation, and Substance Abuse Act of 1985.

Article 1.

General Provisions.

Article 2.

Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.

Article 3.

Clients' Rights.

Article 4.

Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.

Part 2. State, County and Area Authority.

Part 4. Area Facilities.

Article 5.

Procedures for Admission and Discharge of Clients.

Part 1. General Provisions.

Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

Part 6. Involuntary Commitment—General Provisions.

Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

ARTICLE 1.

General Provisions.

§ 122C-1. Short title.

CASE NOTES

Cited in Sumblin v. Craven County Hosp. Corp., 86 N.C. App. 358, 357 S.E.2d 376 (1987); Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

§ 122C-2. Policy.

CASE NOTES

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(12a) "Developmental disability" means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated.

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mentally retarded, or substance abusers, and includes:

a. An "area facility", which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or mentally retarded, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of North Carolina Memorial Hospital;

e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;

f. A "State facility", which is a facility that is operated by the Secretary;

g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mental retarded, or substance abusers.

For the purposes of Articles 2 and 3 of this Chapter only, excluding G.S. 122C-63, "facility" also means any person at one location, whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation for individuals with developmental disabilities, developed under the authority of this Chapter.

(26) Repealed by Session Laws 1987, c. 345, s. 1, effective July 1, 1987.

(1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b).)

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

Editor's Note. — Session Laws 1987, c. 830, s. 1.1 provides that c. 830 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. — Session Laws 1987, c. 345, s. 1, effective July 1, 1987, deleted subdivision (26), defining "Operator."

Session Laws 1987, c. 830, s. 47(a), (b), effective October 1, 1987, added subdivision (12a) and added the last sentence of subdivision (14).

Legal Periodicals. — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Cited in Currie v. United States, 644 F. Supp. 1074 (M.D.N.C. 1986); Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

ARTICLE 2.

Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.

§ 122C-22. Exclusions from licensure; deemed status.

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2.)

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

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, rewrote the first sentence of subsection (b), which read: "If a licensable facility is certified by a nationally-recognized agency, such as the Joint Commission on Accreditation of Hospitals, then the Commission may by rule deem the facility licensed under this article."

§ 122C-23. Licensure.

(b) Each license is issued to the person only for the premises named in the application and shall not be transferrable or assignable except with prior written approval of the Secretary.

(d) The Secretary shall issue a license if the Secretary finds that the person complies with this Article and the rules of the Commission and Secretary.

(1899, c. 1, s. 60; Rev., s. 4600; C.S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 813, s. 1; c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, ss. 133, 152; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 718, ss. 1, 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 8; 1987, c. 345, 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 July 1, 1987, rewrote subsection (b), which read "Each license is issued only for the premises named in the application and for the operator named in the application and shall not be transferable or assignable except with prior written approval of the Secretary," and in subsection (d) substituted "person" for "operator."

§ 122C-24. Adverse action on a license.

(a) The Secretary may deny, suspend, amend, or revoke a license in any case in which the Secretary finds that there has been a substantial failure to comply with any provision of this Article or other applicable statutes or any applicable rule adopted pursuant to these statutes. Action[s] under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150B of the General Statutes.

(1983, c. 718, s. 1; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 8-10; 1987, c. 345, 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.

Editor's Note. — The word "Action" at the beginning of the second sentence of subsection (a) was apparently intended to be the word "Actions."

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, substituted "or other applicable statutes or any applicable rule adopted pursuant to these statutes" for "or any rule adopted pursuant to it" at the end of the first sentence of subsection (a), and substituted "Action" for "Actions" at the beginning of the second sentence of subsection (a).

ARTICLE 3.

Clients' Rights.

§ 122C-52. Right to confidentiality.

(d) No provision of G.S. 122C-205 and G.S. 122C-53 through G.S. 122C-56 permitting disclosure of confidential information may apply to the records of a client when federal statutes or regulations applicable to that client prohibit the disclosure of this information.

(1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1965, c. 800, s. 4; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 11; 1987, c. 749, 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, inserted "G.S. 122C-205 and" in subsection (d).

Legal Periodicals. —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

§ 122C-53. Exceptions; client.

Legal Periodicals. —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

§ 122C-54. Exceptions; abuse reports and court proceedings.

(a1) Upon a determination by the facility director or his designee that disclosure is in the best interests of the client, a facility may disclose confidential information for purposes of filing a petition for involuntary commitment of a client pursuant to Article 5 of this Chapter or for purposes of filing a petition for the adjudication of incompetency of the client and the appointment of a guardian or an interim guardian under Chapter 35A of the General Statutes.

(1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1977, c. 696, s. 1; 1979, c. 147; c. 915, s. 20; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; 1987, c. 638, ss. 1, 3.1.)

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 by c. 638, s. 1, effective July 20, 1987, added subsection (a1).

The 1987 amendment by c. 638, s. 3.1, effective October 1, 1987, substituted "Chapter 35A" for "Chapter 33 or 35" near the end of subsection (a1).

Legal Periodicals. —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

§ 122C-55. Exceptions; care and treatment.

(a) Any area or State facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of North Carolina Memorial Hospital upon a written determination by the responsible professional that such disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client and that failure to share this information would be detrimental to the care, treatment or habilitation of the client; provided however, confidential information may be shared without a written determination either between State facilities or between area facilities within the same catchment area.

(a1) Any State or area facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with an area or State facility or the psychiatric service of North Carolina Memorial Hospital when the responsible professional or the Secretary determines that disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client and that failure to share this information would be detrimental to the care, treatment or habilitation of the client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client.

(1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 15; 1987, c. 638, ss. 2, 3.)

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

Effect of Amendments. —

The 1987 amendment, effective July 20, 1987, substituted "that such disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client" for "possessing the information that the sharing of information is necessary for the appropriate and effective care and treatment of the client" and substituted "care, treatment or habilitation of the client" for "care and treatment of the client" in the first sentence of subsection (a), added the proviso at the end of that sentence, and added subsection (a1).

Legal Periodicals. —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

§ 122C-56. Exceptions; research and planning.

Legal Periodicals. —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

ARTICLE 4.

Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.

Part 2. State, County and Area Authority.

§ 122C-112. Powers and duties of the Secretary.

(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;

(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.

(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

(10) Promote public awareness and understanding of mental health, mental illness, mental retardation, developmental disabilities, and substance abuse;

(11) Administer and enforce rules that are conditions of participation in federal or State financial aid; and

(12) Carry out G.S. 122C-361.

(b) The Secretary may:

(1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, mental retardation, and substance abuse programs;

(2) Sponsor training opportunities in the fields of mental health, mental retardation, and substance abuse;

(3) Promote and conduct research in the fields of mental health, mental retardation, and substance abuse;

(4) Provide technical assistance for the development and improvement of prevention services;

(5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or descrip-

tion which shall be used by the Secretary for the purpose of carrying out mental health, mental retardation, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;

(6) Accept, allocate, and spend any federal funds for mental health, mental retardation, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, mental retardation, or substance abuse purposes specified;

(7) Enter agreements authorized by G.S. 122C-346;

(8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers. (C.S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, c. 32; c. 164; 1945, c. 952, s. 9; 1947, c. 537, ss. 5, 6; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, ss. 3, 6, 10; c. 1184, s. 6; 1965, c. 800, s. 1; c. 929, s. 3; 1969, c. 676, s. 2; 1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 2-4, 23; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2; 1987, c. 720, s. 2; c. 830, s. 47(c).)

Editor's Note. — Session Laws 1987, c. 830, s. 1.1 provides that the 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. — Session Laws 1987, c. 720, s. 2, effective August 1, 1987, added subdivision (b)(8).

Session Laws 1987, c. 830, s. 47(c), effective October 1, 1987, added "developmental disabilities" in subdivision (a)(10).

§ 122C-113. Cooperation between Secretary and other agencies.

(b1) The Secretary shall cooperate with the State Board of Education in coordinating the responsibilities of the Department of Human Resources and of the Department of Public Education for adolescent substance abuse programs. The Department of Human Resources, through its Division of Mental Health, Mental Retardation, and Substance Abuse Services, shall be responsible for intervention and treatment in non-school based programs. The Department of Public Education shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs.

(1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1987, c. 863, 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. 863, s. 2 provided in part "Effective July 1, 1988, appropriations for local school units' and Department of Human Resources agencies' adolescent substance abuse program components shall be contingent upon the development of policies and procedures by the Department of Human Resources and of the Department of Public Education that ensure ease of referrals between school based programs and non-school based programs such as community based intervention and treatment programs that ensure continued educational services while in treatment and that ensure reentry to public school after non-school based treatment."

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added subsection (b1).

§ 122C-117. Powers and duties of the area authority.

(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, mental retardation, developmental disability, and substance abuse services;

(2) Provide services to clients in the catchment area;

(3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;

(6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director.

(1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1987, c. 830, s. 47(d).)

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. 830, s. 1.1 provided that the 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 October 1, 1987, added "developmental disability" in subdivision (a)(1).

§ 122C-122. Public guardians.

The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a proceeding brought under that Subchapter. Bond shall be required or purchased as provided

by G.S. 35A-1239. (1977, c. 679, s. 7; c. 725, s. 7; 1979, c. 358, s. 26; 1985, c. 589, s. 2; 1987, c. 550, s. 26.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, in the first sentence substituted "G.S. 35A-1202(4)" for "G.S. 35-1.7(4)," substituted "Subchapter I of Chapter 35A" for "Article 1A of Chapter 35," deleted "guardianship" preceding "proceeding," and substituted "that Subchapter" for "that Article," and at the end of the second sentence substituted "G.S. 35A-1239" for "G.S. 35-1.19."

§ 122C-123. Other agency responsibility.

Notwithstanding the provisions of G.S. 122C-112(a)(10) and G.S. 122C-117(a)(1), other agencies of the Department, other State agencies, and other local agencies shall continue responsibility for services they provide for persons with developmental disabilities. (1987, c. 830, s. 47(e).)

Editor's Note. — Session Laws 1987, c. 830, s. 1.1 provided that the 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.

Session Laws 1987, c. 830, s. 47(e) makes this section effective October 1, 1987.

§§ 122C-124 to 122C-130: Reserved for future codification purposes.

Part 4. Area Facilities.

§ 122C-141. Provision of services.

(c) The area authority may contract with a health maintenance organization, certified and operating in accordance with the provisions of Chapter 57B of the General Statutes for the area authority, to provide mental health, mental retardation, or substance abuse services to enrollees in a health care plan provided by the health maintenance organization. The terms of the contract must meet the requirements of all applicable State statutes and rules of the Commission and Secretary governing both the provision of services by an area authority and the general and fiscal operation of an area authority and the reimbursement rate for services rendered shall be based on the usual and customary charges paid by the health maintenance organization to similar providers. Any provision in conflict with a State statute or rule of the Commission or the Secretary shall be void; however, the presence of any void provision in that contract does not render void any other provision in that contract which is not in conflict with a State statute or rule of the Commission or the Secretary. Subject to approval by the Secretary and pending the timely reimbursement of the contractual charges, the area authority may expend funds for costs which may be incurred by the area authority as a result of providing the additional services under a contractual agreement with a health maintenance organization. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 839.)

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 14, 1987, added subsection (c).

§ 122C-145. Appeal by area authorities.

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150B of the General Statutes. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 19; 1981, c. 51, s. 3; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 720, 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 August 1, 1987, substituted "Chapter 150B" for "Chapter 150A" in subsection (c).

§ 122C-147. Allocation of funds to area authorities.

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a 24-hour and day facility or (ii) in contracting with a private, nonprofit corporation that operates 24-hour and day facilities for the mentally ill, mentally retarded, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation.

(2) Upon cessation of the use of the 24-hour and day facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the 24-hour and day facility.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation under contract with the area authority and used or to be used as a 24-hour and day facility. Prior to the use of county appropriated funds for this purpose, the area authority must obtain consent of the board or boards of commissioners of all

the counties which comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property. (1973, c. 476, s. 133; c. 613; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 29; 1981, c. 51, s. 3; 1983, c. 5; c. 25; c. 402; 1985, c. 589, s. 2; 1987, c. 720, s. 3; c. 784.)

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

Editor's Note. —

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

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

Session Laws 1987, c. 738, s. 82 makes legislative findings and appropriate 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.

Effect of Amendments. — Session Laws 1987, c. 720, s. 3, effective August 1, 1987, substituted reference to Chapter 150B for reference to Chapter 150A in subsection (g).

Session Laws 1987, c. 784, effective September 1, 1987, substituted "24-hour and day" for "residential" throughout subdivisions (b)(1) and (b)(2) and in the first sentence of subsection (j).

§ 122C-151.1. Pioneer testing.

(a) Notwithstanding G.S. 122C-147 through G.S. 122C-150, the Secretary may implement a pioneer testing program for State funding of area authorities. Such implementation shall generally be as recommended by the Mental Health Study Commission in its February 1987, report to the General Assembly. The Secretary may waive Department and Commission rules relating to accounting, budget format, program standards, and other operating rules and may adopt any necessary substitute procedures necessary for implementation of the pioneer project. Provided, however, the Secretary may not waive rules that directly relate to the health, safety, or welfare of the clients served by the pioneer sites. Substitute procedures shall not be subject to the rule making procedures in Chapter 150B of the General Statutes during the time limits of the pioneer project.

(b) The Secretary shall report to the Mental Health Study Commission on a regular basis regarding the implementation of the pioneer testing program. (1987, c. 738, s. 87(a).)

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

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

Session Laws 1987, c. 738, s. 238 makes this section effective July 1, 1987.

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 148.8 provides: "The Department of Human Resources may make payments of ADAP, ADAP Transportation, Developmental Day, Outpatient Commitment, and any other funds that they may be directed to pay on a subsidy basis, on a unit cost reimbursement basis to Pioneer Project sites in accordance with Pioneer Project procedures established pursuant to Section 87 of Chapter 738 of the 1987 Session Laws."

ARTICLE 5.

Procedures for Admission and Discharge of Clients.

Part 1. General Provisions.

§ 122C-201. Declaration of policy.

CASE NOTES

Negligent Failure to Commit. — For case in which federal district court adopted a "psychotherapist judgment rule" in considering alleged negligent failure to have patient involuntarily committed, see Currie v. United States, 644 F. Supp. 1074 (M.D.N.C. 1986).

Jury Adequately Charged Regarding Procedures Under Acquittal on Grounds of Insanity. — Pattern jury instruction in N.C.P.I.—Crim. 304.10 which informed the jury of the commitment hearing procedures in §§ 15A-1321 and 15A-1322, pursuant to this Article, adequately charged the jury regarding procedures under acquittal on the ground of insanity. State v. Allen, — N.C. —, 367 S.E.2d 626 (1988).

§ 122C-202. Applicability of Article.

CASE NOTES

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

§ 122C-205. Return of clients to 24-hour facilities.

(a) When a client of a 24-hour facility who:

(1) Has been involuntarily committed;

(2) Is being detained pending a judicial hearing;

(3) Has been voluntarily admitted but is a minor or incompetent adult;

(4) Has been placed on conditional release from the facility; or

(5) Has been involuntarily committed or voluntarily admitted and is the subject of a detainer placed with the 24-hour facility by an appropriate official

escapes or breaches a condition of his release, if applicable, the responsible professional shall notify or cause to be notified immediately the appropriate law enforcement agency in the county of residence of the client, the appropriate law enforcement agency in the

county where the facility is located, and the appropriate law enforcement agency in any county where there are reasonable grounds to believe that the client may be found. The responsible professional shall determine the amount of personal identifying and background information reasonably necessary to divulge to the law enforcement agency or agencies under the particular circumstances involved in order to assure the expeditious return of the client to the 24-hour facility involved and protect the general public.

(b) When a competent adult who has been voluntarily admitted to a 24-hour facility escapes or breaches a condition of his release, the responsible professional, in the exercise of accepted professional judgment, practice, and standards, will determine if it is reasonably foreseeable that:

(1) The client may cause physical harm to others or himself;

(2) The client may cause damage to property;

(3) The client may commit a felony or a violent misdemeanor; or

(4) That the health or safety of the client may be endangered unless he is immediately returned to the facility. If the responsible professional finds that any or all of these occurrences are reasonably foreseeable, he will follow the same procedures as those set forth in subsection (a) of this section.

(c) Upon receipt of notice of an escape or breach of a condition of release as described in subsections (a) and (b) of this section, an appropriate law enforcement officer shall take the client into custody and have the client returned to the 24-hour facility from which the client has escaped or has been conditionally released. Transportation of the client back to the 24-hour facility shall be provided in the same manner as described in G.S. 122C-251 and G.S. 122C-408(b). Law enforcement agencies who are notified of a client's escape or breach of conditional release shall be notified of the client's return by the responsible 24-hour facility. Under the circumstances described in this section, the initial notification by the 24-hour facility of the client's escape or breach of conditional release shall be given by telephone communication to the appropriate law enforcement agency or agencies and, if available and appropriate, by Division of Criminal Information (DCI) message to any law enforcement agency in or out of state and by entry into the National Crime Information Center (NCIC) telecommunications system. As soon as reasonably possible following notification, written authorization to take the client into custody shall also be issued by the 24-hour facility. Under this section, law enforcement officers shall have the authority to take a client into custody upon receipt of the telephone notification or Division of Criminal Information message prior to receiving written authorization. The notification of a law enforcement agency does not, in and of itself, render this information public information within the purview of Chapter 132 of the General Statutes. However, the responsible law enforcement agency shall determine the extent of disclosure of personal identifying and background information reasonably necessary, under the circumstances, in order to assure the expeditious return of a client to the 24-hour facility involved and to protect the general public and is authorized to make such disclosure. The responsible law enforcement agency may also place any appropriate message or

entry into either the Division of Criminal Information System or National Crime Information System, or both, as appropriate.

(d) In the situations described in subsections (a) and (b) of this section, the responsible professional shall also notify or cause to be notified as soon as practicable:

(1) The next of kin of the client or legally responsible person for the client;

(2) The clerk of superior court of the county of commitment of the client;

(3) The area authority of the county of residence of the client, if appropriate;

(4) The physician or eligible psychologist who performed the first examination for a commitment of the client, if appropriate; and

(5) Any official who has placed a detainer on a client as described in subdivision (a)(5) of this section

of the escape or breach of condition of the client's release upon occurrence of either action and of his subsequent return to the facility. (1899, c. 1, s. 27; Rev., s. 4563; C.S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3; 1973, c. 673, s. 11; 1983, c. 548; 1985, c. 589, s. 2; c. 695, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 12-14; 1987, c. 749, s. 1.)

Effect of Amendments. —

The 1987 amendment, effective October 1, 1987, rewrote this section.

§ 122C-205.1. Discharge of clients who escape or breach the condition of release.

(a) As described in G.S. 122C-205(a), when a client of a 24-hour facility escapes or breaches the condition of his release and does not return to the facility, the facility shall:

(1) If the client was admitted under Part 2 of this Article or under Parts 3 or 4 of this Article to a nonrestrictive facility, discharge the client based on the professional judgment of the responsible professional;

(2) If the client was admitted under Part 3 or Part 4 of this Article to a restrictive facility, discharge the client when the period for continued treatment, as specified by the court, expires;

(3) If the client was admitted pending a district court hearing under Part 7 of this Article, request that the court consider dismissal or continuance of the case at the initial district court hearing; or

(4) If the client was committed under Part 7 of this Article, discharge the client when the commitment expires.

(b) As described in G.S. 122C-205(a), when a client of a 24-hour facility who was admitted under Part 8 of this Article escapes or breaches the conditions of his release and does not return to the facility, the facility may discharge the client from the facility based on the professional judgment of the responsible professional and following consultation with the appropriate area authority or physician.

(c) Upon discharge of the client, the 24-hour facility shall notify all the persons directed to be notified of the client's escape or breach

of conditional release under 122C-205(a), (b) and (d) that the client has been discharged.

(d) If the client is returned to the 24-hour facility subsequent to discharge from the facility, applicable admission or commitment procedures shall be followed, when appropriate. (1987, c. 674, s. 1.)

Editor's Note. — Session Laws 1987, c. 674, s. 3 makes this section effective October 1, 1987.

§ 122C-210.1. Immunity from liability.

Legal Periodicals. —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Failure to Seek Involuntary Commitment of Patient. — The statutory immunity given by this section makes it most unlikely that the North Carolina Supreme Court would hold that North Carolina's public policy and its tort law would impose tort liabilities upon psychiatrists at Veterans Administration hospital for a mistake in not seeking involuntary commitment of a patient. Currie v. United States, 836 F.2d 209 (4th Cir. 1987).

Quoted in Currie v. United States, 644 F. Supp. 1074 (M.D.N.C. 1986).

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

§ 122C-210.2. Research at State facilities for the mentally ill.

(a) For research purposes, State facilities for the mentally ill may be designated by the Secretary as facilities for the voluntary admission of adults who are not admissible as clients otherwise. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of those admitted for research purposes.

(b) Individuals may be admitted to such designated facilities on either an outpatient or inpatient basis.

(c) The Human Rights Committee of the designated facility shall monitor the care of individuals admitted for research during their participation in any research program.

(d) For these individuals admitted to such designated facilities for research purposes only, the following provisions shall apply:

(1) A written application for admission pursuant to G.S. 122C-211(a) and an examination by a physician within 24 hours of admission shall be provided to each of these individuals;

(2) They shall be exempt from the provisions of G.S. 122C-57(a) governing the rights to treatment and to a treatment plan; the requirements of G.S. 122C-61(2) and G.S. 122C-212(b); and the requirements of any single portal of entry and exit plan; however, nothing in this section shall take away the individual's right to be informed of the

potential risks and alleged benefits of their participation in any research program;

(3) The Secretary shall exempt these individuals from the provisions of Article 7 of Chapter 143 of the General Statutes requiring payment for treatment in a State institution. The Secretary may also authorize reasonable compensation to be paid to individuals participating in research projects for their services; provided, that the compensation is paid from research grant funds; and

(4) The Commission shall adopt rules regarding the admission, care and discharge of those individuals admitted for research purposes only. (1987, c. 358, s. 1.)

Editor's Note. — Session Laws 1987, c. 358, s. 3 makes this section effective October 1, 1987.

Part 2. Voluntary Admissions and Discharges, Competent Adults, Facilities for the Mentally Ill and Substance Abusers.

§ 122C-211. Admissions.

CASE NOTES

Standard of Care Due Prospective Clients. — While voluntary written policies and procedures do not themselves establish a per se standard of due care appropriate to prospective clients, they represent some evidence of a reasonably prudent standard of care. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

Duty to Refer to Another Facility. — This section imposes on a facility the duty to refer an individual to another facility for treatment; therefore, the facility must necessarily use due care in exercising its judgment not to refer an individual for further treatment. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

Shift supervisor of treatment center was required to use due care in deciding whether or not to refer plaintiff for further aid when his friend brought him to the center unconscious and notified the shift supervisor of his drug overdose. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

§ 122C-221. Admissions.

(a) Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance

abuser and in need of treatment. Except as otherwise provided in this Part, the provisions of G.S. 122C-211 shall apply to admissions of minors under this Part. Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for the minor. If a minor reaches the age of 18 while in treatment under this Part, further treatment is authorized only on the written authorization of the client or under the provisions of Part 7 or Part 8 of Article 5 of this Chapter.

(b) The Commission shall adopt rules governing procedures for admission to 24-hour facilities not falling within the category of facilities where freedom of movement is restricted. These rules shall be designed to ensure that no minor is improperly admitted to or improperly remains in a 24-hour facility. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370 rewrote this Part. Where appropriate, the historical citations to the sections in the Part as originally enacted have been added to corresponding sections in the rewritten Part.

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

§ 122C-222. Admissions to State facilities.

Admission of a minor who is a resident of a county that is not in a single portal area shall be made to a State facility following screening and upon referral by an area authority, a physician, or an eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the person making the referral. (1987, c. 370, s. 1.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, rewrote this section, which formerly related to emergency admission to a 24-hour facility. As to emergency admission to a 24-hour facility, see now § 122C-223.

§ 122C-223. Emergency admission to a 24-hour facility.

(a) In an emergency situation, when the legally responsible person does not appear with the minor to apply for admission, a minor who is mentally ill or a substance abuser and in need of treatment may be admitted to a 24-hour facility upon his own written application. The application shall serve as the initiating document for the hearing required by G.S. 122C-224.

(b) Within 24 hours of admission, the facility shall notify the legally responsible person of the admission unless notification is impossible due to an inability to identify, to locate, or to contact him after all reasonable means to establish contact have been attempted.

(c) If the legally responsible person cannot be located within 72 hours of admission, the responsible professional shall initiate proceedings for juvenile protective services as described in Article 44 of Chapter 7A of the General Statutes in either the minor's county of residence or in the county in which the facility is located.

(d) Within 24 hours of an emergency admission to a State facility, the State facility shall notify the area authority and, as appropriate, the minor's physician or eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the appropriate person in the community. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, rewrote this section, which formerly related to judicial determinations. As to judicial review of voluntary admissions, see now § 122C-224. Former § 122C-222 related to emergency admission to a 24-hour facility.

§ 122C-224. Judicial review of voluntary admission.

(a) When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held by the district court in the county in which the 24-hour facility is located within 15 days of the day that the minor is admitted to the facility. A continuance of not more than five days may be granted.

(b) Before the admission, the facility shall provide the minor and his legally responsible person with written information describing the procedures for court review of the admission and informing them about the discharge procedures. They shall also be informed that, after a written request for discharge, the facility may hold the minor for 72 hours during which time the facility may apply for a petition for involuntary commitment.

(c) Within 24 hours after admission, the facility shall notify the clerk of court in the county where the facility is located that the minor has been admitted and that a hearing for concurrence in the admission must be scheduled. At the time notice is given to schedule a hearing, the facility shall notify the clerk of the names and addresses of the legally responsible person and the responsible professional. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, rewrote this section, which formerly related to discharges. As to discharges, see now § 122C-224.7. Former § 122C-223 related to judicial determinations.

§ 122C-224.1. Duties of clerk of court.

(a) Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk of superior court, under direction of the district court judge, shall appoint an attorney for the minor. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4.

(b) Upon receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission. Notice of the time and place of the hearing shall be given as provided in G.S. 1A-1, Rule 4(j) to the attorney in lieu of the minor, as soon as possible but not later than 72 hours before the scheduled hearing. Notice of the hearing shall be sent to the legally responsible person and the responsible professional as soon as possible but not later than 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(c) The clerk shall schedule all hearings and rehearings and send all notices as required by this Part. (1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

§ 122C-224.2. Duties of the attorney for the minor.

(a) The attorney shall meet with the minor within 10 days of his appointment but not later than 48 hours before the hearing. In addition, the attorney shall inform the minor of the scheduled hearing and shall give the minor a copy of the notice of the time and place of the hearing no later than 48 hours before the hearing.

(b) The attorney shall counsel the minor concerning the hearing procedure and the potential effects of the hearing proceeding on the minor. If the minor does not wish to appear, the attorney shall file a motion with the court before the scheduled hearing to waive the minor's right to be present at the hearing procedure except during the minor's own testimony. If the attorney determines that the minor does not wish to appear before the judge to provide his own testimony, the attorney shall file a separate motion with the court before the hearing to waive the minor's right to testify.

(c) In all actions on behalf of the minor, the attorney shall represent the minor until formally relieved of the responsibility by the judge. (1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

§ 122C-224.3. Hearing for review of admission.

(a) Hearings shall be held at the 24-hour facility in which the minor is being treated, if it is located within the judge's district court district as defined in G.S. 7A-133, unless the judge determines that the court calendar will be disrupted by such scheduling. In cases where the hearing cannot be held in the 24-hour facility, the judge may schedule the hearing in another location, including the judge's chambers. The hearing may not be held in a regular courtroom, over objection of the minor's attorney, if in the discretion of the judge a more suitable place is available.

(b) The minor shall have the right to be present at the hearing unless the judge rules favorably on the motion of the attorney to waive the minor's appearance. However, the minor shall retain the right to appear before the judge to provide his own testimony and to respond to the judge's questions unless the judge makes a separate finding that the minor does not wish to appear upon motion of the attorney.

(c) Certified copies of reports and findings of physicians, psychologists and other responsible professionals as well as previous and current medical records are admissible in evidence, but the minor's right, through his attorney, to confront and cross-examine witnesses may not be denied.

(d) Hearings shall be closed to the public unless the attorney requests otherwise.

(e) A copy of all documents admitted into evidence and a transcipt of the proceedings shall be furnished to the attorney, on request, by the clerk upon the direction of a district court judge. The copies shall be provided at State expense.

(f) For an admission to be authorized beyond the hearing, the minor must be (1) mentally ill or a substance abuser and (2) in need of further treatment at the 24-hour facility to which he has been admitted. Further treatment at the admitting facility should be undertaken only when lesser measures will be insufficient. It is not necessary that the judge make a finding of dangerousness in order to support a concurrence in the admission.

(g) The court shall make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the requirements of subsection (f) have been met, the court shall concur with the voluntary admission and set the length of the authorized admission of the minor for a period not to exceed 90 days; or

(2) If the court determines that there exist reasonable grounds to believe that the requirements of subsection (f) have been met but that additional diagnosis and evaluation is needed before the court can concur in the admission, the court may make a one time authorization of up to an additional 15 days of stay, during which time further diagnosis and evaluation shall be conducted; or

(3) If the court determines that the conditions for concurrence or continued diagnosis and evaluation have not been met, the judge shall order that the minor be released.

(h) The decision of the District Court in all hearings and rehearings is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. The minor may be retained and treated in accordance with this Part, pending the outcome of the appeal, unless otherwise ordered by the District Court or the Court of Appeals. (1987, c. 370, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 113.)

Editor's Note. — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "district court district as defined in G.S. 7A-133" for "judicial district" in the first sentence of subsection (a).

§ 122C-224.4. Rehearings.

(a) A minor admitted to a 24-hour facility upon order of the court for further diagnosis and evaluation shall have the right to a rehearing if the responsible professional determines that the minor is in need of further treatment beyond the time authorized by the court for diagnosis and evaluation.

(b) A minor admitted to a 24-hour facility upon the concurrence of the court shall have the right to a rehearing for further concurrence in continued treatment before the end of the period authorized by the court. The court shall review the continued admission in accordance with the hearing procedures in this Part. The court may order discharge of the minor if the minor no longer meets the criteria for admission. If the minor continues to meet the criteria for admission the court shall concur with the continued admission of the minor and set the length of the authorized admission for a period not to exceed 180 days. Subsequent rehearings shall be scheduled at the end of each subsequent authorized treatment period, but no longer than every 180 days.

(c) The responsible professional shall notify the clerk, no later than 15 days before the end of the authorized admission, that continued stay beyond the authorized admission is recommended for the minor. The clerk shall calendar the rehearing to be held before the end of the current authorized admission. (1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

§ 122C-224.5. Transportation.

When it is necessary for a minor to be transported to a location other than the treating facility for the purpose of a hearing, transportation shall be provided under the provisions of G.S. 122C-251. However, the 24-hour facility may obtain permission from the court to routinely provide transportation of minors to and from hearings. (1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

§ 122C-224.6. Treatment pending hearing and after authorization for or concurrence in admission.

(a) Pending the initial hearing and after authorization for further diagnosis and evaluation, or concurrence in admission, the responsible professional may administer to the minor reasonable and appropriate medication and treatment that is consistent with accepted medical standards and consistent with Article 3 of this Chapter.

(b) The responsible professional may release the minor conditionally for periods not in excess of 30 days on specified appropriate conditions. Violation of the conditions is grounds for return of the minor to the 24-hour facility. A law enforcement officer, on request of the responsible professional, shall take the minor into custody and return him to the facility in accordance with G.S. 122C-205. (1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

§ 122C-224.7. Discharge.

(a) The responsible professional shall unconditionally discharge a minor from treatment at any time that it is determined that the minor is no longer mentally ill or a substance abuser, or no longer in need of treatment at the facility.

(b) The legally responsible person may file a written request for discharge from the facility at any time. The facility may hold the minor in the facility for 72 hours after receipt of the request for discharge. If the responsible professional believes that the minor is mentally ill and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 7 of this Article. If the responsible professional believes that the minor is a substance abuser and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 8 of this Article. If an order authorizing the holding of the minor under involuntary commitment procedures is issued, further treatment and holding shall follow the provisions of Part 7 or Part 8 whichever is applicable. If an order authorizing the holding of the minor under involuntary commitment procedures is not issued, the minor shall be discharged.

(c) If a client reaches age 18 while in treatment, and the client refuses to sign an authorization for continued treatment within 72 hours of reaching 18, he shall be discharged unless the responsible professional obtains an order to hold the client under the provisions of Part 7 or Part 8 of this Article pursuant to an involuntary commitment. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987. Former § 122C-224 related to discharges.

Part 6. Involuntary Commitment—General Provisions.

§ 122C-251. Transportation.

(b) Except as provided in subsections (f) and (g) or in G.S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for respondents held in 24-hour facilities who have requested a change of venue for the district court hearing shall be provided by the county where the petition for involuntary commitment was initiated. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a 24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense.

(1899, c. 1, s. 32; Rev., s. 4555; 1919, c. 326, s. 4; C.S., ss. 6201, 6202; 1945, c. 952, ss. 29, 30; 1953, c. 256, s. 6; 1961, c. 186; 1963, c. 1184, s. 1; 1969, c. 982; 1973, c. 1408, s. 1; 1979, c. 915, ss. 21, 22; 1983, c. 138, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 268.)

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, inserted the present second sentence of subsection (b).

Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

§ 122C-262. Special emergency procedure for individuals needing immediate hospitalization.

Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-261(a) and who requires immediate hospitalization to prevent harm to himself or others, may transport the individual directly to an area facility or other place, including a State facility for the mentally ill, for examination by a physician or eligible psychologist, in accordance with G.S. 122C-263(a). If the individual meets the criteria required in G.S. 122C-261(a), the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. The certificate shall also state the reason that the individual requires immediate hospitalization.

If the physician or eligible psychologist executes the oath, appearance before a magistrate shall be waived. The physician or eligible psychologist shall send a copy of the certificate to the clerk

of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours (excluding Saturday, Sunday and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

Anyone, including a law enforcement officer if necessary, may transport the individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law enforcement officer or other designated person providing transportation shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and immediately notify the clerk of superior court of his actions. The physician's or eligible psychologist's certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation in accordance with the provisions of G.S. 122C-251.

Respondents received at a 24-hour facility under the provisions of this section shall be examined by a second physician in accordance with G.S. 122C-266. After receipt of notification that the District Court has determined reasonable grounds for the commitment, further proceedings shall be carried out in the same way as all other respondents under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596, s. 1.)

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

§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found not guilty by reason of insanity or incapable of proceeding; or

(3) Repealed by Session Laws 1987, c. 596, s. 3, effective October 1, 1987.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 5, 6; 1985 (Reg. Sess., 1986), c. 863, s. 18; 1987, c. 596, 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 October 1, 1987, deleted subdivision (b)(3),

which read "The respondent is in custody under the special emergency procedure described in G.S. 122C-262."

§ 122C-264. Duties of clerk of superior court.

(b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is needed, the clerk of superior court of the county where the 24-hour facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within 24 hours (excluding Saturday, Sunday and holidays) for a finding of reasonable grounds in accordance with 122C-261(b). The clerk shall notify the 24-hour facility of the court's findings by telephone and shall proceed as set forth in (b), (c) and (f) of this section.

(1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, ss. 8, 16; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 7; 1985 (Reg. Sess., 1986), c. 863, s. 19; 1987, c. 596, 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 (b1).

§ 122C-266. Inpatient commitment; second examination and treatment pending hearing.

(e) If the 24-hour facility described in G.S. 122C-252 or G.S. 122C-262 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination must occur not later than the following regular working day. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c. 638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596, 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 October 1, 1987, added "or G.S. 122C-262" near the beginning of subsection (e).

§ 122C-267. Outpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence.

(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent.

(e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's district court district as defined in G.S. 7A-133, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the client is indigent, the copies shall be provided at State expense.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-263(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459; 1977, c. 400, s. 7; c. 1126, s. 1; 1979, c. 915, ss. 7, 13; 1983, c. 380, s. 6; c. 638, ss. 12, 13; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 8; 1987, c. 282, s. 18; 1987 (Reg. Sess., 1988), c. 1037, s. 113.1.)

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "G.S. 122C-263(d)(1)" for "G.S. 122C-262(d)(1)" at the end of the first sentence of subsection (h).

The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "district court district as defined in G.S. 7A-133" for "judicial district" in the first sentence of subsection (e).

§ 122C-268. Inpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). A continuance of not more than five days may be granted upon motion of:

(1) The court;
(2) Respondent's counsel; or
(3) The State, sufficiently in advance to avoid movement of the respondent.

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of North Carolina Memorial Hospital, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held at the facility to which he is assigned under this Part.

In addition, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the

State's interest at any commitment hearing, rehearing, or supplemental hearing held in a place other than at one of the State's facilities for the mentally ill or the psychiatric service of North Carolina Memorial Hospital.

(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing.

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(h) The hearing shall be closed to the public unless the respondent requests otherwise.

(i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others. The court shall record the facts that support its findings. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 1014, s. 195(b); 1987 (Reg. Sess., 1988), c. 1037, s. 114.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "district court district as defined in G.S. 7A-133" for "judicial district" in the first sentence of subsection (g).

§ 122C-270. Attorneys to represent the respondent and the State.

(a) The senior regular resident superior court judge of a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill or mentally retarded with an accompanying behavior disorder. This special counsel shall

serve at the pleasure of the appointing judge, may not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys as fixed by the Administrative Officer of the Courts. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Administrative Office of the Courts shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned by a district judge of the district. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Administrative Officer of the Courts, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, a district court judge shall appoint counsel for indigent respondents from members of the bar of the county in accordance with G.S. 122C-268(d).

(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held at North Carolina Memorial Hospital under this Article. (1973, c. 47, s. 2; c. 1408, s. 1; 1977, c. 400, s. 11; 1979, c. 915, s. 12; 1983, c. 275, ss. 1, 2; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 115.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "superior court district or set of districts as defined in G.S. 7A-41.1" for "judicial district" in the first sentence of subsection (a).

§ 122C-276. Inpatient commitment; rehearings.

(a) Fifteen days before the end of the initial inpatient commitment period if the attending physician determines that commitment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the district court district as defined in G.S. 7A-133 in which the facility is located, shall calendar the rehearing. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding of the time and place of the hearing.

(b) Fifteen days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, having been found not guilty by reason of insanity or incapable of proceeding, if the attending physician determines that commitment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of superior court who shall schedule a rehearing as provided in subsection (a) of this section.

(c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the district court district as defined in G.S. 7A-133 in which the facility is located or a district court judge temporarily assigned to that district.

(d) Notice and proceedings of rehearings are governed by the same procedures as initial hearings and the respondent has the same rights he had at the initial hearing including the right to appeal.

(e) At rehearings the court may make the same dispositions authorized in G.S. 122C-271(b) except a second commitment order may be for an additional period not in excess of 180 days.

(f) Fifteen days before the end of the second commitment period and annually thereafter, the attending physician shall review and evaluate the condition of each respondent; and if he determines that a respondent is in continued need of inpatient commitment or, in the alternative, in need of outpatient commitment, or a combination of both, he shall so notify the respondent, his counsel, and the clerk of superior court of the county, in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. No third or subsequent inpatient recommitment order shall be for a period longer than one year.

(g) At any rehearings the court has the option to order outpatient commitment for a period not in excess of 180 days in accordance

with the criteria specified in G.S. 122C-263(d)(1) and following the procedures as specified in this Article. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 9; 1979, c. 915, ss. 9, 17; 1981, c. 537, ss. 2-4; 1983, c. 638, ss. 18, 19; c. 864, s. 4; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 116.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "district court district as defined in G.S. 7A-133" for "judicial district" in the second sentence of subsections (a) and (c).

§ 122C-277. Release and conditional release; judicial review.

Legal Periodicals.

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Jury Adequately Charged Regarding Procedures under Acquittal on Grounds of Insanity. — Pattern jury instruction in N.C.P.I.—Crim. 304.10 which informed the jury of the commitment hearing procedures in §§ 15A-1321 and 15A-1322, pursuant to Article 5 of Chapter 122C, adequately charged the jury regarding procedures under acquittal on the ground of insanity. State v. Allen, — N.C. —, 367 S.E.2d 626 (1988).

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

§ 122C-286. Commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon its own motion or upon motion of the responsible professional, the respondent, or the State, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the responsible professional of the area authority or the proposed treating physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, the court shall appoint counsel to represent him.

(e) Hearings may be held at a facility if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area authority or physician who is responsible for the management and supervision of the respondent's treatment. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 863, ss. 29, 30; 1987 (Reg. Sess., 1988), c. 1037, s. 117.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "district court district as defined in G.S. 7A-133" for "judicial district" in the first sentence of subsection (e).

§ 122C-290. Duties for follow-up on commitment order.

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b), the area authority or physician may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated area authority or physician for examination. The law enforcement officer shall turn the respondent over to the custody of the physician or area authority who shall conduct the examination and release the respondent or have the respondent taken to a 24-hour facility upon a determination that treatment in the facility will benefit the respondent. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251, upon notice to the clerk or magistrate that transportation is necessary, or as provided in G.S. 122C-408(b). If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291.

(1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 32; 1987, c. 674, s. 2; c. 750.)

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

Effect of Amendments. — Session Laws 1987, c. 674, s. 2, effective October 1, 1987, inserted "or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b)" in the first sentence of subsection (b).

Session Laws 1987, c. 750, effective August 7, 1987, rewrote subsection (b).

Part 9. Public Intoxication.

§ 122C-301. Assistance to an individual who is intoxicated in public; procedure for commitment to shelter or facility.

CASE NOTES

Limited Immunity in Dealing with Intoxicated Individuals. — When officers deal with publicly intoxicated individuals, the legislature has immunized them from civil and criminal liability only if the officers use reasonable measures under this section: such limited immunity would be unnecessary if an individual's intoxication always constituted contributory negligence. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., — N.C. App. —, 364 S.E.2d 179 (1988).

Article 6.

Special Provisions.

Part 1. Camp Butner and Community of Butner.

§ 122C-403. Secretary's authority over Camp Butner reservation.

The Secretary shall administer the Camp Butner reservation. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

(1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.

(2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.

(3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3A, 3B, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply.

(4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361 or designate the Community of Butner Planning Commission as the planning agency for the reservation.

(5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.
(6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.
(7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-413 and Article 20, Part 1, of Chapter 160A of the General Statutes.
(8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.
(9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the Chief of Support Services of John Umstead Hospital or another appropriate person.
(10) Adopt rules to carry out the purposes of this Article. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1965, c. 933; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 1987, c. 536, s. 2.)

Editor's Note. — Session Laws 1987, c. 536, s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

Effect of Amendments. — The 1987 amendment, effective July 2, 1987, rewrote this section.

§ 122C-404. Community of Butner Planning Commission.

(h) Prior to the adoption of any rule under this section that will apply to the territory of Camp Butner reservation other than the grounds of State facilities or State institutions, the Secretary shall consult with the Community of Butner Planning Commission.

(i) In addition to the duties prescribed by this section, the Secretary may assign other duties to the Community of Butner Planning Commission that relate to the Community of Butner or the Camp Butner reservation.

If the Secretary is authorized by statute to create a board or other group, some of whose members are required to have special qualifications, the Secretary may assign the duties of the board or other group to the Community of Butner Planning Commission if the members of the Planning Commission have the requisite qualifications. (1985, c. 589, s. 2; 1987, c. 536, s. 3; c. 827, s. 245.)

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. 536, s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

Effect of Amendments. — Session Laws 1987, c. 536, s. 3, effective July 2, 1987, added the second paragraph of subsection (i).

Session Laws 1987, c. 827, s. 245, effective August 13, 1987, deleted "ordinance or" preceding "rule" in subsection (h).

§ 122C-405. Procedure applicable to rules.

Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner reservation. If a public hearing is required before the adoption of a rule, the Community of Butner Planning Commission shall conduct the hearing. (1949, c. 71, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 614, s. 6; 1985, c. 589, s. 2; 1987, c. 536, s. 4; c. 720, s. 3.)

Editor's Note. —
Session Laws 1987, c. 536, s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

Effect of Amendments. — Session Laws 1987, c. 536, s. 4, effective July 2, 1987, rewrote this section.

Session Laws 1987, c. 720, s. 3, effective August 1, 1987, substituted a reference to Chapter 150B for a reference to Chapter 150A in this section as it read prior to its amendment by Session Laws 1987, c. 536, s. 4.

§ 122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.

(b) After taking the oath of office required for law-enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville Counties in those counties respectively. Within the territorial jurisdiction stated in subsection (a) of this section, the special police officers have the primary responsibility to enforce the laws of North Carolina and any rule applicable to that territory adopted under authority of this Part or under G.S. 143-116.6 or G.S. 143-116.7 or under the authority granted any other agency of the State and also have the powers set forth for firemen in Articles 3, 5 and 6 of Chapter 69 of the General Statutes. Any civil or criminal process to be served on any individual confined at any State facility within the territorial jurisdiction described in subsection (a) of this section shall be forwarded by the sheriff of the county in which the process originated to the Director of the Butner Public Safety Division. Special police officers authorized by this section shall be assigned to transport any individual transferred to or from any State facility within the territorial jurisdiction described in subdivision (a) of this section to or from the psychiatric service of North Carolina Memorial Hospital. (1949, c. 71, s. 6; 1955, c. 887, s. 1; 1959, c. 35; c. 1028,

s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 491, s. 1; c. 964, s. 19; c. 1127, s. 49; 1983, c. 761, s. 165; 1985, c. 589, s. 2; 1987, c. 827, s. 246.)

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 "rule" for "ordinance or regulation" in the second sentence of subsection (b).

§ 122C-410. Authority of county or city over Camp Butner reservation.

(a) A municipality may not annex territory extending into or extend its extraterritorial jurisdiction into the Camp Butner reservation without written approval from the Secretary of each proposed annexation or extension. The procedures, if any, for withdrawing approval granted by the Secretary to an annexation or extension of extraterritorial jurisdiction shall be stated in the notice of approval.

(b) A county ordinance may apply in part or all of the Camp Butner reservation if the Secretary gives written approval of the ordinance. The Secretary may withdraw his approval of a county ordinance by giving written notification, by certified mail, return receipt requested, to the county. A county ordinance ceases to be effective in the Camp Butner reservation 30 days after the county receives the written notice of the withdrawal of approval. (1987, c. 536, s. 5.)

Editor's Note. — Session Laws 1987, c. 536, s. 6 makes this section effective upon ratification. Section 6 further provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation. The act was ratified July 2, 1987.

§ 122C-411. Fire protection contracts.

The Department of Crime Control and Public Safety may contract with industries in the vicinity of Butner to provide fire protection to those industries. Those contracts shall provide for a payment by any contracting industry calculated on the basis of twenty cents (20¢) per one hundred dollars ($100.00) of assessed valuation. (1987, c. 845, s. 1.)

Editor's Note. — Session Laws 1987, c. 845, s. 2 makes this section effective upon ratification. The act was ratified August 14, 1987.

§§ 122C-412 to 122C-420: Reserved for future codification purposes.

Chapter 122D.

North Carolina Agricultural Finance Act.

§ 122D-1. Short title.

Editor's Note. —

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

"Notwithstanding G.S. 150B-13, the North Carolina Agricultural Finance Authority may, until six months from the effective date of this act, adopt temporary rules to carry out the purposes of Chapter 122D of the General Statutes without prior notice or hearing or upon any abbreviated notice or hearing the Authority finds practicable. The Authority shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B at the same time it adopts a temporary rule. Temporary rules adopted under this section shall be published by the Director of the Office of Administrative Hearings in the North Carolina Register and shall be effective for a period of not longer than 180 days."

§ 122D-3. Definitions.

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

(1) "Agricultural Loan" means a loan made by a lending institution or by the Authority to any person for the purpose of financing or refinancing land acquisition or improvement; soil conservation; irrigation; construction, renovation or expansion of buildings and facilities; purchase of farm fixtures, livestock, poultry, and fish of any kind; seeds; fertilizers; pesticides; feeds; machinery; equipment; containers or supplies or any other products employed in the production, cultivation, harvesting, storage, marketing, distribution or export of agricultural products.

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

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 29, 1987, inserted "or refinancing" near the beginning of subdivision (1).

§ 122D-6. General powers of Authority.

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

(15) Borrow money, issue bonds, and provide for the rights of the lenders or holders thereof and purchase, discount, sell, negotiate and guarantee, insure, coinsure and reinsure note, drafts, checks, bills of exchange, acceptances, bankers acceptances, cable transfers, letters of credit and

other evidence of indebtedness with or without credit enhancement devices;

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

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 29, 1987, added "with or without credit enhancement devices" at the end of subdivision (15).

§ 122D-16. Trust funds.

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

(1) Bonds, notes or treasury bills of the United States;

(2) Non-convertible debt securities of the following issuers:
   a. The Federal Home Loan Bank Board;
   b. The Federal National Mortgage Association;
   c. The Federal Farm Credit Bank; and
   d. The Student Loan Marketing Association;

(3) Any other obligations not listed above which are guaranteed as to principal and interest by the United States or any of its agencies;

(4) Certificates of deposit and other evidences of deposit at state and federal chartered banks and savings and loan associations; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof be fully collateralized;

(5) Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested;

(6) Money market funds whose portfolios consist of any of the foregoing investments;

(7) A guaranteed investment or similar contract, which provides for the investment of funds at a guaranteed rate of return, with an insurance company or depository financial institution with a claim paying rating of no less than either of the two highest grades given by a nationally recognized rating agency; and

(8) Any other investment authorized by law for the investment of funds by a unit of local government. (1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 1.)

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

§ 122D-23. Immunity.

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

Editor's Note. — Session Laws 1987, c. 335, s. 5 makes this section effective upon ratification. The act was ratified June 10, 1987.

Chapter 125.

Libraries.

Article 1.

State Library Agency.

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

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

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

(5) To give assistance, advice and counsel to other State agencies maintaining special reference collections as to the best means of establishing and administering such libraries and collections.

(5a) To provide for the establishment and maintenance of union catalogs.

(7) Repealed by Session Laws 1987, c. 199, s. 4, effective July 1, 1987.

(9) To provide library services to blind and physically handicapped readers of North Carolina by making available to them books and other reading materials in braille, or sound recordings or any other medium used by the blind and physically handicapped; to enter into contracts and agreements with appropriate libraries and other organizations for the purposes of serving the blind and physically handicapped; to enter into contracts with library agencies of other states for providing library service to the blind and physically handicapped of those states, provided adequate compensation is paid for such service and such contract is otherwise advantageous to this State.

(10) To plan and coordinate cooperative programs between the various types of libraries within the State of North Carolina, and to coordinate State development with regional and national cooperative library programs; and to assist nonprofit corporations in organization and operation for the purposes of cooperative programs. (1955, c. 505, s. 3; 1961, c. 1161; 1973, c. 476, s. 84; 1977, c. 645, s. 1; 1981, c. 918, s. 4; 1983, c. 819; 1987, c. 199.)

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

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, rewrote subdivisions (4) and (5), added subdivision (5a), deleted subdivision (7), relating to sets of logs and journals of the General Assembly for the use of the members, rewrote subdivision (9), and added the language "and to assist nonprofit corporations in organization and operation for the purposes of cooperative programs" at the end of subdivision (10).

ARTICLE 1A.

State Depository Library System.

§ 125-11.5. Purpose.

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

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

§ 125-11.6. Definitions.

As used in this Article:

(1) "Depository library" means a library designated to receive and maintain State publications and make them available to the public.

(2) "Document" means any printed document including any report, directory, statistical compendium, bibliography, map, regulation, newsletter, pamphlet, brochure, periodical, bulletin, compilation, or register, regardless of whether the printed document is in paper, film, tape, disk, or any other format.

(3) "State agency" means every State department, institution, board, and commission.

(4) "State publication" means any document prepared by a State agency or private organization, consultant, or research firm, under contract with or under the supervision of a State agency: Provided, however, the term "State publication" does not include administrative documents used only within the issuing agency, documents produced for instructional purposes that are not intended for sale or publication, appellate division reports and advance sheets distributed by the Administrative Office of the Courts, the S.B.I. Investigative "Bulletin", documents that will be reproduced in the Senate or House of Representatives Journals, or documents that are confidential pursuant to Article 17 of Chapter 120 of the General Statutes. (1987, c. 771, s. 2.)

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

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

§ 125-11.8. State Publications Clearinghouse created.

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

(b) The Clearinghouse shall:

(1) Advise State agencies annually of the number of copies of State publications needed for distribution.

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

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

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

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

§ 125-11.10. Duties of State agencies.

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

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

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

§ 125-11.11. Advisory Committee.

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

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

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

Chapter 126.

State Personnel System.

Article 1.

State Personnel System Established.

§ 126-1. Purpose of Chapter; application to local employees.

CASE NOTES

Chapter 126 clearly gives State Personnel Commission power to establish rules and policies governing personnel matters. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

Cited in Smith v. Bounds, 657 F. Supp. 1327 (E.D.N.C. 1986).

OPINIONS OF ATTORNEY GENERAL

Employment and termination of local health director are subject to the provisions of this chapter, 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 this chapter. 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).

§ 126-2. State Personnel Commission.

(b) The Commission shall consist of seven members who shall be appointed by the Governor on July 1, 1965, or as soon thereafter as is practicable. Two members of the Commission shall be chosen from employees of the State subject to the provisions of this Chapter; two members shall be appointed from a list of individuals nominated by the North Carolina association of county commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be appointed from the public at large. Of the initial members of the Commission, two shall be appointed to serve for terms of two years, two shall be appointed to serve for terms of four years, and three shall be appointed to serve for terms of six years. Their successors shall be appointed by the Governor for terms of six years. Any vacancy occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(1965, c. 640, s. 2; 1975, c. 667, ss. 2-4.)

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

Editor's Note. — Subsection (b) of this section is set out above to correct an error in the main volume.

§ 126-4. Powers and duties of State Personnel Commission.

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s, Birthday for all years after 1987. Provided, however, that the Commission shall not provide for a greater number of total paid holidays than were established for the year 1986. The Commission shall not delete Veterans Day as a holiday.

(9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, and reinstatement in all cases as the Commission shall find justified.

(12) Repealed by Session Laws 1987, c. 320, s. 2, effective June 8, 1987.

(13) Repealed by Session Laws 1987, c. 320, s. 3, effective June 8, 1987.

(1965, c. 640, s. 2; 1971, c. 1244, s. 14; 1975, c. 667, ss. 6, 7; 1977, c. 288, s. 1; c. 866, ss. 1, 17, 20; 1985, c. 617, ss. 2, 3; c. 791, s. 50(b); 1985 (Reg. Sess., 1986), c. 1028, s. 6; 1987, c. 25, s. 2; c. 320, ss. 1-3.)

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

Cross References. — As to the number, appointment, removal, etc., of administrative law judges, see § 7A-754.

Effect of Amendments. —

Session Laws 1987, c. 25, s. 2, effective March 25, 1987, added the last three sentences of subdivision (5).

Session Laws 1987, c. 320, ss. 1-3, effective June 8, 1987, deleted "and the hearing of appeals of applicants, employees, and former employees" following "the investigation of complaints" at the beginning of the first sentence of subdivision (9), deleted a former second sentence of subdivision (9), defining "reinstatement", deleted subdivision (12), relating to the appointment of hearing officers, and deleted subdivision (13), relating to the employment of independent attorneys to represent the Department.

CASE NOTES

Powers. — The Legislature has delegated, to the extent of the commission's statutory powers, its own legislative powers over the State's personnel system. Therefore, rules and policies made pursuant to the commission's statutory authority have the effect of law. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

Section 126-37(a) allows commission to order reinstatement of employee and direct other suitable relief, whenever it deems it necessary to correct the failure of a department or agency to follow policies or rules promulgated pursuant to § 126-4. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

To serve purpose of Chapter 126, rules and policies made pursuant to this section must be enforced. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

Retention of Employees in Abolished Positions. — Because retention of employees in abolished positions is clearly a personnel matter affecting the separation of employees, under Subdivision (7a), the State Personnel Commission has authority to issue a policy thereon and to require the Department of Justice to follow it. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

Plaintiff whose position was abolished and employment terminated did not have to show prejudice once he carried his burden of showing that the Department of Justice failed to follow the State Personnel Commission's policies. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

Burden to Show Department or Agency Followed Personnel Commission's Procedures. — Neither Chapter 126 nor the Administrative Procedure Act indicates that the burden is shifted to the department or agency to show that it followed the Personnel Commission's rules, policies, or procedures. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

OPINIONS OF ATTORNEY GENERAL

The purpose of Chapter 126 and thus public policy would be frustrated by enforcement of contracts made in violation of the valid rules established pursuant to subsection (3) of this section. This frustration of public policy would require nonenforcement of any such contract. See opinion of Attorney General to Mr. Richard V. Lee, State Personnel Director, — N.C.A.G. — (Nov. 6, 1987).

Employment Offer Without Final Approval Not an Enforceable Contract. — A written or verbal offer of employment by a state agency or university, with a specific salary amount and without the final approval of the State Personnel Director, does not create a legally enforceable contract. See opinion of Attorney to Mr. Richard V. Lee, State Personnel Director, — N.C.A.G. — (Nov. 6, 1987).

A written or verbal offer of employment by a state agency or university,

with a specific salary amount which violates applicable personnel policies and administrative rules and without the final approval of the State Personnel Director, does not create a legally enforceable contract. See opinion of Attorney General to Mr. Richard V. Lee, State Personnel Director, — N.C.A.G. — (Nov. 6, 1987).

The position, authority or apparent authority of the person making the offer of employment has no impact on whether the offer constitutes a legally enforceable contract. See opinion of Attorney General to Mr. Richard V. Lee, State Personnel Director, — N.C.A.G. — (Nov. 6, 1987).

Employment Offer Rescinded for Being in Violation of Personnel Policies and Rules creates No Agency Liability. — There is no liability of the agency if an offer of employment is made by a state agency or university, with a specific salary amount which violated applicable personnel policies and administrative rules, and later rescinded as being in violation of applicable personnel policies and rules. See opinion of Attorney General to Mr. Richard V. Lee, State Personnel Director, — N.C.A.G. — (Nov. 6, 1987).

There is no liability of the Office of State Personnel if it refuses to process a hiring decision which violated State Personnel Commission policy. See opinion of Attorney General to Mr. Richard V. Lee, State Personnel Director, — N.C.A.G. — (Nov. 6, 1987).

Liability of Person Who Makes Employment Offer. — It is unlikely that any liability would attach to the person who made an employment offer that is in violation of appplicable personnel policies and rules, but it might depend on the nature of the person's position and the circumstances surrounding the offer. See opinion of Attorney General to Mr. Richard V. Lee, State Personnel Director, — N.C.A.G. — (Nov. 6, 1987).

§ 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to:

(1) All State employees not herein exempt, and

(2) To all employees of area mental health, mental retardation, substance abuse authorities, and to employees of local social services departments, public health departments, and local emergency management agencies that receive federal grant-in-aid funds; and the provision of this Chapter may apply to such other county employees as the several boards of county commissioners may from time to time determine.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-1(5) [116-11(5)], and 116-14.

(10) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20.

(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).

(12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g).

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Human Resources, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) The State Personnel Commission shall establish a position and appointment type for certain field force positions and employees in the Division of Highways, Department of Transportation, where, in the judgement of the Commission, such appointment is for a position that is an entry level occupation, is for a duration of at least one-half of the workdays of each pay period for at least nine calendar months per year, and is reflective of employment practices in competing labor markets. This appointment type shall be for "permanent hourly employees." Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), and 126-4(3), and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to permanent hourly employees. The State Personnel Commission regulations shall provide that these employees will be guaranteed two hours show-up pay when work is postponed, and pay for holidays falling within periods of employment.

(1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19; 1987 (Reg. Sess., 1988), c. 1064, s. 3.)

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

Editor's Note. —

Session Laws 1987, c. 850, s. 27(a) provided that the 1987 act should not be construed as a revenue bill. However, Session Laws 1987 (Reg. Sess., 1988), c. 993, s. 23 repealed this provision.

Effect of Amendments. —

Session Laws 1987, c. 320, s. 4, effective June 8, 1987, substituted "emergency management agencies" for "civil defense agencies" in subsection (a).

Session Laws 1987, c. 395, s. 1, effective July 1, 1987, substituted "pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter" for "pursuant to

G.S. 126-4(4), 126-4(5) and 126-4(6), and except as to the provisions of Articles 6 and 7 of this Chapter" near the beginning of subsection (c3).

Session Laws 1987, c. 809, s. 1, effective October 1, 1987, added subsection (c4).

Session Laws 1987, c. 850, s. 19, effective August 14, 1987, added subdivision (c1)(12).

The 1987 (Reg. Sess., 1988) amendment, effective October 1, 1988, inserted the subdivision designations "(1)" and "(2)" in subsection (a), added "and" at the end of subdivision (a)(1), and inserted "all" following "To" at the beginning of subdivision (a)(2).

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).

The Departments of Human Resources and Correction determine initially whether a particular position is a teaching or related education position within the meaning of subsection (c3). If an employee disputes that decision, he has a right to appeal to the State Personnel Commission and to have the commission resolve the dispute. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, — N.C.A.G. — (Mar. 18, 1987).

Salaries of Exempt Personnel. — The Secretary of the Department of Human Resources and the Secretary of the Department of Correction have authority to set the salary schedules for persons employed by their departments in teaching and related educational positions exempt from the State Personnel Act by subsection (c3) of this section. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, — N.C.A.G. — (Mar. 18, 1987).

The salary schedules established by the Department of Human Resources and the Department of Correction for educational personnel exempt from the State Personnel Act must correspond to the salary schedules established by the State Board of Education for public school employees except in cases where the duties of employees do not correspond to the duties of public school employee positions. In such cases the salary schedule should conform as closely as possible to the public school salary schedules. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, — N.C.A.G. — (Mar. 18, 1987).

ARTICLE 2.

Salaries, Promotions, and Leave of State Employees.

Editor's Note. — Session Laws 1987, c. 689, s. 1 rewrote the title of this Article.

§ 126-7.1. Posting requirement; State employees receive priority consideration.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the vacancy

in a location readily accessible to employees. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee:

(1) Applies for another position of State employment; and

(2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee.

(d) "Qualifications" within the meaning of subsection (c) of this section shall consist of:

(1) Training or education;

(2) Years of experience; and

(3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for. (1987, c. 689, s. 2.)

Editor's Note. — Session Laws 1987, c. 689, s. 5 makes this section effective October 1, 1987.

Session Laws 1987, c. 689, s. 4 provides:

"The State Personnel Director shall present a report to the 1989 General Assembly, no later than March 1, 1989, containing the following:

"(a) An assessment of the impact of this act on employing agencies and current State employees seeking promotional opportunities;

"(b) An assessment of the abililty of State agencies to recruit and hire outside applicants for State government employment; and

"(c) An assessment of the appeals process set forth in G.S. 126-36.2, including the number of appeals filed as a result of this act."

ARTICLE 5.

Political Activity of Employees.

§ 126-13. Appropriate political activity of State employees defined.

OPINIONS OF ATTORNEY GENERAL

Probation and parole officer may file notice of candidacy and campaign for election to the office of sheriff assuming that no federal funds are involved with respect to the probation and parole officer's employment and, thus, that proscriptions contained in the federal Hatch Act do not apply. See opinion of Attorney General to Sheriff Ralph L. Thomas, Carteret County, 55 N.C.A.G. 35 (1985).

§ 126-15.1. Probationary State employee defined.

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by G.S. 126-5(c). (1985, c. 469, s. 4; 1987, c. 282, s. 19.)

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "G.S. 126-5(c)" for "G.S. 126-5(d)."

ARTICLE 7.

The Privacy of State Employee Personnel Records.

§ 126-29. Access to material in file for agency hearing.

A party to a quasi-judicial hearing of a State agency subject to Article 7 of this Chapter, or a State agency subject to Article 7 of this Chapter which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion. Nothing in this Article shall impose liability on any agent or officer of the State for compliance with this provision, notwithstanding any other provision of this Article. (1977, c. 866, s. 12; 1987, c. 320, s. 5.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, added the last sentence.

§ 126-30. Fraudulent disclosure and willful nondisclosure on application for State employment; penalties.

(a) Any employee who knowingly and willfully discloses false or misleading information, or conceals dishonorable military service; or conceals prior employment history or other requested information, either of which are significantly related to job responsibilities on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment. Dismissal shall be mandatory where the applicant discloses false or misleading information in order to meet position qualifications. Application forms for State employment shall include a statement informing applicants of the consequences of such fraudulent disclosure or lack of disclosure.

(b) The employing authority within each department, university, board, or commission, shall verify the status of credentials and the accuracy of statements contained in the application of each new employee within 90 days from the date of the employees employment. Failure to verify the application shall not bar action under subsection (a) above.

(c) The State Personnel Commission shall issue rules and procedures to implement this section for all departments, agencies and institutions which are not exempted from the State Personnel Act under G.S 126-5(c1). Each agency, department and institution which is exempted under G.S. 126-5(c1) shall issue regulations to implement this section pursuant to the rulemaking procedures applicable to it. (1987, c. 666, s. 1.)

Editor's Note. — Session Laws 1987, c. 666, s. 2 makes this section effective January 1, 1988.

§§ 126-31 to 126-33: Reserved for future codification purposes.

ARTICLE 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34. Grievance appeal for State employees.

Any permanent State employee having a grievance arising out of or due to his employment and who does not allege discrimination because of his age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss his problem or grievance with his supervisor and follow the grievance procedure established by his department or agency. (1975, c. 667, s. 10; 1987, c. 320, s. 6.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, substituted "handicapping condition as defined in G.S. 168A-3" for "physical disability."

CASE NOTES

Jurisdiction. — The State Personnel Commission's jurisdiction is not limited to disciplinary actions under § 126-35 or discriminatory actions under § 126-36; jurisdiction may also arise, under this section, for any "grievance arising out of or due to [an employee's] employment." North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

§ 126-35. Written statement of reason for disciplinary action.

CASE NOTES

Jurisdiction. — The State Personnel Commission's jurisdiction is not limited to disciplinary actions under this section or discriminatory actions under § 126-36; jurisdiction may also arise, under § 126-34, for any "grievance arising out of or due to [an employee's] employment." North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

§ 126-36. Appeal of unlawful State employment practice.

Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied him or that demotion, layoff or termination of employment was forced upon him in retaliation for opposition to alleged discrimination or because of his age, sex, race, color, national origin, religion, creed, political affiliation, or handicapped [handicapping] condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission. (1975, c. 667, s. 10; 1977, c. 866, ss. 13, 16; 1987, c. 320, s. 7.)

Editor's Note. — Section 168A-3, referred to above, does not define the term "handicapped condition," but does define "handicapped person" and "handicapping condition."

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, substituted "handicapped condition as defined in G.S. 168A-3" for "physical disability."

CASE NOTES

Jurisdiction. — The State Personnel Commission's jurisdiction is not limited to disciplinary actions under § 126-35 or discriminatory actions under this section; jurisdiction may also arise, under § 126-34, for any "grievance arising out of or due to [an employee's] employment." North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

Racial Discrimination. — The State Personnel Commission has authority to determine whether a State employee has been discharged because of racial discrimination. Abron v. North Carolina Dep't of Cor., — N.C. App. —, 368 S.E.2d 203 (1988).

Once employee establishes prima facie case of racial discrimination, burden shifts to the employer to produce evidence showing legitimate, nondiscriminatory reason for its action. If the employer carries its burden to produce that evidence, the employee must then satisfy the trier of fact that the employer's stated reasons were merely a pretext for intentional discrimination. Abron v. North Carolina Dep't

of Cor., — N.C. App. —, 368 S.E.2d 203 (1988).

Evidence of Discrimination. — In considering whether the employer's stated nondiscriminatory reasons were merely a pretext for discrimination, courts may consider the evidence the employee used to establish his prima facie case as well as: (1) Evidence that white employees involved in acts of comparable seriousness were retained; (2) evidence of the employer's treatment of the employee during his term of employment; (3) evidence of the employer's response to any legitimate civil rights activities of the employee; and (4) evidence of the employer's general policy and practice regarding minority employees. Abron v. North Carolina Dep't of Cor., — N.C. App. —, 368 S.E.2d 203 (1988).

Record held to support the commission's ultimate finding of fact that petitioner assistant manager of soap plant at corrections department facility, was not a victim of racial discrimination. Abron v. North Carolina Dep't of Cor., — N.C. App. —, 368 S.E.2d 203 (1988).

§ 126-36.2. Appeal to Personnel Commission by State employee denied notice of vacancy or priority consideration.

Any State employee who has reason to believe that he was denied promotion due to the failure of the agency, department, or institution that had a job vacancy to:

(1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;

(2) Give him priority consideration pursuant to G.S. 126-7.1(c) may appeal directly to the State Personnel Commission. (1987, c. 689, s. 3.)

Editor's Note. — Session Laws 1987, c. 689, s. 5 makes this section effective October 1, 1987.

Session Laws 1987, c. 689, s. 4 provides:

"The State Personnel Director shall present a report to the 1989 General Assembly, no later than March 1, 1989, containing the following:

"(a) An assessment of the impact of this act on employing agencies and current State employees seeking promotional opportunities;

"(b) An assessment of the ability of State agencies to recruit and hire outside applicants for State government employment; and

"(c) An assessment of the appeals process set forth in G.S. 126-36.2, including the number of appeals filed as a result of this act."

§ 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.

(a) The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission. Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission

is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.

(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial de novo. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the decision of the Commission, the decision of superior court shall be binding on the local appointing authority.

(c) If the local appointing authority is other than a board of county commissioners, the employee must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the filing of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene. (1975, c. 667, s. 10; 1981, c. 680, s. 1; 1985, c. 746, s. 15; 1985 (Reg. Sess., 1986), c. 1022, s. 10; 1987, c. 394.)

Effect of Amendments. — The 1987 amendment, effective June 17, 1987, and applicable to all pending proceedings, provided that local employees shall have 60 days from the effective date to give notice to the county as provided in subsection (c) of this section, designated the first and second paragraphs as subsections (a) and (b), respectively, added the last two sentences of subsection (b), and added subsection (c).

CASE NOTES

Jurisdiction. — The State Personnel Commission's jurisdiction is not limited to disciplinary actions under § 126-35 or discriminatory actions under § 126-36; jurisdiction may also arise, under § 126-34, for any "grievance arising out of or due to [an employee's] employment." North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

Subsection (a) allows the commission to order reinstatement of an employee and direct other suitable relief, whenever it deems it necessary to correct the failure of a department or agency to follow policies or rules promulgated pursuant to § 126-4. North Carolina Dep't of Justice v. Eaker, — N.C. App. —, 367 S.E.2d 392 (1988).

County Board of Social Services Is Not "Local Appointing Authority". — The sole involvement of the county board of social services in personnel matters is to select the county director of

social services. And the director derives his authority to appoint personnel directly from the General Assembly, not from the board. Thus the local board does not become the "local appointing authority" pursuant to this section in the absence of a permanent full-time director. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

§ 126-39. State employee defined.

For the purposes of this Article, except for positions subject to competitive service and except for appeals brought under G.S. 126-16 and 126-25, the terms "permanent State employee," "permanent employee," "State employee" or "former State employee" as used in this Article shall mean a person

(1) in a grade 60 or lower position who has been continuously employed by the State of North Carolina for the immediate 12 preceding months;
(2) in a grade 61 to grade 65 position who has been continuously employed by the State of North Carolina for the immediate 36 preceding months;
(3) in a grade 66 to grade 70 position who has been continuously employed by the State of North Carolina for the immediate 48 preceding months; or
(4) in a grade 71 or higher position who has been continuously employed by the State of North Carolina for the immediate 60 preceding months

at the time of the act, grievance, or employment practice complained of. (1977, c. 866, s. 15; 1985, c. 617, s. 4; 1987, c. 320, s. 8.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, deleted "not" preceding "been continuously employed" in subdivisions (1) through (4).

§ 126-41. Attorney and witness fees.

The decision of the Commission assessing or refusing to assess reasonable witness fees or a reasonable attorney's fee as provided in G.S. 126-4(11) is a final agency decision appealable under Article 4 of Chapter 150B of the General Statutes. The reviewing court may reverse or modify the decision of the Commission if the decision is unreasonable or the award is inadequate. The reviewing court shall award court costs and a reasonable attorney's fee for representation in connection with the appeal to an employee who obtains a reversal or modification of the Commission's decision in an appeal under this section. (1985, c. 717; 1987, c. 827, ss. 1, 56.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "In addition to the grounds set out in G.S. 150A-51" at the beginning of the second sentence.

The 1987 amendment by c. 827, s. 1 substituted reference to Chapter 150B for reference to Chapter 150A in this section.

Article 9.

The Administrative Procedure Act and Modifications.

§§ 126-43, 126-44: Repealed by Session Laws 1987, c. 320, s. 9, effective June 8, 1987.

Article 12.

Work Options Program for State Employees.

§ 126-78. Administration.

The State Personnel Commission and any State division, department, agency, instrumentality or authority participating in the State Work Options Program shall promulgate rules necessary for the administration of the program. (1981, c. 917, s. 1; 1987, c. 827, s. 57.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "pursuant to Chapter 150A, 'the Administrative Procedures Act'" at the end of the section.

Article 13.

Veteran's Preference.

§ 126-80. Declaration of policy.

It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment for positions subject to the provisions of this Chapter with every State department, agency, and institution. (1987 (Reg. Sess., 1988), c. 1064, s. 1.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1064, s. 5 makes this Article effective October 1, 1988.

§ 126-81. Definitions.

As used in this Article:

(1) "A period of war" includes World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

(2) "Veteran" means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.

(3) "Eligible veteran" means:

a. A veteran who served during a period of war; or

b. The spouse of a disabled veteran; or

c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as a result of such service; or

d. A veteran who suffered a service-connected disability during peacetime; or

e. The spouse of a veteran described in subdivision d. of this subsection; or

f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who died for service-related reasons during peacetime. (1987 (Reg. Sess., 1988), c. 1064, s. 1.)

§ 126-82. State Personnel Commission to provide for preference.

(a) The State Personnel Commission shall provide that in evaluating the qualifications of an eligible veteran against the minimum requirements for obtaining a position, credit shall be given for all military service training or schooling and experience that bears a reasonable and functional relationship to the knowledge, skills, and abilities required for the position.

(b) The State Personnel Commission shall provide that if an eligible veteran has met the minimum requirements for the position, after receiving experience credit under subsection (a) of this section, he shall receive experience credit as determined by the Commission for additional related and unrelated military service.

(c) The State Personnel Commission may provide that in reduction in force situations where seniority or years of service is one of the considerations for retention, an eligible veteran shall be accorded credit for military service.

(d) Any eligible veteran who has reason to believe that he or she did not receive a veteran's preference in accordance with the provisions of this Article or rules adopted under it may appeal directly to the State Personnel Commission.

(e) The willful failure of any employee subject to the provisions of Article 8 of this Chapter to comply with the provisions of this Article or rules adopted under it constitutes personal misconduct in accordance with the provisions and promulgated rules of this Chapter, including those for suspension, demotion, or dismissal. (1987 (Reg. Sess., 1988), c. 1064, s. 1.)

§ 126-83. Exceptions.

Notwithstanding G.S. 126-5, and notwithstanding provisions in that section that only certain Articles of this Chapter apply to some employees, this Article applies to all persons covered by this Chapter except those exempted by G.S. 126-5(c)(2), G.S. 126-5(c)(3), G.S. 126-5(c)(4), G.S. 126-5(c1), G.S. 126-5(c2), or G.S. 126-5(c3), but this Article does not apply to those persons covered by G.S. 126-5(a)(2). (1987 (Reg. Sess., 1988), c. 1064, s. 1.)

Chapter 127A.

Militia.

Article 3.

National Guard.

§ 127A-50.1. Military judges.

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

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

Editor's Note. — Session Laws 1987, c. 649, s. 2 makes this section effective upon ratification. The act was ratified July 21, 1987.

Article 15.

North Carolina National Guard Tuition Assistance Act of 1975.

§ 127A-192. Definitions.

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

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

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

Effect of Amendments. — The 1987 amendment, effective July 6, 1987, substituted "community college operated under the provisions of Chapter 115D" for "community college or technical institute operated under the provision of Chapter 115A or Article 3 of Chapter 116" in subsection (d).

§ 127A-194. Eligibility.

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

(1) Students seeking to achieve completion of their secondary school education at a community college [or technical institute].

(2) Students seeking trade or vocational training or education.

(3) Students seeking to achieve a two-year associate degree.

(4) Students seeking to achieve a four-year baccalaureate degree.

(5) Students seeking to achieve a graduate degree. (1975, c. 917, s. 6; 1977, c. 228, ss. 3, 4.)

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

Editor's Note. — Session Laws 1987, c. 564, s. 12, effective July 6, 1987, directed that "community college" be substituted for "community college or technical institute" in subdivision (b)(1) of § 127-194. At the direction of the Revisor of Statutes, the phrase "or technical institute" has been placed in brackets at the end of subdivision (b)(1) of this section, which was apparently the section intended to be amended by the 1987 act.

Chapter 127B.

Military Affairs.

ARTICLE 1.

Military Property Sales Facilities.

§ 127B-1. Military property sales facility defined.

CASE NOTES

Constitutionality. — This Article regulating businesses dealing in military goods, is constitutional under the due process and equal protection provisions of the state and federal constitutions. Poor Richard's, Inc. v. Stone, — N.C. —, 366 S.E.2d 697 (1988).

This article does not violate Art. I, §§ 1 and 19, of the state Constitution. Poor Richard's, Inc. v. Stone, — N.C. —, 366 S.E.2d 697 (1988).

The classification created by this article is not so arbitrary or unreasonable as to be violative of the equal protection requirement. Poor Richard's, Inc. v. Stone, — N.C. —, 366 S.E.2d 697 (1988).

Businesses involved in buying and selling military property have features which distinguish them from other types of retail sales in a way which justifies their regulation. Poor Richard's, Inc. v. Stone, — N.C. —, 366 S.E.2d 697 (1988).

OPINIONS OF ATTORNEY GENERAL

Purpose of this Article appears to be to discourage theft of property from the State and federal armed forces by the establishment of a record both of all military property sold and of the identity of the persons selling it by means of licensure of military property sales facilities. See opinion of Attorney General to the Honorable William N. Martin, 55 N.C.A.G. 31 (1985).

Direct Purchase from Government Requires No License. — If a person, firm or corporation deals only in military property purchased directly from the United States government or this State pursuant to written contract, then that person, firm or corporation is not required to be licensed by this Article. However, the items purchased, if they are indeed "military property" within the meaning of § 127B-2, would nevertheless be subject to recording and reporting requirements by military property sales facilities which might later purchase them. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

§ 127B-2. Military property defined.

OPINIONS OF ATTORNEY GENERAL

Item manufactured for commercial sale, such as camouflage clothing, are not "military property" within the meaning of this section. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

Property such as a desk, which is of a type and kind issued for use in or furnished and intended for the military service of the United States or the militia of this State, is nonetheless not "military property" within the meaning of this Article if it was not originally manufactured for the United States or this State. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

Article is not intended to cover sales and purchases of obsolete mili-

tary property. See opinion of Attorney General to the Honorable William N. Martin, 55 N.C.A.G. 31 (1985).

The term "military property," as defined in this Article, does not include property originally manufactured for use by the United States military or the North Carolina militia, but which is of a type and kind no longer issued for use in or furnished to the personnel of such military services. See opinion of Attorney General to the Honorable William N. Martin, 55 N.C.A.G. 31 (1985).

Recording and Reporting Requirements. — If a person, firm or corporation deals only in military property purchased directly from the United States government or this State pursuant to written contract, then that person, firm or corporation is not required to be licensed by this Article. However, the items purchased, if they are indeed "military property" within the meaning of this section, would nevertheless be subject to recording and reporting requirements by military property sales facilities which might later purchase them. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

§ 127B-3. License.

OPINIONS OF ATTORNEY GENERAL

Sales facility need not get separate license from both county and city. If the facility is in a city or town, it can obtain the license from the city or town government. If it is not in a city or town, then it must obtain the license from the county. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G 42 (1985).

County may charge fee for issuing licenses. See opinion of Attorney General to Mr. Garris N. Yarborough, Cumberland County Attorney, 55 N.C.A.G. 41 (1985).

§ 127B-4. Local governing authorities to grant and control license; bond.

OPINIONS OF ATTORNEY GENERAL

Facility May Purchase Property at Another Facility. — Subsection (a) does not prohibit a military property sales facility from purchasing military property at the place of business of another military property sales facility. However, the purchasing facility would have to make a record of the transaction in compliance with § 127B-6(a). See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

§ 127B-6. Records to be kept.

OPINIONS OF ATTORNEY GENERAL

Orders shipped to facility from out of state must be recorded and reported in compliance with paragraphs (a) and (c), just as other transactions by mail must be. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

Purchase at Another Facility Recorded. — Section 127B-4(a) does not prohibit a military property sales facility from purchasing military property at the place of business of another military property sales facility. However, the purchasing facility would have to make a record of the transaction in compliance with paragraph (a). See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

If military property sales facility purchases items by lot, for example

100 pounds of wool scrap, each scrap need not be listed separately. However, each of the items of scrap should be tagged so that their origin in that lot is discernable. Moreover, where the property has a model number, serial number and/or manufacturer's name, that information must be recorded. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

Record-keeping book called for by paragraph (a) may be loose-leaf. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

§ 128-1.1. Dual-office holding allowed.

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

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

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

Effect of Amendments. — The 1987 amendment, effective June 19, 1987, inserted "or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs" in subsection (c).

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

OPINIONS OF ATTORNEY GENERAL

Person holding appointive office as police officer can hold position as elected officer in either State or local government, including as a school board member. See opinion of Attorney General to Captain Bobby Kilgore, Monroe Public Safety Department, 55 N.C.A.G. 34 (1985).

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

Editor's Note. — Session Laws 1987, c. 738, s. 29(g) purported to add a subdivision (e)(6) to this section, effective January 1, 1988. However, this section does not contain a subsection (e). It would appear that the amendment may have been intended to affect § 128-27.

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

CASE NOTES

An action by citizens and taxpayers to recover monetary damages from a State officer for misuse of State property while in office is not recognized and may not be maintained. Flaherty v. Hunt, 82 N.C. App. 112, 345 S.E.2d 426, cert. denied, 318 N.C. 505, 349 S.E.2d 859 (1986).

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

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

(b) As used in this section:

(1) "A period of war" includes World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

(2) "Veteran" means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.

(3) "Eligible veteran" means:

a. A veteran who served during a period of war; or

b. The spouse of a disabled veteran; or

c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as the result of such service; or

d. A veteran who suffered a disabling injury for service-related reasons during peacetime; or

e. The spouse of a veteran described in subdivision d. of this subsection; or

f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who dies for service-related reasons during peacetime.

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

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

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

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

Article 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.

Local Modification. — (As to Article 3) City of Charlotte: 1987, c. 506; 1987 (Reg. Sess., 1988), c. 1033; city of High Point: 1987, c. 327.

CASE NOTES

This Article creates contractual rights and obligations. Simpson v. North Carolina Local Gov't Employees' Retirement Sys., — N.C. App. —, 363 S.E.2d 90 (1987).

§ 128-24. Membership.

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

(1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act who are required to accept a federal Civil Service appointment may elect in writing on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the local Retirement System. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to cover-

age by Title II of the Social Security Act shall be diminished.

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

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b1), provided that such benefits will be computed in accordance with subsection (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969.

b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

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

b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

c. Should a beneficiary who retired on an early or service retirement allowance be reemployed by an employer participating in the Retirement System on a permanent full-time, part-time, temporary, or on fee-for-ser-

vice basis, whether contractual or otherwise, the retirement allowance shall be suspended if the beneficiary receives or earns any of the following:

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

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

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

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

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on

a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.

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

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

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

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

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

Effect of Amendments. — Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more than 90 days" in paragraphs (5)a, (5)b, (5)b1, and (5)b2.

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

§ 128-26. Allowance for service.

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

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

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

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

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

(1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he is first eligible to be separated or released from such military service under other than dishonorable conditions.

(2) He is in service, with the employer by whom he was employed when he entered military service, for a period of not less than 10 years after he is separated or released from such armed services under other than dishonorable conditions.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof not to exceed one month of credit for each two years of prior and membership service or fraction thereof, but sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S.

128-24(1a) and who subsequently returns to service for a period of five years, may thereafter repay the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when this account was closed.

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

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

On and after January 1, 1986, the creditable service of a member who was a member of the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by participating employers from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, includes service that was creditable in the Law Enforcement Officers' Retirement System; and membership service with that System is membership service with this Retirement System; provided, notwithstanding any provisions of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law Enforcement Officers' Retirement System may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions that would have otherwise applied.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one half of the cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s), provided that he left service prior to July 1, 1975. Any person who

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

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

(n) Notwithstanding any other provision of this Chapter, any person who withdrew his contribution in accordance with the provisions of G.S. 128-27(f), or G.S. 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service, may, upon completion of five years of membership service, purchase the withdrawn service by making a lump sum amount to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees.

(o) Credit at Full Cost for Federal Employment. — Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the Retirement System; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S.

135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 or 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any similar programs that the Board of Trustees may adopt.

(p) Part-Time Service Credit. —

(1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time employee of a participating employer as defined in G.S. 128-21(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 128-26(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year.

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

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

Provided, the member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance

arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. In no instance shall the amount payable be less than the contributions a member would have made during the employment plus four percent (4%) interest compounded annually.

Nothing contained in this subsection shall prevent an employer from paying all or part of the cost; and, to the extent paid by an employer, payments shall be credited to the Pension Accumulation Fund; and to the extent paid by a member, payments shall be credited to the Annuity Savings Fund; provided, however, an employer may not discriminate against any member or group of members in his employ in paying all or any part of this cost.

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

(1) The member was employed by an employer as defined in G.S. 128-21(11);

(2) The member's temporary employment met all other requirements of G.S. 128-21(10);

(3) The member has completed five years or more of membership service;

(4) The member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and

(5) The member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative fee to be determined by the Board of Trustees.

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

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

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

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

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

Subsection (o) was amended by Session Laws 1987 (Reg. Sess., 1988), c. 1088, s. 5, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

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

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

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

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

Session Laws 1987, c. 617, s. 3, effective January 1, 1988, also deleted sub-

section (j), which, as amended by c. 617, ss. 2 and 4, read:

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

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

Session Laws 1987 (Reg. Sess., 1988), c. 1088, ss. 5, 6, effective July 8, 1988, substituted "five years" for "10 years" near the beginning of the first sentence of subsection (o), and added subsections (p), (q), (r), and (s).

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

§ 128-27. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Repealed by Session Laws 1971, c. 325, s. 12.

(4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capac-

ity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

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

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (1/3 of 1%) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

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

(1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

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

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after

the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

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

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

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

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

(f2) (Effective July 1, 1988, through June 30, 1993) Upon the submission of an application, there shall be paid to any member, or surviving beneficiary of a member, who was covered under this System and the Teachers' and State Employees' Retirement System for the same period of service a return of contributions not withdrawn with regular interest thereon, equal to the contributions made at the rate of two percent (2%) of compensation not subject to coverage under the Social Security Act during the period January 1, 1955, to June 30, 1965; provided that such return of contributions shall be payable only if such contribution did not in any way benefit the member under any provision of this Article.

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

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

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

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

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

(1) After June 30, 1969 and after he has attained age 70; or

(2) After December 31, 1969 and after he has attained age 69; or

(3) After December 31, 1970 and after he has attained age 68; or

(4) After December 31, 1971 and after he has attained age 67; or

(5) After December 31, 1972 and after he has attained age 66; or

(6) After December 31, 1973 and after he has attained age 65; or

(7) After December 31, 1978, but before July 1, 1988 and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained age 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

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

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

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).

(4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period imme-

diately prior to the month in which death occurred, not to exceed twenty thousand dollars ($20,000).

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

(*l*2) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

(1) The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance or had attained 20 years of creditable service.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (*l*) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

(cc) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

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

(ee) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1987 Session of the General Assembly. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2; 1987 (Reg. Sess., 1988), c. 1061, s. 2; c. 1086, s. 22(c); c. 1108, s. 3; c. 1110, ss. 4-7.)

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

Editor's Note. — Session Laws 1987, c. 738, s. 29(g) purported to add a subdivision (e)(6) to § 128-7, effective January 1, 1988. However, § 128-7 does not contain a subsection (e). It would appear that the amendment by c. 738, s. 29(g) may have been intended to affect subsection (e) of this section. The subdivision which c. 738, s. 29(g) purported to add reads as follows:

"(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced

service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above."

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

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

Session Laws 1987 (Reg. Sess., 1988), c. 1061, s. 3 provides: "For the purpose of funding this act, the Boards of Trustees of the Teachers' and State Employees' and Local Governmental Employees' Retirement Systems shall set aside reserves in each Retirement System in the amount of one hundred thousand dollars ($100,000) in each reserve, with such amounts payable from the unencumbered actuarial gains of each Retirement System resulting from the actuarial valuations for the year ended December 31, 1986."

Session Laws 1987 (Reg. Sess., 1988), c. 1108, s. 2 provides that the provisions of Sections 1 and 3 of the act, which amended G.S. 135-5(1) and 128-27(1)(7), shall be funded through unencumbered reserves as of December 31, 1987, in the Death Benefit Trust Fund for Teachers and State Employees.

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

Effect of Amendments. —

Session Laws 1987, c. 181, s. 1, effective January 1, 1987, added the last paragraph of subsection (m).

Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more than 90 days" in subdivisions (a)(1), (a)(4), and (a)(5), and for "30 and not more than 90 days" near the beginning of subsection (c).

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

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

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

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

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

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

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

CASE NOTES

Relationship between public employees and retirement system is one of contract. Simpson v. North Carolina Local Gov't Employees' Retirement Sys., — N.C. App. —, 363 S.E.2d 90 (1987).

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

Plaintiffs, as members of the North Carolina Local Governmental Employees' Retirement System, had a contractual right to rely on the terms of the retirement plan as these terms existed at the moment their retirement rights became vested. Simpson v. North Carolina Local Gov't Employees' Retirement Sys., — N.C. App. —, 363 S.E.2d 90 (1987).

Impairment of Rights by 1981 Amendment. — Rights arising under this Article were impaired inasmuch as plaintiff employees stood to suffer signif-

icant reductions in their retirement allowances as a result of the 1981 legislative amendment of this section adding subsection (d4), and where challenge thereto had been resolved below by grant of summary judgment in defendants' favor, but defendants' affidavit failed to demonstrate or reflect that the changes in question were reasonable and necessary to serve an important state interest, the case would be remanded for further proceedings. Simpson v. North Carolina Local Gov't Employees' Retirement Sys., — N.C. App. —, 363 S.E.2d 90 (1987).

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

(q) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained and any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand ($1,000) and/or be imprisoned; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781; 1969, c. 442, s. 15; 1973, c. 243, s. 8; 1985, c. 479, s. 196(o); 1987, c. 539, s. 1.)

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

Effect of Amendments. — The 1987 amendment, effective July 3, 1987, added subsection (q).

§ 128-38. Reservation of power to change.

CASE NOTES

Relationship between public employees and retirement system is one of contract. Simpson v. North Carolina Local Gov't Employees' Retirement Sys., — N.C. App. —, 363 S.E.2d 90 (1987).

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

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

at the moment their retirement rights became vested. Simpson v. North Carolina Local Gov't Employees' Retirement Sys., — N.C. App. —, 363 S.E.2d 90 (1987).

Impairment of Rights by 1981 Amendment. — Rights arising under this Article were impaired inasmuch as plaintiff employees stood to suffer significant reductions in their retirement allowances as a result of the 1981 legislative amendment of § 128-27 adding subsection (d4), and where challenge thereto had been resolved below by grant of summary judgment in defendants' favor, but defendants' affidavit failed to demonstrate or reflect that the changes in question were reasonable and necessary to serve an important state interest, the case would be remanded for further proceedings. Simpson v. North Carolina Local Gov't Employees' Retirement Sys., — N.C. App. —, 363 S.E.2d 90 (1987).

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

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)

Editor's Note. — Session Laws 1987, c. 177, s. 1(c) made this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, that the Retirement Systems were qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

Chapter 129.
Public Buildings and Grounds.

Article 7.

North Carolina Capital Building Authority.

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

Article 7.
North Carolina Capital Building Authority.

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

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

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

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