THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1989 CUMULATIVE SUPPLEMENT

Volume 3B, Part II

Chapters 130 through 136

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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

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

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1989

Preface

This Cumulative Supplement to Volume 3B, Part II contains the general laws of a permanent nature enacted by the General Assembly through the 1989 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

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

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

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

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

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

User's Guide

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

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1989 Regular Session affecting Chapters 130 through 136 of the General Statutes.

Annotations:

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

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

The General Statutes of North Carolina
1989 Cumulative Supplement

VOLUME 3B, PART II

Chapter 130.
Public Health.

Article 13B.
Solid Waste Management.

Sec.
130-166.21D. [Repealed.]

ARTICLE 13B.
Solid Waste Management.

§ 130-166.21D: Repealed by Session Laws 1989, c. 168, s. 10, effective May 30, 1989.

Chapter 130A.

Editor's Note. — The legislation and annotations affecting Chapter 130A have been included in a recently published replacement chapter.

Chapter 130B.

Editor's Note. — The legislation and annotations affecting Chapter 130B have been included in a recently published chapter.

Chapter 131.

Public Hospitals.

§§ 131-1 to 131-188: Repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984.

Editor's Note. — Session Laws 1989, c. 283, effective June 12, 1989, amends § 131-7. Chapter 131 was repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984. However, Session Laws 1983, c. 775, s. 3 contained a savings provision for certain units of government. See the Editor's Note in the main volume.

Session Laws 1989, c. 283, ss. 1 and 2 provide:

"Section 1. G.S. 131-7, as it applies to hospitals continuing to operate under Article 2, Chapter 131 of the North Carolina General Statutes pursuant to Section 3, Chapter 775 of the 1983 Session Laws, is amended by rewriting the first sentence to read: 'Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, township or town, who shall constitute a board of trustees for such public hospital.'

"Sec. 2. G.S. 131-7 is amended by deleting the phrase 'No practicing physician may serve as a trustee.', and substituting 'One practicing physician may serve as a trustee'."

Chapter 131A.

Health Care Facilities Finance Act.

§ 131A-3. Definitions.

Cross References. — As to the definition of "Long-term care facility" in the Long-Term Care Ombudsman Program, see § 143B-181.16.

Chapter 131C.

Charitable Solicitation Licensure Act.

Sec.
131C-4. Licensure required for charitable solicitation.
131C-6. Licensure required for professional fund-raising counsel and professional solicitor.
131C-10. Bond.
131C-16.1. Mandatory disclosures.
131C-17.2. [Repealed.]
131C-21.1. Other remedies.

§ 131C-3. Definitions.

CASE NOTES

Stated in Riley v. National Fed'n of Blind of N.C., Inc., — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

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

(b) A person may solicit charitable contributions after filing the completed application until the Department notifies him that the application has been denied and he waives or exhausts his administrative and judicial remedies under Chapter 150B.

(c) A person who has been denied a license and has waived or exhausted his administrative and judicial remedies under Chapter 150B shall not solicit charitable contributions until another application has been filed with the Department and a license issued by the Department. (1981, c. 886, s. 1; 1985, c. 497, s. 3; 1987, c. 827, ss. 1, 239; 1989, c. 566, s. 1.)

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

Effect of Amendments. —

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

The 1989 amendment, effective October 1, 1989 and applicable to licenses issued on or after that date, in subsection (b), deleted "other than a professional solicitor or professional fund-raising counsel" following "A person," and inserted "completed."

CASE NOTES

Editor's Note. — The case below was decided prior to the 1989 amendments to this Chapter.

Unconstitutionally Overbroad. — North Carolina's licensure procedure infringes upon the First Amendment rights of those organizations which, for various reasons, must rely on professional solicitors. The fact that (1) the licensure process is subject to North Carolina's Administrative Procedure Act, and (2) licenses have in the past been considered expeditiously is not enough to save the statute. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987), — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

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

F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987), — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

Stated in Riley v. National Fed'n of Blind of N.C., Inc., — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

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

Any person who acts as a professional fund-raising counsel or professional solicitor shall apply for and obtain an annual license from the Department. A person who is authorized to act on behalf of a licensed professional fund-raising counsel or a licensed professional solicitor is not required to obtain a license under this section. (1981, c. 886, s. 1; 1985, c. 497, s. 1; 1989, c. 566, s. 2.)

Effect of Amendments. — The 1989 amendment, effective October 1, 1989 and applicable to licenses issued on or after that date, deleted "and shall not act as a professional fund-raising counsel or professional solicitor until after obtaining such license" following "Department" in the first sentence.

CASE NOTES

Editor's Note. — The case below was decided prior to the 1989 amendments to this Chapter.

Unconstitutionally Overbroad. — North Carolina's licensure procedure infringes upon the First Amendment rights of those organizations which, for various reasons, must rely on professional solicitors. The fact that (1) the licensure process is subject to North Carolina's Administrative Procedure Act, and (2) licenses have in the past been considered expeditiously is not enough to save the statute. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987), — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

This section and §§ 131C-4(b), 131C-16.1, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987), — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

This section's licensing requirement as to professional fundraisers is unconstitutional. A speaker's rights are not lost merely because compensation is received, and the State's asserted power to license professional fundraisers carries with it (unless properly constrained) the power directly and substantially to affect the speech they utter. Consequently, the statute is subject to first amendment scrutiny. Riley v. National Fed'n of Blind of N.C., Inc., — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

Generally, speakers need not obtain a license to speak. Even assuming that the State's interest in regulating those who solicit money justifies requiring fundraisers to obtain a license before soliciting, such a regulation must provide that the licensor will, within a specified brief period, either issue a license or go to court. That requirement is not met here, for this section permits a delay without limit. Riley v. National Fed'n of Blind of N.C., Inc., — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

§ 131C-10. Bond.

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

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

CASE NOTES

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

§ 131C-16. Disclosures upon request.

CASE NOTES

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

§ 131C-16.1. Mandatory disclosures.

During any solicitation by a professional solicitor, before requesting or appealing either directly or indirectly for any charitable contribution, the name of the professional solicitor and the name of the person soliciting shall be disclosed to the person solicited.

(1) to (3) Repealed by Session Laws 1989, c. 566, s. 3, effective October 1, 1989. (1985, c. 497, s. 8; 1989, c. 566, s. 3.)

Effect of Amendments. — The 1989 amendment, effective October 1, 1989 and applicable to licenses issued on or after that date, inserted "by a professional solicitor," deleted "and" preceding "before requesting," substituted "the name of the professional solicitor" for "a professional solicitor," inserted "and the name of the person soliciting," substituted "shall be disclosed" for "shall disclose," and repealed subdivisions (1) through (3), pertaining to a professional solicitor disclosing to the person solicited his name, the name of the professional solicitor or professional fund-raising counsel by whom he is employed, the address of the employer, and the average of the percentage of gross receipts actually paid to the charitable purpose.

CASE NOTES

Editor's Note. — The case below was decided prior to the 1989 amendments to this Chapter.

Unconstitutionally Overbroad. — This section and §§ 131C-4(b), 131C-6, 131C-17.2 and 131C-21.1(c) are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987), — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

Disclosure Requirement Is Unconstitutional. — This section's requirement that professional fundraisers disclose to potential donors, before an appeal for funds, the percentage of charitable contributions collected during the previous 12 months that were actually turned over to charity is unconstitutional. Riley v. National Fed'n of Blind of N.C., Inc., — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

State's Interest Is Not Sufficiently Weighty. — The State's interest in informing donors how the money they contribute is spent in order to dispel the alleged misperception that the money they give to professional fundraisers goes in greater-than-actual proportion to benefit charity, is not sufficiently weighty, and the means chosen to accomplish it are unduly burdensome and not narrowly tailored. Riley v. National Fed'n of Blind of N.C., Inc., — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

§ 131C-17.1. Employment of agents regulated.

CASE NOTES

Editor's Note. — The case below was decided prior to the 1989 amendments to this Chapter.

This section is a reasonable exercise of the State's police power. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987), — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

§ 131C-17.2: Repealed by Session Laws 1989, c. 566, s. 4, effective October 1, 1989.

§ 131C-21.1. Other remedies.

(a) The solicitation of charitable contributions by a professional solicitor or professional fund-raising counsel or by an agent, employee, or servant thereof without making the disclosures required by G.S. 131C-16, and G.S. 131C-16.1 shall be considered an unfair or deceptive trade practice, as prohibited by G.S. 75-1.1, and any person solicited, to whom these disclosures were not made, and who made a charitable contribution in response to such solicitation shall have a right of action on account of such injury done under G.S. 75-16 and G.S. 75-16.1 against the offending professional solicitor or professional fund-raising counsel or an employee of either. There is no right of action under this section against a person established for a charitable purpose. In any action under this subsection, the measure of damages shall be the amount of the contribution made by the person solicited.

(c), (d) Repealed by Session Laws 1989, c. 566, s. 5, effective October 1, 1989. (1985, c. 497, s. 12; 1987, c. 827, s. 240; 1989, c. 566, s. 5.)

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

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

The 1989 amendment, effective October 1, 1989 and applicable to licenses issued on or after that date, added "or an employee of either" at the end of the first sentence of subsection (a), repealed former subsection (c), relating to the secretary ordering a professional solicitor, who has charged an unreasonable fee, to pay the charitable organization the difference between the fee charged and a reasonable fee, and repealed former subsection (d), relating to the Secretary of Human Resources commencing proceedings provided for in former subsection (c) where requested to do so by the chief executive officer of any person established for a charitable purpose.

CASE NOTES

Editor's Note. — The case below was decided prior to the 1989 amendments to this Chapter.

Unconstitutionally Overbroad. — Subsection (c) of this section and §§ 131C-4(b), 131C-6, 131C-16.1, and 131C-17.2 are unconstitutionally overbroad and infringe upon First Amendment protected rights. National Fed'n of Blind of N.C., Inc. v. Riley, 635 F. Supp. 256 (E.D.N.C. 1986), aff'd, 817 F.2d 102 (4th Cir. 1987), — U.S. —, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988).

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1.

Licensing of Facilities.

Sec.
131D-2. Licensing of domiciliary homes for the aged and disabled.
131D-3. Domiciliary care facilities; reporting requirements.
131D-4. Domiciliary care facilities; uniform chart of accounts.

Article 1A.

Control Over Child Placing and Child Care.

131D-10.9. Administrative and judicial review.

Article 3.

Domiciliary Home Residents' Bill of Rights.

Sec.
131D-30. [Repealed.]
131D-31. Domiciliary home community advisory committees.
131D-34. Penalties; remedies.

Article 1.

Licensing of Facilities.

§ 131D-1. Licensing of maternity homes.

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

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

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

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

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

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

CASE NOTES

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

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

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

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

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

(1) Seek a court order to enforce compliance;

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

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

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

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

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

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

(1) Seek a court order to enforce compliance;

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

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

ARTICLE 1A.

Control Over Child Placing and Child Care.

§ 131D-10.7. Penalties.

OPINIONS OF ATTORNEY GENERAL

Meaning of "places children." — This section must be read in conjunction with chapter 48 of the General Statutes which, among other things, prescribes procedures for adoptions; it is clear that placement for adoption has a much broader meaning than mere physical receipt or placement. See opinion of Attorney General to Mr. James B. Wood, President, Johnston Memorial Hospital, — N.C.A.G. — (July 27, 1989).

Hospital's Discharge of Infant to Adoptive Parents. — Reading this section in the context of the chapter on licensing and inspection of child placing agencies leads to the conclusion that § 131D-10.7 was not intended to address the situation in which a hospital employee, with no involvement in the arrangement of adoption, simply delivers an infant to adoptive parents. In addition, the language "in . . . adoptive homes" goes beyond what a hospital employee does when he releases a new born child to an adoptive parent; consequently, a hospital's discharge of an infant to adoptive parents does not constitute a violation of this section. See opinion of Attorney General to Mr. James B. Wood, President, Johnston Memorial Hospital, — N.C.A.G. — (July 27, 1989).

§ 131D-10.9. Administrative and judicial review.

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

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

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

ARTICLE 3.

Domiciliary Home Residents' Bill of Rights.

§ 131D-20. Definitions.

Cross References. — As to the definition of "Long-term care facility" in the Long-Term Care Ombudsman Program, see § 143B-181.16.

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

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

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

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

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

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

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

§ 131D-34. Penalties; remedies.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;
(3) The number and type of previous violations committed by the licensee;
(4) The amount of assessment necessary to insure immediate and continued compliance; and
(5) The number of patients put at risk by the violation.

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

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

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

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:
(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the Nursing Home/Rest Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:
(1) A licensed pharmacist;
(2) A registered nurse experienced in long-term care;
(3) A representative of a nursing home;
(4) A representative of a domiciliary home; and
(5) A public member.

Neither the pharmacist, nurse, nor public member appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or domiciliary home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee. (1987, c. 600, s. 3; 1989, c. 556, s. 1.)

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

Effect of Amendments. — The 1989 amendment, effective July 4, 1989, rewrote subsection (h).

Chapter 131E.

Health Care Facilities and Services.

Article 2.

Public Hospitals.

Part A. Municipal Hospitals.

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

Article 5.

Hospital Licensure Act.

Part B. Hospital Privileges.

131E-85. Hospital privileges and procedures.

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Part B. Nursing Home Patients' Bill of Rights.

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131E-154.1. (Effective July 1, 1990) Title; purpose.
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131E-154.3. (Effective July 1, 1990) Licensing.
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131E-154.7. (Effective July 1, 1990) Injunction.
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131E-158. Certified personnel required.

Article 9.

Certificate of Need.

131E-181. Nature of certificate of need.

Article 12.

Disclosure and Contract Requirements for Continuing Care Facilities.

131E-215 to 131E-224. [Repealed.]

Article 1.

General Provisions.

§ 131E-1. Definitions.

CASE NOTES

Cited in Sandcrest Outpatient Servs. v. Cumberland County Hosp. Sys., 853 F.2d 1139 (4th Cir. 1988).

ARTICLE 2.

Public Hospitals.

Part A. Municipal Hospitals.

§ 131E-5. Title and purpose.

Editor's Note. — Session Laws 1989, c. 283, ss. 1 and 2, effective June 12, 1989, amend § 131-7. Chapter 131 was repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984. However, Session Laws 1983, c. 775, s. 3 contained a savings provision for certain units of government.

Session Laws 1989, c. 283, ss. 1 and 2 provide:

"Section 1. G.S. 131-7, as it applies to hospitals continuing to operate under Article 2, Chapter 131 of the North Carolina General Statutes pursuant to Section 3, Chapter 775 of the 1983 Session Laws, is amended by rewriting the first sentence to read: 'Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, township or town, who shall constitute a board of trustees for such public hospital.'

"Sec. 2. G.S. 131-7 is amended by deleting the phrase 'No practicing physician may serve as a trustee.', and substituting 'One practicing physician may serve as a trustee'."

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

(e) A sale or conveyance of substantially all the equipment is a sale or conveyance of hospital facility. (1983, c. 775, s. 1; 1989, c. 444.)

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

Effect of Amendments. — The 1989 amendment, effective June 26, 1989 and applicable to sales or conveyances on or after this date, added subsection (e).

Part B. Hospital Authority.

§ 131E-15. Title and purpose.

Editor's Note. — Session Laws 1989, c. 283, ss. 1 and 2, effective June 12, 1989, amend § 131-7. Chapter 131 was repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984. However, Session Laws 1983, c. 775, s. 3 contained a savings provision for certain units of government.

Session Laws 1989, c. 283, ss. 1 and 2 provide:

"Section 1. G.S. 131-7, as it applies to hospitals continuing to operate under Article 2, Chapter 131 of the North Carolina General Statutes pursuant to Section 3, Chapter 775 of the 1983 Session Laws, is amended by rewriting the first sentence to read: 'Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, township or town, who shall constitute a board of trustees for such public hospital.'

"Sec. 2. G.S. 131-7 is amended by de-

leting the phrase 'No practicing physician may serve as a trustee.', and substituting 'One practicing physician may serve as a trustee'."

§ 131E-18. Commissioners.

Local Modification. — Craven: 1989, c. 190, s. 1; Pasquotank: 1959, c. 203, s. 1; 1989, c. 140, s. 1.

Part C. Hospital District Act.

§ 131E-40. Title and purpose.

Editor's Note. — Session Laws 1989, c. 283, ss. 1 and 2, effective June 12, 1989, amend § 131-7. Chapter 131 was repealed by Session Laws 1983, c. 775, s. 1, effective January 1, 1984. However, Session Laws 1983, c. 775, s. 3 contained a savings provision for certain units of government.

Session Laws 1989, c. 283, ss. 1 and 2 provide:

"Section 1. G.S. 131-7, as it applies to hospitals continuing to operate under Article 2, Chapter 131 of the North Carolina General Statutes pursuant to Section 3, Chapter 775 of the 1983 Session Laws, is amended by rewriting the first sentence to read: 'Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, township or town, who shall constitute a board of trustees for such public hospital.'

"Sec. 2. G.S. 131-7 is amended by deleting the phrase 'No practicing physician may serve as a trustee.', and substituting 'One practicing physician may serve as a trustee'."

Article 5.

Hospital Licensure Act.

§ 131E-76. Definitions.

Legal Periodicals. —

For survey on the medical review committee privilege, see 67 N.C.L. Rev. 79 (1988).

Part B. Hospital Privileges.

§ 131E-85. Hospital privileges and procedures.

(a) The granting or denial of privileges to practice in hospitals to physicians licensed under Chapter 90 of the General Statutes, Article 1, dentists and podiatrists and the scope and delineation of such privileges shall be determined by the governing body of the hospital on a non-discriminatory basis. Such determinations shall be based upon the applicant's education, training, experience, demonstrated competence and ability, and judgment and character of the applicant, and the reasonable objectives and regulations of the hospital, including, but not limited to appropriate utilization of hospital facilities, in which privileges are sought. Nothing in this Part shall be deemed to mandate hospitals to grant or deny to any such indi-

viduals or others privileges to practice in hospitals, or to offer or provide any type of care.

(1981, c. 659, s. 10; 1983, c. 775, s. 1; 1987, c. 859, s. 18; 1989, c. 446.)

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

Effect of Amendments. — The 1989 amendment, effective June 26, 1989, in subsection (a), added "on a non-discriminatory basis" at the end of the first sentence, and added "or to offer or provide any type of care" at the end of the last sentence.

Part C. Discharge from Hospital.

§ 131E-90. Authority of administrator; refusal to leave after discharge.

Legal Periodicals. — For survey on the medical review committee privilege, see 67 N.C.L. Rev. 179 (1988).

Article 6.

Health Care Facility Licensure Act.

Part B. Nursing Home Patients' Bill of Rights.

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

All facilities shall treat their patients in accordance with the provisions of this Part. Every patient shall have the following rights:

(16) To be notified within 10 days after the facility has been issued a provisional license because of violation of licensure regulations or received notice of revocation of license by the North Carolina Department of Human Resources and the basis on which the provisional license or notice of revocation of license was issued. The patient's responsible family member or guardian shall also be notified. (1977, c. 897, s. 1; 1983, c. 775, s. 1; 1989, c. 75.)

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 1989, c. 75, s. 2 provides: "This act is effective on October 1, 1989, and shall not apply to pending litigation."

Effect of Amendments. — The 1989 amendment, effective October 1, 1989, added subdivision (16). As to the applicability of this amendment, see the Editor's Note.

§ 131E-129. Penalties.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer. (1987, c. 600, s. 2; 1989, c. 556, 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 1989 amendment, effective July 4, 1989, added subsection (g).

Part E. Nursing Pool Licensure Act.

(This Part is effective July 1, 1990)

§ 131E-154.1. (Effective July 1, 1990) Title; purpose.

(a) This Part shall be known as "Nursing Pool Licensure Act".

(b) The purpose of this Part is to establish licensing requirements for nursing pools. (1989, c. 774, s. 1.)

Editor's Note. — Session Laws 1989, c. 744, s. 4 makes this Part effective July 1, 1990.

Session Laws 1989, c. 744, s. 3 provides: "Nothing in this act obligates the General Assembly to appropriate funds to implement its terms. The Department of Human Resources shall implement this act to the extent that funds are available within the Department's budget or are appropriated by the General Assembly. The Department of Human Resources shall report to the Joint Legislative Commission on Governmental Operations by April 1, 1990 on any funds expended in the implementation of this act and on projected costs for the full implementation of this act."

§ 131E-154.2. (Effective July 1, 1990) Definitions.

As used in this Part, unless the context clearly implies otherwise:

(1) "Commission" means the North Carolina Medical Care Commission.

(2) "Department" means the Department of Human Resources.

(3) "Health Care Facility" means a hospital, psychiatric facility; rehabilitation facility; long-term care facility; home health agency; intermediate care facility for the mentally retarded; chemical dependency treatment facility; and ambulatory surgical facility.

(4) "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nursing personnel, including nurses, nursing assistants, nurses aides, and orderlies. "Nursing pool" does not include an individual who engages solely in providing his own services on a temporary basis to health care facilities. (1989, c. 744, s. 1.)

Part E has a delayed effective date. See notes under § 131E-154.1 for date.

§ 131E-154.3. (Effective July 1, 1990) Licensing.

(a) No person shall operate or represent himself to the public as operating a nursing pool without obtaining a license from the Department.

(b) The Department shall provide applications for nursing pool licensure. Each application filed with the Department shall contain all information requested. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and with the rules adopted by the Commission. Each license shall be issued only for the premises and persons named, shall not be transferable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises.

(c) The Department shall renew the license in accordance with this Part and with rules adopted pursuant to it.

(d) Nursing pools administered by health care facilities and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes shall not be required to be separately licensed under this Article. However, any facility or agency exempted from licensure as a nursing pool under this subsection shall be subject to rules adopted pursuant to this Article. (1989, c. 744, s. 1.)

§ 131E-154.4. (Effective July 1, 1990) Rules and enforcement.

(a) The Commission shall adopt, amend, and repeal all rules necessary for the implementation of this Part. These rules shall include the following requirements:

(1) The nursing pool shall document that each employee who provides care meets the minimum licensing, training, and continuing education standards for the position in which the employee will be working;

(2) The nursing pool shall comply with all other pertinent regulations relating to the health and other qualifications of personnel;

(3) The nursing pool shall carry general and professional liability insurance to insure against the loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of health care services by the nursing pool or its employees;

(4) The nursing pool shall have written administrative and personnel policies to govern the services that it provides. These policies shall include those concerning patient care, personnel, training and orientation, supervision, employee evaluation, and organizational structure; and

(5) Any other aspects of nursing pool services that may need to be regulated to protect the public.

(b) The Commission shall adopt no rules pertaining to the regulation of charges by the nursing pool or to wages paid by the nursing pool. (1989, c. 744, s. 1.)

Part E has a delayed effective date. See notes under § 131E-154.1 for date.

§ 131E-154.5. (Effective July 1, 1990) Inspections.

The Department shall inspect all nursing pools that are subject to rules adopted pursuant to this Part in order to determine compliance with the provisions of this Part and with rules adopted pursuant to it. Inspections shall be conducted in accordance with rules adopted by the Commission. (1989, c. 744, s. 1.)

§ 131E-154.6. (Effective July 1, 1990) Adverse action on a license; appeal procedures.

(a) The Department may suspend, revoke, annul, withdraw, recall, cancel, or amend a license when there has been a substantial failure to comply with the provisions of this Part or with the rules adopted pursuant to it.

(b) The provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases in which the Department has taken the action described in subsection (a) of this section. (1989, c. 744, s. 1.)

§ 131E-154.7. (Effective July 1, 1990) Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may maintain an action in the name of the State for injunctive relief or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a nursing pool without a license or to restrain or prevent substantial noncompliance with this Part or the rules adopted pursuant to it.

(b) If any person hinders the proper performance of duty of the Department in carrying out the provisions of this Part, the Department may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance. (1989, c. 744, s. 1.)

§ 131E-154.8. (Effective July 1, 1990) Confidentiality.

(a) Notwithstanding G.S. 8-53 or any other law pertaining to confidentiality of communications between physician and patient, in the course of an inspection conducted pursuant to G.S. 131E-154.5:

(1) Department representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any person who is or has been a nursing pool patient; and

(2) Any person involved in treating a patient at or through a nursing pool may disclose information to a Department representative unless the patient objects in writing to review of his records or disclosure of the information. A nursing pool shall not release any information or allow any inspections under this section without first informing each affected patient in writing of his right to object to and thus prohibit release of information or review of records pertaining to him.

Part E has a delayed effective date. See notes under § 131E-154.1 for date.

A nursing pool, its employees, and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of the information to the Department.

(b) The Department shall not disclose:

(1) Any confidential or privileged information obtained under this section unless the patient or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure; or

(2) The name of anyone who has furnished information concerning a nursing pool without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. Any Department employee who willfully discloses this information without appropriate authorization or court order shall be guilty of a misdemeanor and, upon conviction, fined at the discretion of the court but not in excess of five hundred dollars ($500.00).

(c) All confidential or privileged information obtained under this section and the names of all persons providing this information are exempt from Chapter 132 of the General Statutes. (1989, c. 744, s. 1.)

ARTICLE 7.

Regulation of Ambulance Services.

§ 131E-158. Certified personnel required.

(a) Every ambulance when transporting a patient shall be occupied at a minimum by the following:

(1) At least one emergency medical technician who shall be responsible for the medical aspects of the mission prior to arrival at the medical facility, assuming no other individual of higher certification or license is available; and

(2) One ambulance attendant who is responsible for the operation of the vehicle and rendering assistance to the emergency medical technician.

An ambulance owned and operated by a licensed health care facility that is used solely to transport sick or infirm patients with known nonemergency medical conditions between facilities or between a residence and a facility for scheduled medical appointments is exempt from the requirements of this subsection.

(1967, c. 343, s. 3; 1973, c. 476, s. 128; c. 725; c. 1224, s. 1; 1975, c. 612; 1983, c. 775, s. 1; 1989, c. 300.)

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

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, in subsection (a) deleted "on an emergency mission" following "a patient" in the introductory sentence; and added the last paragraph.

Part E has a delayed effective date. See notes under § 131E-154.1 for date.

ARTICLE 9.

Certificate of Need.

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

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

(1) Any increase in the consumer price index;

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

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

(1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 5; 1983, c. 775, s. 1; 1985, c. 521, s. 1; 1985 (Reg. Sess., 1986), c. 968, s. 1; 1987, c. 511, s. 1; 1989, c. 233.)

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

Effect of Amendments. — The 1989 amendment, effective October 1, 1989, substituted "shall require" for "may require" in the second sentence of subsection (b).

ARTICLE 12.

Disclosure and Contract Requirements for Continuing Care Facilities.

§§ 131E-215 to 131E-224: Repealed by Session Laws 1989, c. 758, s. 2, effective January 1, 1990.

Cross References. — For present provisions pertaining to disclosure and contract requirements for continuing care facilities, see § 58-64-1, et seq.

Editor's Note. — Section 3 of Session Laws 1989, c. 758 provides that the act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of the act, and that the act shall not become effective unless monies necessary to implement the act are appropriated. Such an appropriation was made. See Session Laws 1989, c. 752, s. 3.

Session Laws 1989, c. 758, s. 4, contains a severability clause.

Chapter 132.

Public Records.

Sec.
132-1.2. Trade secrets.
132-1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records.
Sec.
132-6. Inspection and examination of records.
132-9. Access to records.

§ 132-1. "Public records" defined.

Local Modification. — Alamance: 1987 (Reg. Sess., 1988), c. 950, s. 1(c); Burke: 1989, c. 422, s. 1(c); Cabarrus: 1989, c. 658, § 1(c); Caldwell: 1987, c. 472, s. 1(c); Carteret: 1989, c. 171, s. 8; Chowan: 1989, c. 174, s. 1(c); Cleveland: 1989, c. 173, s. 1(c); Currituck: 1987, c. 209, s. 1(c); Duplin: 1987, c. 317, s. 1(c); Gaston: 1987, c. 618, s. 1(c); Halifax: 1987, c. 377, s. 1(c); Henderson: 1987, c. 172; Hertford: 1987 (Reg. Sess., 1988), c. 979, s. 1(c); Lee: 1987, c. 538, s. 1(c); Lenoir: 1987, c. 561, s. 1(c); Mitchell: 1987, c. 141, s. 1(c); Nash: 1987, c. 32; Pasquotank: 1987, c. 175, s. 1(c); Pender: 1987 (Reg. Sess., 1988), c. 970, s. 1(c); Pitt: 1987, c. 143, s. 1(c); Rowan: 1987, c. 379, s. 1(c); Vance: 1987 (Reg. Sess., 1988), c. 1067, s. 1(c); Wilson: 1987, c. 484, s. 1(c); Yancey: 1987, c. 140, s. 1(c); city of Elizabeth City: 1987, c. 175, s. 1(c); city of Greensboro: 1987, c. 51; 1989, c. 383, s. 1; cities of Hickory and Conover: 1987, c. 319, s. 1; city of Southport: 1989, c. 639, s. 1(c); town of Banner Elk: 1989, c. 318, s. 2(a); town of Beech Mountain: 1987, c. 376, s. 2(a); town of Blowing Rock: 1987, c. 171, s. 1(c); town of Boone: 1987, c. 170, s. 1(c); town of Garner: 1989, c. 660, § 1(c); town of Holden Beach: 1987 (Reg. Sess., 1988), c. 963, s. 1(c); town of Sunset Beach: 1987 (Reg. Sess., 1988), c. 956, s. 1(c); town of Wake Forest: 1989, c. 604, s. 1(c); Averasboro Township: 1987, c. 142.

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

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

CASE NOTES

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

§ 132-1.2. Trade secrets.

Nothing in this Article shall be construed to require or authorize a public agency to disclose any information which:

(1) Constitutes a "trade secret" as defined in G.S. 66-152(3);
(2) Is the property of a private "person" as defined in G.S. 66-152(2);
(3) Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, or industrial development project; and
(4) Is designated as "confidential" and/or as a "trade secret" at the time of its initial disclosure to the public agency. (1989, c. 269.)

Editor's Note. — Session Laws 1989, c. 269, s. 2 makes this section effective upon ratification. The act was ratified June 8, 1989.

§ 132-1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records.

(a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency's official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any counsel, insurance company or other representative acting on behalf of such agency, shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.

(b) No judge, administrative judge or administrative hearing officer of this State, nor any board or commission, nor any arbitrator appointed pursuant to the laws of North Carolina, shall order or permit the sealing of any settlement document in any proceeding described herein except on the basis of a written order concluding that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Such order shall articulate the overriding interest and shall include findings of fact that are sufficiently specific to permit a reviewing court to determine whether the order was proper.

(c) Except for confidential communications as provided in G.S. 132-1.1, the term "settlement documents," as used herein, shall include all documents which reflect, or which are made or utilized in connection with, the terms and conditions upon which any proceedings described in this section are compromised, settled, terminated or dismissed, including but not limited to correspondence, settlement agreements, consent orders, checks, and bank drafts. (1989, c. 326.)

Editor's Note. — Session Laws 1989, c. 326, s. 2 makes this section effective July 1, 1989, and applicable to settlements finalized on or after that date.

§ 132-6. Inspection and examination of records.

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

to permit the withholding of public records relating to general economic development policies or activities. (1935, c. 265, s. 6; 1987, c. 835, s. 1.)

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

§ 132-9. Access to records.

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

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

Chapter 133.

Editor's Note. — The legislation and annotations affecting Chapter 133 have been included in a recently published replacement chapter.

Chapter 134A.

Youth Services.

Article 3.

Commitment and Care.

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

Article 5.

Detention Services.

Sec.
134A-36. Legislative intent.

Article 1.

Division of Youth Services in the Department of Human Resources.

§ 134A-1. Legislative intent and purpose.

Cross References. — As to definition of special education and related services, see § 115C-108. As to definition of children with special needs, see § 115C-109.

Editor's Note. — Session Laws 1989, c. 500, s. 82 makes legislative findings regarding the children identified as a class in the case of Willie M; provides for the expenditure of funds appropriated for programs serving such children, as well as a reserve fund therefor; sets out reporting requirements; and provides for the provision of services through contracts with public or private agencies or by direct operation by the department.

Session Laws 1985, c. 479, s. 85 and c. 791, ss. 18 and 18.1, Session Laws 1987, c. 738, s. 82, and Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 148.6 had previously provided for children identified as a class in the case of Willie M.

Article 3.

Commitment and Care.

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

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

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

ARTICLE 5.

Detention Services.

§ 134A-36. Legislative intent.

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

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

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

Sec.
135-3. Membership.
135-4. Creditable service.
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Article 3.

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Article 4.

Consolidated Judicial Retirement Act.

135-56. Creditable service.
135-56.2. Creditable service for other employment.
135-65. Post-retirement increases in allowances.
135-74. Internal Revenue Code compliance.
135-75, 135-76. [Reserved.]

Article 5.

Supplemental Retirement Income Act of 1984.

135-95. Exemption from garnishment, attachment.

Article 6.

Disability Income Plan of North Carolina.

135-101. Definitions.
135-104. Salary continuation.
135-105. Short-term disability benefits.
135-106. Long-term disability benefits.
135-107. Optional Retirement Program.
135-112. Transition provisions.

Article 1.

Retirement System for Teachers and State Employees.

§ 135-3. Membership.

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

(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be ab-

sent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

Notwithstanding the foregoing, any persons whose membership was terminated under the provisions set forth above who had five or more years of creditable service and had not effected a return of contributions may elect to receive a retirement allowance on or after age 60; provided that this member may retire only upon written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing, he desires to be retired.

(1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 9½; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 2, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14; 1971, c. 117, ss. 6-8; c. 118, ss. 1, 2; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363; 1977, c. 783, s. 3; 1979, c. 396; c. 972, s. 2; 1981, c. 979, s. 1; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 228, 229, 236; c. 1106, ss. 1, 2, 4; 1985, c. 520, s. 1; c. 649, ss. 2, 11; 1987, c. 513, s. 1; c. 738, s. 38(b); 1989, c. 791.)

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

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, added the second paragraph in subdivision (3).

§ 135-4. Creditable service.

(f) Armed Service Credit. —

(1) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from such armed services under other than dishonorable conditions shall be entitled to full credit for all prior service.

(2) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from such armed services under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in such armed services up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.

(3) Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed services.

(4) Under such rules as the Board of Trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the Board of Trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.

(5) The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.

(6) Repealed by Session Laws 1981, c. 636, s. 1, effective July 1, 1981.

(7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose current membership began on or prior to July 1, 1981, and who make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased, with sufficient interest added thereto so as to equal one-half of

the cost of allowing this service, plus an administrative fee to be set by the Board of Trustees.

b. For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph a. of this subdivision, whose current membership began on or before July 1, 1981, but who did not or do not make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

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

(j1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest

age at which a member could retire on an unreduced service allowance.

(m) All repayments and purchases of service credits, allowed under the provisions of this section, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(p1) 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 teacher or employee of the State, except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 135-4(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Under all requirements and conditions set forth in the preceding subdivision of this subsection (p1), except for the requirement that the completion of five years of membership service be subsequent to service rendered as a part-time teacher or employee of the State, 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 teacher or employee of the

State if (i) the member terminates or has terminated employment in any capacity as a teacher or employee of the State, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.

(r) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) Leaves of Absence Terminated Prior to July 1, 1983. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the board of trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(2) Leaves of Absence Terminating On and After July 1, 1983, but before January 1, 1988. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, but before January 1, 1988, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

(3) Leaves of Absence Terminating On and After January 1, 1988. — The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon or before a return to service on and after January 1, 1988, shall be due and payable to the Annuity Savings Fund within six months from return to service and shall be

a lump sum amount equal to the employee percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. For members electing to make this payment, the member's employer which granted the leave of absence, or the member's employer upon a return to service, or both, shall make a matching lump sum payment to the Pension Accumulation Fund within six months from return to service equal to the employer percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. Such purchases of creditable service are applicable only when members have membership service credits within 30 days prior to the leave of absence and within 12 months following the leave of absence and such membership service is creditable service at the time of purchase. Notwithstanding any other provision of this subdivision, the cost to a member and to a member's employer or former employer or both employers whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof that the payment is made after the six-month period.

(s) Credit at Full Cost for Temporary State Employment. — In addition to the provisions of subsection (p) above, any member may purchase creditable service for State employment when classified as a temporary teacher or employee subject to the conditions that the:

(1) Member was employed by an employer as defined in G.S. 135-1(11);

(2) Member's temporary employment met all other requirements of G.S. 135-1(10) or (25);

(3) Member has completed five years or more of membership service;

(4) Member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and

(5) Member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

The provisions of this subsection shall also apply to the purchase of creditable service for State employment when classified as a permanent hourly employee in accordance with G.S. 126-5(c4).

(t) Credit at Full Cost for Local Government Employment. — Any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in the North Carolina Local Governmental Employees' Retirement System upon completion of 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, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

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

(1) Within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or

(2) After 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the average yield on the pension accumulation fund for the preceding calendar year; or

(3) After three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

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

(w) 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 the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt.

(x) Notwithstanding any other provision of this Chapter, any person who withdrew his contribution in accordance with the provisions of G.S. 128-27(f), or G.S. 135-5(f) or the rules and regulations of the Law-Enforcement Officer's Retirement System, and who subsequently returns to service, may, upon completion of five years of membership service, purchase the withdrawn service by making a lump sum amount to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which

the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(z) Credit at Full Cost for Leave Due to Extended Illness. — Any member in service with five or more years of membership service standing to his credit may purchase creditable service for periods of interrupted service while on leave without pay status due to the member's illness or injury, excluding leave due to maternity, provided that any single such interrupted service shall have included such period of time during which the member failed to earn at least two months membership service, by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4; 1953, c. 1050, s. 3; 1959, c. 513, s. 1½; 1961, c. 516, s. 3; c. 779, s. 2; 1963, c. 1262; 1965, c. 780, s. 1; c. 924; 1967, c. 720, s. 3; 1969, c. 1223, ss. 3, 4; 1971, c. 117, ss. 9, 10; c. 993; 1973, c. 241, s. 2; c. 242, s. 1; c. 667, s. 2; c. 737, s. 1; c. 816, s. 1; c. 1063; c. 1311, ss. 1-5; 1975, c. 205, s. 2; c. 875, s. 47; 1977, cc. 317, 790; 1979, c. 826; c. 866, s. 2; c. 867; c. 972, s. 3; 1981, c. 557, s. 3; c. 636, s. 1; c. 1116, s. 1; 1981 (Reg. Sess., 1982), c. 1396, s. 4; 1983, c. 533, s. 1; c. 725; 1983 (Reg. Sess., 1984), c. 1030; c. 1034, ss. 230, 231; c. 1045, ss. 1, 2; 1985, c. 401, ss. 1, 2; c. 407, s. 1; c. 479, s. 193; c. 512; c. 530; c. 649, ss. 1, 4; c. 749, s. 1; 1987, c. 533, s. 1; c. 717, s. 2; c. 738, s. 29(b); c. 809, s. 2; c. 821; c. 825; 1987 (Reg. Sess., 1988), c. 1088, ss. 1-4; c. 1103; c. 1110, s. 9; 1989, c. 255, ss. 11-20; c. 762, s. 3.)

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

Effect of Amendments. —

Session Laws 1989, c. 255, ss. 11-20, effective June 7, 1989, added the second sentence in subsection (j1); added the last sentence of subsection (m); added the last sentence of subdivision (p1)(1); added the second sentence of subdivision (r)(1); added the second sentence of subdivision (s)(5); added the last sentence of subsection (t); added the second sentence of subdivision (v)(3); added the last sentence of subsection (w); added the second sentence of subsection (x); and added the second sentence of subsection (z).

Session Laws 1989, c. 762, s. 3, effective October 1, 1989, added subdivision (f)(7).

CASE NOTES

Employee Held Not in Service for Death Benefit Purposes. — Where employee did not contribute to the Retirement System after being placed on leave without pay, the possible extension provided by this section for plan members who contribute while on leave of absence did not apply. Therefore, employee's death occurred more than 90 days after his last day of actual service, and he was not in service at the time of his death and thus, his beneficiary is not eligible for the death benefit. Garrett v. Teachers' & State Employees' Retirement Sys. ex rel. Board of Trustees, 91 N.C. App. 409, 371 S.E.2d 776, cert. denied, 323 N.C. 624, 374 S.E.2d 585 (1988).

§ 135-5. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement

application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

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

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(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. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

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

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

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

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement

benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance and shall not be applicable to members in service on or after January 1, 1988. Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter

indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent ($^1/_{10}$th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and

subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a. below reduced by the amount in b. below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

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

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

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

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

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

tirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; Provided that, notwith-

standing any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; Provided, further, that such agency or subdivision shall have notified the executive director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) **(Effective July 1, 1989, through June 30, 1993)** Upon submission of an application, there shall be paid to any member at retirement or thereafter or surviving beneficiary of a member a refund of contributions not withdrawn with regular interest thereon, equal to (i) additional contributions made under the provisions of Section 2 of Chapter 1053 of the 1953 Session Laws of North Carolina with respect to membership service prior to 1953 and (ii) the contributions made by Cooperative Agricultural Extension Service Employees on compensation not subject to coverage under the Social Security Act during the period January 1, 1955, to June 30, 1963; provided that such return of contributions shall be payable only if such contributions did not in any way benefit the member under the provisions of this Chapter; provided further that this subsection shall apply as well to any former Cooperative Agricultural Extension Service Employee who obtained a refund of contributions for the period January 1, 1955, to June 30, 1963, and who subsequently purchased the creditable service forfeited by paying the contributions withdrawn and interest thereon.

(*l*) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insur-

§ 135-5(f1) has a delayed expiration date. See notes for date.

ance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

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

(1) After December 31, 1968 and after he has attained age 70; or

(2) After December 31, 1969 and after he has attained age 69; or

(3) After December 31, 1970 and after he has attained age 68; or

(4) After December 31, 1971 and after he has attained age 67; or

(5) After December 31, 1972 and after he has attained age 66; or

(6) After December 31, 1973 and after he has attained age 65; or

(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the

form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

a. When employment has been terminated, the last day the member actually worked.

b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).

(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from

the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

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

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg.

Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41a; c. 770, s. 31; c. 792, ss. 3.1-3.3.)

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 (Reg. Sess., 1988), c. 1061, s. 1, effective July 1, 1988, through June 30, 1993, added subsection (f1).

Session Laws 1989, c. 731, s. 3 rewrites Session Laws 1987 (Reg. Sess., 1988), c. 1061, s. 3, as noted in the main volume, to read: "The Board of Trustees of the Teachers' and State Employees' Retirement System shall reserve the sum of one million five hundred thousand dollars ($1,500,000) and the Board of Trustees of the Local Governmental Employees' Retirement System shall reserve the sum of five hundred thousand dollars ($500,000) from unencumbered actuarial gains in the Retirement Systems for the year ending December 31, 1987, for the purpose of funding this act. Applications for refunds under this act shall be made on or before July 1, 1994."

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

Session Laws 1989, c. 752, s. 167 contains a severability clause.

Session Laws 1989, c. 792, s. 3.8 provides:

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

Effect of Amendments. —

Session Laws 1989, c. 717, ss. 1-6, effective July 1, 1989, added the second sentence in subdivision (a)(5); in subsection (c) substituted "Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988" for "Disability Retirement Benefits of Members Retiring Prior to January 1, 1988" in the introductory sentence, and inserted "in service" in the first sentence; in subsection (d4) substituted "Who Left Service" for "but" in the first sentence, and in the second sentence deleted "but prior to January 1, 1988" following "July 1, 1982", and inserted "who left service prior to January 1, 1988"; substituted "and shall not be applicable to members in service on or after January 1, 1988" for "prior to January 1, 1988" in the first paragraph of subsection (e); added the last sentence in the last paragraph of subsection (f); and in subsection (*l*) inserted "but before January 1, 1987" in subdivision (7) of the second paragraph; and in the seventh paragraph inserted "G.S. 135-105 and", and substituted "G.S. 135-112" for "G.S. 135-112(b) and (c)."

Session Laws 1989, c. 731, s. 1, effective July 1, 1989, rewrote subsection (f1).

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

Session Laws 1989, c. 770, s. 31, effective August 12, 1989, substituted "subdivision (3a) of this subsection" for "subdivision (3a) of this section" in two places in subdivision (e)(5).

Session Laws 1989, c. 792, ss. 3.1-3.3, effective July 1, 1989, in the introductory language of subsection (b10) inserted "but before July 1, 1989" in two

places; and added subsections (b11) and (qq).

CASE NOTES

Widow of a prison guard was not entitled to death benefits where the guard's last day of service was ruled to be the date his sick and annual leave expired, and not the date his position was vacated, and thus his death, which occurred more than 90 days after his last day of service, did not occur while "in service" within the meaning of the benefit provision. Garrett v. Teachers' & State Employees' Retirement Sys. ex rel. Board of Trustees, 91 N.C. App. 409, 371 S.E.2d 776, cert. denied, 323 N.C. 624, 374 S.E.2d 585 (1988).

§ 135-9. Exemption from garnishment, attachment, etc.

Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Chapter, and the moneys in the various funds created by this Chapter, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Chapter specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or the former Disability Salary Continuation Plan or the Disability Income Plan of North Carolina may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary. (1941, c. 25, s. 9; 1985, c. 402, s. 1; c. 649, s. 5; 1987, c. 738, s. 29(k); 1989, c. 665, s. 1; c. 792, s. 2.5.)

Effect of Amendments. —

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

Session Laws 1989, c. 792, s. 2.5, effective for taxable years beginning on or after January 1, 1989, deleted "taxes" preceding "garnishment" in the catchline; and deleted "hereby exempt from any State or municipal tax, and" following "Chapter, are" in the first sentence.

§ 135-18.7. Internal Revenue Code compliance.

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

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if neces-

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

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. (1989, c. 276, s. 3.)

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

ARTICLE 3.

Other Teacher, Employee Benefits.

Part 2. Administrative Structure.

§ 135-39. Board of Trustees established.

CASE NOTES

Cited in Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

§ 135-39.5. Powers and duties of the Executive Administrator and Board of Trustees.

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

(19) Establishing and operating a hospital bill audit program and a fraud detection program. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 2; 1985, c. 732, ss. 7, 9, 23, 24, 50; 1985 (Reg. Sess., 1986), c. 1020, ss. 3, 20; 1987, c. 857, ss. 6, 7; 1987 (Reg. Sess., 1988), c. 1091, s. 5; 1989, c. 752, s. 22(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 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, added subdivision (19).

§ 135-39.7. Administrative review.

CASE NOTES

Language Is Not Exemption From Requirements of the Administrative Procedure Act. — Language in this section that board of trustees "may make a binding decision" concerning a dispute between an aggrieved individual and a claims administrator of a medical plan is not an express and unequivocal exemption of the board from the requirements of the Administrative Procedure Act; instead, the use of the term "binding" in the statute was intended to mean only that the board's decision would be binding upon the parties absent further review according to law. Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

Part 3. Comprehensive Major Medical Plan.

§ 135-40. Undertaking.

(a) The State of North Carolina undertakes to make available a Comprehensive Major Medical Plan (hereinafter called the "Plan") exclusively for the benefit of its employees, retired employees and certain of their dependents which will pay benefits in accordance with the terms hereof. The Plan shall have all the powers and privileges of a corporation and shall be known as the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. The Executive Administrator and Board of Trustees shall carry out their duties and responsibilities as fiduciaries for the Plan.

(d) Notwithstanding any other provisions of the Plan, the Executive Administrator and Board of Trustees are specifically authorized to use all appropriate means to secure tax qualification of the Plan under any applicable provisions of the Internal Revenue Code of 1954 as amended. The Executive Adminstrator and Board of Trustees shall furthermore comply with all applicable provisions of the Internal Revenue Code as amended, to the extent that this compliance is not prohibited by this Article. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732, ss. 44, 61; 1985 (Reg. Sess., 1986), c. 1020, ss. 8, 20; 1989, c. 752, s. 22(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 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective January 1, 1989, in subsection (a) substituted "exclusively for the benefit of its employees" for "to employees", and added the second sentence, and added the second sentence of subsection (d).

CASE NOTES

Cited in Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

§ 135-40.1. General definitions.

As used in Parts 2 and 3 of this Article, the following terms have the meaning specified as follows:

(2) Deductible. — Deductible shall mean an amount of covered expenses during a fiscal year which must be incurred after which benefits (subject to the deductible) becomes payable. The deductible for an employee, retired employee and/or his or her dependents shall be one hundred fifty dollars ($150.00) for each fiscal year.

The deductible applies separately to each covered individual in each fiscal year, subject to an aggregate maximum of four hundred fifty dollars ($450.00) per family (employee or retiree and his or her covered dependents) in any fiscal year.

If two or more family members are injured in the same accident only one deductible is required for charges related to that accident during the benefit period.

(17) Retired Employee (Retiree). — Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled. On and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 4, 21.1, 21.2, 21.7; 1983 (Reg. Sess., 1984), c. 1110, s. 10; 1985, c. 192, ss. 7, 16.1, 16.2; c. 732, ss. 12, 19, 25, 26; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(a), 9, 20, 24, 27; 1987, c. 564, s. 17; c. 857, ss. 9, 10; 1989, c. 752, s. 22(c), (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 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. —

The 1989 amendment, effective July 1, 1989, substituted "fiscal year" for "calendar year" throughout subdivision (2), and substituted "retiring" for "retired" in the second sentence of subdivision (17).

§ 135-40.2. Eligibility.

(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

(1) All permanent full-time employees of an employing unit who meet the following conditions:

a. Paid from general or special State funds, or

b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.

Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for

nine or more months per calendar year are covered by the provisions of this subdivision.

(1a) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

(2) Retired teachers, State employees, and members of the General Assembly.

(2a) Surviving spouses of:

a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and

b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

(3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(b), effective January 1, 1988.

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(4) Members of the General Assembly.

(h) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(*l*); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12; 1989, c. 752, s. 22(e), (f).)

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 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. —

The 1989 amendment, effective July 1, 1989, inserted "not otherwise covered by the Plan" in the second sentence of subdivision (a)(1), and added subsection (h).

§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).

The following benefits are subject to a deductible of one hundred fifty dollars ($150.00) per covered individual to an aggregate maximum of four hundred fifty dollars ($450.00) per family per fiscal year and are payable on the basis of ninety percent (90%) by the Plan and ten percent (10%) by the covered individual up to a maximum of three hundred dollars ($300.00) out-of-pocket per fiscal year:

(1) In-Hospital Benefits. — The Plan pays in-hospital benefits for each single confinement, when charged by a hospital, for room accommodations, including bed, board and general nursing care, but not to exceed the charge for semipri-

vate room or ward accommodations, or the rate negotiated for the Plan.

The Plan will pay the following covered charges, when charged by a hospital, for each confinement.

a. Intensive and cardiac nursing care.
b. All recognized drugs and medicines for use in the hospital.
c. Radiation services, including diagnostic x-rays, x-ray therapy, radiation therapy and treatment.
d. Clinical and pathological laboratory examinations.
e. Electrocardiograms and electroencephalograms.
f. Physical therapy.
g. Intravenous solutions.
h. Oxygen and oxygen therapy, plus the use of equipment.
i. Dressings, ordinary splints, plaster casts and sterile supplies.
j. Use of operating, delivery, recovery and treatment rooms and equipment.
k. Routine nursery charges, if the mother is eligible to receive maternity benefits.
l. Anesthetics and the administration thereof by the hospital's employee anesthesiologist.
m. Devices or appliances surgically inserted within the body.
n. Processing and administering of blood and blood plasma.
o. Children are entitled to benefits for treatment of illnesses or congenital defect, incubation or isolette care, and treatment of prematurity or postmaturity.

If the mother is a covered individual, benefits are provided for the newborn's circumcision and routine nursery care.

p. When a covered individual is admitted to or transferred to a section of a hospital providing ambulant, convalescent, or rehabilitative care, benefits are provided up to the average number of days of service for treatment of the particular diagnosis or condition involved, or more if medical necessity requires.
q. The Plan pays benefits for laboratory testing and administration of blood provided to a covered individual.

When a covered individual is the recipient of transplanted organs or bones, benefits are provided for services to the donor which are directly and specifically related to the transplantation.

r. Thirty days per fiscal year are provided for inpatient treatment of mental illness. Readmission for this condition within 365 days of last discharge shall be considered a single confinement. When furnished to a patient in a skilled nursing facility, 30 days less the days of care already provided for the same illness in a hospital are provided. Additional inpatient treatment, based on individual consideration, may be provided if prior approval is obtained from the Claims Processor.
s. The use of nebulizers when authorized as medically necessary by the attending physician.

(2) Limitations and Exclusions to In-Hospital Benefits. —

a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.

b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at ninety percent (90%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.

c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.

d. Hospitalization for custodial, domiciliary or sanitarium care, or rest cures, is not covered.

e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.

f. Prior to admission for scheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective January 1, 1987, failure to secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees.

(5) Surgical Benefits. — The Plan pays the usual, customary and reasonable charges for covered surgical services as follows:

a. Surgery: Cutting procedures, treatment of fractures, transfusions, operative preparation for diagnostic x-ray examinations, surgical implantation radiation sources, major endoscopic examinations, biopsies, surgical sterilization, other standard services and operations.

For the purpose of this subdivision, the term "standard services and operations" includes the following organ transplants: liver, heart, corneal, bone marrow, and kidney. All other organ transplants shall be considered nonreimbursable under the Plan. Benefits for the above listed organ transplants shall be payable only in accordance with rules established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees may limit the Plan's reimbursement for selected organ transplants to amounts that would otherwise be allowed in accordance with G.S. 135-40.4.

b. Anesthesia: Administration of general, spinal block or local anesthesia. Covered services include pre- and postoperative visits, the administration of the anesthetic, fluids and/or blood provided by the anesthesiologist and incidental to the anesthesia, and necessary drugs and materials provided by the anesthesiologist. No benefits are provided for administration of local anesthesia or for anesthesia administered by the operating surgeon or surgical assistant(s).

c. Oral Surgery: Services which are within the scope of practice of both a doctor of medicine and a dentist, such as excision of tumors and lesions of the mouth, treatment of jaw fractures and surgery to correct injuries of the mouth structure other than teeth and their supporting structure. Developmental and congenital orthognathic surgery procedures will be covered under the Plan, provided such surgery is medically necessary, is the only method of treatment which will correct the patient's deformity, is not performed for cosmetic reasons, and is approved in advance by the Claims Processor on the basis of the surgeon's documentation that the correction of the deformity is medically necessary for the maintenance of good physical health.

d. Maternity Care: Independent operative procedures in connection with pregnancy, such as: manipulative obstetrical delivery, delivery by Caesarean section, removal of ectopic pregnancy, dilation and curettage. Benefits for manipulative obstetrical delivery include use of forceps and/or episiotomy. No benefits are provided for antepartum or postpartum care, except for direct surgical procedures of delivery and surgical treatment.

e. Surgical Assistants: Services of an assistant surgeon when medical judgment requires the services of an assistant surgeon and no hospital-employed doctor in training is available.

f. Multiple Procedures: When multiple or bilateral surgical procedures are performed by the same doctor through separate incisions or approaches during the same session, the surgical benefits will be the greater UCR allowance, plus fifty percent (50%) of the lesser UCR allowance. Anesthesia benefits will be the greater UCR allowance.

When multiple surgical procedures are performed by the same doctor through the same incision or operative approach, the surgical benefits are limited to the procedure which has the highest UCR allowance.

When a surgical procedure is performed in two or more stages, the surgical benefit for the entire procedure is the same as it would be were the procedure performed in one stage (except where otherwise provided in the benefit schedule). This limitation does not apply to anesthesia benefits.

g. Cleft Palate: Notwithstanding G.S. 135-40.6(6)a and G.S. 135-40.7(11), medical treatment and care needed

by an individual born with cleft palate, including specialized dental and orthodontic care necessitated by the congenital condition.

(8) Other Covered Charges. —

a. Prescription Drugs: Prescription legend drugs in excess of the first two dollars ($2.00) per prescription for generic drugs and brand name drugs without a generic equivalent and in excess of the first three dollars ($3.00) per prescription for brand name drugs for use outside of a hospital or skilled nursing facility. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though prescription is not required.

b. Private Duty Nursing: Services of licensed nurses (not immediate relatives or members of the participant's household or private duty nursing used in lieu of or as a substitute for hospital staff nurses) ordered by the attending doctor for a condition requiring skilled nursing services. Private Duty Nursing ordered must be approved in advance by the Claims Processor as medically necessary. Allowances for Private Duty Nursing shall not exceed the Plan's usual, customary and reasonable allowances or ninety percent (90%) of the daily semiprivate rate at skilled nursing facilities as determined by the Plan.

c. Home Health Agency Services: Services provided in a covered individual's home, when ordered by the attending physician who certifies that hospital or skilled nursing facility confinement would be required without such treatment and cannot be readily provided by family members. Services may include medical supplies, equipment, appliances, therapy services (when provided by a qualified speech therapist or licensed physiotherapist), and nursing services. Nursing services will be allowed for:

1. Services of a registered nurse (RN); or
2. Services of a licensed practical nurse (LPN) under the supervision of a RN; or
3. Servcies of a home health aide under the supervision of a RN, limited to four hours a day.

Home health services shall be limited to 60 days per fiscal year, except that additional home health services may be provided on an individual basis if prior approval is obtained from the Claims Processor. Plan allowances for home health services shall be limited to licensed or Medicare certified home health agencies and shall not exceed ninety percent (90%) of the skilled nursing facility semiprivate rates as determined by the Plan, or charges negotiated by the Plan.

d. Licensed Ambulance Service: Local ambulance transportation:

1. To or from a hospital for inpatient care or outpatient accident care;
2. From a hospital to the nearest facility able to provide needed services not available at the transferring hospital; or
3. From a hospital to a skilled nursing facility.

The word "local" means ambulance transportation of not more than 50 miles unless the Claims Processor authorizes ambulance transportation beyond this distance.

e. Prosthetic and Orthopedic Appliances and Durable Medical Equipment: Appliances and equipment including corrective and supportive devices such as artificial limbs and eyes, wheelchairs, traction equipment, inhalation therapy and suction machines, hospital beds, braces, orthopedic corsets and trusses, and other prosthetic appliances or ambulatory apparatus which are provided solely for the use of the participant. Eligible charges include repair and replacement when medically necessary. Benefits will be provided on a rental or purchase basis at the sole discretion of the Administrator and agreements to rent or purchase shall be between the Administrator and the supplier of the appliance.

For the purposes of this subdivision, the term "durable medical equipment" means standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home. Decisions of the Claims Processor, the Executive Administrator and Board of Trustees as to compliance with this definition and coverage under the Plan shall be final.

f. Dental Services: Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under G.S. 135-40.3. No benefits are provided in connection with injury incurred in the act of chewing, nor for damage or breakage of an appliance such as bridge or denture being cleaned or otherwise not in normal mouth usage at the time of accident, nor for appliances for orthodontic treatment when a class of malocclusion, other than orthognathic, or cross bite has been diagnosed. Benefits for temporomandibular joint (TMJ) disfunction appliance therapy are limited to cases where the TMJ disfunction has been diagnosed as solely resulting from accidental means as certified by the attending practitioner and approved by the Claims Processor.

Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances to reasonably restore condition and function to that existing immediately prior to the accident. Injury or breakage of existing appliances

such as bridges and dentures is limited to repair of such appliances unless certified as damaged beyond repair.

g. Medical Supplies: Colostomy bags, catheters, dressings, oxygen, syringes and needles, and other similar supplies.

h. Blood: Transfusions including cost of blood, plasma, or blood plasma expanders.

i. Physical Therapy: Recognized forms of physical therapy for restoration of bodily function, provided by a doctor, hospital, or by a licensed professional physiotherapist. No benefits are provided for eye exercises or visual training.

j. Inhalation Therapy: When provided by a doctor, hospital, or other organization.

k. Speech Therapy: Speech therapy provided by certified speech therapist.

l. Cataract Lenses: Cataract lenses prescribed as medically necessary for aphakia persons, including charges for necessary examinations and fittings. Benefits will be limited to one set of cataract lenses every 24 months for persons 18 years of age or older, and one set of cataract lenses every 12 months for persons less than 18 years of age.

m. Cardiac Rehabilitation: Charges not to exceed six hundred fifty dollars ($650.00) per fiscal year for cardiac testing and exercise therapy, when determined medically necessary by an attending physician and approved by the Claims Processor for patients with a medical history of myocardial infarction, angina pectoris, arrhythmias, cardiovascular surgery, hyperlipidemia, or hypertension, provided such charges are incurred in a medically supervised facility fully certified by the North Carolina Department of Human Resources.

n. Chiropractic Services: Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143. Maximum benefits for x-rays, manipulations, and modalities shall be one thousand dollars ($1,000) per fiscal year.

o. Foot Surgery: All foot surgery on bones and joints in excess of one thousand dollars ($1,000), except for emergencies, shall require prior approval from the Claims Processor.

p. Outpatient Diabetes Self-Care Programs: Charges, not to exceed three hundred dollars ($300.00) per fiscal year, when determined to be medically necessary by an attending physician and approved by the Executive Administrator and Claims Processor as meeting the standards of the National Diabetes Advisory Board for patients with a medical history of diabetes, provided such charges are incurred in a medically supervised facility.

q. Necessary medical services provided to terminally ill patients by duly licensed hospice organizations, when

directed by the attending physician and approved in advance by the Claims Processor and the Executive Administrator.

r. Occupational Therapy: Recognized forms of occupational therapy provided by a doctor, hospital, or by a licensed professional occupational therapist to restore fine motor skills for the resumption of bodily functions.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 8-14, 21.3, 21.5, 21.9; 1983 (Reg. Sess., 1984), c. 1110, s. 12; 1985, c. 192, ss. 2, 3, 6, 6.1, 11, 16-17; c. 732, ss. 1, 14, 15, 20-22, 27-29, 31-33, 35, 65, 66; 1985 (Reg. Sess., 1986), c. 1020, ss. 4, 11-15, 20, 23; 1987, c. 282, ss. 23, 24; c. 857, ss. 15-18; 1989, c. 752, s. 22(g)-(k); c. 770, s. 32.)

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

Session Laws 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. —

Session Laws 1989, c. 752, s. 22(g), effective July 1, 1986, substituted "per fiscal year" for "per calendar year" in the introductory paragraph.

Session Laws 1989, c. 770, s. 32, effective August 12, 1989, substituted "coverage type (2) or (3)" for "coverage type (2), (3), or (5)" in paragraph (1)o.

Session Laws 1989, c. 752, s. 22(h)-(k) effective October 1, 1989, deleted "who are born under the coverage type (2), (3), or (5), as outlined in G.S. 135-40.3(d), and who remain continuously covered" following "Children" in paragraph (1)o; deleted "and following admission for unscheduled inpatient hospitalization" following "hospitalization" in paragraph (2)f; in the second paragraph of paragraph (5)a inserted "heart" in the second sentence and added the last sentence; deleted "provided that the individual was covered at the time of birth by the Plan or the Predecessor Plan" at the end of paragraph (5)g; inserted subparagraph designations 1, 2, and 3 in paragraph (8)d; deleted the last sentence in paragraph (8)k, which read "Benefits are provided only in connection with a condition, illness, or injury arising while continuously covered under this Plan"; and added paragraph (8)r.

CASE NOTES

Cited in Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

§ 135-40.6A. Prior approval procedures.

(b) The Executive Administrator and Board of Trustees may establish procedures to require prior medical approvals for the following services:

(1) Skilled Nursing Facility Care (after the initial 30 days);
(2) Private Duty Nursing;
(3) Speech Therapy (unless rendered in an inpatient hospital);
(4) Physical Therapy (in the home);
(5) Argon Laser Trabeculoplasty;
(6) Radioallergosorbent Test (RAST);
(7) Surgical Procedures:
  a. Blepharoplasties
  b. Surgery for Hermaphroditism
  c. Excision of Keloids
  d. Reduction Mammoplasty
  e. Morbid Obesity Surgery
  f. Penile Prosthesis
  g. Excision of Gynecomastia
  h. Cochlear Implants

i. Revision of the Nasal Structure
j. Abdominoplasty
k. Fimbrioplasty
l. Tubotubal Anastomasis.

(8) Subcutaneous injection of "filling" material (Example: zyderm, silicone); and

(9) Suction Lipectomy.

(1985 (Reg. Sess., 1986), c. 1020, s. 22; 1987, c. 857, s. 19; 1989, c. 770, s. 33.)

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

Effect of Amendments. — The 1989 amendment, effective July 1, 1986, substituted "Blepharoplasties" for "Elepharoplasties" in paragraph (b)(7)a.

§ 135-40.7A. Special provisions for chemical dependency.

(b) Notwithstanding any other provisions of this Part, the maximum benefit for each covered individual for treatment of chemical dependency is as follows:

Fiscal Year	$ 8,000
Lifetime	25,000

Daily benefits are limited to two hundred dollars ($200.00) except for medical detoxification treatment under rules established by the Executive Administrator and Board of Trustees.

(c) Notwithstanding any other provision of this Part, provisions for benefits for necessary care and treatment of chemical dependency under this Part shall provide for benefit payments for the following providers of necessary care and treatment of chemical dependency:

(1) The following units of a general hospital licensed under Article 5 of General Statutes Chapter 131E:
a. Chemical dependency units in facilities licensed after October 1, 1984;
b. Medical units;
c. Psychiatric units; and

(2) The following facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C:
a. Chemical dependency units in psychiatric hospitals;
b. Chemical dependency hospitals;
c. Residential chemical dependency treatment facilities;
d. Social setting detoxification facilities or programs;
e. Medical detoxification facilities or programs; and

(3) Duly licensed physicians and duly licensed practicing psychologists and certified professionals working under the direct supervision of such physicians or psychologists in facilities described in (1) and (2) above and in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency. (1983 (Reg. Sess., 1984), c. 1110, s. 11;

1985, c. 589, s. 43(a), (b); c. 732, s. 36; 1987, c. 282, s. 25; c. 857, s. 24; 1989, c. 752, s. 22(l); c. 770, s. 34.)

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 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. —

Session Laws 1989, c. 752, s. 22(l), effective October 1, 1989, rewrote subsection (b).

Session Laws 1989, c. 770, s. 34, effective August 12, 1989, substituted "Article 2 of General Statutes Chapter 122C" for "Article 1A of the General Statutes Chapter 131E" in the introductory sentence of subdivision (c)(2).

§ 135-40.8. Out-of-pocket expenditures.

(a) For the balance of any fiscal year after each eligible employee, retired employee, or dependent satisfies the cash deductible, the Plan pays ninety percent (90%) of the eligible expenses outlined in G.S. 135-40.6. The covered individual is then responsible for the remaining ten percent (10%) until three hundred dollars ($300.00), in excess of the deductible, has been paid out-of-pocket. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(b) Where a covered individual fails to obtain a second surgical opinion as required under the Plan, the covered individual shall be responsible for fifty percent (50%) of the eligible expenses, provided, however, that no covered individual shall be required to pay out-of-pocket in excess of five hundred dollars ($500.00) per fiscal year.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 16; 1985, c. 192, ss. 4, 8, 10, 18; 1985 (Reg. Sess., 1986), c. 1020, s. 17; 1987, c. 857, s. 20; 1989, c. 752, s. 22(m).)

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 1989, c. 752, s. 22(n) purported to amend "G.S. 40.8(b)" by inserting "in addition to the expenses in subsection (a) above" following "pay." It appears that the amendment was intended to be made to this section. Subsection (b) has been set out above at the direction of the Revisor of Statutes.

Session Laws 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. —

Session Laws 1989, c. 752, s. 22(m), effective July 1, 1986, substituted "(90%)" for "(95%)" in subsection (a).

Session Laws 1989, c. 752, s. 22(n), effective October 1, 1989, inserted "in addition to the expenses in subsection (a) above" in subsection (b).

§ 135-40.10. Persons eligible for Medicare.

(b) For those participants eligible for Medicare, the State's plan will be administered on a "carve out" basis. The provisions of the plan are applied to the charges not paid by Medicare (Parts A & B). In other words, those charges not paid by Medicare would be subject to the deductible and coinsurance of the Plan just as if the charges not paid by Medicare were the total bill.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985 (Reg. Sess., 1986), c. 1020, s. 18; 1987, c. 857, s. 21; 1989, c. 752, s. 22(o).)

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

Editor's Note. — Session Laws 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective October 1, 1982, deleted "new" preceding "plan" in three places in subsection (b).

§ 135-40.11. Cessation of coverage.

(a) Coverage under this Plan of an employee and his or her surviving spouse or eligible dependent children or of a retired employee and his or her surviving spouse or eligible dependent children shall cease on the earliest of the following dates:

(1) The last day of the month in which an employee or retired employee dies. Provided such surviving spouse or eligible dependent children were covered under the Plan at the time of death of the former employee or retired employee, or were covered on September 30, 1986, any such surviving spouse or eligible dependent children may then elect to continue coverage under the Plan by submitting written application to the Claims Processor and by paying the cost for such coverage when due at the applicable fees. Such coverage shall cease on the last day of the month in which such surviving spouse or eligible dependent children die, except as provided by this Article.

(2) The last day of the month in which an employee's employment with the State is terminated as provided in subsection (c) of this section.

(3) The last day of the month in which a divorce becomes final.

(4) The last day of the month in which an employee or retired employee requests cancellation of coverage.

(5) The last day of the month in which a covered individual enters active military service.

(6) The last day of the month in which a covered individual is found to have knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 17, 19-21; 1985, c. 732, ss. 13, 34; 1985 (Reg. Sess., 1986), c. 1020, ss. 19, 29(m)-(x); 1987, c. 738, s. 29(o); 1989, c. 752, s. 22(p).)

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 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, added subdivision (a)(6).

§ 135-40.13. Coordination of benefits.

(c) Effect on Benefits. —

(1) This provision shall apply in determining the benefits as to a person covered under this Plan for any claim determination period if, for the covered services incurred as to such a person during such claim determination period, the sum of:

a. The benefits that would be payable under this Plan in the absence of this provision, and

b. The benefits that would be payable under all other plans in the absence therein of provisions of similar purpose of this provision would exceed the usual and customary charges for such covered services.

(2) As to any claim determination period with respect to which this provision is applicable, the benefits that would be payable under this Plan in the absence of this provision for the covered services incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefit and all the benefits payable for such covered services under all other plans, except as provided in Item (3) immediately below, shall not exceed the total of such covered services. Benefits payable under another Plan include the benefits that would have been payable had claim been duly made therefor. In the case of another Plan which does not contain a provision coordinating its benefits, the benefits of such other Plan shall be determined before the benefits of this Plan. A Plan without a coordination of benefits provision shall be deemed to be the primary carrier within the meaning of this Plan.

(3) If:

a. Another Plan which is involved in Item (2) immediately above and which contains provisions coordinating its benefits with those of this Plan would, according to its rules, determine its benefits after the benefits of this Plan have been determined, and

b. The rules set forth in Item (4) immediately below would require this Plan to determine its benefits before such other Plan, then the benefits of such other plan will be ignored for the purposes of determining the benefits under this Plan.

(4) For the purposes of Item (3) immediately above, the rules establishing the order of benefit determination are:

a. The benefits of a Plan which covers the person on whose covered services claim is based other than as a dependent shall be determined before the benefits of a Plan which covers such person as a dependent;

b. Except as stated in sub-subdivision c of this subdivision when this Plan and another Plan cover the same child as a dependent of different persons called parents:

1. the benefits of the Plan of the parent whose birthday falls earlier in the calendar year are determined before the benefits of the Plan of the parent whose birthday falls later in the calendar year; but

2. if both parents have the same birthday, the benefits of the Plan that has covered a parent for a longer period of time are determined before those of the Plan that has covered the other parent for a shorter period of time; however, if the other Plan has a rule based on the gender of the parent, and if as a result, the Plans do not agree on the order of benefits, the rule in the other Plan will determine the order of benefits.

c. If two or more Plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:
1. first, the Plan of the parent with custody of the child;
2. second, the Plan of the spouse of the parent with custody of the child; and
3. third, the Plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the Plan of that parent has actual knowledge of those terms, the benefits of that Plan are determined first. This paragraph does not apply with respect to any claim determination period or Plan year during which any benefits are actually paid or provided before the entity has actual knowledge.

d. The benefits of a Plan that covers the person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a Plan that covers that person as a laid-off or retired employee (or as that employee's dependent). If the other Plan does not have this rule, and if, as a result, the Plans do not agree on the order of benefits, this rule is ignored.

e. When rules a and b immediately above do not establish an order of benefit determination, the benefits of a Plan which has covered the person on whose covered services claim is based for the longer period of time shall be determined before the benefits of a Plan which had covered such person for the shorter period of time.

(5) When this provision operates to reduce the total amount of benefits otherwise payable as to a person covered under this Plan during any claim determination period, each benefit that would be payable in the absence of this provision shall be reduced proportionately, and such reduced amount shall be charged against any applicable benefit limit of this Plan.

(1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, s. 18; 1985 (Reg. Sess., 1986), c. 1020, ss. 20, 30; 1989, c. 770, s. 35.)

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

Effect of Amendments. — The 1989 amendment, effective August 12, 1989, substituted "rules" for "roles" in paragraph (c)(4)e.

ARTICLE 4.

Consolidated Judicial Retirement Act.

§ 135-56. Creditable service.

(d) Any member may purchase creditable service for service as a judge, district attorney, or clerk of superior court, when not otherwise provided for in this section, and as a judge of any lawfully constituted court of this State inferior to the superior court, not to include service as a magistrate, justice of the peace or mayor's court judge. The member, after the transfer of any accumulated contributions from the Teachers' and State Employees' Retirement System or Local Governmental Employees' Retirement System, shall pay an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire with an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(e) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. (1973, c. 640, s. 1; 1977, c. 936; 1983 (Reg. Sess., 1984), c. 1031, ss. 14, 15; 1985, c. 649, s. 1; 1989, c. 255, s. 21(a).)

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

Effect of Amendments. — The 1989 amendment, effective June 7, 1989, added the last sentences of subsections (d) and (e).

§ 135-56.2. Creditable service for other employment.

Any member may purchase creditable service for service as a State teacher or employee, as defined under G.S. 135-1(10) and (25), and for service as an employee of local government, as defined under G.S. 128-21(10). A member, upon the completion of 10 years of membership service, may also purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member, after the transfer of any accumulated contributions from the Teachers' and State Employees' Retirement System or Local Governmental Employees' Retirement System, shall pay an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee as set by the Board of Trustees. As an alternative to transferring any accumulated contributions from the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System to the Consolidated Judicial Retirement System, a member may irrevocably elect to transfer these contributions to the Supplemental Retirement Income Plan of North Carolina as determined by the Plan's Board of Trustees and the Department of State Treasurer in accordance with the provisions of G.S. 135-94(a)(4). Notwithstanding the foregoing provisions of this section that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. (1983 (Reg. Sess., 1984), c. 1041; 1985, c. 348, s. 1; c. 749, s. 2; 1989, c. 255, s. 21(b).)

Effect of Amendments. — The 1989 amendment, effective June 7, 1989, added the last sentence.

§ 135-65. Post-retirement increases in allowances.

(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and

June 30, 1989. (1973, c. 640, s. 1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b); 1987 (Reg. Sess., 1988), c. 1086, s. 22(b); 1989, c. 752, s. 41(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 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. —
The 1989 amendment, effective July 1, 1989, added subsection (j).

§ 135-74. Internal Revenue Code compliance.

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

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

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. (1989, c. 276, s. 4.)

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

§§ 135-75, 135-76: Reserved for future codification purposes.

Article 5.

Supplemental Retirement Income Act of 1984.

§ 135-95. Exemption from garnishment, attachment.

Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment. (1983 (Reg. Sess., 1984), c. 975; 1985, c. 402; 1989, c. 665, s. 2; c. 792, s. 2.6.)

Effect of Amendments. — Session Laws 1989, c. 665, s. 2, effective October 1, 1989, and applicable to orders issued on or after that date, inserted "and G.S. 110-136.3 et seq."

Session Laws 1989, c. 792, s. 2.6, effective for taxable years beginning on or after January 1, 1989, deleted "taxes" preceding "garnishment" in the catchline; and deleted "and the benefits payable under this Article are hereby exempt from any State and local government taxes" following "garnishment."

Article 6.

Disability Income Plan of North Carolina.

§ 135-101. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(3) "Benefits" shall mean the monthly disability income payments made pursuant to the provisions of this Article. In the event of death on or after the first day of a month, the monthly benefit shall not be prorated and shall equal the benefits paid in the previous month.

(20) "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104 and shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as provided in G.S. 135-105.

(21) "Workers' Compensation" shall mean any disability income benefits provided under the North Carolina Workers' Compensation Act, excluding any payments for a permanent partial disability rating. (1987, c. 738, s. 29(q); 1989, c. 717, ss. 7, 8.)

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

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, deleted "or termination of benefits" following "event of death" in subdivision (3); and added subdivisions (20) and (21).

§ 135-104. Salary continuation.

(a) A participant shall receive no benefits from the Plan for a period of 60 continuous calendar days from the onset of disability determined as the last actual day of service, the day of the disabling event if the disabling event occurred on a day other than a normal workday, or the day succeeding at least 365 calendar days after service as a teacher or employee, whichever is later. These 60 continuous calendar days may be considered the waiting period before benefits are payable from the Plan. During this waiting period, a participant may be paid such continuation of salary as provided by an employer through the use of sick leave, vacation leave or any other salary continuation.

(1987, c. 738, s. 29(q); 1989, c. 717, s. 9.)

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

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, inserted "the day of the disabling event if the disabling event occurred on a day other than a normal workday" in the first sentence of subsection (a).

§ 135-105. Short-term disability benefits.

(a) Any participant who becomes disabled and is no longer able to perform his usual occupation may, after at least 365 calendar days succeeding his date of initial employment as a teacher or employee and at least one year of contributing membership service, receive a benefit commencing on the first day succeeding the waiting period; provided that the participant's employer and attending physician shall certify that such participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter; provided further that the requirement for one year of contributing membership service must have been earned within 36 calendar months immediately preceding the date of disability and further, salary continuation used during the period as provided in G.S. 135-104 shall count toward the aforementioned one year requirement.

(b) The benefits as provided for in subsection (a) of this section shall commence on the first day following the waiting period and shall be payable for a period of 365 days as long as the participant continues to meet the definition of disability. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of short-term disability benefits; provided further, such election shall not extend the 365 days duration of short-term payments. An election to receive any salary continuation for any part of a given day shall be in lieu of any short-term benefit otherwise payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any short-term benefit otherwise payable.

(c) The monthly benefit as provided in subsection (a) of this section shall be equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last payable to the participant prior to the beginning of the short-term benefit period as may be adjusted for percentage increases as provided under G.S. 135-108 plus fifty

percent (50%) of 1/12th of the annual longevity payment to which the participant would be eligible, to a maximum of three thousand dollars ($3,000) per month reduced by monthly payments for Workers' Compensation to which the participant may be entitled. Provided, that should a participant have earnings in an amount greater than the short-term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit.

(1987, c. 738, s. 29(q); 1989, c. 717, 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 1989 amendment, effective July 1, 1989, substituted "at the time of the active employment" for "while the participant was a teacher or employer" in subsection (a); added the last sentence of subsection (b); and inserted "period as may be adjusted for percentage increases as provided under G.S. 135-108" in subsection (c).

§ 135-106. Long-term disability benefits.

(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases or after salary continuation payments cease, whichever is later; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

(b) After the commencement of benefits under this section, the benefits payable under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars ($3,900) per month reduced by any primary Social Security disability benefits and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled, but the benefits payable shall be no less than ten dollars ($10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Notwithstanding the foregoing, upon the completion of four years from the conclusion of the waiting period as provided in G.S. 135-104, the beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled.

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan.

(1987, c. 738, s. 29(q); 1989, c. 717, s. 11.)

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

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, in subsection (a) substituted "at the time of active employment" for "while a teacher or employee" in the first paragraph, and inserted "effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled" in the next to the last paragraph; in subsection (b) in the first sentence substituted "short-term disability pe-

riods as may be adjusted for percentage increases as provided under G.S. 135-108" for "long-term benefits", inserted "monthly payments for", and substituted "to which the participant or beneficiary may be entitled, but the benefits payable shall be no less than ten dollars ($10.00) a month" for "if any", and inserted the third sentence.

§ 135-107. Optional Retirement Program.

Any participant of the Optional Retirement Program who becomes a beneficiary under the Plan shall be eligible to receive long-term disability benefits until the time the beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary elected to be a member of the Teachers' and State Employees' Retirement System, and shall receive no service accruals as otherwise provided members of the Retirement System under the provisions of G.S. 135-4(y). (1987, c. 738, s. 29(q).)

Editor's Note. — The section above is set out to correct a typographical error in the main volume.

§ 135-112. Transition provisions.

(b) All benefit recipients under the former Disability Salary Continuation Plan provided for in G.S. 135-34 and the rules adopted thereto shall become beneficiaries under this Plan under the same provisions and conditions including the benefit amounts payable as were provided under the former Disability Salary Continuation Plan. Any benefit recipient under the former Disability Salary Continuation Plan who returns to service on or after January 1, 1988, who subsequently becomes disabled due to the same disabling condition within 90 days after restoration to service shall not become a participant of the Disability Income Plan but shall be entitled to a restoration of the disability benefit under the same provisions and conditions, including the benefit amounts payable, as were provided under the former Disability Salary Continuation Plan, and shall be entitled to make application for disability retirement benefits under the Retirement System under the same provisions and conditions as were provided members whose service terminated prior to January 1, 1988.

(1987, c. 738, s. 29(q); 1989, c. 717, s. 12.)

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

Editor's Note. — Section 135-34, referred to in this section, was repealed by Session Laws 1987, c. 738, s. 29(l). See now § 135-100 et seq.

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, added the second sentence of subsection (b).

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ARTICLE 1.

Organization of Department of Transportation.

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

(a) The Department of Transportation shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Department of Transportation, and such other data as may be of interest in connection with the work of the Department of Transportation. A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request.

(b) At least 30 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation Improvement Program, the Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

(1) The Speaker and the Speaker Pro Tempore of the House of Representatives;
(2) The Lieutenant Governor and the President Pro Tempore of the Senate;
(3) The Chairs of the House and Senate Appropriations Committees;
(4) Each member of the Joint Legislative Highway Oversight Committee; and
(5) The Fiscal Research Division of the Legislative Services Commission. (1921, c. 2, s. 23; C.S., s. 3846(l); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 692, s. 1.3; c. 770, s. 74.16.)

Editor's Note. — Session Laws 1989, c. 692, s. 1.11 provides: "The Department of Transportation shall determine on which highways, bridges, and ferries it is economically feasible to collect tolls and shall report its findings to the General Assembly. If the Department finds it desirable to establish toll roads, bridges, or ferries, the Department shall include in its report any legislation needed to establish the toll roads, bridges, or ferries and to implement the collection of tolls, including the creation of a North Carolina Toll Authority."

Session Laws 1989, c. 692, s. 8.2 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another 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."

Effect of Amendments. — Session Laws 1989, c. 692, s. 1.3, effective August 1, 1989, added "Transportation Improvement Program submitted to members and staff of General Assembly" in the catchline, added the designation of subsection (a), and added subsection (b).

Session Laws 1989, c. 770, s. 74.16, effective August 12, 1989, amended this section as amended by Session Laws 1989, c. 692, s. 1.3, effective August 1, 1989, by substituting "30 days" for "25 days" in the introductory sentence of subsection (b).

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

§ 136-16.4. Continuing aviation appropriations.

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

Editor's Note. — Session Laws 1987, c. 738, s. 170(c), as amended by Session Laws 1989, c. 500, s. 53, makes §§ 136-16.4 to 136-16.9 effective September 1, 1987.

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

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

§ 136-16.5. Purposes for continuing aviation appropriations.

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

Editor's Note. — Session Laws 1987, c. 738, s. 170(c), as amended by Session Laws 1989, c. 500, s. 53, makes §§ 136-16.4 to 136-16.9 effective September 1, 1987.

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

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

§ 136-16.6. Continuing rail appropriations.

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

Editor's Note. — Session Laws 1987, c. 738, s. 170(c), as amended by Session Laws 1989, c. 500, s. 53, makes §§ 136-16.4 to 136-16.9 effective September 1, 1987.

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

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

§ 136-16.7. Purposes for continuing rail appropriations.

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

Editor's Note. — Session Laws 1987, c. 738, s. 170(c), as amended by Session Laws 1989, c. 500, s. 53, makes §§ 136-16.4 to 136-16.9 effective September 1, 1987.

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

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

§ 136-16.8. Continuing appropriations for public transportation.

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

Editor's Note. — Session Laws 1987, c. 738, s. 170(c), as amended by Session Laws 1989, c. 500, s. 53, makes §§ 136-16.4 to 136-16.9 effective September 1, 1987.

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

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

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

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

Editor's Note. — Session Laws 1987, c. 738, s. 170(c), as amended by Session Laws 1989, c. 500, s. 53, makes §§ 136-16.4 to 136-16.9 effective September 1, 1987.

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

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

Article 2.

Powers and Duties of Department and Board of Transportation.

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

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

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

§ 136-17.2A. Distribution formula for funds expended on Intrastate System and Transportation Improvement Program.

(a) Funds expended for the Intrastate System projects listed in G.S. 136-179 and both State and federal-aid funds expended under the Transportation Improvement Program, other than funds expended on an urban loop project listed in G.S. 136-180, shall be distributed throughout the State in accordance with this section. For purposes of this distribution, the counties of the State are grouped into seven distribution regions as follows:

(1) Distribution Region A consists of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Johnston, Martin, Nash, Northampton, Pasquotank, Perquimans, Tyrrell, Washington, Wayne, and Wilson.

(2) Distribution Region B consists of the following counties: Beaufort, Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt, and Sampson.

(3) Distribution Region C consists of the following counties: Bladen, Columbus, Cumberland, Durham, Franklin, Granville, Harnett, Person, Robeson, Vance, Wake, and Warren.

(4) Distribution Region D consists of the following counties: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes.

(5) Distribution Region E consists of the following counties: Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery; Moore, Randolph, Richmond, Scotland, Stanly, and Union.

(6) Distribution Region F consists of the following couties: Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba,

Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin.

(7) Distribution Region G consists of the following counties: Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey.

(b) Until ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:

(1) Twenty-five percent (25%) on the estimated number of miles to complete the Intrastate System projects in that distribution region compared to the estimated number of miles to complete the total Intrastate System;

(2) Fifty percent (50%) on the estimated population of the distribution region compared to the total estimated population of the State; and

(3) Twenty-five percent (25%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.

(c) When ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:

(1) Sixty-six percent (66%) on the estimated population of the distribution region compared to the total estimated population of the State; and

(2) Thirty-four percent (34%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.

(d) In each fiscal year, the Department shall, as nearly as practicable, expend in a distribution region an amount equal to that region's tentative percentage share of the funds that are subject to this section and are available for that fiscal year. In any consecutive seven-year period, the amount expended in a distribution region must be between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts established under this subsection as the target amounts to be expended in the region for those seven years.

(e) In making the calculation under this section, the Secretary shall use the most recent estimates of population certified by the State Budget Officer.

(f) In developing the schedules of improvements to be funded from the Trust Fund and of improvements to be made under the Transportation Improvement Program, the Board of Transportation shall consider the highway needs of every county in a distribution region and shall make every reasonable effort to schedule the construction of highway improvements in a manner that addresses the

needs of every county in the region in an equitable and timely manner. (1989, c. 692, s. 1.4; c. 770, s. 74.7.)

Editor's Note. — Session Laws 1989, c. 692, s. 8.3 makes this section effective August 1, 1989.

Effect of Amendments. — The 1989 amendment, effective August 12, 1989, amends this section as enacted by Session Laws 1989, c. 692, s. 1.4, effective August 1, 1989, by redesignating subdivision (c)(3) as subdivision (c)(2).

§ 136-18. Powers of Department of Transportation.

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

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, s. 1; 1987, c. 311; 1989, c. 158.)

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

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

Effect of Amendments. —

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

The 1989 amendment, effective May 29, 1989, substituted "secondary road route" for "service road route" in the second sentence of subdivision (29).

OPINIONS OF ATTORNEY GENERAL

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

§ 136-18.6. Cutting down trees.

Except in the process of an authorized construction, maintenance or safety project, the Department shall not cut down trees unless:

(1) The trees pose a potential danger to persons or property; or

(2) The cutting down of the trees is approved by the appropriate District Engineer. (1989, c. 63, s. 1.)

Editor's Note. — Session Laws 1989, c. 63, s. 2 makes this section effective upon ratification. The act was ratified on April 19, 1989.

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

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, 89 N.C. App. 223, 365 S.E.2d 694, appeal dismissed, 322 N.C. 479, 370 S.E.2d 221 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-21. Drainage of highway; application to court; summons; commissioners.

Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right-of-way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other than said highway will be drained and benefited, then, and in such event, the Department of Transportation, if said highway be a part of the State highway system, or the county commissioners, if said road is not under State supervision, may, by petition, apply to the superior court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than 10 days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recom-

mended by the Department of Environment, Health, and Natural Resources, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; c. 122, s. 44; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 464, s. 7.1; c. 771, s. 4; 1989, c. 727, s. 218(88).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" near the end of the section.

§ 136-25. Repair of road detour.

CASE NOTES

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

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

(a) All contracts over three hundred thousand dollars ($300,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal-aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. The Department of Transportation shall use only the contract provisions provided in the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act.

(b) In those cases in which the amount of work to be let to contract for highway construction or repair is three hundred thousand dollars ($300,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opended.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase,

installation, and maintenance of generators for electricity for its ferry repair facilities. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3.)

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

Effect of Amendments. —

The 1987 amendment, effective June 18, 1987, added subsection (i).

Session Laws 1989, c. 78, effective May 1, 1989, added the last two sentences in subsection (a).

Session Laws 1989, c. 749, ss. 2, 3, effective August 9, 1989, substituted "three hundred thousand dollars ($300,000)" for "one hundred fifty thousand dollars ($150,000)" in the first sentence of subsection (a) as amended by Session Laws 1989, c. 78, s. 2, and rewrote subsection (b).

§ 136-28.4. State policy concerning participation by minority contractors.

(a) It is the policy of this State to encourage and promote the use of minority contractors in the construction, alteration and maintenance of State roads, streets, highways, and bridges and in the procurement of materials for such projects. All State agencies, institutions and political subdivisions shall cooperate with the Department of Transportation and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of minority contractors in such State construction, alteration, maintenance and procurement.

(b) A ten percent (10%) goal for participation by minority businesses in road or bridge construction, alteration, or maintenance projects is established. The Department of Transportation shall endeavor to award to minority businesses at least ten percent (10%), by value, of the contracts it lets for the construction, alteration, or maintenance of roads and bridges. The Department shall adopt written procedures specifying the steps it will take to achieve this goal, provided that the Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) As used in this section, the term "minority" has the same meaning as in 49 C.F.R. § 23.5. (1983, c. 692, s. 3; 1989, c. 692, s. 1.5.)

Editor's Note. — Session Laws 1989, c. 692, s. 8.2 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another 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."

Effect of Amendments. — The 1989 amendment, effective August 1, 1989, substituted "State policy concerning participation by" for "State policy; cooperation in promoting the use of," in the heading of the section; substituted "minority contractors" for "small, minority, physically handicapped and women" in the catchline in the first and second sentences of subsection (a); designated subsection (a); and added subsections (b) and (c).

§ 136-28.5. Construction diaries.

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

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

§ 136-28.6. (Effective until June 30, 1991) Private contract participation by the Department of Transportation.

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

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

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

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

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

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

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

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

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

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section. (1987, c. 860, s. 1.)

Editor's Note. — Session Laws 1987, c. 860, s. 2, as amended by Session Laws 1989, c. 749, s. 1, makes this section effective upon ratification, and provides that it shall expire June 30, 1991. The act was ratified August 14, 1987.

§ 136-28.6 has a delayed expiration date. See notes for date.

§ 136-28.7. Contract requirements relating to construction materials.

(a) The Department of Transportation shall require that every contract for construction or repair necessary to carry out the provisions of this Chapter shall contain a provision requiring that all steel and cement permanently incorporated into the construction or repair project be produced in the United States.

(b) Subsection (a) shall not apply whenever the Department of Transportation determines in writing that this provision required by subsection (a) cannot be complied with because such products are not produced in the United States in sufficient quantities to meet the requirements of such contracts or cannot be complied with because the cost of such products produced in the United States unreasonably exceeds other such products.

(c) The Department of Transportation shall apply this section consistent with the requirements in 23 C.F.R. § 635.410(b)(4).

(d) The Department of Transportation shall not authorize, provide for, or make payments to any person pursuant to any contract containing the provision required by subsection (a) unless such person has fully complied with such provision. (1989, c. 692, s. 1.18; c. 770, ss. 74.12, 74.14, 74.15.)

Editor's Note. — Session Laws 1989, c. 692, s. 8.3 makes this section effective August 1, 1989.

Session Laws 1989, c. 692, s. 1.18, effective August 1, 1989, enacted this section as § 136-44.8. It was recodified as § 136-28.7 by Session Laws 1989, c. 770, s. 74.12, effective August 12, 1989.

Effect of Amendments. — The 1989 amendment by c. 770, ss. 74.14 and 74.15, effective August 12, 1989, amended this section as enacted by Session Laws 1989, c. 692, s. 1.18, effective August 1, 1989, by substituting "all steel and cement permanently incorporated into the construction or repair project be produced in the United States" for "steel and cement used or supplied in the performance of the contract or any subcontract thereunder are produced in the United States" in subdivision (a); redesignated former subsection (c) as present subsection (d); and added subsection (c).

§ 136-28.8. Use of recyclable materials in construction.

(a) It is the intent of the General Assembly that the Department of Transportation continue to expand its current use of recovered materials in its construction programs.

(b) The General Assembly declares it to be in the public interest to find alternative ways to use certain recyclable materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. To determine the feasibility of using recyclable materials for highway construction, the Department shall undertake a literature search to evaluate the potential for using:

(1) Ground rubber from tires in road resurfacing or subbase materials; and

(2) Recycled mixed-plastic materials for guard rail posts, right-of-way fence posts, and sign supports.

(c) As a part of its scheduled projects, the Department may conduct such additional research as it determines to be warranted, which may include demonstration projects, on the use of recyclable materials in highway construction.

(d) The Deparment shall review and revise existing bid procedures and specifications for the purchase or use of products and materials to eliminate any procedures and specifications that explicitly discriminate against products and materials with recycled content, except where the procedures and specifications are necessary to protect the health, safety, and welfare of the people of this State.

(e) The Department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of products and materials with recycled content and shall, in developing new procedures and specifications, encourage the use of products and materials with recycled content.

(f) All agencies shall cooperate with the Department in carrying out the provisions of this section. (1989, c. 784, s. 6.)

Editor's Note. — Session Laws 1989, c. 784, s. 17, makes this section effective October 1, 1989.

Session Laws 1989, c. 784, s. 6 enacted this section as § 136-285. The section has been recodified as § 136-28.8 at the direction of the Revisor of Statutes.

§ 136-29. Adjustment and resolution of highway construction contract claim.

(a) A contractor who has completed a contract with the Department of Transportation to construct a State highway and who has not received the amount he claims is due under the contract may submit a verified written claim to the State Highway Administrator for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives his final statement from the Department and shall state the factual basis for the claim.

The State Highway Administrator shall investigate a submitted claim within 90 days of receiving the claim or within any longer time period agreed to by the State Highway Administrator and the contractor. The contractor may appear before the State Highway Administrator, either in person or through counsel, to present facts and arguments in support of his claim. The State Highway Administrator may allow, deny, or compromise the claim, in whole or in part. The State Highway Administrator shall give the contractor a written statement of the State Highway Administrator's decision on the contractor's claim.

(b) A contractor who is dissatisfied with the State Highway Administrator's decision on the contractor's claim may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the State Highway Administrator's written statement of the decision.

(c) As to any portion of a claim that is denied by the State Highway Administrator, the contractor may, in lieu of the procedures set forth in subsection (b) of this section, within six months of receipt of the State Highway Administrator's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed.

The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(d) The provisions of this section shall be part of every contract for State highway construction between the Department of Transportation and a contractor. A provision in a contract that conflicts with this section is invalid. (1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667; 1965, c. 55, s. 11; 1967, c. 873; 1973, c. 507, ss. 5, 17, 18; 1977, c. 464, s. 7.1; 1983, c. 761, s. 191; 1987, c. 847, s. 3.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable to actions brought for claims denied by the State Highway Administrator or by the Director of the Office of State Construction of the Department of Administration on or after that date, rewrote this section.

Legal Periodicals. —

For survey of North Carolina construction law, see 21 Wake Forest L. Rev. 633 (1986).

For article on "North Carolina Construction Law Survey II," see 22 Wake Forest L. Rev. 481 (1987).

CASE NOTES

The sole statutory grounds that allow suit against the State Highway Administrator are provided in this section. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

Contractor's Substantive Rights Not Expanded. — Although this section, as amended in 1983, terms the board an alternative to civil suit, the claim allowed to the board is nevertheless a waiver of sovereign immunity, the terms of which are to be strictly construed. The same restrictions on maintaining a claim to the board as those for a claim to superior court will be applied, for there is no language, express or implied, that the creation of this alternative was to expand the substantive rights of the contractor against the sovereign immunity of the State. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

Where contractor changed both the theory and the substance of its claim after the claim was denied by the Administrator, these changes divested the Board of jurisdiction to hear its appeal. In re Thompson-Arthur Paving Co., 81 N.C. App. 645, 344 S.E.2d 853, cert. denied, 318 N.C. 506, 349 S.E.2d 874 (1986).

ARTICLE 2A.

State Roads Generally.

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents ($1\frac{3}{4}¢$) tax on each gallon of motor fuel as taxed by G.S. 105-434 and 105-435, to be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this

section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received. The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54; 1985 (Reg. Sess., 1986), c. 982, s. 1; 1989, c. 692, s. 1.6.)

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

Local Modification. — Grandfather Village: 1987, c. 419, s. 1.

Editor's Note. —

Session Laws 1989, c. 692, s. 8.2 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another 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."

Effect of Amendments. —

The 1989 amendment, effective August 1, 1989, in subsection (a), in the first paragraph, in the first sentence deleted "hereby" preceding "annually appropriated," and substituted "this section" for "the following formula," and added the last two sentences, in the second paragraph, substituted "the funds appropriated for cities and towns" for "said funds" in the first sentence, and inserted "State" preceding "highway system" in the last sentence, substituted "under this section" for "by virtue of G.S. 136-41.1 and 136-41.2" in the first sentence of the third paragraph, substituted "October 1 of each year" for "October 1 each year after March 15, 1951" in the first sentence of the fourth paragraph, in the next to the last paragraph, deleted the former first sentence relating to allocations to cities and towns from the one cent per gallon additional tax on gasoline, and in the present first sentence, substituted "may withhold" for "is hereby authorized to withhold," and substituted "appropriated for distribution under this section" for "appropriated in G.S. 136-41.1", and substituted "this section" for "G.S. 136-41.1 and 136-41.2" in the second sentence of the last paragraph.

§ 136-44.2. (Effective until July 1, 1990) Budget and appropriations.

The Director of the Budget shall include in the "Budget Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, and urban road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for

§ 136-44.2 is set out twice. See headings for effective dates.

the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Budget Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

In the event receipts and increments to the State Highway Fund shall be more than the appropriations made for the preceding fiscal year, such excesses shall be allocated by the Director of the Budget to the Department of Transportation for school and industrial access roads and unforeseen happenings or state of affairs requiring prompt action, with fifty percent (50%) of the balance to be allocated to the State secondary roads program on the basis of need as determined by the Department of Transportation and the remaining fifty percent (50%) to be allocated in accordance with G.S. 136-44.5.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1981, c. 859, s. 84; 1983, c. 717, ss. 46, 47; 1987, c. 830, s. 113(b).)

Section Set Out Twice. — The section above is effective until July 1, 1990. For the section as amended effective July 1, 1990, see the following section, also numbered § 136-44.2.

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

Session Laws 1987, c. 830, s. 121 is a severability clause.

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

§ 136-44.2 is set out twice. See headings for effective dates.

§ 136-44.2. (Effective July 1, 1990) Budget and appropriations.

The Director of the Budget shall include in the "Current Operations Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, urban, and State parks road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits. The State parks system shall include all State parks roads which are not also part of the State highway system.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

In the event receipts and increments to the State Highway Fund shall be more than the appropriations made for the preceding fiscal year, such excesses shall be allocated by the Director of the Budget to the Department of Transportation for school and industrial access roads and unforeseen happenings or state of affairs requiring prompt action, with fifty percent (50%) of the balance to be allo-

§ 136-44.2 is set out twice. See headings for effective dates.

cated to the State secondary roads program on the basis of need as determined by the Department of Transportation and the remaining fifty percent (50%) to be allocated in accordance with G.S. 136-44.5.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1981, c. 859, s. 84; 1983, c. 717, ss. 46, 47; 1987, c. 830, s. 113(b); 1989, c. 799, s. 12(a).)

Section Set Out Twice. — The section above is effective July 1, 1990. For this section as in effect until July 1, 1990, see the preceding section, also numbered § 136-44.2.

Effect of Amendments. —

The 1989 amendment, effective July 1, 1990, in the first paragraph, in the first sentence substituted "Current Operations Appropriations Bill" for "Budget Appropriations Bill", inserted "and State parks", and added the last sentence, and substituted "Current Operations" for "Budget" in the first sentence of the fifth paragraph.

§ 136-44.2A. Secondary road construction.

There shall be annually allocated out of the State Highway Fund to the Department of Transportation for secondary road construction programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum equal to that allocation made from the Highway Fund under G.S. 136-41.1(a). In addition, as provided in G.S. 136-176(b)(4) and G.S. 20-85(b), revenue is annually allocated from the Highway Trust Fund for secondary road construction. Of the funds allocated from the Highway Fund and the Highway Trust Fund, the sum of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated among the counties in accordance with G.S. 136-44.5(b). All funds for secondary road construction in excess of that amount shall be allocated among the counties in accordance with G.S. 136-44.5(c). (1981, c. 690, s. 6; 1989, c. 692, s. 1.7.)

Editor's Note. —

Session Laws 1987, c. 830, s. 117 provides: "Nine hundred sixty-four thousand dollars ($964,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1987-88 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State maintained county roads in the counties where signing has not already been funded."

Session Laws 1989, c. 692, s. 8.2 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another 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."

Effect of Amendments. — The 1989 amendment, effective August 1, 1989, inserted "from the Highway Fund" in the first sentence, deleted the former second sentence which read: "Secondary roads allocation shall be made in accordance with the provisions of G.S. 136-44.5," and added the present second through the fourth sentences.

§ 136-44.2 is set out twice. See headings for effective dates.

§ 136-44.5. Secondary roads; mileage study; allocation of funds.

(a) Before July 1, in each calendar year, the Department of Transportation shall make a study of all state-maintained unpaved roads in the State. The study shall determine the number of miles of unpaved state-maintained roads in each county, the total number of miles of unpaved state-maintained roads in the State, the number of miles of unpaved state-maintained roads in each county that have a traffic vehicular equivalent of at least 50 vehicles a day, and the total number of miles of unpaved state-maintained roads in the State that have a traffic vehicular equivalent of at least 50 vehicles a day. Except for federal-aid programs, the Department shall allocate all secondary road construction funds on the basis of a formula using the study figures.

(b) The first sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated as follows: Each county shall receive a percentage of these funds, the percentage to be determined as a factor of the number of miles of unpaved state-maintained secondary roads in the county divided by the total number of miles of unpaved state-maintained secondary roads in the State.

(c) Funds allocated for secondary road construction in excess of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated to each county based on the percentage proportion that the number of miles in the county of state-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day bears to the total number of miles in the State of state-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day.

(d) Copies of the Department study of unpaved state-maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1989, c. 692, s. 1.8.)

Editor's Note. —

Session Laws 1987, c. 830, s. 117 provides: "Nine hundred sixty-four thousand dollars ($964,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1987-88 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State maintained county roads in the counties where signing has not already been funded."

Session Laws 1989, c. 500, s. 51 provides: "Of the funds appropriated in Section 4 of this act to the Department of Transportation for fiscal years 1989-90 and 1990-91, twenty million dollars ($20,000,000) shall be allocated for small urban construction projects. Fourteen million dollars ($14,000,000) of these funds shall be allocated equally among the 14 Highway Divisions for the Small Urban Construction Program for small urban construction projects that are located within the area covered by a one-mile radius of the municipal corporate limits. The remaining six million dollars ($6,000,000) of these funds shall be used statewide for rural or small urban highway improvements as approved by the Secretary of the Department of Transportation.

"None of these funds used for rural secondary road construction are subject to the county allocation formula as provided in G.S. 136-44.5.

"The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Commission on Governmen-

tal Operations and the Fiscal Research Division."

Session Laws 1989, c. 500, s. 127 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1989-91 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1989-91 biennium."

Session Laws 1989, c. 692, s. 8.2 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another 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."

Effect of Amendments. — The 1989 amendment, effective August 1, 1989, designated subsection (a), and in subsection (a), in the second sentence, deleted "and" preceding "the total number," and added the language beginning "the number of miles of unpaved state-maintained roads"; added the designation of subsection (b), and in subsection (b), substituted "The first sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated" for "The allocation shall be," and substituted "these funds" for "the total funds available for totally state-funded secondary road construction"; added subsection (c); and added the designation of subsection (d).

§ 136-44.7. Secondary roads; annual work program.

(a) The Department of Transportation shall be responsible for developing criteria for improvements and maintenance of secondary roads. The criteria shall be adopted by the Board of Transportation before it shall become effective. The Department of Transportation shall be responsible for developing annual work programs for both construction and maintenance of secondary roads in each county in accordance with criteria developed. It shall reflect the long-range and immediate goals of the Department of Transportation. Projects on the annual construction program for each county shall be rated according to their priority based upon the secondary road criteria and standards which shall be uniform throughout the State. Tentative construction projects and estimated funding shall also be listed in accordance to priority. The annual construction program shall be adopted by the Board of Transportation before it shall become effective.

(b) When a secondary road in a county is listed in the first 10 secondary roads to be paved during a year on a priority list issued by the Department of Transportation under this section, the secondary road cannot be removed from the top 10 of that list or any subsequent list until it is paved. All secondary roads in a county shall be paved, insofar as possible, in the priority order of the list. (1973, c. 507, s. 3; 1975, c. 716, s. 7; 1977, c. 464, s. 8; 1989, c. 692, s. 1.9.)

Editor's Note. — Session Laws 1989, c. 692, s. 8.1 provides: "The prohibition imposed by G.S. 136-44.7(b) against changing the order of unpaved roads set out in a published list of the top 10 roads to be paved in a county applies to lists adopted for fiscal years beginning with the 1988-89 fiscal year."

Session Laws 1989, c. 692, s. 8.2 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another 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."

Effect of Amendments. — The 1989 amendment, effective October 1, 1989,

designated the first paragraph as subsection (a) and added subsection (b).

§ 136-44.12. (Effective until July 1, 1990) Construction and maintenance of roads in areas administered by the Division of State Parks.

The Department of Transportation is authorized to construct and maintain all roads leading into and located within the boundaries of all areas administered by the Division of State Parks of the Department of Environment, Health, and Natural Resources.

All such roads shall be planned, designed, engineered and constructed through joint action between the Department of Transportation and the Division of State Parks of the Department of Environment, Health, and Natural Resources. This joint action shall be given to all accepted park planning and design principles. Particular concern shall be given to traffic counts and vehicle weight, minimal cutting into or through any natural and scenic areas, width of shoulders, the cutting of natural growth along roadways, and the reduction of any potential use of roads for any purpose other than by park users. All State park roads shall conform to the standards regarding width and other roadway specifications as agreed upon by the Division of State Parks of the Department of Environment, Health, and Natural Resources and the Department of Transportation.

The State park road systems may be closed to the public in accordance with approved park practices that control the use of State areas so as to protect these areas from overuse and abuse and provide for functional use of the park areas, or for any other purpose considered in the best interest of the public by the Division of State Parks of the Department of Environment, Health, and Natural Resources.

Nothing herein shall be construed to include the transfer to the Department of Transportation the powers now vested in the Division of State Parks of the Department of Environment, Health, and Natural Resources relating to the patrol and safeguarding of State parks or parkway roads. (1973, c. 123, ss. 1-3; 1977, c. 771, s. 4; 1989, c. 727, s. 218(89).)

Section Set Out Twice. — The section above is effective until July 1, 1990. For the section as amended effective July 1, 1990, see the following section, also numbered § 136-44.12.

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" throughout the section.

§ 136-44.12 is set out twice. See headings for effective dates.

§ 136-44.12. (Effective July 1, 1990) Maintenance of roads in areas administered by the Division of Parks and Recreation.

The Department of Transportation shall maintain all roads which are not part of the State Highway System, leading into and located within the boundaries of all areas administered by the Division of Parks and Recreation of the Department of Environment, Health, and Natural Resources.

All such roads shall be planned, designed, and engineered through joint action between the Department of Transportation and the Division of Parks and Recreation of the Department of Environment, Health, and Natural Resources. This joint action shall be given to all accepted park planning and design principles. Particular concern shall encompass all traffic counts and vehicle weight, minimal cutting into or through any natural and scenic areas, width of shoulders, the cutting of natural growth along roadways, and the reduction of any potential use of roads for any purpose other than by park users. All State park roads shall conform to the standards regarding width and other roadway specifications as agreed upon by the Division of Parks and Recreation of the Department of Environment, Health, and Natural Resources and the Department of Transportation.

The State park road systems may be closed to the public in accordance with approved park practices that control the use of State areas so as to protect these areas from overuse and abuse and provide for functional use of the park areas, or for any other purpose considered in the best interest of the public by the Division of Parks and Recreation of the Department of Environment, Health, and Natural Resources.

Nothing herein shall be construed to include the transfer to the Department of Transportation the powers now vested in the Division of Parks and Recreation of the Department of Environment, Health, and Natural Resources relating to the patrol and safeguarding of State parks or parkway roads. (1973, c. 123, ss. 1-3; 1977, c. 771, s. 4; 1989, c. 727, s. 218(89); c. 799, s. 12(b).)

Section Set Out Twice. — The section above is effective July 1, 1990. For this section as in effect until July 1, 1990, see the preceding section, also numbered § 136-44.12.

Effect of Amendments. — Session Laws 1989, c. 727, s. 218(89), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" throughout the section.

Session Laws 1989, c. 799, s. 12(b), effective July 1, 1990, substituted "shall maintain all roads which are not part of the State Highway System" for "is authorized to construct and maintain all roads" in the first paragraph, substituted "and engineered" for "engineered and constructed" in the second paragraph, and substituted "Division of Parks and Recreation" for "Division of State Parks" throughout the section. In addition, the amendment made the same change as was made by c. 727, s. 218(89).

§ 136-44.12 is set out twice. See headings for effective dates.

§ 136-44.15: Expired.

Editor's Note. — This section was enacted by Session Laws 1987, c. 324 s. 1. Section 2 of the act provided that it would expire June 30, 1988.

§§ 136-44.16 to 136-44.19: Reserved for future codification purposes.

ARTICLE 2B.

Public Transportation.

§ 136-44.20. Department of Transportation designated agency to administer and fund public transportation programs; authority of political subdivisions.

(d) Of the amount appropriated to the Department each year for State construction under the Transportation Improvement Program, the Department may use up to five million dollars ($5,000,000) to develop economical transit alternatives to highway construction. These alternatives may include high occupancy vehicle lanes and rail routes. (1975, c. 451; 1977, c. 341, s. 2; 1983, c. 616; 1989, c. 692, s. 2.3.)

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

Editor's Note. — Session Laws 1989, c. 700, § 1 amended Session Laws 1989, c. 692, which added subsection (d), by adding a new sentence at the beginning of section 8.3 to read "Part II of this act shall become effective August 15, 1989."

Effect of Amendments. — The 1989 amendment, effective August 15, 1989, added subsection (d).

§ 136-44.27. North Carolina Elderly and Handicapped Transportation Assistance Program.

(a) There is established the Elderly and Handicapped Transportation Assistance Program that shall provide State financed elderly and handicapped transportation services for counties within the State. The Department of Transportation is designated as the agency of the State responsible for administering State funds appropriated to purchase elderly and handicapped transportation services for counties within the State. The Department shall develop appropriate procedures regarding the distribution and use of these funds and shall adopt rules to implement these procedures. No funds appropriated pursuant to this act may be used to cover State administration costs.

(b) For the purposes of this section, an elderly person is defined as one who has reached the age of 60 or more years, and a handicapped person is defined as one who has a physical or mental impairment that substantially limits one or more major life activities, an individual who has a record of such impairment, or an individ-

ual who is regarded as having such an impairment. Certification of eligibility shall be the responsibility of the county.

(c) All funds distributed by the Department under this section are intended to purchase additional transportation services, not to replace funds now being used by local governments for that purpose. These funds are not to be used towards the purchase of transportation vehicles or equipment. To this end, only those counties maintaining elderly and handicapped transportation services at a level consistent with those in place on January 1, 1987, shall be eligible for additional transportation assistance funds.

(d) The Public Transportation Division of the Department of Transportation shall distribute these funds to the counties according to the following formula: fifty percent (50%) divided equally among all counties; twenty-two and one-half percent (22½%) based upon the number of elderly residents per county as a percentage of the State's elderly population; twenty-two and one-half percent (22½%) based upon the number of handicapped residents per county as a percentage of the State's handicapped population; and, the remaining five percent (5%) based upon a population density factor that recognizes the higher transportation costs in sparsely populated counties.

(e) Funds distributed by the Department under this section shall be used by counties in a manner consistent with transportation development plans which have been approved by the Department and the Board of County Commissioners. To receive funds apportioned for a given fiscal year, a county shall have an approved transportation development plan. Funds that are not obligated in a given fiscal year due to the lack of such a plan will be distributed to the eligible counties based upon the distribution formula prescribed by subsection (d) of this section. (1987 (Reg. Sess., 1988), c. 1095, s. 1(a).)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1095, s. 1(b), as amended by Session Laws 1987 (Reg. Sess., 1988), c. 1101, s. 8.2, which were repealed by Session Laws 1989, c. 752, s. 105(b), made this section effective only upon the transfer from the Highway Fund to the General Fund of the sum of two million dollars ($2,000,000) for fiscal year 1988-89, to provide funds for the North Carolina Elderly and Handicapped Transportation Assistance Program established by this section.

Session Laws 1987 (Reg. Sess., 1988), c. 1101, s. 8, which was repealed by Session Laws 1989, c. 752, s. 105(b), transferred $2,000,000 of the funds transferred from the General Fund to the Highway Fund under § 105-164.44A back to the General Fund, to be used to fund the North Carolina Elderly and Handicapped Transportation Assistance Program created pursuant to this section.

Session Laws 1989, c. 752, s. 105(a) funded this program through 1991.

§§ 136-44.28, 136-44.29: Reserved for future codification purposes.

ARTICLE 2D.

Railroad Revitalization.

§ 136-44.35. Railroad revitalization and corridor preservation a public purpose.

The General Assembly hereby finds that programs for railroad revitalization which assure the maintenance of safe, adequate, and efficient rail transportation services and that programs for railway corridor preservation which assure the availability of such corridors in the future are vital to the continued growth and prosperity of the State and serve the public purpose. (1979, c. 658, s. 1; 1989, c. 600, s. 1.)

Effect of Amendments. — The 1989 amendment, effective July 11, 1989, inserted "and corridor preservation" in the heading of the section, and inserted "and that programs for railway corridor preservation which assure the availability of such corridors in the future."

§ 136-44.36. Department of Transportation designated as agency to administer federal and State railroad revitalization programs.

The General Assembly hereby designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all State and federal railroad revitalization programs. The Department of Transportation is authorized to develop, and the Board of Transportation is authorized to adopt, a State railroad plan, and the Department of Transportation is authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute and expend federal and State funds for rail programs designated to cover the costs of acquiring, by purchase, lease or other manner as the department considers appropriate, a railroad line or other rail property to maintain existing or to provide future rail service; the costs of rehabilitating and improving rail property on railroad lines to the extent necessary to permit safe, adequate and efficient rail service on such lines; and the costs of constructing rail or rail related facilities for the purpose of improving the quality, efficiency and safety of rail service. The Department shall also have the authority to preserve railroad corridors for future railroad use and interim compatible uses and may lease such corridors for interim compatible uses. Such authority shall also include the power to receive and administer federal financial assistance without State financial participation to railroad companies to cover the costs of local rail service continuation payments, of rail line rehabilitation, and of rail line construction as listed above. This Article shall not be construed to grant to the department the power or authority to operate directly any rail line or rail facilities. (1979, c. 658, s. 2; 1987 (Reg. Sess., 1988), c. 1071, s. 1; 1989, c. 600, s. 2.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 7, 1988, and applicable only to railroad corridors and abandonments after that date, substituted "distribute and expend federal and State funds for rail programs" for "distribute federal and State financial assistance for rail freight assistance programs" near the beginning of the third sentence, deleted "freight" preceding "rail service" at the end of the third sentence, added the present fourth sentence, and substituted "operate directly" for "purchase or operate" in the last sentence.

The 1989 amendment, effective July 11, 1989, substituted "lines" for "line" in the third sentence, and added "and may lease such corridors for interim compatible uses" in the fourth sentence.

§ 136-44.36A. Railway corridor preservation.

The North Carolina Department of Transportation is authorized, pursuant to 16 U.S.C.A. § 1247(d), to preserve rail transportation corridors and permit compatible interim uses of such corridors. (1987 (Reg. Sess., 1988), c. 1071, s. 2.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1071, s. 7 makes this section effective upon ratification and applicable only to railroad corridors and abandonments after that date. The act was ratified July 7, 1988.

Session Laws 1987 (Reg. Sess., 1988), c. 1071, ss. 3 through 5, provide:

"Sec. 3. If the Congress of the United States repeals the authorization contained in 16 U.S.C.A. 1247(d) or if a court of competent jurisdiction declares the provisions to be unconstitutional or otherwise invalid, following any appellate review, then Section 2 of this act shall expire upon certification by the Secretary of State that the federal authorization has been repealed or has been invalidated.

"Sec. 4. The Department of Transportation is authorized to proceed under Section 2 of this act, but the payment of just compensation may be provided to the underlying fee owners in accordance with Article 9 of Chapter 136 of the General Statutes, the same as if the railroad had been abandoned rather than preserved for future railroad use and compatible interim uses.

"Sec. 5. The Department of Transportation shall develop a proposed high speed rail corridor plan for North Carolina, in conjunction with the Department's railway corridor preservation program. The Department shall present its plan to the 1989 General Assembly for its review and approval."

§ 136-44.36B. Power of Department to preserve railroad corridors.

In exercising its power to preserve railroad corridors, the Department of Transportation may acquire property that is part of a railroad corridor and is not part of an existing, active railroad line by purchase, gift, condemnation, or other method. The procedures in Article 9 of this Chapter apply when the Department condemns property to preserve a railroad corridor. (1989, c. 600, s. 3.)

Editor's Note. — Session Laws 1989, c. 600, s. 10 makes this section effective upon ratification. The act was ratified July 11, 1989.

§ 136-44.38. Department to provide State and federal financial assistance to cities and counties for rail revitalization.

(a) The Department of Transportation is authorized to distribute to cities and counties State financial assistance for local rail revitalization programs provided that every rail revitalization project for which State financial assistance would be utilized must be approved by the Board of Transportation and by the Director of the Budget. Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission.

(b) Repealed by Session Laws 1989, c. 600, s. 4, effective July 11, 1989. (1979, c. 658, s. 3; 1983, c. 717, s. 48; 1985 (Reg. Sess., 1986), c. 955, ss. 49, 50; 1989, c. 600, s. 4.)

Effect of Amendments. — The 1989 amendment, effective July 11, 1989, inserted "cities and" in the catchline and near the beginning of subsection (a) substituted "section" for "subsection" near the end of subsection (a), and repealed subsection (b) relating to state financial assistance to counties not exceeding ten percent of total project costs.

§§ 136-44.39 to 136-44.49: Reserved for future codification purposes.

Article 2E.

Roadway Corridor Official Map Act.

§ 136-44.50. Roadway corridor official map act.

(a) A roadway corridor official map may be adopted or amended by the governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or by the Board of Transportation for any portion of the existing or proposed State highway system. Before a city adopts a roadway corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a roadway corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city must obtain approval from the Board of County Commissioners. No roadway corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the city or the Department of Transportation in each county affected by the map, has held a public hearing on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the roadway corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Com-

missioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the roadway corridor passes.

c. By posting copies of the proposed roadway corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

(2) A permanent certified copy of the roadway corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(b) Roadway corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a roadway corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five ($5.00) for each map sheet or page recorded.

(c) Repealed by Session Laws 1989, c. 595, s. 1, effective July 7, 1989.

(d) Within one year following the establishment of a roadway corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the roadway corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a roadway corridor official map or amendments to a roadway corridor official map. When a city prepares a roadway corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. (1987, c. 747, s. 19; 1989, c. 595, s. 1.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this Article effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1989 amendment, effective July 7, 1989, in the introductory language of subsection (a), in the first sentence, substituted "for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2" for "within its corporate limits and the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances," added "for any portion of the existing or proposed State highway system," and added the second sentence; in subdivision (b)(1), deleted "for municipal adopted maps, or, following "city clerk," added "and" following "city clerk," and deleted "for State adopted maps" following "district engineer"; repealed former subsection (c) relating to roadway corridors or any portion placed on an official map not being effective unless specific requirements are followed; and redesignated former subsection (c) as present subsection (d), and adding the last two sentences of present subsection (d).

CASE NOTES

Cited in Batch v. Town of Chapel Hill, — N.C. App. —, 376 S.E.2d 22 (1989).

§ 136-44.51. Effect of roadway corridor official map.

(a) After a roadway corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the roadway corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the roadway corridor. The district engineer of the Highway District in which the roadway corridor is located shall be notified within 10 days of all requests for building permits or subdivision approval within the roadway corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the roadway corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) No application for building permit issuance or subdivision plat approval shall be delayed by the provisions of this section for more than three years from the date of its original submittal. (1987, c. 747, s. 19.)

CASE NOTES

Cited in Batch v. Town of Chapel Hill, — N.C. App. —, 376 S.E.2d 22 (1989).

§ 136-44.52. Variance from roadway corridor official map.

(a) The Department of Transportation or the city which initiated the roadway corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Com-

missioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S.136-44.51 result in practical difficulties or unnecessary hardships. (1987, c. 747, s. 19.)

§ 136-44.53. Advance acquisition of right-of-way within the roadway corridor.

(a) After a roadway corridor official map is filed with the register of deeds, the Department of Transportation or the city which initiated the roadway corridor official map is authorized to make advanced acquisition of specific parcels of property when such acquisition is determined by the respective governing board to be in the best public interest to protect the roadway corridor from development or when the roadway corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any such advance acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective municipal governing board which initiated the roadway corridor official map shall develop and adopt appropriate policies and procedures to govern such advanced acquisition of right-of-way and to assure such advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a roadway corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of such advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S.136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of rights-of-way shown on a duly adopted roadway corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits. (1987, c. 747, s. 19.)

ARTICLE 3A.

Streets and Highways in and around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. — The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.

(4) If the governing body of any municipality shall determine that is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:

a. Construction of curbing and guttering;

b. Adding of lanes for automobile parking;

c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;

d. Constructing sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes.

e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular

municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1; 1987, c. 747, s. 2.)

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

Editor's Note. — Session Laws 1987, c. 747, s. 4 provides: "This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown."

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, deleted "but many of these streets and highways also have varying degrees of benefit of municipalities" at the end of the third sentence of subdivision (1), deleted a former final sentence of that subdivision, which read "therefore, the respective responsibilities of the Department of Transportation and the municipalities for the acquisition and costs of rights-of-way for State highway system street improvement projects shall be determined by neutral agreement between the Department of Transportation and each municipality," substituted "If" for "In the event that" at the beginning of the introductory language of subdivision (4), deleted "Bearing that portion of the cost of" at the beginning of paragraph (4)c, added paragraph (4)e, and rewrote the second sentence of the second paragraph of subdivision (4), which read "Any work authorized by this subdivision may be financed jointly by the municipality and the Department of Transportation pursuant to a cost-sharing agreement entered into by each."

CASE NOTES

Cited in Town of Emerald Isle ex rel. Smith v. State, 320 N.C. App. 640, 360 S.E.2d 756 (1987).

OPINIONS OF ATTORNEY GENERAL

Maintenance of Streets and Highways. — Municipalities have the duty and responsibility of constructing and maintaining streets and highways on the Municipal Street System and the Department of Transportation has the duty and responsibility to maintain streets and highways on the State Highway System. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., — N.C.A.G. — (Feb. 26, 1988).

§ 136-66.2. Development of a coordinated street system.

CASE NOTES

Cited in Batch v. Town of Chapel Hill, — N.C. App. —, 376 S.E.2d 22 (1989).

§ 136-66.3. Municipal participation in improvements to the State highway system.

(a) Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.

(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities may, but shall not be required to, participate in the right-of-way and construction cost of "Small Urban Construction Program" highway improvements.

(c) A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that purpose by a vote of the citizens of the municipality. The governing body of the municipality may call a special referendum at any time to allow this use of funds. The total cost of the improvements authorized by this subsection shall be the responsibility of the municipality and shall not be participated in by the Department of Transportation, nor shall the construction of improvements be a consideration for any other project by the Department of Transportation. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) A municipality may pursuant to an agreement with the Department of Transportation reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement project approved by

the Board of Transportation under G.S. 143B-350(f)(4) that are in addition to those improvements that the Department of Transportation would normally include in the project.

(f) Municipalities having a population of less than 10,000 according to most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).

Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:

Municipal Population	Maximum Participation In Right-of-Way Costs
10,000 — 25,000	5%
25,001 — 50,000	10%
50,001 — 100,000	15%
over 100,000	25%

This authority to allow a municipality to participate in the right-of-way costs of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits shall expire on June 30, 1992.

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs of rights-of-way necessary for the project. The Department of Transportation shall not charge a municipality any interest on its agreed upon share of rights-of-way costs. The Secretary shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk." It is the intention of this subsection that the powers herein

granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities for right-of-way acquisition by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way. (1959, c. 687, s. 3; 1965, c. 867; 1967, c. 1127; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1987, c. 747, s. 3; 1989, c. 595, ss. 2, 3.)

Editor's Note. — Session Laws 1987, c. 747, s. 4 provides: "This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown."

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, rewrote this section.

The 1989 amendment, effective July 7, 1989, rewrote subsection (c), and substituted "June 30, 1992" for "June 30, 1990" in the last sentence of the second paragraph of subsection (f).

§§ 136-66.8, 136-66.9: Reserved for future codification purposes.

ARTICLE 3B.

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

§ 136-66.10. Dedication of right-of-way under local ordinances.

(a) Whenever a tract of land located within the territorial jurisdiction of a city or county's zoning or subdivision control ordinance or any other land use control ordinance authorized by local act is proposed for subdivision or for use pursuant to a zoning or building permit, and a portion of it is embraced within a corridor for a street or highway on a plan established and adopted pursuant to G.S. 136-66.2, a city or county zoning or subdivision ordinance may provide for the dedication of right-of-way within that corridor pursuant to any applicable legal authority, or:

(1) A city or county may require an applicant for subdivision plat approval or for a special use permit, conditional use permit, or special exception, or for any other permission pursuant to a land use control ordinance authorized by local act to dedicate for street or highway purpose, the right-of-way within such corridor if the city or county allows the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant. No dedication of right-of-way shall be required pursuant to this subdivision unless the board or agency granting final subdivision plat approval or the special use permit, conditional use permit, special exception, or permission shall find, prior to the grant, that the dedication does not result in the deprivation of a reasonable use of the original tract and that the dedication is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land or the impact of the dedication is mitigated by measures provided in the local ordinance.

(2) If a city or county does not require the dedication of right-of-way within the corridor pursuant to subdivision (1) of this subsection or other applicable legal authority, but an applicant for subdivision plat approval or a zoning or building permit, or any other permission pursuant to a land use control ordinance authorized by local act elects to dedicate the right-of-way, the city or county may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan or to transfer severable development rights attributable to the dedicated right-of-way to noncontiguous land in designated receiving districts pursuant to G.S. 136-66.11.

(b) When used in this section, the term "density credit" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, and/or other land use control ordinance authorized by local act, expressed in dwelling unit equivalents or other measures of development density or intensity or a

fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land in that is part of a common development plan. (1987, c. 747, s. 7, 1989, c. 595, s. 4.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this Article effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1989 amendment, effective July 7, 1989, deleted "for a street or highway that is included in the Department of Transportation's 'Transportation Improvement Program'" following "G.S. 136-66.2" in the first sentence of subsection (a).

§ 136-66.11. Transfer of severable development rights.

(a) When used in this section and in G.S. 136-66.10, the term "severable development right" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.

(b) A city or county may provide in its zoning and subdivision control ordinances for the establishment, transfer, and exercise of severable development rights to implement the provisions of G.S. 136-66.10 and this section.

(c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or county to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

(d) In order to provide for the transfer of severable development rights pursuant to this section, the governing board shall amend the zoning ordinance to designate severable development rights receiving districts. These districts may be designated as separate use districts or as overlaying other zoning districts. No severable development rights shall be exercised in conjunction with the development of subdivision of any parcel of land that is not located in a receiving district. A city or county may, however, limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district. No plat for a subdivision in conjunction with

which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the granting city or county and providing for their subsequent extinguishment. These documents shall also include any other information that the city or county ordinance may prescribe.

(e) In order to implement the purposes of this section a city or county may by ordinance adopt regulations consistent with the provisions of this section.

(f) A severable development right shall be treated as an interest in real property. Once a deed for severable development rights has been transferred by a city or county to the dedicator and recorded, the severable development rights shall vest and become freely alienable. (1987, c. 747, s. 7.)

Article 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

Legal Periodicals. — For note discussing the acquisition of the public use of roadways by statute and prescriptive easement in North Carolina, in light of West v. Slick, 313 N.C. 33, 326 S.E.2d 601 (1985), see 21 Wake Forest L. Rev. 807 (1986).

CASE NOTES

Stated in In re Easement of Right of Way, 90 N.C. App. 303, 368 S.E.2d 639 (1988).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

CASE NOTES

Cited in Turlington v. McLeod, 323 N.C. 591, 374 S.E.2d 394 (1988).

§ 136-69. Cartways, tramways, etc., laid out; procedure.

CASE NOTES

I. GENERAL CONSIDERATION.

The term "timber" as used in this section includes "growing trees or their wood;" therefore, trees standing on petitioner's property, though suitable only for firewood, were "timber," and petitioner was entitled to a cartway to enable him to cut and remove the standing timber for firewood. Turlington v. McLeod, 323 N.C. 591, 374 S.E.2d 394 (1988).

ARTICLE 6.

Ferries, etc., and Toll Bridges.

§ 136-82. Department of Transportation to establish and maintain ferries.

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

To provide for the comfort and convenience of the passengers on the ferries established and maintained pursuant to this section, the Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide food, drink, other refreshments, and personal comfort items for those passengers. (1927, c. 223; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 752, s. 101.)

Editor's Note. — Session Laws 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, added the last paragraph.

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.49. Definitions.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, 89 N.C. App. 223, 365 S.E.2d 694, appeal dismissed, 322 N.C. 479, 370 S.E.2d 221 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.51. Design of controlled-access facility.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, 89 N.C. App. 223, 365 S.E.2d 694, appeal dismissed, 322 N.C. 479, 370 S.E.2d 221 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.52. Acquisition of property and property rights.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, 89 N.C. App. 223, 365 S.E.2d 694, appeal dismissed, 322 N.C. 479, 370 S.E.2d 221 (1988), holding that evidence of right to

deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.53. New and existing facilities; grade crossing eliminations.

CASE NOTES

When Remedy for Denial of Access to Highway May Be Asserted. — While the state has a right to cut adjacent landowners' access to highway off at any time, the state can only restrict such right of access when the highway is a controlled-access facility or is being converted to a controlled-access facility. It is at that point in time that the legislature has delegated a remedy to the deprived landowner of his abutter's right of access when it is denied and specified on a plat by the Department of Transportation. A non-controlled-access highway has no need for these types of remedies until the situation arises where it is necessary to effect measures for the safety of the public and in the public interest. Department of Transp. v. Craine, 89 N.C. App. 223, 365 S.E.2d 694, appeal dismissed, 322 N.C. 479, 370 S.E.2d 221 (1988), holding that evidence of right to deny access was improper in a condemnation proceeding by DOT to acquire a portion of defendants' property for a non-controlled-access highway project.

§ 136-89.56. Commercial enterprises.

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

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

ARTICLE 7.

Miscellaneous Provisions.

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.

Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by a deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within 15 years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, except where such dedication was made less than 20 years prior to April 28, 1953, such right may be asserted within one year from and after April 28, 1953; provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or some one or more of those claiming under him shall file and cause

to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid; provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants, may execute and cause to be registered in the office of the register of deeds of the county where such land is situated the declaration of withdrawal provided for in this section, and, under Chapter 46 of the General Statutes of North Carolina, entitled "Partition," and Chapter 1, Article 29A of the General Statutes of North Carolina, known as the "Judicial Sales Act," and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the court shall thereupon order the same cancelled of record; that where any corporation has dedicated any strip, piece or parcel of land in the manner herein set out, and said dedicating corporations is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest in said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out herein before in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway. This section shall apply to dedications made after as well as before April 28, 1953.

The provisions of this section shall not apply when the public dedication is part of a future street shown on the street plan adopted pursuant to G.S. 136-66.2. Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2. This resolution shall be attached to the declaration of withdrawal and shall be registered in the office of the register of deeds of the county where the land is situated. (1921, c. 174; C.S., ss. 3846(rr), 3846(ss), 3846(tt); 1939, c. 406; 1953, c. 1091; 1957, c. 517; 1987, c. 428, s. 1.)

Effect of Amendments. —The 1987 amendment, effective June 19, 1987, added the last paragraph.

CASE NOTES

Use by Public Prevents Withdrawal. —

Assuming, arguendo, that this section was applicable, defendant could not withdraw areas designated by subdivision plat as "Park Property" under this section where there was evidence to support the court's finding that the subject area had been used for recreational purposes within 15 years from its dedication and thus had not been abandoned for purposes of the statute. Stines v. Willyng, Inc., 81 N.C. App. 98, 344 S.E.2d 546 (1986).

Before an abandonment can occur under this section the dedicator, or someone claiming under him, (unless the dedicator was a corporation that has ceased to exist), must file and cause to be recorded a declaration withdrawing such strip or parcel of land. Rudisill v. Icenhour, — N.C. App. —, 375 S.E.2d 682 (1989).

§ 136-97. Responsibility of counties for upkeep, etc., terminated.

(a) The board of county commissioners or other road-governing bodies of the various counties in the State are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the State highway system, after the same shall have been taken over, and the control thereof assumed by the Department of Transportation.

(b) The Department of Transportation, as part of maintaining the highways, bridges, and watercourses of this State, shall haul all debris removed from on, under, or around a bridge to an appropriate disposal site for solid waste, where the debris shall be disposed of in accordance with law. (1921, c. 2, s. 50; C.S., s. 3846(dd); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, ss. 5, 20; 1977, c. 464, s. 7.1; 1989, c. 752, s. 102.)

Editor's Note. — Session Laws 1989, c. 752, s. 167 contains a severability clause.

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

§ 136-102.3. Filing record of results of test drilling or boring with Secretary of Administration and Secretary of Environment, Health, and Natural Resources.

Any person, firm or corporation making any test drilling or boring upon any public land, owned or controlled by the State of North Carolina, shall, forthwith after completion, file a complete record of the results of the test drilling or boring with the Secretary of Administration and with the Secretary of Environment, Health, and Natural Resources, of each test hole bored or drilled. Such records filed shall become a matter of public record. Provided, that after exploratory drilling and boring has been completed, and a lease or contract has been executed for operation, production or development of the area, the results of test drillings or borings made incidental to the operation, production or development of the area under lease or contract shall not be subject to the provisions of G.S. 136-102.2 to 136-102.4 unless otherwise provided in such lease or

contract. (1967, c. 923, s. 2; 1973, c. 1262, s. 86; 1975, c. 879, s. 46; 1977, c. 771, s. 4; 1989, c. 727, s. 218(90).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the catchline and in the first sentence.

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a roadway corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article.

(k) A willful violation of any of the provisions of this section shall be a misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8; 1987, c. 747, s. 21.)

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

Editor's Note. — Subsection (f) is set out above to correct a typographical error in the main volume.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 7, 1987, redesignated former subsection (j) as

present subsection (k) and added new subsection (j).

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit.

Local Modification. — (As to Article 9) Grandfather Village: 1987, c. 419, s. 1.

§ 136-108. Determination of issues other than damages.

CASE NOTES

Cited in Department of Transp. v. Higdon, 82 N.C. App. 752, 347 S.E.2d 868 (1986); Department of Transp. v. Quick As A Wink of Asheville West, Inc., 82 N.C. App. 755, 347 S.E.2d 870 (1986); Taylor v. North Carolina Dep't of Transp., 86 N.C. App. 299, 357 S.E.2d 439 (1987).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

"Taking." — Although plaintiffs' property damage caused by the bridge construction does not fit squarely within the definition of a "taking," North Carolina courts have consistently held that such damage does, in fact, constitute a "taking." Robinson v. North Carolina Dep't of Transp., 89 N.C. App. 572, 366 S.E.2d 492 (1988).

Damage to land which inevitably or necessarily flows from a public construction project results in an appropriation of land for public use. The remedy for such property damage is an action against the Department of Transportation on the theory of condemnation. Robinson v. North Carolina Dep't of Transp., 89 N.C. App. 572, 366 S.E.2d 492 (1988).

Tolling of Statute of Limitations. — The 24 month statute of limitations contained in this section was automatically and unconditionally tolled by 50 U.S.C.A. App. § 525 until the plaintiff's retirement from military service. Taylor v. North Carolina Dep't of Transp., 86 N.C. App. 299, 357 S.E.2d 439 (1987).

Laches. — The plaintiff's exemption from the statute of limitations in this section during his military service, established by 50 U.S.C.A. App. § 525, applied apart from and irrespective of the doctrine of laches, and the trial court's findings were sufficient to support its conclusion that laches barred the plaintiff's claim under this section. Taylor v. North Carolina Dep't of Transp., 86 N.C. App. 299, 357 S.E. 439 (1987).

Additional Compensation for Delay in Payment — When Required. — When the taking of property by the State precedes the payment of compensation, the owner is entitled to additional compensation for the delay in payment. The Fifth and Fourteenth Amendments to the Constitution of the United States and N.C. Const., Art. I, § 19 require this additional payment as a part of just compensation. The additional sum awarded for delay in payment of the value for the property taken is not interest eo nomine, but interest is a fair means for measuring the amount

to be arrived at of such additional sums. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Determination as Judicial Function. — Since the ascertainment of just compensation is a judicial function, and compensation for delay in payment is a part of just compensation, determining the amount of additional compensation for delay in payment is also a judicial function. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Compound Interest. — Compound interest should be allowed for delayed payment in condemnation cases if the evidence shows that during the pertinent period the "prudent investor" could have obtained compound interest in the market place. The use of compound interest as a measure in calculating additional compensation for delay is a matter which will turn upon the evidence in each case and must be decided on a case-by-case basis. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Cited in Robinson v. North Carolina Dep't of Transp, — N.C. App. —, 366 S.E.2d 494 (1988).

§ 136-112. Measure of damages.

CASE NOTES

II. DAMAGES WHERE PART OF TRACT IS TAKEN.

In General. —

Subdivision (1) of this section provides that the commissioners, jury or judge are restricted to the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking. The judge is required to instruct the jury to use the above standard—and that standard only—in computing damages. However, a real estate appraiser is given wide latitude regarding permissible bases for opinions on value. Department of Transp. v. Byrum, 82 N.C. App. 96, 345 S.E.2d 416 (1986).

§ 136-113. Interest as a part of just compensation.

CASE NOTES

Additional Compensation for Delay in Payment — When Required. — When the taking of property by the State precedes the payment of compensation, the owner is entitled to additional compensation for the delay in payment. The Fifth and Fourteenth Amendments to the Constitution of the United States and N.C. Const., Art. I, § 19 require this additional payment as a part of just compensation. The additional sum awarded for delay in payment of the value for the property taken is not interest eo nomine, but interest is a fair means for measuring the amount to be arrived at of such additional sums. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Determination as Judicial Function. — Since the ascertainment of just compensation is a judicial function, and compensation for delay in payment is a part of just compensation, determining the amount of additional compensation for delay in payment is also a judicial function. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Legal Rate as Prima Facie Rate. — This section provides for the legal rate as a prima facie rate to be imposed for delay in compensation. This statutory rate is deemed presumptively reasonable. However, the landowner may rebut the rate's reasonableness by introducing evidence of prevailing market rates and demonstrating that the prevailing rates are higher than the statutory rate. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

Same — Compound Interest. — Compound interest should be allowed for delayed payment in condemnation cases if the evidence shows that during the

pertinent period the "prudent investor" could have obtained compound interest in the market place. The use of compound interest as a measure in calculating additional compensation for delay is a matter which will turn upon the evidence in each case and must be decided on a case-by-case basis. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986).

§ 136-119. Costs and appeal.

CASE NOTES

The award of attorney fees, etc. In accord with the main volume. See Lea Co. v. North Carolina Bd. of Transp., 323 N.C. 691, 374 S.E.2d 868 (1989).

Denial of Fees Held Proper. — Trial court did not abuse its discretion in denying portion of plaintiff's application for fees relating to its Rule 60(b) motion where plaintiff sought attorneys' fees for a Rule 60(b) motion to reopen a judgment it could not reopen as to interest on award of damages, since plaintiff was bound by the mandate of the Superior Court; therefore, the motion was denied and fees were not reasonably incurred. Lea Co. v. North Carolina Bd. of Transp., 323 N.C. 691, 374 S.E.2d 868 (1989).

Trial court did not err in denying portion of plaintiff's application for fees attributable to services of paralegals and secretaries acting as paralegals since trial judge could reasonably have concluded that these services of paralegals and secretaries acting as paralegals were largely clerical in nature or, even if not, were part of ordinary office overhead and ought to be subsumed in the hourly rate of attorneys. Lea Co. v. North Carolina Bd. of Transp., 323 N.C. 691, 374 S.E.2d 868 (1989).

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Cited in Whiteco Metrocom Inc. v. Roberson, 84 N.C. App. 305, 352 S.E.2d 277 (1986).

§ 136-130. Regulation of advertising.

CASE NOTES

Cited in Whiteco Metrocom Inc. v. Roberson, 84 N.C. App. 305, 352 S.E.2d 277 (1986).

§ 136-131.1. Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

Editor's Note. — Session Laws 1989, c. 166, s. 1, amends Session Laws 1987 (Reg. Sess., 1988), c. 1024, s. 1 and Session Laws 1983, c. 318, s. 1, which rewrote Session Laws 1981 (Reg. Sess., 1982), c. 1147, s. 2, as noted in the main volume, by changing the expiration date of this section to June 30, 1994.

Session Laws 1987 (Reg. Sess., 1988), c. 1024, s. 1.1 provides that the act does not affect litigation pending on the effective date thereof (June 30, 1988), unless the failure to apply the act would cause the loss of any federal highway aid or other federal aid.

§ 136-133. Permits required.

No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a twenty dollar ($20.00) initial fee and a fifteen dollar ($15.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a sixty dollar ($60.00) initial fee and thirty dollar ($30.00) annual renewal fee. (1967, c. 1248, s. 8; 1973, c. 507, s. 5; 1975, c. 568, s. 11; 1977, c. 464, ss. 7.1, 32; 1983, c. 604, s. 2; 1989, c. 677.)

Effect of Amendments. — The 1989 amendment, effective September 1, 1989, substituted "sixty dollar ($60.00) initial fee and thirty dollar ($30.00) annual renewal fee" for "twenty dollar ($20.00) initial fee and a fifteen dollar ($15.00) annual renewal fee" in the last sentence.

§ 136-134.1. Judicial review.

CASE NOTES

Although a review of a final agency decision is de novo, trial court still limited by this section in scope of review. However, this does not circumvent the requirements of § 1A-1, Rule 52(a)(1). This section limits the scope of the findings of fact and conclusions of law which can be made; it does not limit the requirements for properly setting forth such findings and conclusions. Appalachian Poster Adv. Co. v. Harrington, 89 N.C. 476, 366 S.E.2d 705 (1988).

De Novo Review of DOT Decision. — Pursuant to this section petitioner whose signed permit was revoked by DOT was entitled to a non-jury de novo review of the DOT decision by the Superior Court, where the court had to hear the merits of plaintiff's case without any presumption in favor of DOT's decision. Appalachian Poster Adv. Co. v. Harrington, 89 N.C. App. 476, 366 S.E.2d 705 (1988).

Cited in Whiteco Metrocom Inc. v. Roberson, 84 N.C. App. 305, 352 S.E.2d 277 (1986).

ARTICLE 14.

North Carolina Highway Trust Fund.

§ 136-175. (For contingent repeal see note) Definitions.

The following definitions apply in this Article:

(1) Intrastate System. The network of major, multilane arterial highways composed of those projects listed in G.S. 136-179, I-240, I-277, US-29 from I-85 to the Virginia line, and any other route added by the Department of Transportation under G.S. 136-178.

(2) Transportation Improvement Program. The schedule of major transportation improvement projects required by G.S. 143B-350(f)(4).

(3) Trust Fund. The North Carolina Highway Trust Fund. (1989, c. 692, s. 1.1.)

Editor's Note. — Session Laws 1989, c. 692, s. 8.3 made this Article effective August 1, 1989.

Session Laws 1989, c. 692, s. 8.4 provides that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, which contingency is not expected to occur until some years after the date of enactment, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. This Article shall be repealed effective on the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the repeal will become effective on the first day of the second calendar quarter following the date the letter is sent.

Session Laws 1989, c. 692, s. 8.2 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another 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 1989, c. 799, s. 21, provides: "Notwithstanding the establishment of the North Carolina Highway

This Article has a contingent repeal provision. See notes under § 136-175.

Trust Fund as an entity, since various components of that Fund are coordinated with programs of the Highway Fund, all projects funded shall be subject to the provisions of the Executive Budget Act (Article 1 of Chapter 143) with respect to allotments, obligations, encumbrances, and expenditures with appropriate reporting to the Director of the Budget in the same manner as currently employed for the Highway Fund and the Highway Bond Fund."

§ 136-176. (For contingent repeal see note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, special fuel, and road tax revenue deposited in the Fund under G.S. 105-445, 105-449.16, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-173.

(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.

(4) Revenue available from the retirement of refunding bonds issued to repay highway construction bonds and deposited in the Fund under G.S. 136-183.

(5) Interest and income earned by the Fund.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed five percent (5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund are allocated, an amount equal to the amount of federal funds received may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the biennium following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6.)

This Article has a contingent repeal provision. See notes under § 136-175.

Editor's Note. — Session Laws 1989, c. 692, s. 1.17 provides: "Notwithstanding G.S. 136-176(b), the sum of $11,000,000 for the 1989-90 fiscal year is appropriated from the Highway Trust Fund to the Department of Transportation for administrative expenses of the Trust Fund. This appropriation is in lieu of the allocation under G.S. 136-176(b)."

As enacted by Session Laws 1989, c. 692, s. 1.1, the reference in subdivision (a)(2) was to "G.S. 105-171." Session Laws 1989, c. 770, s. 68.2 purported to amend this reference by substituting "G.S. 105-173" for "G.S. 105-171," but was not in the proper coded bill drafting format. The subdivision is set out as above at the direction of the Revisor of Statutes.

For contingent repeal of this Article, see the Editor's Note under § 136-175.

Effect of Amendments. — The 1989 amendment by c. 770, s. 68.2, effective August 12, 1989, substituted "G.S. 105-173" for "G.S. 105-171" in subdivision (a)(2).

The 1989 amendment by c. 770, s. 74.6, effective August 12, 1989, substituted "certificate of title fee and other fees payable" for "fee payable when a certificate of title is issued for a motor vehicle" in subdivision (a)(3).

§ 136-177. (For contingent repeal see note) Limitation on funds obligated from Trust Fund.

In a fiscal year, the Department of Transportation may not obligate more Trust Fund revenue, other than revenue allocated for city streets under G.S. 136-176(b)(3) or secondary roads under G.S. 136-176(b)(4) and G.S. 20-85(b), to construct or improve highways than the amount indicated in the following table:

Fiscal Year	Maximum Expenditure
1989-90	$200,000,000
1990-91	250,000,000
1991-92	300,000,000
1992-93	400,000,000
1993-94	500,000,000
1994-95 and following years	Unlimited

The amount of revenue credited to the Trust Fund in a fiscal year under G.S. 136-176(a) that exceeds the maximum allowable expenditure set in the table above may be used only for preliminary planning and design and the acquisition of rights-of-way for scheduled highways and highway improvements to be funded from the Trust Fund. (1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

§ 136-178. (For contingent repeal see note) Purpose of Intrastate System.

The Intrastate System is established to provide high-speed, safe travel service throughout the State. It connects major population centers both inside and outside the State and provides safe, convenient, through-travel for motorists. It is designed to support statewide growth and development objectives and to connect to major highways of adjoining states. All segments of the routes in the Intrastate System shall have at least four travel lanes and, when warranted, shall have vertical separation or interchanges at crossings, more than four travel lanes, or bypasses. Access to a route in

This Article has a delayed contingent repeal provision. See notes under § 136-175.

the Intrastate System is determined by travel service and economic considerations.

The Department of Transportation may add a route to the Intrastate System if the route is a multilane route and has been designed and built to meet the construction criteria of the Intrastate System projects. No funds may be expended from the Trust Fund on routes added by the Department. (1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

§ 136-179. (For contingent repeal see note) Projects of Intrastate System funded from Trust Fund.

Funds allocated from the Trust Fund for the Intrastate System may be used only for the following projects of the Intrastate System:

Route	Improvements	Affected Counties
I-40	Widening	Buncombe, Haywood, Guilford, Wake, Durham
I-77	Widening	Mecklenburg
I-85	Widening	Durham, Orange, Alamance, Guilford, Cabarrus, Mecklenburg, Gaston
I-95	Widening	Halifax
US-1	Complete 4-laning from Henderson to South Carolina Line (including 6-laning of Raleigh Beltline)	Vance, Franklin, Wake, Chatham, Lee, Moore, Richmond
US-13	Connector from I-95 to NC-87	Cumberland
US-13	Complete 4-laning from Virginia Line to US-17	Gates, Hertford, Bertie
US-17	Complete 4-laning from Virginia Line to South Carolina Line (including Washington, New Bern, and Jacksonville Bypasses)	Camden, Pasquotank, Perquimans, Chowan, Bertie, Martin, Beaufort, Craven, Jones, Onslow, Pender, New Hanover, Brunswick
US-19/US-19E	Complete 4-laning from US-23 to NC 194 in Ingalls	Madison, Yancey, Mitchell, Avery
US-19	Complete 4-laning	Cherokee, Macon, Swain
US-23	Complete 4-laning and upgrading existing 4-	Madison, Buncombe

This Article has a contingent repeal provision. See notes under § 136-175.

Route	Improvements	Affected Counties
	lanes from Tennessee Line to I-240	
US-23-441	Complete 4-laning from US-19/US-74 to Georgia Line	Macon
US-52	Complete 4-laning from I-77 to Lexington (including new I-77 Connector)	Surry, Davidson
US-64	Complete 4-laning from Raleigh to Coast (including freeway construction from I-95 to US-17)	Edgecombe, Pitt, Martin, Washington, Tyrrell, Dare
US-64	Complete 4-laning from Lexington to Raleigh	Davidson, Randolph, Chatham, Wake
US-70	Complete 4-laning from Raleigh to Morehead City (including Clayton, Goldsboro, Kinston, Smithfield-Selma, and Havelock Bypasses predominately freeways on predominately new locations)	Wake, Johnston, Wayne, Lenoir, Craven
US-74	Complete 4-laning from Charlotte to US-17 (including multilaning of Independence Blvd. in Charlotte, and Bypasses of Monroe, Rockingham, and Hamlet)	Mecklenburg, Union, Richmond, Robeson, Columbus
US-74	Complete 4-laning from I-26 to I-85	Polk, Rutherford
US-158	Complete 4-laning from Winston-Salem to Whalebone	Forsyth, Guilford, Rockingham, Caswell, Person, Granville, Vance, Warren, Halifax, Northampton, Gates, Hertford, Pasquotank, Camden, Currituck, Dare
	New bridge over Currituck Sound	Currituck
US-221	Complete 4-laning from Linville to South Carolina	Avery, McDowell, Rutherford

This Article has a contingent repeal provision. See notes under § 136-175.

Route	Improvements	Affected Counties
US-220	Complete 4-laning from I-40 to US-1	Guilford, Randolph, Montgomery, Richmond
US-220/NC-68	Complete 4-laning from Virginia Line to I-40	Rockingham, Guilford
US-264	Complete 4-laning from US-64 to Washington (including Wilson and Greenville Bypasses) (including freeway construction from I-95 to Greenville)	Wilson, Greene, Pitt
US-321	Complete 4-laning from Boone to South Carolina Line	Caldwell, Catawba, Lincoln, Gaston
US-421	Complete 4-laning from Tennessee Line to I-40	Watauga, Wilkes, Yadkin
US-421	Complete 4-laning from Greensboro to Sanford (including Bypass of Sanford)	Chatham, Lee
NC-24	Complete 4-laning from Charlotte to Morehead City	Mecklenburg, Cabarrus, Stanly, Montgomery, Moore, Harnett, Cumberland, Sampson, Duplin, Onslow, Carteret
NC-87	Complete 4-laning from Sanford to US-74	Lee, Harnett, Cumberland, Bladen, Columbus
NC-105	Complete 4-laning from Boone to Linville	Watauga, Avery
NC-168	Complete multilaning from Virginia Line to US-158	Currituck
NC-194	Complete 4-laning from US-19E to US-221	Avery

(1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

This Article has a contingent repeal provision. See notes under § 136-175.

§ 136-180. (For contingent repeal see note) Urban loops.

Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
Asheville Western Loop	Multilane facility on new location from I-26 west of Asheville to US-19/23 north of Asheville for the purpose of connecting these roads. The funds may be used to improve existing corridors.	Buncombe
Charlotte Outer Loop	Multilane facility on new location encircling City of Charlotte	Mecklenburg
Durham Northern Loop	Multilane facility on new location from I-85 west of Durham to US-70 east of Durham	Durham, Orange
Greensboro Loop	Multilane facility on new location encircling City of Greensboro	Guilford
Raleigh Outer Loop	Multilane facility on new location from US-1 southwest of Cary northerly to US-64 in eastern Wake County	Wake
Wilmington Bypass	Multilane facility on new location from US-17 northeast of Wilmington to US-17 southwest of Wilmington	New Hanover
Winston-Salem Northbelt	Multilane facility on new location from I-40 west of Winston-Salem northerly to I-40 in eastern Forsyth County	Forsyth

(1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

This Article has a contingent repeal provision. See notes under § 136-175.

§ 136-181. (For contingent repeal see note) Supplement for city streets.

Funds allocated to supplement the appropriations for city streets made under G.S. 136-41.1 shall be distributed to cities as provided in that statute. (1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

§ 136-182. (For contingent repeal see note) Supplement for secondary road construction.

Funds are allocated from the Trust Fund to increase allocations for secondary road construction made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day can be paved by the 1998-99 fiscal year. This supplement shall be discontinued when the Department of Transportation certifies that, with funds available from sources other than the Trust Fund, all State-maintained unpaved secondary roads, regardless of their traffic vehicular equivalent, can be paved during the following six years. If the supplement is discontinued before the Trust Fund terminates, the funds that would otherwise be allocated under this section shall be added to the allocation from the Trust Fund for projects of the Intrastate System. (1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

§ 136-183. (For contingent repeal see note) Revenue available from retirement of bonds credited to Highway Trust Fund.

Beginning with the 1994-95 fiscal year, the State Treasurer shall credit the following amounts of revenue to the Trust Fund:

Fiscal Year	Yearly Amount
1994-95	$ 9,600,000
1995-96	12,100,000
1996-97	32,300,000
1997-98 and each subsequent year until the Trust Fund ends	38,000,000

These amounts represent increased revenue resulting from the retirement of refunding bonds issued to repay highway construction bonds. In each fiscal year, the State Treasurer shall credit to the Trust Fund one-fourth of the amount set in the table for that year within 10 days after the end of each calendar quarter. (1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

This Article has a contingent repeal provision. See notes under § 136-175.

§ 136-184. (For contingent repeal see note) Reports by Department of Transportation.

(a) The Department of Transportation shall develop, and update annually, a report containing a completion schedule for all projects to be funded from the Trust Fund. The report shall include a separate schedule for the Intrastate System projects, the urban loop projects, and the paving of unpaved State-maintained secondary roads that have a traffic vehicular equivalent of at least 50 vehicles a day. The annual update shall indicate the projects, or portions thereof, that were completed during the preceding fiscal year, any changes in the original completion schedules, and the reasons for the changes. The Department shall submit the report and the annual updates to the Joint Legislative Highway Oversight Committee.

(b) The Department of Transportation shall make quarterly reports to the Joint Legislative Highway Oversight Committee containing any information requested by the Committee. The Department shall provide the Committee with all information needed to determine if funds available under the Trust Fund and the Transportation Improvement Program are being spent in accordance with G.S. 136-17.2A. (1989, c. 692, s. 1.1.)

Editor's Note. — For contingent repeal of this Article, see the Editor's Note under § 136-175.

This Article has a contingent repeal provision. See notes under § 136-175.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1989

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1989 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina