

**THE GENERAL STATUTES OF  
NORTH CAROLINA**

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**1974 SUPPLEMENT**

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

UNDER THE DIRECTION OF

W. M. WILLSON, J. H. VAUGHAN AND  
SYLVIA FAULKNER

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**Volume 3C**

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# Preface

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This Supplement to Replacement Volume 3C contains the general laws of a permanent nature enacted at the Second 1973 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein. At the Second 1973 Session, which was held in 1974, the General Assembly enacted Session Laws 1973, Chapters 827 to 1482.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1974 Cumulative Supplements thereto.

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 thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be 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 Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



# Scope of Volume

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## **Statutes:**

Permanent portions of the general laws enacted at the Second 1973 Session of the General Assembly affecting Chapters 137 through 156 of the General Statutes.

## **Annotations:**

Sources of the annotations:

North Carolina Reports volumes 283 (p. 589)-285 (p. 597).

North Carolina Court of Appeals Reports volumes 18 (p. 352)-22 (p. 508).

Federal Reporter 2nd Series volumes 476 (p. 657)-498 (p. 912).

Federal Supplement volumes 357-377 (p. 192).

Federal Rules Decisions volumes 56 (p. 663)-63 (p. 229).

United States Reports volumes 411 (p. 526)-415 (p. 604).

Supreme Court Reporter volumes 93 (p. 2789)-94 (p. 3234).

Wake Forest Intramural Law Review volumes 6 (p. 569)-7 (p. 697).

Opinions of the Attorney General.





# The General Statutes of North Carolina 1974 Supplement

## VOLUME 3C

### Chapter 138.

#### Salaries, Fees and Allowances.

Sec.	Sec.
138-1. Annual salaries payable monthly.	138-6. Travel allowances of State officers and employees.
138-5. Per diem and allowances of State boards, etc.	

§ 138-1. **Annual salaries payable monthly.** — All annual salaries shall be paid monthly except employees of the institutions of the Department of Human Resources may be paid biweekly effective July 1, 1974. (Code, s. 3731; 1893, c. 54; Rev., s. 2772; C. S., s. 3847; 1925, c. 230; 1928, c. 100; 1973, c. 1430.)

**Editor's Note.** — The 1973 amendment added the exception.

§ 138-5. **Per diem and allowances of State boards, etc.** — (a) Except as provided in subsection (c) of this section, members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

- (1) Compensation at the rate of fifteen dollars (\$15.00) per diem for each day of service;
- (2) A subsistence allowance of
  - a. Fifteen dollars (\$15.00) per day for each day of service when the member did not spend the night away from his home,
  - b. Thirty-five dollars (\$35.00) per day for each day of service when the member spent the night away from his home;
- (3) Reimbursement of travel expenses at the rates allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a).
- (4) For convention registration fees, the actual amount expended, as shown by receipt.

(b) Except as provided in subsection (c) of this section, the schedules of per diem, subsistence, and travel allowances established in this section shall apply to members of all State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer, excluding those boards, commissions, committees and councils the members of which are now serving without compensation and excluding occupational licensing boards as defined in G.S. 93B-1; and all special statutory provisions relating to per diem, subsistence, and travel allowances are hereby amended to conform to this section.

(c) Members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowances as are provided for members of the General Assembly for services on interim legislative committees.

(d) The subsistence allowances provided in this section shall be paid without

requiring the claimant to file any vouchers covering actual expenditures for meals or lodging.

(e) Out-of-state travel on official business by members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget. (1961, c. 833, s. 5; 1963, c. 1049, s. 1; 1965, c. 169; 1971, c. 1139; 1973, c. 1397.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, rewrote subsections (a) through (c), added present subsection (d) and designated former

subsection (d) as (e). In present subsection (e), the amendment substituted a comma for "and" following "commissions" and inserted "and councils."

**§ 138-6. Travel allowances of State officers and employees. —** (a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

- (1) For transportation by privately owned automobile, fifteen cents (15¢) per mile of travel and the actual cost of tolls paid;
- (2) For bus, railroad, Pullman, or other conveyance, actual fare;
- (3) For subsistence, the actual amount expended for room, meals, and reasonable gratuities, not to exceed a total of nineteen dollars (\$19.00) per day when traveling in State or a total of twenty-five dollars (\$25.00) per day when traveling out of State;
- (4) For convention registration fees, not to exceed fifteen dollars (\$15.00) per convention.

(1973, c. 1456.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, substituted "fifteen cents (15¢)" for "eleven cents (11¢)" in subsection (a)(1).

As subsection (b) was not changed by the amendment, it is not set out.



**Chapter 139.**

**Soil and Water Conservation Districts.**

**Article 1.**

**General Provisions.**

- Sec.  
 139-3. Definitions.  
 139-4. Powers and duties of Soil and Water Conservation Commission generally.  
 139-5. Creation of soil and water conservation districts.  
 139-7. District board of supervisors — appointive members; organization of board; certain powers and duties.  
 139-8. Powers of districts and supervisors.  
 139-13. Discontinuance of districts.  
 139-14. Dividing large districts.

**Article 2.**

**Watershed Improvement Districts.**

- 139-18. Notice and hearing on petition; determination of need for district and defining boundaries.

Sec.

- 139-26. Estimate of expenses; filing and confirmation of initial assessment roll; subsequent assessments.  
 139-35. Supervision by Environmental Management Commission.  
 139-36. Dissolution of watershed improvement district.  
 139-38. Power of eminent domain conferred on watershed improvement districts.

**Article 3.**

**Watershed Improvement Programs; Expenditure by Counties.**

- 139-41. Powers of county commissioners.  
 139-46. Recreational and related aspects of watershed improvement programs.  
 139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization.

**ARTICLE 1.**

*General Provisions.*

§ 139-3. **Definitions.** — Wherever used or referred to in this Chapter, unless a different meaning clearly appears from the context:

(3) "Environmental Management Commission" or "State Environmental Management Commission" means the Environmental Management Commission of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Environmental Management Commission.

(4) "Commission" or "Soil and Water Conservation Commission" means the agency created in G.S. 139-4.

(1973, c. 1262, s. 38.)

**Cross References.** — As to the Environmental Management Commission, see §§ 143B-282 through 143B-285. As to the Soil and Water Conservation Commission, see §§ 143B-294 through 143B-297.

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" and for "Board of Water Resources" in subdivision (3) and substituted "Commission" for "Committee" and "Soil and Water Conservation Commission" for "State Soil Conservation Committee" in subdivision (4).

Session Laws 1973, c. 1262, s. 38, provides that whenever the words "State Soil and Water Conservation Committee" or the words "State Committee" or "Committee" when referring to

the State Soil and Water Conservation Committee or the words "State Soil Conservation Committee" are used or appear in any statute or law of this State, they shall be deleted and the words "State Soil Conservation Commission" or "Commission," as appropriate, shall be substituted, unless otherwise provided in the Act. The agency created by s. 38 of the act (§ 143B-294), however, is designated the "Soil and Water Conservation Commission," and that title has been used in subdivision (4) of this section as set out above, and in the other sections of this Chapter treated as amended by Session Laws 1973, c. 1262, s. 38.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (3) and (4) are set out.

**§ 139-4. Powers and duties of Soil and Water Conservation Commission generally.** — (a) to (c) Repealed by Session Laws 1973, c. 1262, s. 38, effective July 1, 1974.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

- (1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.
- (2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
- (3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.
- (4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.
- (5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.
- (6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.
- (7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2; 1965, c. 582, s. 2; c. 932; 1971, c. 396; 1973, c. 1262, s. 38.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, repealed subsections (a) through (c), relating to the establishment, composition, organization, etc., of the State Soil and Water Conservation

Committee and substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" and "Commission" for "State Committee" in subsection (d). See note to § 139-3.

**§ 139-5. Creation of soil and water conservation districts.** — (a) Any 25 occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the Soil and Water Conservation Commission asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

- (1) The proposed name of said district.
- (2) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.
- (3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.
- (4) A request that the Soil and Water Conservation Commission duly define the boundaries for such districts; that a referendum be held within the



territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the Commission determine that such a district be created.

Where more than one petition is filed covering parts of the same territory the Soil and Water Conservation Commission may consolidate all or any such petitions.

Town or village lots or government-owned or controlled lands may be included within the boundaries of any district. As used in this subsection: The term "government-owned or controlled land" includes land owned or controlled by any governmental agency or subdivision, federal, State or local; and the term "town and village lots" means parcels or tracts on which no agricultural operations are conducted, or (being less than three acres in extent) whose production of agricultural products for home use or for sale during the immediately preceding calendar year was of less than two hundred and fifty dollars (\$250.00) in value. This section applies to existing soil and water conservation districts as well as districts that may hereafter be formed. Insofar as it applies to existing districts it is intended to be declaratory of the present boundaries of such districts as defined by other charters.

(b) Within 30 days after such a petition has been filed with the Soil and Water Conservation Commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this Chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for the inclusion of the district, and such further hearing held. After such hearing, if the Commission shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Commission shall give due weight and consideration to the topography or the area considered and of the state and composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this Chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in G.S. 139-2. The territory to be included within such boundaries need not be contiguous. If the Commission shall determine after such hearing after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same



territory may be filed as aforesaid and new hearings held and determinations made thereon.

(c) After the Commission has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this Chapter is administratively practicable and feasible. To assist the Commission in the determination of such administrative practicability and feasibility, it shall be the duty of the Commission, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county(ies) of . . . . . and . . . . ." and "Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of . . . . . and . . . . ." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the Commission. All occupiers of land lying within the boundaries of the territory, as determined by the Soil and Water Conservation Commission, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

(d) The Department of Natural and Economic Resources shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(e) The Department of Natural and Economic Resources shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon



the proposition of creation of the district shall have been cast in favor of the creation of such district.

(f) If the Commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two temporary supervisors to act as the governing body of the district, who shall serve until supervisors are elected or appointed and qualify as provided in G.S. 139-6 and 139-7. Such districts shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed temporary supervisors shall present to the Secretary of State an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals):

- (1) That a petition for the creation of the district was filed with the Soil and Water Conservation Commission pursuant to the provisions of this Chapter and that the proceedings specified in this Chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this Chapter; and that the Commission has appointed them as supervisors;
- (2) The name and official residence of each of the temporary supervisors, together with a certified copy of the appointment evidencing their right to office;
- (3) The name which is proposed for the district; and
- (4) The location of the principal office of the supervisors of the district.

The application shall be subscribed and sworn to by each of the said temporary supervisors before an officer authorized by the laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the temporary supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the Soil and Water Conservation Commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the Commission did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the Commission did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Commission.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the Soil and Water Conservation Commission, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall



constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the Soil and Water Conservation Commission as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this Chapter.

(g) After six months shall have expired from the date of entry of a determination by the Soil and Water Conservation Commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this Chapter.

(h) Petitions for including additional territory within an existing district may be filed with the Soil and Water Conservation Commission, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The Commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this Chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by two thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(i) In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5; 1947, c. 131, s. 4; 1959, c. 781, s. 6; 1965, c. 582, s. 3; 1973, c. 1262, s. 38.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Committee" in the first sentences of subsections (d) and (e), substituted "Commission" for "Committee" and substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" throughout the rest of the section. See note to § 139-3.

**§ 139-7. District board of supervisors — appointive members; organization of board; certain powers and duties.** — The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the elective supervisors of each county shall on or before December 31, 1974, and on or before December 31 as the terms of the appointive supervisors expire, recommend in writing two persons to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the January meeting of the Commission. Appointive supervisors shall take office on the third Wednesday in January following their appointment. One appointive supervisor shall be appointed for a term of two years and one for a term of four years. Thereafter, as their terms expire, their successors shall



be appointed for terms of four years. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required, to appoint one district supervisor without recommendation from the elective supervisors, to serve as a district supervisor along with the elected members of the board of supervisors. Such appointment shall be made at the same time other appointments are made under this section, and the person appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of Natural and Economic Resources.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943,



c. 481; 1947, c. 31 ss. 6, 7; 1957, c. 1374, s. 3; 1963, c. 563; 1973, c. 502, s. 2; c. 1262, s. 38.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Committee" in the first sentence of the first paragraph, substituted "Department of Natural and Economic Resources" for "State Committee" at the end of the third paragraph, substituted "Department" for "State

Committee" in the first sentence of the fourth paragraph, substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" in the fourth sentence of the fourth paragraph and in the second sentence of the fifth paragraph, and substituted "Commission" for "State Committee" throughout the rest of the section. See note to § 139-3.

**§ 139-8. Powers of districts and supervisors.** — A soil and water conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the Department of Natural and Economic Resources in cooperation with the United States Department of Agriculture.

(1973, c. 1262, s. 38.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "State Forest Nursery, operated by the State Department of Conservation and Development" near the end of subdivision (8).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (8) are set out.

**§ 139-13. Discontinuance of districts.** — At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the . . . . . (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the . . . . . (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert any X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such



referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of Natural and Economic Resources shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the



Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years. (1937, c. 393, s. 13; 1973, c. 1262, s. 38.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Committee" in the first sentence of the second paragraph and substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" and "Commission" for "Committee" throughout the rest of the section. See note to § 139-3.

The 1973 amendatory act also directed that "Department of Natural and Economic Resources" should be substituted for "State Soil Conservation Committee" in line one of paragraph four of this section. Since the quoted words never appeared in line one of paragraph four, no attempt has been made to give effect to this part of the amendment.

**§ 139-14. Dividing large districts.** — Whenever the Soil and Water Conservation Commission shall receive a petition from any board of district supervisors signed by all supervisors of such district, the Commission shall have the authority to divide such district into two or more districts. The governing bodies of the resulting districts shall be composed of supervisors in the same manner and in the same number as is provided in G.S. 139-6 and 139-7. Upon the creating of new districts through dividing an existing district under the provisions of this section, the Commission shall appoint all district supervisors necessary to give such district its full quota of supervisors who shall serve until regular supervisors are elected or appointed, as the case may be, at the time of the next regular election of supervisors. The Commission shall assign a name to each district resulting from the division of the district under the provisions of this section and do all other things necessary to complete the organization of such new districts and place them on an operating basis. (1947, c. 131, s. 8; 1973, c. 1262, s. 38.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State

Committee" near the beginning of the section and substituted "Commission" for "State Committee" in three places. See note to § 139-3.

ARTICLE 2.

*Watershed Improvement Districts.*

**§ 139-18. Notice and hearing on petition; determination of need for district and defining boundaries.**

(j) If there be only one voting place the county election authorities shall immediately after the counting of the ballots form a board of canvassers and, in the presence of such voters as choose to attend, shall canvass and judicially determine the results.

If there be more than one voting place the county election authorities at each voting place shall elect one of their members to attend the meeting of the board of canvassers as a member thereof. When the results of the counting of the ballots shall have been ascertained, such results shall be embodied in a duplicate statement, one copy of which shall be placed in a sealed envelope and delivered to the official elected to attend the meeting of the board of canvassers, and the other copy of which shall be mailed by another county election official to the board of supervisors of the soil conservation district. The members of the board of canvassers so appointed shall meet at 11 A.M. on the second day after the election at the county courthouse of the county wherein the largest portion of the proposed district lies, as determined by the said board of supervisors. A majority of the board of canvassers shall constitute a quorum, and such board shall organize by the election of one of its number as chairman and one as



secretary. Any member of such board who shall fail to deliver the certified returns from his voting place by 12 noon on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. If any returns have not been received by 12 noon on the day of the meeting, or if any returns are incomplete or defective, it may dispatch an officer to the residence of such officials for the purpose of securing the proper returns for such voting place. The board of canvassers at its meeting shall in the presence of such voters as choose to attend, open, canvass, and judicially determine the results.

Whether there be one or more than one voting place, the board of canvassers after judicially determining the results shall make abstracts stating the number of legal ballots cast in each voting place and the number of votes cast for and against creation of the watershed improvement district, and shall sign the same in duplicate with its certificate as to the correctness of the abstracts. It shall have power to pass upon judicially all the votes relative to the election and judicially determine and declare the results of the same; to send for papers and persons and examine the latter upon oath; and to pass upon the legality of any disputed ballots transmitted to it by any election official. The board of canvassers shall transmit one copy of the certified abstract of the results to the Soil and Water Conservation Commission, and shall file the other copy with the supervisors of the soil and water conservation district.

(m) After the completion of the referendum the supervisors shall enter a final order approving or disapproving the petition, and shall record such order in their official minutes. The supervisors shall by personal service or registered mail serve a copy of the final order upon every person who attended the hearings and signed a roster provided for that purpose, and shall publish notice of such order once a week for two successive weeks. Any order of approval shall declare the district to be duly organized; shall specifically define the boundaries of the district, and shall be certified by the supervisors together with a certified copy of the petition for establishment of the district, to the Soil and Water Conservation Commission, the Environmental Management Commission and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket. The boundary definition contained in said order shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land, and said boundaries may be defined by any of the methods permitted in G.S. 139-17(3) for description of boundaries. If the final order makes no change in the area proposed to be organized in the petition, a reference to a map or description of said area contained in the petition shall be a sufficient boundary definition for purposes of the order. If a petition is disapproved, subsequent petitions covering the same or substantially the same territory may be filed after six months have elapsed from the date of the order of disapproval, and new proceedings held thereon.

(1973, c. 1262, s. 38.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" near the end of the last paragraph of subsection (j) and for "State Soil and Water Conservation Committee" near

the middle of subsection (m) and substituted "Environmental Management Commission" for "State Board" near the middle of subsection (m). See note to § 139-3.

As the rest of the section was not changed by the amendment, only subsections (j) and (m) are set out.

**§ 139-26. Estimate of expenses; filing and confirmation of initial assessment roll; subsequent assessments.**

(d) If the owner of, or any person interested in, any land assessed or classified is dissatisfied with the amount of the assessment under this section or with the classification under G.S. 139-25, he may give written notice to the secretary-



treasurer of the district within 10 days after confirmation of the assessment roll or after the last day of the classification hearing, respectively, that he takes an appeal to the Environmental Management Commission. Within 20 days after such confirmation or after the last day of the classification hearing, respectively, he must file with the Environmental Management Commission and the secretary-treasurer of the district a brief statement of the grounds for his dissatisfaction with the ruling of the trustees. The Environmental Management Commission shall set a date for a hearing not more than 90 days from the date of the filing of the statement. At said hearing, evidence shall be taken by the Environmental Management Commission from the district and the landowner, both of whom shall have the right to be represented by counsel. After hearing the evidence, the Environmental Management Commission may affirm, overrule or modify the ruling of the trustees and may tax the cost of the hearing against the losing party. Either party may appeal from the ruling of the Environmental Management Commission to the superior court of the county wherein the land is located for trial de novo. The appeal from the trustees or the Environmental Management Commission shall not delay or stop the operation of the district or any of its works of improvement. The Environmental Management Commission in order to fulfill the duties herein granted shall have the powers given it under G.S. 139-35(e). The Environmental Management Commission may delegate to one of its members or to a deputy the function of holding any or all hearings which it is required to hold under the provisions of this subsection.

(1973, c. 1262, s. 38.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "State Board" throughout subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

**§ 139-35. Supervision by Environmental Management Commission. —**

(a) The Environmental Management Commission, to the extent herein provided, shall have supervisory responsibility over the programs provided for in this Article.

(b) Each watershed improvement district (to the extent that moneys are made available therefor by the State of North Carolina or any of its agencies or political subdivisions, by any municipality, or otherwise) shall:

- (1) By means of suitable measuring and recording devices and facilities and at intervals prescribed by the Environmental Management Commission, record the inflow of water into and release of water from such reservoirs of the district as may be designated by the Environmental Management Commission; and
- (2) Make periodic reports of such records as required by the Environmental Management Commission.

(c) The Environmental Management Commission shall be the State agency to which watershed work plans developed under Public Law 566 (83rd Congress, as amended) for contemplated works of improvement shall be submitted for review and approval or disapproval. All other work plans for contemplated works of improvement pursuant to this Chapter shall likewise be submitted to the Environmental Management Commission for review and for approval or disapproval. The Environmental Management Commission shall approve such work plans if, in its judgment, the work plans

- (1) Provided for proper and safe construction of proposed works of improvement;
- (2) Show that the construction and operation of the proposed works of improvement (in conjunction with other such works and related structures of the district and the watershed) will not appreciably



diminish the flow of useful water that would otherwise be available to existing downstream water users during critical periods;

- (3) Determine whether a program of flood plain management in connection with such proposed works is in the public interest, and to withhold approval until satisfactory measures are incorporated; and
- (4) Are otherwise in compliance with law.

No work of improvement may be constructed or established without the approval of work plans by the Environmental Management Commission pursuant to this subsection. The Environmental Management Commission may publish flood plain management criteria to be followed by those persons, district, or other agencies preparing such work plans. The construction or establishment of any such work of improvement without such approval, or without conforming to a work plan approved by the Environmental Management Commission, may be enjoined. The Environmental Management Commission may institute an action for such injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in any such action shall be as provided in Article 37, Chapter 1 of the General Statutes.

(d) In conjunction with any work plans submitted to the Environmental Management Commission under subsection (c) of this section, a watershed improvement district shall submit in such form as the Environmental Management Commission may prescribe a plan of its proposed method of operations for works of improvement covered by the work plans and for related structures. With the approval of the Environmental Management Commission, the district may amend its initial plan of operations from time to time. Environmental Management Commission approval of the initial plan of operations shall not be required.

(e) If the Environmental Management Commission has reason to believe that a watershed improvement district is not operating any work of improvement or related structure in accordance with its plan of operations as amended, the Environmental Management Commission on its own motion or upon complaint may order a hearing to be held thereon upon not less than 30 days' written notification to the district and complainant, if any, by personal service or registered mail. Notice of such hearing shall be published at least once a week for two successive weeks. In connection with any such hearing the Environmental Management Commission shall be empowered to administer oaths; to take testimony; and, in the same manner as the superior court, to order the taking of depositions, issue subpoenas, and to compel the attendance of witnesses and production of documents. If the Environmental Management Commission determines from evidence of record that the district is not operating any work of improvement or related structure in accordance with its plan of operations, as amended, the Environmental Management Commission may issue an order directing the district to comply therewith or to take other appropriate corrective action. Upon failure by a district to comply with any such order, the Environmental Management Commission may institute an action for injunctive relief in the superior court of any county wherein such noncompliance occurs, and the procedure in any such action shall be as provided in Article 37, Chapter 1, of the General Statutes.

(f) As used in this section the term "critical periods" means monthly periods, or other periods designated by the Environmental Management Commission when (in the area affected) below-average stream flows coincide with above-average utilization of water; provided, that where insufficient data are available to permit reliable determinations concerning these matters, the Environmental Management Commission may adopt as the "critical period" for any particular area the period June 15 — September 15. (1959, c. 781, s. 8; 1967, c. 1070, ss. 2, 3; 1973, c. 1262, s. 38.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management

Commission" for "State Board" and for "Board" throughout the section.



**§ 139-36. Dissolution of watershed improvement district.** — A watershed improvement district, after all outstanding debts or obligations have been satisfied, if any, may be dissolved upon:

- (1) Petition filed with the supervisors of the soil and water conservation district or districts wherein the watershed improvement district lies, setting forth the change of circumstances which causes such district to be no longer of any benefit, and signed by any 100 owners of land lying within the limits of the watershed improvement district, or a majority of such owners if their total number be less than 200;
- (2) Public hearings held, as provided in G.S. 139-18; and
- (3) An order of the supervisors of the soil and water conservation district or districts approving the action sought.

If the foregoing requirements are met, the supervisors shall declare the watershed improvement district to be dissolved. Such declaration of dissolution shall be recorded in their official minutes, and the same certified to the Soil and Water Conservation Commission, the Environmental Management Commission, and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket of such clerk. (1959, c. 781, s. 8; 1973, c. 1262, s. 38.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" and "Environmental Management Commission" for "State Board" in the second sentence of the last paragraph. See note to § 139-3.

**§ 139-38. Power of eminent domain conferred on watershed improvement districts.** — (a) A watershed improvement district shall have the power to acquire by condemnation any interest in land needed in carrying out the purposes of this act, except interests in land within the boundaries of any project licensed by the Federal Power Commission or interests in land owned or held for use by a public utility as defined in G.S. 62-3. This power may be exercised only after:

- (1) The district makes application to the Soil and Water Conservation Commission, identifying the land sought to be condemned and stating the purposes for which said land is needed; and
  - (2) The Soil and Water Conservation Commission finds that the land is sought to be acquired for a proper district purpose. The findings of the Soil and Water Conservation Commission shall be conclusive in the absence of fraud, notwithstanding any other provision of law.
- (b) The Soil and Water Conservation Commission shall certify copies of its findings to the applicant district, the Environmental Management Commission and the clerk of superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings thereof.
- (c) For purposes of this section:
- (1) The term "interest in land" means any land, right-of-way, right of access, privilege, easement, or other interest in or relating to land. Said "interest in land" does not include an interest in land which is held or used in whole or in part for a public water supply, unless such "interest in land" is not necessary or essential for such uses or purposes.
  - (2) A "description" of land shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the applicant district, boundaries may be described by any of the following methods or any combination thereof: by reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land.
  - (3) "Commission" means the Soil and Water Conservation Commission.



(e) Interests in land acquired pursuant to this section may be used in such manner and for such purposes as the trustees of the district deem best. If, in the opinion of the trustees, such lands should be sold, leased or rented, the trustees may do so, subject to the approval of the Soil and Water Conservation Commission.

(1973, c. 1262, s. 38.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "Committee" in subsections (a), (b) and (e), substituted "Environmental Management Commission" for "State Board" in subsection (b) and substituted "Commission" for

"Committee" and "Soil and Water Conservation Commission" for "State Soil and Water Conservation Committee" in subdivision (3) of subsection (c). See note to § 139-3.

As subsections (d) and (f) were not changed by the amendment, they are not set out.

ARTICLE 3.

*Watershed Improvement Programs; Expenditure by Counties.*

**§ 139-39. Alternative method of financing watershed improvement programs by special county tax.**

**Local Modification.** — Camden, Pasquotank and Perquimans: 1973, c. 957, amending 1973, c. 387.

**§ 139-40. Conduct of election.**

**Local Modification.** — Camden, Pasquotank and Perquimans: 1973, c. 957, amending 1973, c. 387.

**§ 139-41. Powers of county commissioners.**

(e) Counties which carry out watershed improvement programs under this Article shall be subject to supervision by the Environmental Management Commission pursuant to G.S. 139-35 to the same extent as are watershed improvement districts, and, for this purpose the words "districts" and "watershed improvement districts," wherever they occur in such section, shall be read as referring to counties.

(1973, c. 1262, s. 38.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "State Board" in subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

**§ 139-46. Recreational and related aspects of watershed improvement programs.** — (a) Local watershed sponsors may install and maintain recreational facilities and services in connection with watershed improvement works or projects, and may provide areas (including structures) for the conservation and replacement of fish and wildlife habitat. For any of these purposes said sponsors may appropriate and expend funds, may levy taxes and assessments, and may issue bonds and notes, to the same extent as in the case of other authorized watershed activities. Such recreational facilities and services may include but are not limited to any or all of the water-related recreational facilities provided for in subsection (b) of this section, and parking areas, ingress and egress roads, hiking or nature trails, picnic areas and campsites. No application for watershed planning under Public Law 566 (83rd Congress, United States), as amended, may be approved by the Soil and Water Conservation Commission until after receipt and consideration of recommendations from the appropriate fish and wildlife agency concerning replacement of fish and wildlife



habitat in mitigation of anticipated damages: Provided that this requirement for consideration of fish and wildlife recommendations shall not apply if such recommendations are not received by the Soil and Water Conservation Commission within 30 days after the Soil and Water Conservation Commission requests such recommendations. Within the meaning of this provision the "appropriate fish and wildlife agency" means the North Carolina Wildlife Resources Commission as to matters within its jurisdiction, and the North Carolina Department of Natural and Economic Resources as to matters within its jurisdiction, or both such agencies as to matters within their concurrent jurisdiction.

(1973, c. 1262, ss. 38, 86.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Soil and Water Conservation Committee" and for "State Committee" and substituted "Department of Natural and Economic

Resources" for "Department of Conservation and Development" in subsection (a). See note to § 139-3.

As subsections (b) and (c) were not changed by the amendment, they are not set out.

**§ 139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization.** — (a) As used in this section:

- (1) The term "channelization" means channel excavation but does not include channel clearing and snagging work. Determinations by the Environmental Management Commission that a project involves channelization shall be conclusive for purposes of this section.
- (2) The term "channel excavation" means the construction or enlargement of a channel by the removal and disposal of material by excavation to facilitate runoff of floodwater or drainage of water.
- (3) "Channel clearing and snagging" means the removal and disposal of trees, snags, drifts, boulders or other obstructions from the flow area of a natural or excavated channel.

(c) Following publication of the notice, the Environmental Management Commission (or its designee pursuant to G.S. 143-215.3(a)(4)) shall hold a public hearing in the county or counties wherein any part of the project lies to allow interested parties to be heard concerning the proposed project. The hearing shall be held pursuant to the provisions of G.S. 143-215.4(d), except that notice of the hearing shall be given as required by subsection (b) of this section. The decision of the Environmental Management Commission shall be subject to judicial review pursuant to G.S. 143-215.5.

(d) Every preliminary project investigation or recommended report concerning a watershed improvement project or drainage project that involves channelization shall be submitted to the Environmental Management Commission for review and for approval or disapproval. Such review shall be prior to, and in addition to, the review of watershed work plans provided for by G.S. 139-35. The Environmental Management Commission shall approve such investigation or report, following the public hearing held pursuant to subsection (c) of this section, if, in its judgment, the investigation or report shows that any channelization features of the proposed project are necessary to the project and that no other feasible alternatives are available. No work of improvement may be constructed or established without the approval of the preliminary project investigation or recommended report by the Environmental Management Commission pursuant to this section. The construction or establishment of any such work of improvement without such approval, or without conforming to a preliminary project investigation or recommended report approved by the Environmental Management Commission, may be enjoined. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina Department of Human Resources and local health



departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through 130-209. The Environmental Management Commission may institute an action for injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in such action shall be as provided in Article 37, Chapter 1 of the General Statutes. (1971, c. 1138, s. 3; 1973, c. 476, s. 128; c. 1262, s. 23.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water

and Air Resources" and for "Board" in subsections (a), (c) and (d).

As subsection (b) was not changed by the amendment, it is not set out.

**Chapter 143.**

**State Departments, Institutions, and Commissions.**

**Article 8.**

**Public Building Contracts.**

- Sec.  
 143-128. Separate specifications for building contracts; responsible contractors.  
 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.  
 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.

**Article 12.**

**Law-Enforcement Officers' Benefit and Retirement Fund.**

- 143-166. Law-Enforcement Officers' Benefit and Retirement Fund.

**Article 12A.**

**Law-Enforcement Officers', Firemen's and Rescue Squad Workers' Death Benefit Act.**

- 143-166.2. Definitions.

**Article 13.**

**Publications.**

- 143-169. Limitations on publications.

**Article 14.**

**North Carolina Zoological Authority.**

- 143-171 to 143-176.1. [Repealed.]  
 143-177.1. North Carolina Zoological Park Fund.  
 143-177.3. Sources of funds.

**Article 18.**

**Rules and Regulations Filed with Secretary of State.**

- 143-196 to 143-198.1. [Repealed.]

**Article 21.**

**Water and Air Resources.**

**Part 1. Organization and Powers Generally; Control of Pollution.**

- 143-211. Declaration of public policy.  
 143-212. [Repealed.]  
 143-213. Definitions.  
 143-214. [Repealed.]  
 143-214.1. Water; water quality standards and classifications; duties of Envi-

**Sec.**

**Environmental Management Commission.**

- 143-214.2. Prohibited discharges.  
 143-215. Effluent standards and limitations.  
 143-215.1. Control of sources of water pollution; permits required.  
 143-215.2. Special orders.  
 143-215.3. General powers of Environmental Management Commission and Department of Natural and Economic Resources; auxiliary powers.  
 143-215.4. General provisions as to procedure; seal; hearing officer.  
 143-215.5. Judicial review.  
 143-215.6. Enforcement procedures.  
 143-215.8A. Planning.  
 143-215.9. Restrictions on authority of the Environmental Management Commission.  
 143-215.10. [Repealed.]

**Part 2. Regulation of Use of Water Resources.**

- 143-215.13. Declaration of capacity use areas.  
 143-215.14. Regulations within capacity use areas; scope and procedures.  
 143-215.15. Permits for water use within capacity use areas—procedures.  
 143-215.16. Permits for water use within capacity use areas—duration, transfer, reporting, measurement, present use, fees and penalties.  
 143-215.17. Violations.  
 143-215.18. Map or description of boundaries of capacity use areas.  
 143-215.19. Rights of investigation, entry, access and inspection.  
 143-215.20. Rules and regulations.  
 143-215.21. Definitions.

**Part 3. Dam Safety Law.**

- 143-215.25. Definitions.  
 143-215.26. Construction of dams.  
 143-215.28. Action by Environmental Management Commission upon applications.  
 143-215.29. Supervision by qualified engineers; reports and modification during work.  
 143-215.30. Notice of completion; certification of final approval.  
 143-215.31. Supervision over maintenance and operation of dams.  
 143-215.32. Inspection of dams.  
 143-215.33. Judicial review.  
 143-215.34. Investigations by Department; rules and regulations; employment of consultants.



Sec.

- 143-215.35. Liability for damages.
- 143-215.36. Violations; penalties.
- 143-215.37. Rights of investigation, entry, access, and inspection.

**Part 4. Federal Water Resources Development Projects.**

- 143-215.40. Resolutions and ordinances assuring local cooperation.
- 143-215.41. Items of cooperation to which localities and the State may bind themselves.
- 143-215.42. Acquisition of lands.

**Part 5. Right of Withdrawal of Impounded Water.**

- 143-215.48. Determining streamflows.
- 143-215.50. Interpretation with other statutes.

**Part 6. Floodway Regulation.**

- 143-215.56. Delineation of floodway; powers of Environmental Management Commission and Department of Natural and Economic Resources; powers of local governments.

**Part 6A. Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund.**

- 143-215.62. Revolving fund established; conditions and procedures.

**Part 7. Water and Air Quality Reporting.**

- 143-215.64. Purpose.
- 143-215.65. Reports required.
- 143-215.66. Monitoring required.
- 143-215.68. Rules and regulations.
- 143-215.69. Penalties.

**Article 21A.**

**Oil Pollution Control.**

**Part 1. General Provisions.**

- 143-215.77. Definitions.
- 143-215.78. Oil pollution control program.
- 143-215.79. Inspections and investigations; entry upon property.
- 143-215.81. Authority supplemental.

**Part 2. Oil Discharge Controls.**

- 143-215.83. Discharges.
- 143-215.84. Removal of prohibited discharges.
- 143-215.85. Required notice.
- 143-215.86. Other State agencies.
- 143-215.87. Oil Pollution Protection Fund.
- 143-215.88. Payments to State agencies.
- 143-215.90. Liability for damage to public resources.
- 143-215.91. Penalties.
- 143-215.92. Lien on vessel.

**Part 3. Oil Terminal Facilities.**

Sec.

- 143-215.99. Oil refinery permits.

**Article 21B.**

**Air Pollution Control.**

- 143-215.106. Administration of air quality program.
- 143-215.107. Air quality standards and classifications.
- 143-215.108. Control of sources of air pollution; permits required.
- 143-215.109. Control of complex sources.
- 143-215.110. Special orders.
- 143-215.111. General powers of Environmental Management Commission; auxiliary powers.
- 143-215.112. Local air pollution control programs.
- 143-215.113. General provisions as to procedure; appeals.
- 143-215.114. Enforcement procedures.

**Article 24.**

**Wildlife Resources Commission.**

- 143-252. Article subject to Chapter 113.
- 143-253. Jurisdictional questions.

**Article 25.**

**National Park, Parkway and Forests Development Commission.**

- 143-255 to 143-257. [Repealed.]
- 143-259, 143-260. [Repealed.]

**Article 29D.**

**Manpower Council.**

- 143-283.44. North Carolina Manpower Council; organization.

**Article 30.**

**Nutbush Conservation Area.**

- 143-284 to 143-286. [Repealed.]
- 143-286.1. Nutbush Conservation Area.
- 143-287, 143-288. [Repealed.]
- 143-289. Contributions from certain counties and municipalities authorized; other grants or donations.
- 143-290, 143-290.1. [Repealed.]

**Article 31.**

**Tort Claims against State Departments and Agencies.**

- 143-291. Industrial Commission constituted a court to hear and determine claims; damages.

**Article 31A.**

**Defense of State Employees.**

Sec.  
143-300.6. Payment of judgments; compromise and settlement of claims.

**Article 33.**

**Judicial Review of Decisions of Certain Administrative Agencies.**

143-306 to 143-316. [Repealed.]

**Article 33A.**

**Rules of Evidence in Administrative Proceedings before State Agencies.**

143-317, 143-318. [Repealed.]

**Article 33B.**

**Meetings of Governmental Bodies.**

143-318.4. Exceptions.

**Article 34.**

**Local Affairs.**

143-319. [Repealed.]  
143-320. Definitions.  
143-321, 143-322. [Repealed.]  
143-323. Functions of Department of Natural and Economic Resources.  
143-324. [Repealed.]  
143-325. Functions of committees.  
143-326. Transfer of functions, records, property, etc.  
143-327. [Repealed.]

**Article 37A.**

**Marine Science Council.**

143-347.2. Membership; terms; expenses.

**Article 38.**

**Water Resources.**

Sec.  
143-350. Definitions.  
143-354. Ordinary powers and duties of the Environmental Management Commission.  
143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Natural and Economic Resources and of the Secretary of said Department.  
143-358. Cooperation of State officials and agencies.  
143-359. Biennial reports of Environmental Management Commission.

**Article 40.**

**Advisory Commission for State Museum of Natural History.**

143-370. Commission created; membership.

**Article 42.**

**Board of Science and Technology.**

143-378 to 143-383. [Repealed.]

**Article 56.**

**Emergency Medical Services Act of 1973.**

143-508. Department of Human Resources to establish program; rules and regulations of North Carolina Medical Care Commission.  
143-514. Training programs; utilization of emergency services personnel.

**ARTICLE 7.**

*Inmates of State Institutions to Pay Costs.*

**§ 143-126. Death of inmate; lien on estate.**

**Lien Created by This Section Does Not Have Priority Over Costs of Administration but Falls within the Fourth Class of § 28-105.**  
— See opinion of Attorney General to Mr.

Frankie Williams, Clerk of the Superior Court, Rockingham County, 43 N.C.A.G. 304 (1974).

**ARTICLE 8.**

*Public Building Contracts.*

**§ 143-128. Separate specifications for building contracts; responsible contractors.** — Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or altering of buildings for the State,



or for any county or municipality, when the entire cost of such work shall exceed twenty thousand dollars (\$20,000), must have prepared separate specifications for each of the following branches of work to be performed:

- (1) Heating, ventilating and/or air conditioning and accessories separately or combined into one conductive system.
- (2) Plumbing and gas fittings and accessories.
- (3) Electrical installations.
- (4) Refrigeration for cold storage where the cooling load is 15 tons or more of refrigeration.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction or alterations of buildings, or any parts thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision is less than two thousand five hundred [dollars] (\$2,500), the same may be included in one of the several other contracts, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due, respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording, "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State, or with any county or municipality, for the erection, construction or alteration of any building or buildings, or parts thereof.

All public authorities coming within the requirements of this section shall have the authority to purchase and erect relocatable or prefabricated buildings or portions thereof without complying with the provisions of this section, except that portion of the work which must be performed at the construction site. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419.)

**Editor's Note. —**

The 1973 amendment added the last paragraph.

**§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc. —** No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ten thousand dollars (\$10,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars (\$2,500), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided



that the advertisements for bidders required by this section shall be published at such a time that a least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond, and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of



contract is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article.

The Director of the Department of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2.)

**Local Modification.** — Bladen County Board of Education: 1973, c. 891; Forsyth: 1973, c. 1185; Mecklenburg: 1973, c. 1158, repealing 1969, c. 279; city of Charlotte: 1973, c. 1158, repealing 1967, c. 92; city of Durham: 1973, c. 987; city of Winston-Salem: 1967, c. 805; 1973, c. 1185.

By virtue of Session Laws 1973, c. 989, "1951,

c. 506," following "Durham," should be stricken from the Replacement Volume.

**Editor's Note.** —

The 1973 amendment, effective Sept. 1, 1974, rewrote the tenth paragraph. As to the construction of the amendment, see Editor's note to § 44A-25.



**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.**

**Local Modification.** — By virtue of Session Laws 1973, c. 989, "1951, c. 506," following "Durham" should be stricken from the Replacement Volume.

**§ 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.** — Upon completion of any contract for construction or repair work awarded by any State board to any contractor, under the provisions of this Article, should the contractor fail to receive such settlement as he claims to be entitled to under terms of his contract, he may, within 60 days from the time of receiving written notice as to the disposition to be made of his claim, submit to the Director of the Department of Administration a written and verified claim for such amount as he deems himself entitled to under the terms of said contract, setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the Director of the Department of Administration and present any additional facts and arguments in support of his claim. Within 90 days from the receipt of the said written claim, the Director of the Department of Administration shall make an investigation of the claim and may allow all or any part or may deny said claim and shall have the authority to reach a compromise agreement with the contractor and shall notify the contractor in writing of his decision.

As to such portion of the claim which may be denied by the Director of the Department of Administration, the contractor may, within six months from receipt of the decision, institute a civil action for such sum as he claims to be entitled to under said contract by the filing of a verified complaint and issuance of summons in the Superior Court of Wake County or in the superior court of any county wherein the work under said contract was performed. The procedure shall be the same as in all civil actions except as herein and as hereinafter set out.

All issues of law and fact and every other issue shall be tried by the judge, without jury; provided that the matter may be referred in the instances and in the manner provided for in Article 20 of Chapter 1 of the General Statutes.

The submission of the claim to the Director of the Department of Administration within the time set out in this section and the filing of an action in the superior court within the time set out in this section shall be a condition precedent to bringing an action under this section and shall not be a statute of limitations.

The provisions of this section shall be deemed to enter into and form a part of every contract entered into between any board of the State and any contractor, and no provision in said contracts shall be valid that is in conflict herewith.

The word "board" as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. "A contract for construction or repair work," as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration enters into contracts.

"Contractor" as used in this section includes any person, firm, association or



corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1; 1973, c. 1423.)

**Editor's Note.** -- The 1973 amendment added the last paragraph.

Chapter 1, Article 20, referred to in this section, was repealed by Session Laws 1967, c. 954, s. 4. See now Rule 53 of the Rules of Civil Procedure (§ 1A-1).

**Stated** in *Wood-Hopkins Contracting Co. v. North Carolina State Ports Auth.*, 284 N.C. 732, 202 S.E.2d 473 (1974).

ARTICLE 12.

*Law-Enforcement Officers' Benefit and Retirement Fund.*

**§ 143-166. Law-Enforcement Officers' Benefit and Retirement Fund.**

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this Article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this Article, he shall voluntarily pay into the fund herein created a percentage of his monthly salary, which percentage shall be determined by the said Board: Provided, that any officer so voluntarily contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall voluntarily pay into the fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law-enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the fund for credit to the individual account of such member any one or more of the following:

- (1) An amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall not exceed in any year fifteen percent (15%) of such member's compensation; and
- (2) A sum not to exceed three times the value of prior service of such member as determined by the Board of Commissioners; and
- (3) A sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave;

such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided,



however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law-enforcement officer, a matching contribution and a sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund or Wildlife Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law-enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law-enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law-enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided by Chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law-Enforcement Officers' Benefit and Retirement Fund.

(1973, c. 931.)

**Editor's Note. —**

The 1973 amendment substituted "a matching contribution" for "an amount equal to three times the value of his prior service and an amount equal to three times the cost of matching his contribution" in the first sentence of the last paragraph of subsection (i).

As the other subsections were not changed by the amendment, only subsection (i) is set out.

Session Laws 1973, c. 572, cited in this note in the Replacement Volume, was amended by Session Laws 1973, c. 874.

ARTICLE 12A.

*Law-Enforcement Officers', Firemen's and Rescue Squad Workers' Death Benefit Act.*

§ 143-166.2. **Definitions.** — The following words and phrases, when used in this Article, shall have the meanings assigned to them by this section unless the context clearly indicated another meaning:

- (3) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman or rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties.
- (4) The term "law-enforcement officer," "officer," or "fireman" shall mean all law-enforcement officers employed full-time by the State of North Carolina or any county or municipality thereof and all full-time custodial



employees of the North Carolina Department of Correction. The term "fireman" shall mean "eligible fireman" or "fireman" as defined in G.S. 118-23. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care of emergency medical services and who belongs to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and so certified by secretary of said Association. Each member shall be required to attend a minimum of 36 hours of training and meetings in each calendar year. Each rescue squad must file a roster certified to by the secretary of those members meeting the above requirements with the State Auditor on or about January 1 of each year.

(1973, c. 955, ss. 1, 2.)

**Editor's Note. —**

The second 1973 amendment rewrote subdivision (3) so as to include within the definition death as a result of extreme exercise or extreme activity experienced in the course and scope of official duties. The amendment also added at the end of the third sentence of

subdivision (4) the language beginning "which is eligible" and added the fourth and fifth sentences of subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (3) and (4) are set out.

ARTICLE 13.

*Publications.*

**§ 143-169. Limitations on publications.**

(b) Every publication published at State expense which makes use of the multicolor process is prohibited except:

- (1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;
- (2) When the publication is a project of the Department of Natural and Economic Resources, or is a part of the magazine "Wildlife in North Carolina," published under the auspices of the Wildlife Resources Commission; or
- (3) When the express approval of the Department of Administration is obtained. (1911, c. 211, s. 2; C. S., s. 7302; 1931, c. 261, s. 3; c. 312, ss. 14, 15; 1955, c. 1203; 1961, c. 243, s. 3; 1973, c. 1262, s. 86.)

**Editor's Note. —** The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and

Development" in subdivision (2) of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

ARTICLE 14.

*North Carolina Zoological Authority.*

**§§ 143-171 to 143-176.1:** Repealed by Session Laws 1973, c. 1262, s. 85, effective July 1, 1974.

**Cross Reference. —** As to the North Carolina Zoological Park Council, see §§ 143B-335, 143B-336.

**§ 143-177.1. North Carolina Zoological Park Fund. —** All gifts made to the North Carolina Zoological Park for the purposes of this Article shall be exempt from every form of taxation including, but not by the way of limitation, ad valorem, intangible, gift, inheritance and income taxation. Proceeds from the sale of any property acquired under the provisions of this Article shall be

deposited in the North Carolina State treasury and shall be credited to the North Carolina Zoological Park. (1969, c. 1104, s. 9; 1973, c. 1262, s. 85.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Park" for "Garden" near the beginning of the section and "North Carolina State treasury and shall be credited to the North Carolina Zoological Park" for "North Carolina Zoological Garden treasury" at the end of the section.

**§ 143-177.3. Sources of funds.** — It is the intent of this Article that the funds for the creation, establishment, construction, operation and maintenance of the North Carolina Zoological Park shall be obtained primarily from private sources; however, the Council under the supervision and approval and with the assistance of the Secretary of Natural and Economic Resources is hereby authorized to receive and expend such funds as may from time to time become available by appropriation or otherwise from the State of North Carolina; provided, that the North Carolina Zoological Park Council shall not in any manner pledge the faith and credit of the State of North Carolina for any of its purposes. (1969, c. 1104, s. 11; 1973, c. 1262, s. 85.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote this section.

## ARTICLE 18.

### *Rules and Regulations Filed with Secretary of State.*

**§ 143-195.** Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

#### **Cross References.** —

For present provisions as to rule making by administrative agencies, see §§ 150A-9 through 150A-17. For present provisions as to publication of administrative rules, see §§ 150A-58 through 150A-64. As to the effect of statutory references to the repealed provisions,

see the Editor's note following the analysis to Chapter 150A.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

**Cited in** *Huntley v. North Carolina State Bd. of Educ.*, 493 F.2d 1016 (4th Cir. 1974).

**§§ 143-196 to 143-198.1:** Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

#### **Cross References.** —

For present provisions as to rule making by administrative agencies, see §§ 150A-9 through 150A-17. For present provisions as to publication of administrative rules, see §§ 150A-58 through 150A-64. As to the effect of

statutory references to the repealed provisions, see the Editor's note following the analysis to Chapter 150A.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

## ARTICLE 21.

### *Water and Air Resources.*

#### Part 1. Organization and Powers Generally; Control of Pollution.

**§ 143-211. Declaration of public policy.** — It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare. It is the purpose of this Article to create an agency which shall administer a program



of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Natural and Economic Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 1262, s. 23.)

**Cross References.** — As to organization of the Department of Natural and Economic Resources, see §§ 143B-275 through 143B-279. As to the Board of Natural and Economic Resources, see § 143B-280. As to the Environmental Management Commission, see §§ 143B-282 through 143B-285.

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" in the fifth sentence.

§ 143-212: Repealed by Session Laws 1973, c. 1262, s. 23, effective July 1, 1974.

§ 143-213. **Definitions.** — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

- (6) The term "area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Environmental Management Commission.
- (7) "Commission" means the Environmental Management Commission created under the provisions of this Article and the provisions of the Executive Organization Act of 1973.
- (8) "Department" means the Department of Natural and Economic Resources.
- (11) The term "effective date" means the date, as established pursuant to the statutory powers of the Environmental Management Commission and announced by official regulations of the Environmental Management Commission after which the statutory provisions designated by the Environmental Management Commission shall become applicable and enforceable, with respect to persons within one or more watersheds, the State as a whole or one or more "areas of the State" as designated by the Environmental Management Commission.
- (16) The term "standard" or "standards" means such measure or measures of the quality of water and air as are established by the Environmental Management Commission pursuant to G.S. 143-214.1 and G.S. 143-215.
- (21) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Environmental Management Commission for all statutory purposes and to be defined by the Environmental Management Commission in its official regulations.

(1973, c. 1262, s. 23.)

**Cross References.** — As to the organization of the Department of Natural and Economic Resources, see §§ 143B-275 through 143B-279. As to the Board of Natural and Economic Resources, see § 143B-280.

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, rewrote subdivisions (7), which formerly defined "Board" as the Board of Water and Air Resources, and (8), which



formerly defined "Department" as the Department of Water and Air Resources. The amendment also substituted "Environmental Management Commission" for "Board" in subdivisions (6), (11), (16) and (21).

As the rest of the section was not changed by the amendment, only subdivisions (6), (7), (8), (11), (16) and (21) and the introductory language are set out.

§ 143-214: Repealed by Session Laws 1973, c. 1262, s. 23, effective July 1, 1974.

§ 143-214.1. **Water; water quality standards and classifications; duties of Environmental Management Commission.** — (a) The Environmental Management Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article:

- (1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this Article most effectively;
- (2) To survey all the waters of the State and to separately identify all such waters as the Environmental Management Commission believes ought to be classified separately in order to promote the policy and purposes of this Article, omitting only such waters, as in the opinion of the Environmental Management Commission, are insufficiently important to justify classification or control under this Article; and
- (3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Environmental Management Commission deems proper in order to promote the policy and purposes of this Article most effectively.

(b) **Criteria for Classification.** — In developing and adopting classifications, and the standards applicable to each, the Environmental Management Commission shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned.

(c) **Criteria for Standards.** — In establishing the standards applicable to each classification, the Environmental Management Commission shall consider and the standards when finally adopted and published shall state: the extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) **Criteria for Assignment of Classifications.** — In assigning to each identified water the appropriate classifications (with its accompanying standards), the Environmental Management Commission shall consider, and the decision of the Environmental Management Commission when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

- (1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;
- (2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;



- (3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any other uses.

(e) Proposed Adoption and Assignment of Classification. — Prior to the adoption by the Environmental Management Commission of the series of classifications and standards applicable thereto as specified in subsection (a)(1) of this section, prior to the assignment by the Environmental Management Commission of any such classifications to any waters as specified in subsection (a)(3) of this section, and prior to any modification of any of such actions previously taken by the Environmental Management Commission, the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the following requirements:

- (1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Environmental Management Commission proposes to take. The notice shall either include details of such proposed action, or where such proposed action, as in the case of proposed assignments of classifications to identified waters, is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from [the] Department of Natural and Economic Resources in sufficient quantity to satisfy the requests of all interested persons.
- (2) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Department of Natural and Economic Resources pursuant to the provisions of G.S. 143-215.4.
- (3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Department on or before the first date set for the hearing. The Environmental Management Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Environmental Management Commission shall permit anyone who so desires to file a written argument or other statement with the Environmental Management Commission in relation to any proposed action of the Environmental Management Commission any time within 30 days following the conclusion of any public hearing or within any such additional time as the Environmental Management Commission may allow by notice given as prescribed in this section.

(f) Final Adoption and Assignment of Classification. — Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Environmental Management Commission pursuant to this section, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the Environmental Management Commission shall likewise publish as part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.1 and 143-215.2 to persons within such watershed or watersheds.



(g) Environmental Management Commission's Power to Modify or Revoke. — The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part; any such modification or revocation, however, to be subject to the procedural requirements of this Article. (1951, c. 606; 1957, c. 1275, s. 2; 1967, c. 892, s. 1; 1969, c. 822, s. 1; 1973, c. 1262, s. 23.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "the office of the Board" near the end of subdivision (1) of subsection (e), substituted "Department of Natural and Economic Resources" for "Board"

near the end of subdivision (2), and "Department" for "Board" in the first sentence of subdivision (3), of subsection (e), and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

**§ 143-214.2. Prohibited discharges.**

(c) The discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited, except where such discharges are permitted pursuant to regulation duly adopted by the Environmental Management Commission. (1973, c. 698, s. 2; c. 1262, s. 23.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" at the end of subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

**§ 143-215. Effluent standards and limitations.** — (a) The Environmental Management Commission is authorized and directed to develop, adopt, modify and revoke effluent standards and limitations as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations may provide, without limitation, standards or limitations for any point source or sources; standards, limitations or prohibitions for toxic wastes or combinations of toxic wastes discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations.

(b) The effluent standards and limitations developed and adopted by the Environmental Management Commission shall be promulgated in its official regulations as provided in G.S. 143-215.3(a)(1) and shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters concomitant with the public interest therein and the best use thereof; to preserve and protect the public health, safety and welfare; to promote propagation of and protect fish, shellfish and wildlife; to prevent damage to private and public property; and to preserve and enhance esthetic values.

(c) In adopting effluent standards and limitations the Environmental Management Commission shall be guided by the same considerations and criteria set forth, from time to time, in federal law for the guidance of federal agencies administering the Federal Water Pollution Control Program. It is the intent of the General Assembly that the effluent standards and limitations adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards and limitations. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4; c. 929; c. 1262, s. 23.)

**Editor's Note. —**

The second 1973 amendment added subsection (c).

1974, substituted "Environmental Management Commission" for "Board" in three places.

The third 1973 amendment, effective July 1,



**§ 143-215.1. Control of sources of water pollution; permits required. —**

(a) After the effective date of water quality standards and classifications established pursuant to G.S. 143-214.1 or effluent standards or limitations established pursuant to G.S. 143-215, no person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Environmental Management Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Make any outlets into the waters of the State;
- (2) Construct or operate any sewer system, treatment works, or disposal system within the State;
- (3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;
- (4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water, or to an extent beyond such minimum limits as the Environmental Management Commission may prescribe, by way of general exemption from the provisions of this subdivision, by its official regulations;
- (5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;
- (6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Environmental Management Commission under the provisions of this Article;
- (7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;
- (8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities.

In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Environmental Management Commission shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste into waters classified as sources of public water supply, where the Department of Human Resources determines and advises the Environmental Management Commission that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect thereon, until the Environmental Management Commission has referred the complete plans and specifications to the Commission for Health Services and



has received advice in writing that same are approved in accordance with the provisions of G.S. 130-161.

In any case where the Environmental Management Commission denies a permit, it shall state in writing the reason for such denial and shall also state the Environmental Management Commission's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(b) Environmental Management Commission's Power as to Permits. — The Environmental Management Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by preventing, so far as reasonably possible, any pollution or any increased pollution of the waters of the State from any additional or enlarged sources.

The Environmental Management Commission shall have the power:

- (1) To grant a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this section;
- (2) To grant any temporary permit for such period of time as the Environmental Management Commission shall specify even though the action allowed by such permit may result in pollution or increased pollution where conditions make such temporary permit essential; and
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no condition shall be attached to the permit, except when the Environmental Management Commission finds such denial or such conditions necessary to effectuate the purposes of this section.

(c) Applications for Permits and Renewals for Pretreatment Facilities and for Other Facilities Discharging to the Surface Waters. —

- (1) All applications for permits and for renewal of existing permits for pretreatment facilities, outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Environmental Management Commission may prescribe the form of such applications. All applications shall be filed with the Environmental Management Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from the applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application. The Environmental Management Commission may adopt such rules as it deems necessary, to be published as a part of its rules of procedure, with respect to the consideration of any application for permit or renewal and to the granting or denial thereof. Such rules may require the submission of plans and specifications and such other information as the Environmental Management Commission deems necessary to the proper evaluation of the application.
- (2) The Department of Natural and Economic Resources, pursuant to appropriate rules of procedure adopted by [the] Environmental Management Commission, shall refer each application for permit, or renewal of an existing permit, for pretreatment facilities, outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Environmental Management Commission concurs in the proposed determination, it shall cause notice of the application and of the



proposed determination, along with any other data that the Environmental Management Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Environmental Management Commission through its official rules, shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet or point source or treatment works or disposal system discharging to the surface waters of the State lies and by publication of the notice one time in a newspaper having general circulation within the county.

- (3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Environmental Management Commission within 30 days following date of the notice of application. The Environmental Management Commission shall consider all such requests for hearing, and if the Environmental Management Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of application was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Environmental Management Commission shall also cause a copy of the notice thereof to be posted at the courthouse door of the county in which the pretreatment facility, outlet, point source, treatment works or disposal system lies, and shall cause the notice to be published at least one time in a newspaper having general circulation in such county. The Environmental Management Commission, through its official rules, shall prescribe the form and content of the notices.

The Environmental Management Commission shall adopt appropriate rules and regulations governing the procedures to be followed in such hearings. If the hearing is not conducted by the Environmental Management Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Environmental Management Commission for its consideration prior to final action granting or denying the permit.

- (4) Forty-five days following notice of application or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Environmental Management Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Environmental Management Commission and all decisions denying application for permit or renewal shall be in writing.
  - (5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.
- (d) Applications and Permits for Sewer Systems, Sewer System Extensions, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. — All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Environmental Management Commission shall



act on all applications for permits as rapidly as possible, but it shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Environmental Management Commission to take action on an application for a permit or renewal within 90 days after all data, plans, specifications and other required information have been furnished by the applicant, shall be treated as approval of such application. The Environmental Management Commission shall adopt such rules and regulations as it deems necessary, establishing the form of and procedures for processing applications, permits and renewals. Such regulations may require the submission of plans and specifications and other information as the Environmental Management Commission deems necessary to the proper evaluation of an application. Permits and renewals issued in approving such facilities pursuant to this subsection (d) shall be effective until the date specified therein or until rescinded unless modified or revoked by the Environmental Management Commission.

(e) Hearings and Appeals. — Any person whose application for a permit or renewal is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5; c. 1262, s. 23.)

**Editor's Note. —**

The third 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board" and "Environmental Management Commission" for

"it" in the first sentence of subdivision (2) of subsection (c) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

§ 143-215.2. **Special orders.** — (a) Issuance. — The Environmental Management Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Environmental Management Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Environmental Management Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Environmental Management Commission issued pursuant to hearing.

(b) Procedure. — No special order shall be issued by the Environmental Management Commission (unless issued upon consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. Every special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such



hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals. — Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Environmental Management Commission shall be final and binding.

(d) Effect of Compliance. — Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued [pursuant] to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Environmental Management Commission or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Environmental Management Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

- (1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and
- (2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, c. 1131, s. 2; 1967, c. 892, s. 1; 1973, c. 698, s. 3; c. 1262, s. 23.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Environmental

Management Commission" for "Board" throughout the section.

**§ 143-215.3. General powers of Environmental Management Commission and Department of Natural and Economic Resources; auxiliary powers.** — (a) In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

- (1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article: Provided, that no regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4;
- (2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided, that no person shall be



- required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties;
- (3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article;
  - (4) To delegate such of the powers of the Environmental Management Commission as the Environmental Management Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department of Natural and Economic Resources; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Environmental Management Commission; and provided further that the Environmental Management Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subsection (a)(12) for the abatement of existing water or air pollution. Any employee of the Department of Natural and Economic Resources to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Environmental Management Commission.
  - (5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the Environmental Management Commission has occurred, or, in the discretion of the Environmental Management Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Environmental Management Commission may deem necessary for the enforcement of any of the provisions of this Article or of any official action of the Environmental Management Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Environmental Management Commission;
  - (6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.
  - (7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Environmental Management Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Environmental Management Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department of Natural and Economic Resources and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all



reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department of Natural and Economic Resources shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Department of Natural and Economic Resources shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department of Natural and Economic Resources to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Department of Natural and Economic Resources on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

- (8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Environmental Management Commission, after public hearing held pursuant to the provisions of G.S. 143-215.4, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article. The Environmental Management Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Environmental Management Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issu-



ance of permits pending a determination by the Environmental Management Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given by publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing; and by registered or certified mail at least 20 days in advance of hearing to the governing body of each county, city, town, metropolitan sewerage district, water and sewer district and any other political subdivision lying, in whole or in part, within the area; to every person within the area whose permit application is pending; to every affected or interested agency of local, State, and federal government; and to any other person whom the Environmental Management Commission believes to have a direct interest therein.

Any person who is adversely affected by the order of the Environmental Management Commission may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal.

- (9) If an investigation conducted pursuant to this Article reveals a violation of any regulations, standards, or limitations adopted by the Environmental Management Commission pursuant to this Article, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or G.S. 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.109, the Environmental Management Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Environmental Management Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Environmental Management Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.
- (10) To require any laboratory facility performing or seeking to perform any tests, analyses, measurements, or monitoring required by this Article or regulations of the Environmental Management Commission implementing the provisions of this Article to be certified by the Environmental Management Commission in accordance with standards established for such facilities in its regulations; and to charge a reasonable fee for certifying any such laboratory facility.
- (11) Local Air Pollution Control Programs.—
  - a. To review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and any applicable standards and rules and regulations pursuant thereto. The Environmental Management Commission shall certify any local program which:
    1. Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article, and the



- standards and rules and regulations issued pursuant thereto; provided, however, the Environmental Management Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Environmental Management Commission;
2. Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;
  3. Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and
  4. Is approved by the Environmental Management Commission as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.
- b. No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of subdivision (11) of subsection (a) of this section and is so certified by the Environmental Management Commission.
- c. If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration.
- d. 1. If the Environmental Management Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this Article, the Environmental Management Commission shall, upon due notice, conduct a hearing on the matter.
2. If, after such hearing the Environmental Management Commission determines that an existing local air pollution control program or one which has been certified by the Environmental Management Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.
  3. If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Environmental Management Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties

all of the regulatory provisions of this Article. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

4. If the Environmental Management Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.
  5. Any municipality or county in which the Environmental Management Commission administers its air pollution control program pursuant to paragraph 3 of this subdivision may, with the approval of the Environmental Management Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Environmental Management Commission.
  6. Nothing in this Article shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article for certification by the Environmental Management Commission as an approved local air pollution control program. Any certification required from the Environmental Management Commission shall be deemed granted unless the Environmental Management Commission takes specific action to the contrary.
  7. Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Environmental Management Commission. The Environmental Management Commission shall approve any such application if it is consistent with this Article and other applicable requirements of law.
  8. Notwithstanding any other provision of this section, if the Environmental Management Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Environmental Management Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emissions of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary.
- e. Local air pollution control programs authorized. —
1. The governing body of any county, municipality, or group of



counties and municipalities within a designated area of the State, as defined in this Article, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

- i. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
  - ii. Air-quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
  - iii. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
  - iv. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Environmental Management Commission; and administration of such rules, regulations and standards in accordance with provisions of this subdivision.
  - v. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;
  - vi. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.
2. Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Department of Natural and Economic Resources and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.



3. The penalty for violation of any of the requirements contained in such ordinances, resolutions, rules or regulations shall, upon conviction, be a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days, except that the penalty for violation of an order for the abatement of air pollution issued by the governing body after notice and hearing shall, upon conviction, be a fine of not more than two hundred fifty dollars (\$250.00) or imprisonment for not more than 30 days. Each day in violation shall constitute a separate offense and shall be subject to the foregoing penalties.
4. Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same.
5. In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.
6. Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of Chapter 143, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.
- f. Administration of county or municipal air pollution control programs. — Subject to the approval of the Environmental Management Commission as provided in this Article, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:
  1. Establishing a program under the administration of the duly elected governing body of the county or municipality;
  2. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;
  3. Appointing an air pollution control board as provided in this section, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and



4. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.
- g. Creation and administration of regional air pollution control programs. — In addition to any other powers provided by law and subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Environmental Management Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.
- (12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Environmental Management Commission shall fix a place and time for a hearing before the Environmental Management Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Environmental Management Commission shall either affirm, modify or set aside the order of the assistant director.
- In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the



emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this provision shall apply.

- (13) To certify and approve for eligibility any qualified application for State or federal grant funds available for the construction, modification, extension, maintenance, or operation of a disposal system or portion thereof. As a condition of certification and approval of any such application and of the permit issued pursuant to G.S. 143-215.1, the Environmental Management Commission may require that the applicant conform to all applicable requirements of the State or federal laws and programs under which said grant funds are available.

Nothing in this subsection shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

(b) Research Functions. — The Department of Natural and Economic Resources shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department of Natural and Economic Resources may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department of Natural and Economic Resources shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article. All State departments shall advise with and cooperate with the Department of Natural and Economic Resources on matters of mutual interest.

(c) Relation with the Federal Government. — The Environmental Management Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control.

(d) Relations with Other States. — The Environmental Management Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.

(e) Variances. — Any person subject to the provisions of G.S. 143-215.1 or G.S. 143-215.108 may apply to the Environmental Management Commission for a variance from rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, G.S. 143-215, or G.S. 143-215.107. The Environmental Management Commission may grant such variance, but only after public hearing on due notice, if it finds that:



- (1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and
- (2) Compliance with the rules, regulations, standards or limitations from which variance is sought cannot be achieved by application of best available technology economically achievable at the time of application for such variance, or would produce serious hardship without equal or greater benefits to the public. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86.)

**Editor's Note. —**

The third 1973 amendment, effective July 1, 1974, substituted "To direct that such investigation be conducted" for "To conduct such investigations" at the beginning of subdivision (a)(2), substituted "Commission or Department" for "Board" near the middle of the last sentence of subdivision (a)(2), substituted "the Secretary or any other qualified employee of the Department of Natural and Economic Resources" for "its director, assistant director, or to any other qualified employee of the Board" and "the designated employees of the Department" for "its own qualified employees" in the first sentence of (a)(4), substituted "direct the investigation of" for "investigate" near the beginning of the first sentence of the first paragraph of subdivision (a)(7), rewrote the second sentence of the first paragraph of subdivision (a)(7) and substituted "the Commission may deem" for "it deems" in the third sentence of the first paragraph of subdivision (a)(7), substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the last sentence of the first paragraph of subdivision (a)(7), rewrote the third sentence of the second paragraph of subdivision (a)(7), substituted "the Secretary of the Department with the concurrence of the Governor" for "the assistant director, with the approval of the director and the concurrence of the Governor" in the second sentence of the first paragraph of subdivision (a)(12), substituted "Secretary" for "assistant director" near the beginning of the first sentence of the second paragraph of subdivision (a)(12), deleted "the approval of the director and" preceding "the concurrence of the Governor" in the first sentence of the second paragraph of subdivision (a)(12) and inserted "or the Department" near the beginning of subsection (d). The amendment also substituted "Department of Natural and Economic Resources" for "Board" in two places in the third sentence of the first paragraph of subdivision (a)(7) and in the first sentence of the second paragraph of subdivision (a)(7), and

for "State Board of Water and Air Resources" in paragraph e2 of subdivision (a)(11) and for "Board" in four places in subsection (b), and substituted "Environmental Management Commission" for "Board" and for "Board of Water and Air Resources" throughout the rest of the section.

**Power of Regional Boards to Adopt Air Quality and Emission Control Standards. —**

Subsection (a)(11)g does not expressly confer authority upon regional air pollution control boards to determine and adopt air quality and emission control standards. The authority, if any, must be found in the text thereof. *State v. W.N.C. Pallet & Forest Prod. Co.*, 283 N.C. 705, 198 S.E.2d 433 (1973).

**Judicial Notice of Regional Board's Rules and Regulations. —**

The Supreme Court cannot take judicial notice that a regional air pollution board known as the Western North Carolina Regional Air Pollution Agency has been created by two or more municipalities or counties by joint resolution or contract. A fortiori, the Court cannot take judicial notice of the contents of any rules and regulations which such a board may have adopted. The record of a criminal enforcement action must present a proper basis for passing upon whether rules and regulations adopted by such a board have constitutional validity. *State v. W.N.C. Pallet & Forest Prod. Co.*, 283 N.C. 705, 198 S.E.2d 433 (1973).

**Sufficiency of Warrant Charging Violation of Regional Board's Regulation. —**

A warrant which charges a violation of a regulation of the Western North Carolina Regional Air Pollution Agency, but does not allege verbatim or in substance the provisions of the alleged regulation, nor allege when and under what circumstances the alleged regulation was adopted, nor that a copy thereof has been filed with the State Board of Water and Air Resources (now the Environmental Management Commission) and with the clerk of court of the county is insufficient to show that violation of the regulation constitutes a criminal offense. *State v. W.N.C. Pallet & Forest Prod. Co.*, 283 N.C. 705, 198 S.E.2d 433 (1973).

**§ 143-215.4. General provisions as to procedure; seal; hearing officer.**

— (a) Persons Entitled to Notice, Mailing List. — In any proceeding pursuant



to G.S. 143-215.1, 143-215.2, 143-215.3, the Department shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to G.S. 143-214.1 and 143-215, the Department shall give notice as provided by that section, and it shall also give notice of all the official acts of the Commission (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Department to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Department, ask to be permanently recorded on such mailing list.

(b) Publication and Codification of Environmental Management Commission's Regulations and Rules. — All official acts of the Environmental Management Commission which have or are intended to have general application effect shall be incorporated either in the Environmental Management Commission's official regulations (applying and interpreting this Article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Environmental Management Commission be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Secretary of State. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Department in sufficient numbers to satisfy all reasonable requests therefor. The Department shall codify the Commission's regulations and rules and from time to time shall revise and bring up to date such codifications.

(c) Notices. — All notices which are required to be given by the Department or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Environmental Management Commission. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Department may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Environmental Management Commission by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(d) Hearings. — The following provisions, together with any additional provisions not inconsistent herewith which the Environmental Management Commission may prescribe, shall be applicable in connection with hearings pursuant to this Article, except where other provisions are applicable in connection with specific types of hearings:

- (1) Any hearing held pursuant to G.S. 143-215.1 and 143-215.2 or 143-215.3, except those held pursuant to subsection (a)(12) of G.S. 143-215.3, whether called at the instance of the Environmental Management Commission or of any person, shall be held upon not less than 30 days' written notice given by the Department to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.
- (2) All hearings shall be before the Environmental Management Commission or its authorized agent or agents, and the hearing shall be open to the public. The Environmental Management Commission, or its authorized agents, shall have the authority to administer oaths.
- (3) A full and complete record of all proceedings at any hearing shall be



taken by a reporter designated by the Department or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Department.

- (4) The Environmental Management Commission shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.
  - (5) Subpoenas or subpoenas duces tecum issued by the Environmental Management Commission, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Environmental Management Commission, application may be made to the superior court of the appropriate county for enforcement thereof.
  - (6) The burden of proof at any hearing shall be upon the person or the Environmental Management Commission, as the case may be, at whose instance the hearing is being held.
  - (7) No decision or order of the Environmental Management Commission shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.
  - (8) Following any hearing, the Environmental Management Commission shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Environmental Management Commission proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Environmental Management Commission's ruling with respect to each such requested finding of fact and conclusion of law.
  - (9) All orders and decisions of the Environmental Management Commission shall set forth separately the Environmental Management Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Environmental Management Commission is based.
  - (10) As previously recited above, the Department shall have the authority to adopt a seal which shall be the seal of said Environmental Management Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the Secretary of the Department under his hand and the seal of the Department and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent.
- (e) One or more qualified employees of the Department of Natural and Economic Resources may be designated as hearing officers to conduct any



hearings provided for in this Article in accordance with the procedures established for such hearings by law and the official rules and regulations of the Environmental Management Commission. Unless otherwise provided in the Environmental Management Commission's regulations, an order or decision of a hearing officer shall be final and to the same effect as an order or decision of the Environmental Management Commission. Appeal from a final order or decision of a hearing officer shall be as provided in G.S. 143-215.5. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 10; c. 1262, s. 23.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Department" and "Environmental Management Commission" for "Board" and "Environmental Management Commission's" for "Board's" throughout the section. The amendment also substituted "the official acts of the Commission" for "its official acts" in the second sentence of subsection (a),

substituted "the Commission's" for "its" in the last sentence of subsection (b), substituted "designated" for "appointed" in the first sentence of subdivision (d)(3) and substituted "Secretary" for "director or assistant director" in the second sentence of subdivision (d)(10).

**Quoted** in *State v. W.N.C. Pallet & Forest Prod. Co.*, 283 N.C. 705, 198 S.E.2d 433 (1973).

**§ 143-215.5. Judicial review.** — (a) Any person against whom a final order or decision has been entered by a hearing officer pursuant to G.S. 143-215.4(d) shall be entitled to a review of the order or decision by the full Environmental Management Commission upon written demand by such person within 10 days following notice of the order or decision given by registered or certified mail. The Environmental Management Commission shall review the order or decision, the transcript of evidence and exhibits submitted at hearing, and other pertinent matters, and, if good ground be shown therefor, shall reconsider the evidence, receive further evidence, rehear the parties or their representatives, and affirm, modify, or vacate the order or decision. If the order or decision was entered pursuant to a hearing conducted by a member or members of the Environmental Management Commission, such member or members shall be disqualified from sitting in review of the order or decision. A majority of the members of the Environmental Management Commission shall constitute the full Environmental Management Commission on review.

(b) Any person against whom a final order or decision of the Environmental Management Commission is entered pursuant to hearing conducted by the Environmental Management Commission under G.S. 143-215.4(d), or is entered upon review of an order or decision by a hearing officer or member or members of the Environmental Management Commission to whom such authority has been duly delegated, may appeal from the order or decision of the Environmental Management Commission within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, to the Superior Court of Wake County or of the county where the order or decision is effective. Upon such appeal the Department shall send a transcript certified by the Environmental Management Commission of all testimony and exhibits introduced before the Environmental Management Commission, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Court of Appeals. No bond shall be required of the Environmental Management Commission to the Court of Appeals.

(1) Upon appeal filed by any party, the Department shall forthwith furnish each party to the proceeding with a copy of a certified transcript and



exhibits filed with the Environmental Management Commission. A reasonable charge shall be paid the Department for said copies.

- (2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 108, s. 88; c. 698, s. 11; c. 1262, s. 23.)

**Editor's Note.** —

The third 1973 amendment, effective July 1, 1974, substituted "Department shall send a transcript certified by the Environmental Management Commission" for "Board shall send a certified transcript" in the second

sentence of subsection (b), substituted "Department" for "Board" in two places in subdivision (1) of subsection (b) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

**§ 143-215.6. Enforcement procedures.** — (a) Civil Penalties. —

- (1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Environmental Management Commission against any person who:
- Violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or G.S. 143-215.
  - Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
  - Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
  - Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article.
  - Refuses access to the Environmental Management Commission or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article.
  - Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.
- (2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Environmental Management Commission may assess a penalty not to exceed five thousand dollars (\$5,000) per day for so long as the violation continues.
- (3) The Environmental Management Commission may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural and Economic Resources within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Environmental Management Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.
- (b) Criminal Penalties. —
- (1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or G.S.



143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any regulation of the Environmental Management Commission implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment not to exceed six months, or by both.

- (2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or regulations of the Environmental Management Commission implementing this Article, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or regulations of the Environmental Management Commission implementing this Article, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.
- (3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.
- (4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) Injunctive Relief. — Whenever the Department of Natural and Economic Resources has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural and Economic Resources may, either before or after the institution of any other action or proceeding authorized by this Article, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural and Economic Resources for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Article or the regulations of the Environmental Management Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this



Article. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23.)

**Editor's Note.** —

The third 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission's" for "Board's" in sub-

division (3) of subsection (a) and "Environmental Management Commission" for "Board" throughout the section.

**§ 143-215.8A. Planning.** — (a) Policy, Purpose and Intent. — The Environmental Management Commission and Department of Natural and Economic Resources shall undertake a continuing planning process to develop and adopt plans and programs to assure that the policy, purpose and intent declared in this Article are carried out with regard to establishing and enforcing standards of water purity designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to enhance the quality of the environment, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development, and to insure the beneficial use of the water resources of the State.

(b) Goals. — The goals of the continuing planning process shall be the enhancement of the quality of life and protection of the environment through development by the Environmental Management Commission of water quality plans and programs utilizing the resources of the State on a priority basis to attain, maintain, and enhance water quality standards and water purity throughout the State.

(c) Statewide and Regional Planning. — The planning process may be conducted on a statewide or regional basis, as the Environmental Management Commission shall determine appropriate. If the Environmental Management Commission elects to proceed on a regional basis, it shall delineate the boundaries of each region by preparation of appropriate maps; by description referring to geographical features, established landmarks or political boundaries; or such other manner that the extent and limits of each region shall be easily ascertainable. The Environmental Management Commission shall consult officials and agencies of localities and regions in the development of plans affecting those areas.

(d) Local Planning Organizations. — The Environmental Management Commission shall submit to the Governor or his designee any plans, projections, data, comments or recommendations that he may request. If the Governor determines that the goals of this section will be more expeditiously and efficiently achieved, he may designate a representative organization, capable of carrying out a planning process for any region of the State or area therein, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area. The Environmental Management Commission shall consult with, advise, and assist any organization so designated in the preparation of its plans and shall submit to the Governor the Environmental Management Commission's comments and recommendations regarding such plans. All such organizations shall submit plans developed by them to the Governor for review, and no plan shall be effective until concurred in and approved by him.

(e) Interstate Planning Regions. — The Governor may consult and cooperate with the governor of any adjoining state in establishing an interstate planning region or area and in designating a representative organization, capable of carrying out a planning process for the region or area, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area, if he determines that such region or area has common water quality control problems for which an interstate plan would be most effective.



(f) The Environmental Management Commission shall establish procedures for the development, revision and modification of plans under this section through adoption of appropriate rules and regulations. The rules and regulations of the Environmental Management Commission shall establish procedures for public hearing on all plans prior to their adoption, modification or revision, and upon adoption, they shall become the official water quality management plans of the State. (1973, c. 698, s. 13; c. 1262, s. 23.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management

Commission's" for "Board's" in subsection (d) and "Environmental Management Commission" for "Board" throughout the section.

**§ 143-215.9. Restrictions on authority of the Environmental Management Commission. —** Nothing in this Article shall be construed to:

- (1) Grant to the Environmental Management Commission any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;

(1973, c. 1262, s. 23.)

**Editor's Note. —** The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subdivision (1).

As subdivisions (2) and (3) were not changed by the amendment, they are not set out.

**§ 143-215.10:** Repealed by Session Laws 1973, c. 1262, s. 23, effective July 1, 1974.

## Part 2. Regulation of Use of Water Resources.

**§ 143-215.13. Declaration of capacity use areas. —** (a) The Environmental Management Commission may declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.

(b) Within the meaning of this Part "a capacity use area" is one where the Environmental Management Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.

(c) The Environmental Management Commission may declare and delineate capacity use areas in accordance with the following procedures:

- (1) Whenever the Environmental Management Commission believes that a capacity use situation exists or may be emerging in any area of the State, it may direct the Department to investigate and report to the Environmental Management Commission thereon.
- (2) In conducting its investigation the Department shall consult with all interested persons, groups and agencies; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area, including established or pending water classifications under the Stream Sanitation Law and the criteria for such classifications. Following its investigation the Department shall render a written report to the Environmental Management Commission. This report shall include the Department's findings and recommendations as to whether the water use problems of the area involve surface waters, groundwaters or both; whether effective measures can be employed limited to surface water or to groundwater; and whether timely action by any agency or person may preclude the need for additional



regulation at that time. The report shall also include such other findings and recommendations as the Department deems appropriate, including recommended boundaries for any capacity use area that may be proposed.

- (3) If the Environmental Management Commission finds, following its review of the departmental report (or thereafter following its evaluation of measures taken falling short of regulation) that a capacity use area should be declared, it may adopt an order declaring said capacity use area. Prior to adopting such an order the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to such proposed action.
- (4) Such notice shall be given not less than 30 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Environmental Management Commission proposes to take. The notice shall either include details of such proposed action, or where such proposed action is too lengthy for publication the notice shall specify that copies of such detailed proposed action shall be obtained on request from the Department of Natural and Economic Resources in sufficient quantity to satisfy the requests of all interested persons.
- (5) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Department of Natural and Economic Resources pursuant to the provisions of G.S. 143-215.15.
- (6) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Environmental Management Commission on or before the first date set for the hearing. The Environmental Management Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Environmental Management Commission shall permit anyone who so desires to file a written argument or other statement with the Environmental Management Commission in relation to any proposed action of the Environmental Management Commission any time within 30 days following the conclusion of any public hearing or within any such additional time as the Environmental Management Commission may allow by notice given as prescribed in this section.
- (7) Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action by the Environmental Management Commission pursuant to this paragraph, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification or revocation, however, to be subject to the procedural requirements of this Part, including notice and hearing. If the Environmental Management Commission finds and orders that a capacity use area shall be declared, its order shall include a delineation of the boundary of said area, and the Department of Natural and Economic Resources shall instruct the Secretary of the Department to prepare proposed regulations consistent with the provisions of this Part



and commensurate with the degree of control needed from among the classes of permissible regulations set forth in G.S. 143-215.14.

(d) The Environmental Management Commission may conduct a public hearing pursuant to the provisions of G.S. 143-215.4 in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Environmental Management Commission determines, pursuant to hearing, that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Environmental Management Commission may issue an order:

- (1) Prohibiting any person withdrawing waters in excess of 100,000 gallons per day from increasing the amount of the withdrawal above such limit as may be established in the order.
- (2) Prohibiting any person from constructing, installing or operating any new well or withdrawal facilities having a capacity in excess of a rate established in the order; but such prohibition shall not extend to any new well or facility having a capacity of less than 10,000 gallons per day.
- (3) Prohibiting any person discharging water pollutants to the waters from increasing the rate of discharge in excess of the rate established in the order.
- (4) Prohibiting any person from constructing, installing or operating any facility that will or may result in the discharge of water pollutants to the waters in excess of the rate established in the order.
- (5) Prohibiting any agency or political subdivision of the State from issuing any permit or similar document for the construction, installation, or operation of any new or existing facilities for withdrawing water from or discharging water pollutants to the waters in such area in excess of the rates established in the order.

The determination of the Environmental Management Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Environmental Management Commission that the generalized condition of water depletion or water pollution within the area has ceased.

Notice setting forth the time, place and purpose of the hearing and a description by geographical or political boundaries of the area affected shall be given:

- (1) By publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing;
- (2) By mailing copies of the notice by registered or certified mail at least 20 days in advance of hearing to the governing body of every county, city, town, and affected political subdivision lying in whole or in part within the area and to every affected or interested State and federal agency; and
- (3) By posting a copy of the notice at the courthouse in every county lying, in whole or in part, within the area.



The Environmental Management Commission is also authorized, in the exercise of its discretion, to mail copies of notice by first-class mail to any person who it believes will or may be interested in or affected by the hearing.

Upon issuance of any order by the Environmental Management Commission pursuant to this subsection, a certified copy of such order shall be mailed by registered or certified mail to the governing body of every county, city, town, and affected political subdivision lying, in whole or in part, within the area and to every affected or interested State and federal agency. A certified copy of the order shall be posted at the courthouse in every county lying, in whole or in part, within the area, and a notice setting forth the substantive provisions and effective date of the order shall be published once a week for two successive weeks in a newspaper or newspapers having general circulation within the area. After publication of notice is completed, any person violating any provision of such order after the effective date thereof shall be subject to the penalties and proceedings set forth in G.S. 143-215.17.

Any person who is adversely affected by an order of the Environmental Management Commission issued pursuant to this subsection may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal. (1967, c. 933, s. 3; 1973, c. 698, s. 14; c. 1262, s. 23.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, deleted "the office of" following "request from" in the second sentence of subdivision (4) of subsection (c), substituted "Department of Natural and Economic

Resources" for "Board" in three places in subsection (c), substituted "Secretary" for "Director" in the last sentence of subdivision (7) of subsection (c) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

**§ 143-215.14. Regulations within capacity use areas; scope and procedures. —** (a) Following the declaration of a capacity use area by the Environmental Management Commission, it shall prepare proposed regulations to be applied in said area, containing such of the following provisions as the Environmental Management Commission finds appropriate concerning the use of surface waters or groundwaters or both:

- (1) Provisions requiring water users within the area to submit reports not more frequently than at 30-day intervals concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof.
- (2) With respect to surface waters, groundwaters, or both: provisions concerning the timing of withdrawals; provisions to protect against or abate salt water encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use.
- (3) With respect to groundwaters: provisions concerning well-spacing controls; and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer.
- (4) Such other provisions not inconsistent with this Part as the Environmental Management Commission finds necessary to implement the purposes of this Part.

(b) The Environmental Management Commission shall conduct one or more hearings upon the proposed regulations, upon notice, in accordance with the requirements of subdivisions (4)-(6) of G.S. 143-215.13(c). Upon completion of the hearings and consideration of submitted evidence and arguments with respect to any proposed regulation, the Environmental Management Commission shall adopt its final action with respect thereto, and shall publish such final action as part of its official regulations. The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously



taken by it pursuant to the provisions of this section, any such modifications or revocations, however, to be subject to the procedural requirements of this Part, including notice and hearing. (1967, c. 933, s. 4; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" throughout the section.

**§ 143-215.15. Permits for water use within capacity use areas — procedures.** — (a) In areas declared by the Environmental Management Commission to be capacity use areas no person shall (after the expiration of such period, not in excess of six months, as the Environmental Management Commission may designate) withdraw, obtain, or utilize surface waters or groundwaters or both, as the case may be, in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the Environmental Management Commission.

(b) When sufficient evidence is provided by the applicant that the water withdrawn or used from a stream or the ground is not consumptively used, a permit therefor shall be issued by the Environmental Management Commission without a hearing and without the conditions provided in subsection (c) of this section. Applications for such permits shall set forth such facts as the Environmental Management Commission shall deem necessary to enable it to establish and maintain adequate records of all water uses within the capacity use area.

(c) In all cases in which sufficient evidence of a nonconsumptive use is not presented the Department of Natural and Economic Resources shall notify each person required by this Part to secure a permit of the Environmental Management Commission's proposed action concerning such permit, and shall transmit with such notice a copy of any permit it proposes to issue to such persons, which permit will become final unless a request for a hearing is made within 15 days from the date of service of such notice. The Environmental Management Commission shall have the power: (i) to grant such permit with conditions as the Environmental Management Commission deems necessary to implement the regulations adopted pursuant to G.S. 143-215.14; (ii) to grant any temporary permit for such period of time as the Environmental Management Commission shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the Environmental Management Commission's regulations applicable to such capacity use area; (iii) to modify or revoke any permit upon not less than 60 days' written notice to any person affected; and (iv) to deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Any water user wishing to contest the proposed action shall be entitled to a hearing upon request therefor.

(d) In any proceeding pursuant to this section or G.S. 143-215.16 the Environmental Management Commission shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to G.S. 143-215.13 or 143-215.14 the Environmental Management Commission shall give notice as provided by these sections, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Department of Natural and Economic Resources to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Department of Natural and Economic Resources ask to be permanently recorded on such mailing list.

(e) All notices which are required to be given by the Environmental



Management Commission or the Department or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Environmental Management Commission. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Environmental Management Commission or the Department may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice.

(f) The following provisions shall be applicable in connection with hearings pursuant to this Part:

- (1) Any hearing held pursuant to this section or G.S. 143-215.16, whether called at the instance of the Environmental Management Commission or of any person, shall be held upon not less than 30 days' written notice given by the Environmental Management Commission to any person who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.
- (2) All hearings under this Part shall be before the Environmental Management Commission, or before one or more of its own members or before one or more qualified employees of the Department, and shall be open to the public. Any member of the Commission or employee of the Department of Natural and Economic Resources to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission for decision.
- (3) A full and complete record of all proceedings at any hearing under this Part shall be taken by a reporter designated by the Department or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Department of Natural and Economic Resources.
- (4) The Environmental Management Commission and its duly authorized agents shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.
- (5) The Environmental Management Commission, or the duly authorized agent of such Environmental Management Commission, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.
- (6) Subpoenas issued by the Environmental Management Commission, in connection with any hearing under this Part shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Environmental Management Commission, application may be made to the superior court of the appropriate county for enforcement thereof.
- (7) The burden of proof at any hearing under this Part shall be upon the person or the Environmental Management Commission, as the case may be, at whose instance the hearing is being held.
- (8) No decision or order of the Environmental Management Commission shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.
- (9) Following any hearing, the Environmental Management Commission



shall afford the parties thereto a reasonable opportunity to submit within 30 days or within such additional time as prescribed by the Environmental Management Commission, proposed findings of fact and conclusions of law and any brief in connection therewith.

- (10) All orders and decisions of the Environmental Management Commission shall set forth separately the Environmental Management Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Environmental Management Commission, is based.
- (11) The Department of Natural and Economic Resources shall have the authority to adopt a seal which shall be the seal of said Environmental Management Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the Secretary of the Department under his hand and the seal of the Department of Natural and Economic Resources and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent.

(g) Any person against whom any final order or decision has been made except where no appeal is allowed as provided by G.S. 143-215.2(j) shall have a right of appeal to the Superior Court of Wake County or of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Department of Natural and Economic Resources shall send a certified transcript of all testimony and exhibits introduced before the Environmental Management Commission, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the appellate division. No bond shall be required of the Environmental Management Commission to the appellate division.

- (1) Upon appeal filed by any party, the Department of Natural and Economic Resources shall forthwith furnish each party to the proceeding with a copy of the certified transcript and exhibits filed with the Environmental Management Commission. A reasonable charge shall be paid the Department of Natural and Economic Resources for said copies.
  - (2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript.
- (h) In adopting any regulations pursuant to the provisions of G.S. 143-215.14,



and in considering permit applications, revocations or modifications under this section, the Environmental Management Commission shall consider:

- (1) The number of persons using an aquifer or stream and the object, extent and necessity of their respective withdrawals or uses;
- (2) The nature and size of the stream or aquifer;
- (3) The physical and chemical nature of any impairment of the aquifer or stream, adversely affecting its availability or fitness for other water uses (including public use);
- (4) The probable severity and duration of such impairment under foreseeable conditions;
- (5) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;
- (6) The kinds of businesses or activities to which the various uses are related;
- (7) The importance and necessity of the uses claimed by permit applicants (under this section), or of the water uses of the area (under G.S. 143-215.14) and the extent of any injury or detriment caused or expected to be caused to other water uses (including public use);
- (8) Diversion from or reduction of flows in other watercourses or aquifers; and
- (9) Any other relevant factors. (1967, c. 933, s. 5; 1973, c. 108, s. 89; c. 698, s. 15; c. 1262, s. 23.)

**Editor's Note.** —

The third 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" and "Department of Natural and Economic Resources" for

"Board" throughout the section and made other changes in conformity with the reorganization of the Department of Natural and Economic Resources by Session Laws 1973, c. 1262.

**§ 143-215.16. Permits for water use within capacity use areas — duration, transfer, reporting, measurement, present use, fees and penalties.** — (a) No permit under G.S. 143-215.15 shall be issued for a longer period than the longest of the following: (i) 10 years, or (ii) the duration of the existence of a capacity use area, or (iii) the period found by the Environmental Management Commission to be necessary for reasonable amortization of the applicant's water-withdrawal and water-using facilities. Permits may be renewed following their expiration upon compliance with the provisions of G.S. 143-215.15.

(b) Permits shall not be transferred except with the approval of the Environmental Management Commission.

(c) Every person in a capacity use area who is required by this Part to secure a permit shall file with the Environmental Management Commission in the manner prescribed by the Environmental Management Commission a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than 30-day intervals. Such statements shall be filed on forms furnished by the Department of Natural and Economic Resources within 90 days after the adoption of an order by the Environmental Management Commission declaring a capacity use area. Water users in a capacity use area nor required to secure a permit shall comply with procedures established to protect and manage the water resources of the area. Such procedures shall be adapted to the specific needs of the area, shall be within the provisions of this and other North Carolina water resource acts, and shall be adopted after public hearing in the area. The requirements embodied in the two preceding sentences shall not apply to individual domestic water use.

(d) If any person who is required to secure a permit under this Part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different



conditions than has been authorized by the Environmental Management Commission, the Environmental Management Commission shall have the authority to require such person to install water meters, or some other more economical means for measuring water use acceptable to the Environmental Management Commission. In determining the amount of water being withdrawn or used by a permit holder or applicant the Environmental Management Commission may use the rated capacity of his pumps, the rated capacity of his cooling system, data furnished by the applicant, or the standards or methods employed by the United States Geological Survey in determining such quantities or by any other accepted method.

(e) In any case where a permit applicant can prove to the Environmental Management Commission's satisfaction that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the Environmental Management Commission shall take into consideration the extent to which such prior use or withdrawal was reasonably necessary in the judgment of the Environmental Management Commission to meet its needs, and shall grant a permit which shall meet those reasonable needs. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(f) The Environmental Management Commission shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the Environmental Management Commission within a reasonable time after June 27, 1967. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(1973, c. 1262, s. 23.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board" near the middle of the second sentence of subsection (c)

and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

As subsections (g) and (h) were not changed by the amendment, they are not set out.

**§ 143-215.17. Violations.**

(b) Civil Actions. — In addition, upon violation of any of the provisions of this Part, or the regulations of the Environmental Management Commission hereunder, the Secretary of the Department may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violation, institute, either in the county in which the violation occurred, or, at the Secretary's discretion, in the county wherein the violator resides or has his or its principal place of business, a civil action in the superior court in the name of the State upon relation of the Secretary of the Department for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the same. (1967, c. 933, s. 7; 1973, c. 698, s. 16; c. 1262, s. 23.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" near the beginning of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

**§ 143-215.18. Map or description of boundaries of capacity use areas.**

— (a) The Environmental Management Commission in designating and the Department in recommending the boundaries of any capacity use area may



define such boundaries by showing them on a map or drawings, by a written description, or by any combination thereof, to be designated appropriately and filed permanently with the Department. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries shall be made under the direction of the Secretary of Natural and Economic Resources. Photographic, typed or other copies of such map or description, certified by the Secretary of Natural and Economic Resources, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. If the boundaries are changed pursuant to other provisions of this Part, the Department may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or all maps which it is designated to replace.

(b) The Department shall file with the Secretary of State a certified copy of the map, drawings, description or combination thereof, showing the boundaries of any capacity use area designated by the Environmental Management Commission; and a certified copy of any redrawn or altered map or drawing, and of any amendments or additions to written descriptions, showing alterations to said boundaries. The filings required by this subsection shall constitute compliance with the requirements of Article 18 of Chapter 143 of the General Statutes. (1967, c. 933, s. 8; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, substituted “Secretary of Natural and Economic Resources” for “Director of the Environmental Management Commission” for “Department” and for “Director” in subsection “Board” in subsections (a) and (b) and (a).

**§ 143-215.19. Rights of investigation, entry, access and inspection.** — The Environmental Management Commission shall have the right to direct the conduct of such investigations as may reasonably be necessary to carry out its duties prescribed in this Part, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition, withdrawal or use of any waters, investigating water sources, or investigating the installation or operation of any well or surface water withdrawal or use facility, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the installation or operation of any well or surface water withdrawal or use facility; provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Environmental Management Commission or Department who requests entry for purposes of a lawful inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties consistent with the provisions of this Part. (1967, c. 933, s. 9; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted “Environmental Management Commission or Department” for “Board” near the beginning of the second sentence and substituted “Environmental Management Commission” for “Board” and “direct the conduct of” for “conduct” near the beginning of the first sentence.

**§ 143-215.20. Rules and regulations.** — The Environmental Management Commission may adopt and modify from time to time rules and regulations consistent with the provisions of this Part to implement the provisions of this Part. All such rules and regulations, and modifications thereof, shall be filed with the Secretary of State as required by Article 18 of Chapter 143 of the General Statutes. (1967, c. 933, s. 10; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted “Environmental Management Commission” for “Board.”



§ 143-215.21. **Definitions.** — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

- (1) "Area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Environmental Management Commission.
- (2) "Commission" means the Environmental Management Commission, or its successor.
- (4) "Department" means the Department of Natural and Economic Resources, or its successor.
- (5) "Nonconsumptive use" means (i) the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken; or, if the user owns both sides of the stream at the point of withdrawal, the water is returned to the stream upstream of the next property below the point of diversion on either side of the stream; (ii) the use of water withdrawn from a groundwater system or aquifer in such a manner that it is returned to the groundwater system or aquifer from which it was withdrawn without substantial diminution in quantity or substantial impairment in quality at or near the point from which it was withdrawn; (iii) provided, however, that (in determining whether a use of groundwater is nonconsumptive) the Environmental Management Commission may take into consideration whether any material injury or detriment to other water users of the area by reason of reduction of water pressure in the aquifer or system has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.

(1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" at the end of subdivision (1) and in clause (iii) of subdivision (5) and rewrote subdivisions (2), which formerly defined "Board" as the Board of Water Resources or its

successor, and (4), which formerly defined "Department" as the Department of Water Resources or its successor.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1), (2), (4) and (5) are set out.

### Part 3. Dam Safety Law.

§ 143-215.25. **Definitions.** — As used in this Part, unless the context otherwise requires:

- (1) "Commission" means the Environmental Management Commission.
- (3) "Department" means the North Carolina Department of Natural and Economic Resources.
- (4) "Minimum stream flows" or "minimum flows" means stream flows of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department of Natural and Economic Resources under the North Carolina Stream Sanitation Law and applicable to the waters affected by the project under consideration. In order to ensure that such classifications and standards shall be met and maintained, the Department may impose such conditions and requirements in orders and written approvals issued under this Part as, in its judgment, may be necessary to this end, including conditions and requirements relating to the release or discharge of designated flows from impoundments, the location or design of water outlets for impoundments and of water intakes, the amount and timing of withdrawal of water from a reservoir, and the construction of



submerged weirs or other devices designed to satisfy minimum stream flow requirements.

(1973, c. 1262, ss. 23, 38.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote subdivisions (1), which formerly defined "Board" as the North Carolina Board of Water Resources, and (3) which formerly defined "Department" as the North Carolina Department of Water Resources. The amendment also substituted

"Department of Natural and Economic Resources" for "State Stream Sanitation Committee" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1), (3) and (4) are set out.

**§ 143-215.26. Construction of dams.**

(b) When an application has been completed pursuant to the preceding subsection, the Department shall refer copies of the completed application papers to the Department of Human Resources, the Wildlife Resources Commission, the Board of Transportation, and such other State and local agencies as it deems appropriate for review and comment. (1967, c. 1068, s. 4; 1973, c. 476, s. 128; c. 507, s. 5; c. 1262, s. 23.)

**Editor's Note.** —

The third 1973 amendment, effective July 1, 1974, deleted "the Department of Conservation and Development" following "Wildlife Resources Commission," in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

**§ 143-215.28. Action by Environmental Management Commission upon applications.** —

(a) Following receipt of agency comments the Environmental Management Commission shall approve, disapprove, or approve subject to conditions necessary to ensure safety and to satisfy minimum stream flow requirements, all applications made pursuant to this Part.

(c) If the Environmental Management Commission disapproves an application, one copy shall be returned with a statement of its objections. If an application is approved, the approval shall be attached thereto, and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the Environmental Management Commission deems necessary to safeguard life and property.

(d) Construction shall be commenced within one year after the date of approval of the application or such approval is void. The Environmental Management Commission upon written application and good cause shown may extend the time for commencing construction. Notice by registered mail shall be given the Environmental Management Commission at least 10 days before construction is commenced. (1967, c. 1068, s. 6; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subsections (a), (c) and (d).

As subsection (b) was not changed by the amendment, it is not set out.

**§ 143-215.29. Supervision by qualified engineers; reports and modification during work.** —

(a) Any project for which the Environmental Management Commission's approval is required under G.S. 143-215.26 and 143-215.27 shall be designed and supervised by an engineer legally qualified in the State of North Carolina.

(b) During the construction, enlargement, repair, alteration or removal of a dam, the Environmental Management Commission may require such progress reports from the supervising engineer as it deems necessary.

(c) If during construction, reconstruction, repair, alteration or enlargement of any dam, the Environmental Management Commission finds the work is not being done in accordance with the provisions of the approval and the approved plans and specifications, it shall give written notice by registered mail or



personal service to the person who received the approval and to the person in charge of construction at the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of the approval, and the approved plans and specifications. The Environmental Management Commission may order that no further construction work be undertaken until such compliance has been effected and approved by the Environmental Management Commission. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made after notice as provided in this section. (1967, c. 1068, s. 7; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, for "Board's" in subsection (a) and effective July 1, 1974, substituted "Environmental Management Commission" for "Environmental Management Commission's" "Board" throughout subsections (b) and (c).

**§ 143-215.30. Notice of completion; certification of final approval.** — (a) Immediately upon completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be given the Environmental Management Commission. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the Department in such detail as the Environmental Management Commission may require.

(b) When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.

(c) The completed work shall be inspected by the supervising engineers, and upon finding that the work has been done as required and that the dam is safe and satisfies minimum stream-flow requirements, they shall file with the Department a certificate that the work has been completed in accordance with approved design, plans, specifications and other requirements. Unless the Environmental Management Commission has reason to believe that the dam is unsafe or is not in compliance with any applicable requirement, regulation, or law, the Environmental Management Commission shall grant final approval of the work in accordance with the certificate, subject to such terms as it deems necessary for the protection of life and property.

(d) Pending issuance of the Environmental Management Commission's final approval, the dam shall not be used except on written consent of the Environmental Management Commission, subject to conditions it may impose. (1967, c. 1068, s. 8; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" and "Environmental Management Commission's" for "Board's" throughout the rest of the section.

**§ 143-215.31. Supervision over maintenance and operation of dams.** — The Environmental Management Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum stream-flow requirements. The Environmental Management Commission is hereby authorized to adopt such standards for maintenance and operation of dams as may be necessary for the purposes of this Part. In its discretion the Environmental Management Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function. (1967, c. 1068, s. 9; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" in three places.

**§ 143-215.32. Inspection of dams.** — (a) The Department is hereby



authorized at any time to inspect any dam upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(b) If the Department upon inspection finds that any dam is not sufficiently strong, or is not maintained in good repair or operating condition, or is dangerous to life or property, or does not satisfy minimum stream-flow requirements, the Department shall cause such evidence to be presented to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action. (1967, c. 1068, s. 10; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote the first sentence of subsection (a), substituted "Department" for "Board" in the second sentence of subsection

(a), rewrote subsection (b) and substituted "Environmental Management Commission" for "Board" in three places in subsection (c).

**§ 143-215.33. Judicial review.** — If an applicant under this Part, or owner of a dam which is the subject of an application, or any landowner whose property would be endangered by failure of a dam, are dissatisfied with any final order or decision of the Environmental Management Commission issued under this Part, he (or they, as the case may be) shall have a right of appeal to the superior court pursuant to the provisions of Article 33 of Chapter 143 of the General Statutes. (1967, c. 1068, s. 11; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board."

**§ 143-215.34. Investigations by Department; rules and regulations; employment of consultants.** — The Department shall make such investigations and assemble such data as it deems necessary for a proper review and study of the design and construction of dams, reservoirs and appurtenances, and for such purposes may enter upon private property. The Environmental Management Commission may adopt such rules and regulations as may be necessary to carry out the purposes of this Part. The Department may employ or make such agreements with geologists, engineers, or other expert consultants and such assistants as it deems necessary to carry out the provisions of this Part. (1967, c. 1068, s. 12; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in the third sentence and "Board" in the second sentence and "Environmental Management Commission" for "Board" in the first sentence.

**§ 143-215.35. Liability for damages.** — No action shall be brought against the State of North Carolina, the Department, or the Environmental Management Commission or any agent of the Commission or any employee of the State or



the Department for damages sustained through the partial or total failure of any dam or its maintenance by reason of any supervision or other action taken pursuant to or under this Part. Nothing in this Part shall relieve an owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership or operation. (1967, c. 1068, s. 13; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote the first sentence.

**§ 143-215.36. Violations; penalties.**

(b) Injunctive and Other Relief. — In addition, upon violation of any of the provisions of this Part, or the regulations of the Commission hereunder, the Secretary of the Department may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violation, institute a civil action in the superior court in the name of the State upon relation of the Secretary of the Department for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the same. (1967, c. 1068, s. 14; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Commission" for "Department" near the beginning of subsection (b) and "Secretary" for "Director" in two places in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

**§ 143-215.37. Rights of investigation, entry, access, and inspection.** — The Commission shall have the right to direct the conduct of such investigations as it may reasonably deem necessary to carry out its duties prescribed in this Part, and the Department shall have the right to conduct such investigations, and for this purpose the employees of the Department and agents of the Commission have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or associated equipment facility or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the construction or operation of any dam: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. (1967, c. 1068, s. 15; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote the part of the first sentence preceding the proviso and substituted "Commission or Department" for "Board" in the second sentence.

Part 4. Federal Water Resources Development Projects.

**§ 143-215.40. Resolutions and ordinances assuring local cooperation.** — (a) The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Environmental Management Commission, in behalf of the State of North



Carolina, subject to the approval of the Governor and the Advisory Budget Commission, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Secretary of Natural and Economic Resources for the information of the Governor.

(1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" and "Secretary of Natural and Economic

Resources" for "Director of the Department of Water and Air Resources" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

**§ 143-215.41. Items of cooperation to which localities and the State may bind themselves.** — Such resolutions and ordinances may irrevocably bind such county, municipality, other local unit, or the State of North Carolina, acting through the Environmental Management Commission, to the following when included as requirements of local cooperation for a federal water resources development project:

- (1) To provide, without cost to the United States, all lands, easements, and rights-of-way required for construction and subsequent maintenance of the project and for aids to navigation, if required, upon the request of the Chief of Engineers, or other official to be required in the general public interest for initial and subsequent disposal of spoil, and also necessary retaining dikes, bulkheads, and embankments therefor, or the costs of such retaining works;
- (2) To hold and save the United States free from damages due to the construction works and subsequent maintenance of the project;
- (3) To provide firm assurances that riverside terminal and transfer facilities will be constructed at the upper limit of the modified project to permit transfer of commodities from or to plants and barges;
- (4) To provide and maintain, without cost to the United States, depths in berthing areas and local access channels serving the terminals commensurate with depths provided in related project areas;
- (5) To accomplish, without cost to the United States, such alterations, if any, as required in sewer, water supply, drainage, electrical power lines, and other utility facilities, as well as their maintenance;
- (6) To provide, without cost to the United States, all lands, easements, rights-of-way, utility relocations and alterations, and, with the concurrence and under the direction of the Board of Transportation, highway or highway bridge construction and alterations necessary for project construction;
- (7) To adjust all claims concerning water rights;
- (8) To maintain and operate the project after completion, without cost to the United States, in accordance with regulations prescribed by the Secretary of the Army or other responsible federal official, board, or agency;
- (9) To provide a cash contribution for project costs assigned to project features other than flood control;



- (10) To prevent future encroachment which might interfere with proper functioning of the project for flood control;
- (11) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional or other federal document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which counties, municipalities and the State are herein authorized to irrevocably bind themselves; it being intended to authorize counties, municipalities and the Environmental Management Commission in behalf of the State to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned, or project reports by the Army Chief of Engineers, the Administrator of the Soil Conservation Service, the Board of Directors of the Tennessee Valley Authority, or other responsible federal official, board or agency. (1969, cc. 724, 968; 1973, c. 507, s. 5; c. 1262, s. 23; c. 1446, s. 14.)

**Editor's Note. —**

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in two places.

The third 1973 amendment substituted "or" for "of" following "local unit" near the beginning of the introductory paragraph.

**§ 143-215.42. Acquisition of lands. —** (a) For the purpose of complying with the terms of local cooperation as specified in Chapter 143, Article 21, Part 4, and as stipulated in the congressional document covering the particular project involved, any county, municipality, other local government unit or the State of North Carolina, acting on behalf of the Environmental Management Commission, may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation. A municipality, county or other local government unit may acquire such lands by any of the aforesaid means outside as well as inside its territorial boundaries, if the local governing body finds that substantial benefits will accrue to property inside such territorial boundaries as a result of such acquisition.

(b) The power of condemnation herein granted to counties, municipalities and other local government units may be exercised only after:

- (1) The municipality, county or other local unit makes application to the Environmental Management Commission, identifying the land sought to be condemned and stating the purposes for which said land is needed; and
- (2) The Environmental Management Commission finds that the land is sought to be acquired for a proper purpose within the intent of Chapter 143, Article 21, Part 4. The findings of the Environmental Management Commission will be conclusive in the absence of fraud, notwithstanding any other provision of law.

(c) The Department of Natural and Economic Resources shall certify copies of the Commission's findings to the applicant municipality, county, or other local unit, and to the clerk of superior court of the county or counties wherein any of the land sought to be condemned lies for recordation in the special proceedings thereof.

(f) Interests in land acquired pursuant to this section may be used in such manner and for such purpose as the condemning authority deems best. If the local government unit so determines, such lands may be sold, leased, or rented, subject to the prior approval of the Environmental Management Commission. The State may sell, lease or rent any lands acquired by it, and if the Environmental Management Commission is participating with any local government unit or units in a water resources project under this Article, may



convey such lands or interests to the unit or units as a part of its participation therein.

(1973, c. 1262, s. 23.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" and "the Commission's" for "its" in subsection (c) and substituted

"Environmental Management Commission" for "Board of Water and Air Resources" in subsections (a), (b) and (f).

As the rest of the section was not changed by the amendment, only subsections (a), (b), (c) and (f) are set out.

Part 5. Right of Withdrawal of Impounded Water.

**§ 143-215.48. Determining streamflows.** — (a) In litigation in which the rate of flow of water that would exist in the absence of an impoundment is in issue, that rate shall be deemed to be the minimum average flow for a period of seven consecutive days that have an average recurrence of once in 10 years unless a party to the litigation introduces a calculation that more closely approximates the actual rate. A determination made by the Environmental Management Commission (i) of either that minimum average flow, or (ii) that adopts a calculation that more closely approximates the actual rate of flow, and introduced by one of the parties to the litigation, shall be prima facie correct.

(b) The Environmental Management Commission is authorized to make the determinations specified in subsection (a) of this section and to require the submission of such reports and such inspections as are necessary to permit those determinations. (1971, c. 111, s. 1; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in

subsections (a) and (b) and deleted "make" preceding "such inspections" near the end of subsection (b).

**§ 143-215.50. Interpretation with other statutes.** — Whether rights of withdrawal shall have effect in a capacity use area declared by the Environmental Management Commission under the Water Use Act of 1967 shall be in the discretion of the Environmental Management Commission. This Part shall be subject to the provisions of the Water and Air Resources Act, and the Dam Safety Law of 1967. (1971, c. 111, s. 1; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted

"Board of Water and Air Resources" and for "Board."

Part 6. Floodway Regulation.

**§ 143-215.56. Delineation of floodway; powers of Environmental Management Commission and Department of Natural and Economic Resources; powers of local governments.** — (a) For the purpose of delineating the floodway and evaluating the possibility of flood damages, responsible local governments are empowered to:

- (1) Request technical assistance from the competent federal agencies, including the Army Corps of Engineers, the Soil Conservation Service, the Tennessee Valley Authority, and the U.S. Geological Survey, or successor agencies, and
- (2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Department of Natural and Economic Resources shall be empowered to render advice and assistance to any local government having responsibilities under this Part. In exercising this function it shall specifically be authorized to



furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; but it shall not be limited to such activities. In the exercise of its powers to adopt rules and regulations interpreting and applying the provisions of this Part, the Environmental Management Commission may adopt (but is not limited to adopting) regulations interpreting any of the terms used in this Part, including regulations supplementing the definitions provided in this Part. A copy of every regulation adopted by the Environmental Management Commission interpreting or applying the provisions of this Part, shall be filed by the Department of Natural and Economic Resources with the chairman of the governing body of each county and municipality within the State, as well as with the Secretary of State as required by G.S. 143-195.

(c) A local government may delineate any floodway subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. The Environmental Management Commission may delineate a floodway, in the same manner and subject to the same requirement, when the reach of a stream in which a floodway is determined by the Environmental Management Commission to be needed exceeds the jurisdiction of a single local government. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of such map or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government or the Environmental Management Commission may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing and approval thereof as designated and provided above.

(d) If the Environmental Management Commission determines that the floodway of any stream or stream segment should be delineated and the use thereof controlled as provided in this Part, and the local governments within which the stream or segment lies have not delineated the floodway or controlled uses therein, the Environmental Management Commission shall advise the local governments of its intent to delineate the floodway, and it shall be the responsibility of the local governments to control uses therein. At least 30 days prior to the effective date specified in the resolution of the Environmental Management Commission establishing any floodway, notice of the effective date and copies of such rules and regulations shall be delivered to every affected local government along with copies of all maps and plans delineating the floodway. Public notice of the resolution shall be given at least 30 days prior to the effective date by publication of a notice once a week for two successive weeks in a newspaper or newspapers having general circulation in the county or counties in which each affected local government lies and by posting a copy of the notice at the courthouse of each such county, along with a sketch map showing the stream or stream segment affected. The notice shall be adequate to apprise all interested persons of the nature of the rules and regulations, the effective date thereof, the stream or stream segment affected, and the manner in which more detailed information may be secured. (1971, c. 1167, s. 3; 1973, c. 621, ss. 6, 7; c. 1262, s. 23.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" in the first sentence of

subsection (b) and for "Board" in the last sentence of subsection (b) and substituted "Environmental Management Commission" for "Board of Water and Air Resources" and for "Board" throughout the rest of the section.



Part 6A. Hurricane Flood Protection and Beach  
Erosion Control Project Revolving Fund.

**§ 143-215.62. Revolving fund established; conditions and procedures.**

— (a) There is established under the control and direction of the North Carolina Department of Natural and Economic Resources, a Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source for the purpose of financing the local portion of the nonfederal share of the cost of hurricane flood protection and beach erosion control projects. The Department of Natural and Economic Resources shall, when funds are available, and in accordance with priorities established by the Environmental Management Commission, make advances from the fund to any county or municipality for:

- (1) Advance planning and engineering work necessary or desirable in order to promote the development, construction, or preservation of hurricane flood protection and beach erosion works or projects;
- (2) Construction of hurricane flood protection and beach erosion control works or projects, or other related costs which are a responsibility of local government, including costs associated with construction, such as the acquisition of land or rights-of-way or the relocation of public roads and utilities;
- (3) Maintenance and nourishment of the constructed works or project.

Such advances shall be subject to repayment by the recipient to the Department of Natural and Economic Resources from the proceeds of bonds or other obligations for the beach erosion control and hurricane flood protection works or projects, or from other funds available to the recipient, including grants.

(b) Prior to making any advance to a county or municipal government the Environmental Management Commission shall advise the county or municipal government:

- (1) Its opinion as to whether or not the projected works or project would further beach erosion control or provide protection to life or property from floodwaters resulting from hurricanes;
- (2) Its opinion as to whether or not there is a reasonable prospect of federal aid in the financing of the projected works or project and whether or not the advance will exceed the local portion of the nonfederal share of the cost of the works or project to be financed by the county or municipality making the application;
- (3) Its opinion as to whether or not the anticipated financial outlays in connection with the projected works or project for the county or municipality making the application would constitute an unreasonable burden on the citizens of the county or municipality.

The Environmental Management Commission shall authorize no advance to a county or municipal government without first receiving satisfactory assurances from such government that the projected works or project shall be undertaken and the funds advanced repaid as provided herein.

(c) Repayment of any advance may be in equal installments or in a lump sum, but the term for such repayment shall not exceed a term of 10 years. All moneys received from repayments on advances shall be paid into the revolving fund and shall be used for the purposes set forth in this section.

(d) The Environmental Management Commission may adopt such rules and regulations with respect to making application as are consistent with the terms and purposes of this section. (1971, c. 1159, s. 1; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Board of Water and Air Resources" in the first sentence and for "Board" near the beginning of the second sentence of the introductory



paragraph of subsection (a), substituted "Department of Natural and Economic Resources" for "Board" in the last sentence of subsection (a), substituted "authorize" for

"make" in the last sentence of subsection (b) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

### Part 7. Water and Air Quality Reporting.

**§ 143-215.64. Purpose.** — The purpose of this Part is to require all persons who are subject to the provisions of G.S. 143-215.1 to file reports with the Environmental Management Commission covering the discharge of waste and air contaminants to the waters and outdoor atmosphere of the State and to establish and maintain approved systems for monitoring the quantity and quality of such discharges and their effects upon the water and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board of Water and Air Resources."

**§ 143-215.65. Reports required.** — All persons subject to the provisions of G.S. 143-215.1 who discharge wastes to the waters or emit air contaminants to the outdoor atmosphere of this State shall file monthly reports with the Environmental Management Commission setting forth the volume and characteristics of wastes discharged or air contaminants emitted daily or such other period of time as may be specified by the Environmental Management Commission in its official regulations. Such reports shall be filed on forms provided by the Department and approved by the Environmental Management Commission and shall include such pertinent data with reference to the total and average volume of wastes or air contaminants discharged, the strength and amount of each waste substance or air contaminant discharged, the type and degree of treatment such wastes or air contaminants received prior to discharge and such other information as may be specified by the Environmental Management Commission in its official regulations. The information shall be used by the Environmental Management Commission only for the purpose of air and water pollution control. The Department shall provide proper and adequate facilities and procedures and the Commission shall adopt adequate regulations to safeguard the confidentiality of proprietary manufacturing processes except that confidentiality shall not extend to wastes discharged or air contaminants emitted. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, deleted "either" following "on forms" and substituted "the Department and" for "or" in the second sentence, rewrote the last sentence, and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

**§ 143-215.66. Monitoring required.** — In order to provide for adequately monitoring the discharge of wastes to the waters and the emission of contaminants to the outdoor atmosphere and their effects upon the quality of the environment, all persons subject to the provisions of G.S. 143-215.1 who cause such discharges or emissions shall establish and maintain adequate water and air quality monitoring systems and report the data obtained therefrom to the Environmental Management Commission. Each monitoring system shall include the collection of water or air quality data as appropriate from such locations, in such detail, and with such frequency as shall be reasonably required by the Environmental Management Commission, in its official regulations, for evaluating the efficiency of treatment facilities or air-cleaning devices and the effects of the discharges or emissions upon the waters and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" in two places.



**§ 143-215.68. Rules and regulations.** — The Environmental Management Commission is hereby specifically authorized to adopt appropriate report forms and such rules and regulations as deemed necessary for the implementation of this Part. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board."

**§ 143-215.69. Penalties.** — Any person who violates any provisions of this Part or any regulations adopted by the Environmental Management Commission for its implementation shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000) for each violation and each day such person shall fail to comply after having been officially notified by the Environmental Management Commission shall constitute a separate offense subject to the foregoing penalty. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" in two places.

#### ARTICLE 21A.

#### *Oil Pollution Control.*

#### Part 1. General Provisions.

**§ 143-215.77. Definitions.** — As used in this Article, unless the context otherwise requires:

- (2) "Environmental Management Commission" shall mean the North Carolina Environmental Management Commission.
- (3) "Secretary" shall mean the North Carolina Secretary of Natural and Economic Resources.
- (4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into waters, or upon land in such proximity to waters that oil is reasonably likely to reach the waters, but shall not include discharges in amounts determined by the Environmental Management Commission to be not harmful to the public health or welfare (including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches); provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person on agricultural, horticultural, or forestry crops, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge.
- (7) "Department" shall mean the Department of Natural and Economic Resources.

(1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote subdivisions (2), which formerly defined "Board" as the North Carolina Board of Water and Air Resources, (3), which formerly defined "Director" as the North Carolina Director of Water and Air Resources, and (7), which formerly defined "Office" as the North Carolina Office of Water

and Air Resources. The amendment also substituted "Environmental Management Commission" for "Board" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (2), (3), (4) and (7) are set out.



§ 143-215.78. **Oil pollution control program.** — The Department shall establish within the office an oil pollution control program for the administration of this Article. The Department may employ and prescribe the duties of employees assigned to this activity. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in two places.

§ 143-215.79. **Inspections and investigations; entry upon property.** — The Environmental Management Commission, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil discharge to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Environmental Management Commission are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil discharges or to perform any restoration necessitated by an oil discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" in two places.

§ 143-215.81. **Authority supplemental.** — The authority and powers granted under this Article shall be in addition to, and not in derogation of, any authority or powers vested in the Environmental Management Commission under any other provision of law, except to the extent that such other powers or authority may conflict directly with the powers and authority granted under this Article; and the Environmental Management Commission is empowered to adopt such rules and regulations as are necessary to administer and carry out the purposes of this Article. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" in two places.

## Part 2. Oil Discharge Controls.

### § 143-215.83. Discharges.

(b) Excepted Discharges. — This section shall not apply to discharges of oil in the following circumstances:

- (1) When the discharge was authorized by an existing regulation of the Environmental Management Commission.
- (2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:
  - a. An act of God.
  - b. An act of war or sabotage.
  - c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.
  - d. An act or omission of a third party, whether any such act or omission was or was not negligent.
  - e. Any act or omission by or at the direction of a law-enforcement officer or fireman.



(c) Permits. — Any person who desires or proposes to discharge oil onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules and regulations adopted by the Environmental Management Commission. Any permit granted pursuant to this subsection may contain such terms and conditions as the Environmental Management Commission shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subsections (b) and (c). As subsection (a) was not changed by the amendment, it is not set out.

**§ 143-215.84. Removal of prohibited discharges.** — (a) Person Discharging. — Any person having control over oil discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Environmental Management Commission.

(b) Removal by Department. — Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" at the end of subsection (a), substituted "Department" for "Board" in the catchline to subsection (b) and in the first sentence of the subsection, and substituted "Secretary" for "director" in the second sentence of subsection (b).

**§ 143-215.85. Required notice.** — Every person owning or having control over oil discharged in violation of the provisions of this Article, upon notice that such discharge has occurred, shall immediately notify the office, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the office receiving the notification shall immediately notify the Secretary of Natural and Economic Resources or such member or members of the permanent staff of the office as the Secretary may designate. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "director" or assistant director of the Board" and "Secretary" for "director" in the second sentence.

**§ 143-215.86. Other State agencies.** — (a) Cooperative Effort. — The Board of Transportation, the North Carolina Wildlife Resources Commission,



and any other agency of this State shall cooperate with and lend assistance to the Environmental Management Commission by assigning to the Environmental Management Commission upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil discharged upon the land or into the waters of this State.

(b) Planning. — Subsequent to May 16, 1973, and prior to September 1, 1973, designated representatives of the Environmental Management Commission, the Board of Transportation, and the Wildlife Resources Commission and any other agency or agencies of the State which the Environmental Management Commission shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules and regulations as shall be necessary to effectuate the purposes of this section.

(c) Accounts. — Every State agency participating in the containment, collection, dispersal or removal of an oil discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Environmental Management Commission upon completion of the project or activity. (1973, c. 507, s. 5; c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note. —**

Session Laws 1973, c. 1262, s. 23, effective July 1, 1974, deleted "the North Carolina Department of Conservation and Development" following "Board of Transportation" near the beginning of

subsection (a) and "the Department of Conservation and Development" following "Board of Transportation" near the beginning of subsection (b) and substituted "Environmental Management Commission" for "Board" throughout the section.

**§ 143-215.87. Oil Pollution Protection Fund.** — There is hereby established under the control and direction of the Department an Oil Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil discharged to the land or waters of this State or for restoration necessitated by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word "penalties" means civil penalties and does not include criminal fines or penalties. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note. —** The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in three places.

**§ 143-215.88. Payments to State agencies.** — Upon completion of any oil removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State that has participated by furnishing personnel, equipment or material shall deliver to the Department a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary to each such agency from the Oil Pollution Protection Fund. Upon completion of any oil removal or restoration project or activity, the



Secretary shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the oil discharged to the land or waters of the State, unless the Environmental Management Commission shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-215.84(b). Any person having control of oil discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil shall be directly liable to the State for the necessary expenses of oil cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person having control over the oil discharged shall fail or refuse to pay the sum expended by the State, the Secretary shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in the first sentence, "Environmental Management

Commission" for "Board" in the third sentence and "Secretary" for "director" in the second, third and last sentences.

**§ 143-215.90. Liability for damage to public resources.** — Any person who violates any of the provisions of this Article, or any order, rule or regulation of the Environmental Management Commission adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the Environmental Management Commission made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Environmental Management Commission, shall be liable to pay the State damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands adjoining the seacoast to their condition prior to the injury, as such condition is determined by the Environmental Management Commission in conference with the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation (or by the designees of any or all of such boards, commissions and agencies). Such damages shall be recoverable in an action brought by the Attorney General in the name of the State in the superior court of the county in which the damage occurred or in which the violator resides or has his or its principal place of business, as he shall elect; provided, that if damages occurred in more than one county, the Attorney General may bring an action in any of the counties where the damages occurred. Any money so recovered by the Attorney General shall be transferred by the Environmental Management Commission to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, deleted "the Board of Conservation and Development," preceding "the Wildlife Resources Commission" near the

end of the first sentence and substituted "Environmental Management Commission" for "Board" and for "Board of Water and Air Resources" throughout the section.



**§ 143-215.91. Penalties.** — (a) Civil Penalties. — Any person who intentionally or negligently discharges oil, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the Environmental Management Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, and such other considerations as the Environmental Management Commission deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Environmental Management Commission describing the violation with reasonable particularity and advising such person that the penalty is due. The Environmental Management Commission may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Environmental Management Commission may adopt. If the amount of such penalty is not paid to the Department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the Environmental Management Commission subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Environmental Management Commission, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business, to recover the amount specified in the final order of the Environmental Management Commission. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

(1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

**§ 143-215.92. Lien on vessel.** — Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States government) from which oil is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil removal specified in this Part and such penalty and costs shall constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the Environmental Management Commission in an amount and with sureties acceptable to the Environmental Management Commission, or a cash deposit is made with the Environmental Management Commission in an amount acceptable to the Environmental Management Commission. Provided further, that such lien shall not have priority over any existing perfected lien or security interest. The Environmental Management Commission may adopt regulations providing for such conditions, limitations,



and requirements concerning the bond or deposit prescribed by this section as the Environmental Management Commission deems necessary. (1973, c. 534, s. 1; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" throughout the section.

### Part 3. Oil Terminal Facilities.

**§ 143-215.99. Oil refinery permits.** — No facility which is used or capable of being used for the purpose of refining oil shall be initiated or constructed prior to July 1, 1975, without a permit from the Department. The Department shall deny such permit upon finding:

- (1) That the installation will have substantial adverse effects on wildlife or on fresh water, estuarine or marine fisheries;
- (2) That the operation of the installation will violate standards of air or water quality promulgated or administered by the Department;
- (3) That the installation will have a substantial adverse effect on a publicly owned park, forest or recreation area; or
- (4) That the installation will have substantial adverse effects on the public health, safety or welfare that are not outweighed by the benefits of the installation.

In the absence of such findings, a permit shall be granted. The Department may adopt rules and regulations prescribing procedures to be followed in connection with such permits. (1973, c. 534, s. 1; c. 1068, ss. 1, 2.)

**Editor's Note.** — The 1973 amendment the introductory paragraph and substituted substituted "July 1, 1975" for "July 1, 1974" in "Department" for "Board" in four places.

## ARTICLE 21B.

### *Air Pollution Control.*

**§ 143-215.106. Administration of air quality program.** — The air quality program of the State of North Carolina shall be administered by the Department of Natural and Economic Resources under the rules, regulations and policies of the North Carolina Environmental Management Commission created pursuant to G.S. 143-214. The Environmental Management Commission shall review and have general oversight and supervision over the creation and administration of local air pollution control programs authorized by this Article. Public hearings on the adoption by the Environmental Management Commission of air quality standards, emission control standards, and classifications for air contaminant sources as well as any proposed revisions in such standards and classifications shall be conducted in accordance with the procedure set forth in subsections (e)(1), (e)(2) and (e)(3) of G.S. 143-214.1. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Board of Water and Air Resources" in the first effective July 1, 1974, substituted sentence and for "Board" in the second and "Environmental Management Commission" for third sentences.

**§ 143-215.107. Air quality standards and classifications.** — (a) The Environmental Management Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.



- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Environmental Management Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To develop and adopt classifications for use in classifying air contaminant sources, which in the judgment of the Environmental Management Commission may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Any person operating or responsible for the operation of air contaminant sources of any class for which the Environmental Management Commission requires reporting shall make reports containing such information as may be required by the Environmental Management Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt such emission control standards as in the judgment of the Environmental Management Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Environmental Management Commission.
- (6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(b) Criteria for Standards. — In developing air quality and emission control standards, the Environmental Management Commission shall recognize varying local conditions and requirements and may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article and Article 21.

(c) Proposed Adoption of Standards and Classifications. — Prior to the adoption by the Environmental Management Commission of air quality standards, emission control standards and classifications for air contaminant sources, and prior to any modification of any such actions previously taken, the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the procedure set forth in subsections (e)(1), (e)(2), and (e)(3) of G.S. 143-214.1.

(d) Final Adoption of Air Quality Standards, Emission Control Standards and Classifications for Air Contaminant Sources. — Upon completion of hearings and consideration of submitted evidence and arguments concerning any proposed action by the Environmental Management Commission with respect to the adoption of air quality standards, emission control standards and classifications for air contaminant sources, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as a part of its official regulations. When final action has been adopted and is published with respect to the aforesaid standards and classifications, the Environmental Management Commission shall likewise publish as a part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.108 and G.S. 143-215.109 to persons within the State as a whole or within any designated area of the State.



(e) Environmental Management Commission's Powers to Modify or Revoke. — The Environmental Management Commission is hereby empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part, any such modification or revocation, however, to be subject to the procedural requirements of this Article and Article 21. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section, and "Environmental Management Commission's" for "Board's" in the catchline to subsection (e).

**§ 143-215.108. Control of sources of air pollution; permits required.** — (a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Environmental Management Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) Establish or operate any air contaminant source;
- (2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;
- (4) Enter into a contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(b) The Environmental Management Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air of the State from any additional or enlarged sources.

The Environmental Management Commission shall have the power:

- (1) To grant and renew a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this section;
- (2) To grant and renew any temporary permit for such period of time as the Environmental Management Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit; and
- (6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing.

The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure



of the Environmental Management Commission to take action on an application for a permit within 90 days after all data, plans, specifications and other required information have been furnished by the applicant shall be deemed as approval of such application.

Any person whose application for a permit or renewal thereof is denied or is granted subject to conditions which are unacceptable to such person or whose permit is modified or revoked shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision upon such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" throughout the section.

**§ 143-215.109. Control of complex sources.** — (a) The Environmental Management Commission shall develop and adopt regulations establishing criteria for controlling the effects of complex sources on air quality. The regulations shall set forth such basic minimum criteria or standards under which the Environmental Management Commission shall approve or disapprove any such construction or modification. The regulations shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources.

(b) If the Environmental Management Commission shall determine that the construction or modification of any complex sources will result in a violation of ambient air quality standards or interfere with the attainment of such standards in any area where an air pollution abatement control program has been established, the Environmental Management Commission shall have authority to disapprove such construction or modification or to approve such construction or modification under such conditions as the Environmental Management Commission shall deem necessary or appropriate.

(c) In adopting the regulations required by this section and in applying such regulations to any complex source, the Environmental Management Commission may conduct such public hearings as it, in its sole discretion, shall deem appropriate, after such notice and pursuant to such procedures as the Environmental Management Commission shall establish in its rules of procedure. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" throughout the section.

**§ 143-215.110. Special orders.** — (a) Issuance. — The Environmental Management Commission is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to time to modify or revoke) a special order or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Environmental Management Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Environmental Management Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar



documents by agreement with the person responsible for pollution of the air, and such document shall have the same force and effect as a special order of the Environmental Management Commission issued pursuant to hearing.

(b) Procedure. — No special order shall be issued by the Environmental Management Commission (unless issued upon the consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.111 and in any applicable rules of procedure of the Environmental Management Commission. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals. — Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Environmental Management Commission shall be final and binding.

(d) Effect of Compliance. — Any person who installs an air-cleaning device for purpose of alleviating or eliminating air pollution in compliance with the terms of, or as result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Environmental Management Commission or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for a period to be fixed by the Environmental Management Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date such special order, consent special order, assurance of voluntary compliance, other document or decision, or the conditions of such permit become finally effective, if:

- (1) The air-cleaning devices result in the elimination or alleviation of air pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance, or other document or decision and complies with any other terms thereof; and
- (2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management

Commission" for "Board" throughout the section.

**§ 143-215.111. General powers of Environmental Management Commission; auxiliary powers. —** In addition to the specific powers prescribed elsewhere in this Article and the applicable general powers prescribed in G.S. 143-215.3, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

- (1) To make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of the State and the several areas thereof, and make recommendations to the General Assembly and other appropriate public and private bodies for the control of such air contaminants.
- (2) To consult, upon request, with any person proposing to construct, install, or otherwise acquire an air pollution source or air-cleaning device for the control of air contaminants concerning the efficacy of such device, or the air problem which may be related to such source, or device; provided, however, that nothing in any such consultation



shall be construed to relieve any person from compliance with this Article and Article 21, rules and regulations adopted pursuant thereto, or any other provision of law.

- (3) To encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide such local units technical and consultative assistance to the maximum extent possible. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" in the introductory paragraph.

**§ 143-215.112. Local air pollution control programs.**—(a) The Environmental Management Commission is authorized and directed to review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and Article 21 and any applicable standards and rules and regulations adopted pursuant thereto. The Environmental Management Commission shall certify any local program which:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article and Article 21, and the standards and rules and regulations issued pursuant thereto; provided, however, the Environmental Management Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Environmental Management Commission;
- (2) Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;
- (3) Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and
- (4) Is approved by the Environmental Management Commission as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

(b) No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of this section and is so certified by the Environmental Management Commission.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

- a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
- b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
- c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
- d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and



- standards duly adopted by the Environmental Management Commission; and administration of such rules, regulations and standards in accordance with provisions of this section.
- e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;
  - f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.
- (2) Subject to the approval of the Environmental Management Commission as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:
- a. Establishing a program under the administration of the duly elected governing body of the county or municipality;
  - b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;
  - c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and
  - d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.
- (3) If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a con-



tinuous boundary and comprise the total area contained in any region designated by the Environmental Management Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

- (4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Environmental Management Commission and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.
- (d)(1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body shall constitute a misdemeanor, punishable as provided in G.S. 143-215.114(b).
- (2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article and Article 21 for any violation of same.



- (3) In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.
  - (4) Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of Chapter 143, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.
- (e) (1) If the Environmental Management Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirement of this Article, the Environmental Management Commission shall, upon due notice, conduct a hearing on the matter.
- (2) If, after such hearing, the Environmental Management Commission determines that an existing local air pollution control program or one which has been certified by the Environmental Management Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.
  - (3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Environmental Management Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article and Article 21. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.
  - (4) If the Environmental Management Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this subdivision may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.
  - (5) Any municipality or county in which the Environmental Management Commission administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Environmental Management Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Environmental Management Commission.
  - (6) Nothing in this Article and Article 21 shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such



date any such program shall meet all requirements of this Article and Article 21 for certification by the Environmental Management Commission as an approved local air pollution control program. Any certification required from the Environmental Management Commission shall be deemed granted unless the Environmental Management Commission takes specific action to the contrary.

- (7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Environmental Management Commission. The Environmental Management Commission shall approve any such application if it is consistent with this Article, Article 21 and other applicable requirements of law.
- (8) Notwithstanding any other provision of this section, if the Environmental Management Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Environmental Management Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Board of Water and Air Resources" and for effective July 1, 1974, substituted "Board" throughout the section. "Environmental Management Commission" for

**§ 143-215.113. General provisions as to procedure; appeals.** — All hearings provided for in this Article to be conducted by the Environmental Management Commission shall be in accordance with the provisions of G.S. 143-215.4. Appeals from any final order or decision of the Environmental Management Commission shall be pursuant to the provisions of G.S. 143-215.5. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" in two places.

**§ 143-215.114. Enforcement procedures.** — (a) Civil Penalties. —

- (1) A civil penalty of not more than five thousand dollars (\$5,000) may be assessed against any person who:
- a. Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;
  - b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;
  - c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;
  - d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article;
  - e. Refuses access to the Environmental Management Commission of [or] its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article; or



- f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.
- (2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Environmental Management Commission may assess a penalty not to exceed five thousand dollars (\$5,000) per day for so long as the violation continues.
  - (3) The Environmental Management Commission, or, if authorized by the Environmental Management Commission, the Department of Natural and Economic Resources may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural and Economic Resources within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.
- (b) Criminal Penalties. —
- (1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any regulation of the Environmental Management Commission implementing any of the said section, shall be guilty of a misdemeanor punishable by a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment not to exceed six months, or by both.
  - (2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article and Article 21, or regulations of the Environmental Management Commission implementing this Article and Article 21, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article and Article 21 or regulations of the Environmental Management Commission implementing this Article and Article 21, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.
  - (3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.
  - (4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and



only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) **Injunctive Relief.** — Whenever the Department of Natural and Economic Resources has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural and Economic Resources, either before or after the institution of any other action or proceeding authorized by this Article and Article 21, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural and Economic Resources for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the violation occurred or may occur. Upon a determination by the court that the alleged violation of the provisions of this Article and Article 21 or the regulation of the Environmental Management Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1973, c. 821, s. 6; c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board" throughout the section.

## ARTICLE 22.

### *State Ports Authority.*

#### **§ 143-216. Creation of Authority; membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.**

**Applied** in *Wood-Hopkins Contracting Co. v. North Carolina State Ports Auth.*, 284 N.C. 732, 202 S.E.2d 473 (1974).

#### **§ 143-223. Terminal railroads.**

**Operation of Interstate Railroad Subjects Authority to Suit in Federal Court.** — The North Carolina State Ports Authority, by knowingly entering into the operation of an interstate railroad, has subjected itself to suit in federal court by private parties to enforce rights created by Congress in the exercise of its power over interstate commerce. *International Longshoremen's Ass'n v. North Carolina State Ports Auth.*, 370 F. Supp. 33 (E.D.N.C. 1974).

**Collective Bargaining with Railroad Employees.** — While this section vests in the Ports Authority the discretionary right to

bargain collectively with certain of the railroad employees, it expressly provides that "such agreements with said employees shall be made in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) . . ." Thus, it is manifest that the North Carolina General Assembly was aware that it was entering into an area of federal regulation governed by the RLA. *International Longshoremen's Ass'n v. North Carolina State Ports Auth.*, 370 F. Supp. 33 (E.D.N.C. 1974).

## ARTICLE 23.

### *Armories.*

#### **§ 143-229. Definitions.**

**Stated** in *Sides v. Cabarrus Mem. Hosp.*, 22 N.C. App. 117, 205 S.E.2d 784 (1974).



## ARTICLE 24.

*Wildlife Resources Commission.***§ 143-246. Executive Director; appointment, qualifications, duties, oath of office, and bond.**

**Editor's Note.** — Because the last sentence of this section relates to past events, no change has been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

**§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.**

**Editor's Note.** — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

**§ 143-248. Transfer of lands, buildings, records, equipment, and other properties.**

**Editor's Note.** — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

**§ 143-249. Transfer of personnel.**

**Editor's Note.** — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

**§ 143-250. Wildlife Resources Fund.**

**Editor's Note.** — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

**§ 143-252. Article subject to Chapter 113.** — Nothing in this Article shall be construed to affect the jurisdictional division between the North Carolina Wildlife Resources Commission and the Department of Natural and Economic Resources contained in Subchapter IV of Chapter 113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter. (1947, c. 263, s. 16; 1965, c. 957, s. 17; 1973, c. 1262, s. 86.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Conservation and Development" for "Department of Natural and Economic Resources" for

**§ 143-253. Jurisdictional questions.** — In the event of any question arising between the Department of Natural and Economic Resources and the North Carolina Wildlife Resources Commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or regulations or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor of the State and his determination shall be binding on each of said bodies. (1947, c. 263, s. 17; 1973, c. 1262, s. 86.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Conservation and Development" for "Department of Natural and Economic Resources" for

**§ 143-254. Conflicting laws; regulations of Department continued.**

**Editor's Note.** — Because the second paragraph of this section relates to past events, no change has been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.



## ARTICLE 25.

*National Park, Parkway and Forests Development Commission.*

§§ 143-255 to 143-257: Repealed by Session Laws 1973, c. 1262, s. 86, effective July 1, 1974.

**Cross Reference.**—As to the North Carolina National Park, Parkway and Forests Development Council, see §§ 143B-322 through 143B-324.

§§ 143-259, 143-260: Repealed by Session Laws 1973, c. 1262, s. 86, effective July 1, 1974.

**Cross Reference.** — As to the North Carolina National Park, Parkway and Forests Development Council, see §§ 143B-322 through 143B-324.

## ARTICLE 29D.

*Manpower Council.*

§ 143-283.44. **North Carolina Manpower Council; organization.** — (a) **Membership.** — The North Carolina Manpower Council shall consist of 15 members appointed by the Governor and, in addition, the chief elected official or his designee of each unit or combination of units of general local government which have federally approved comprehensive manpower plans. The 15 Council members appointed by the Governor shall be as follows: one representative of the State community colleges nominated by the State Board of Education; one representative of the Employment Security Commission; one representative of the Department of Human Resources; one representative of the Department of Administration; at least two representatives of organized labor; at least two representatives of business and industry; at least two representatives of community-based organizations and of the client community to be served under applicable federal legislation; and at least two representatives of the general public. Terms of the initial members of the Council shall be for one year and shall expire on July 1, 1975. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. Service on the Council shall not be deemed incompatible with the holding of any elective or appointive office under the Constitution of North Carolina, Article VI, Sec. 9.

(1973, c. 1459.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, rewrote subsection (a). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

## ARTICLE 30.

*Nutbush Conservation Area.*

§§ 143-284 to 143-286: Repealed by Session Laws 1973, c. 1262, s. 76, effective July 1, 1974.

**Cross Reference.** — As to the John H. Kerr Reservoir Committee, see §§ 143B-328 through 143B-330.

§ 143-286.1. **Nutbush Conservation Area.** — The Department of Natural and Economic Resources is hereby authorized to enter into lease agreements with the proper agencies of the federal government covering the marginal land area of the John H. Kerr Reservoir or so much thereof as may be necessary or desirable in order to develop said area for park purposes and to carry on a program of conservation, forestry development and wildlife protection. The area so obtained shall be known as the Nutbush Conservation Area. The Department



of Natural and Economic Resources is hereby authorized to control and develop the area so leased and to enter into sublease agreements on terms as may be authorized in the original lease agreement. All proceeds obtained from any sublease agreement shall be used exclusively for the further development of the Nutbush Conservation Area. (1953, c. 1312, s. 4; 1963, c. 612, s. 2; 1973, c. 1262, ss. 28, 76.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" in the first sentence and for "John H. Kerr Reservoir Development Commission" in the third sentence.

§§ 143-287, 143-288: Repealed by Session Laws 1973, c. 1262, s. 76, effective July 1, 1974.

**§ 143-289. Contributions from certain counties and municipalities authorized; other grants or donations.** — The boards of county commissioners of the Counties of Granville, Vance and Warren and the municipalities within these counties are authorized and empowered in their discretion to make annual contributions to the Department of Natural and Economic Resources for the purpose of defraying the necessary expenses of operation and the Department of Natural and Economic Resources is authorized and empowered to accept grants or donations from any interested citizens or from any state or federal agency. (1951, c. 444, s. 6; 1973, c. 1262, s. 76.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Commission" in two places.

§§ 143-290, 143-290.1: Repealed by Session Laws 1973, c. 1262, s. 76, effective July 1, 1974.

ARTICLE 31.

*Tort Claims against State Departments and Agencies.*

**§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages.** — The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, Commission finds that there was such negligence on the part of an officer, employee, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of thirty thousand dollars (\$30,000). (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1.)

**Editor's Note.** — The second 1973 amendment substituted "thirty thousand dollars (\$30,000)" for "twenty thousand dollars (\$20,000)" at the end of the last sentence.

Session Laws 1973, c. 1225, s. 2, provides:



"This act shall not apply to claims arising prior to ratification." The act was ratified April 9, 1974.

**Application of Article to Local Units.—**

A tort claim arising out of a local board of education's negligence in installing unsafe glass

at the end of a gymnasium is not an injury of the kind for which an action may be brought against the board under the Tort Claims Act. *Clary v. Alexander County Bd. of Educ.*, 285 N.C. 188, 203 S.E.2d 820 (1974).

**§ 143-293. Appeals to Court of Appeals.**

**Inquiry of Reviewing Court Limited, etc.—**

In reviewing a decision of the Industrial Commission in a case arising under the Tort Claims Act, an appellate court has two questions to consider: whether the Commission's findings of fact are supported by competent evidence, and whether its conclusions of law are supported by its findings

of fact. *Tanner v. State Dep't of Cor.*, 19 N.C. App. 689, 200 S.E.2d 350 (1973).

**Finding of Commission Conclusive if Supported by Competent Evidence.—**

In accord with 2nd paragraph in original. See *Tanner v. State Dep't of Cor.*, 19 N.C. App. 689, 200 S.E.2d 350 (1973).

**§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.**

**Editor's Note.** — The State Nine Months School Fund is now the State Public School Fund.

**Installation of Unsafe Glass at End of Gymnasium.** — A tort claim arising out of a local board of education's negligence in

installing unsafe glass at the end of a gymnasium is not an injury of the kind for which an action may be brought against the board under the Tort Claims Act. *Clary v. Alexander County Bd. of Educ.*, 285 N.C. 188, 203 S.E.2d 820 (1974).

ARTICLE 31A.

*Defense of State Employees.*

**§ 143-300.6. Payment of judgments; compromise and settlement of claims.** — (a) All final judgments awarded in courts of competent jurisdiction against State employees in actions or suits to which this Article applies, or any amounts payable under a settlement of such suits in accordance with this section, shall be paid by the department, agency, board, commission, institution, bureau or authority which employs or employed the State employee. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or to authorize the payment of any judgment or settlement against a State employee in excess of twenty thousand dollars (\$20,000).

(b) The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, provided that no settlement of any such claim in an amount in excess of twenty thousand dollars (\$20,000) shall be made without the approval of the employee. In a case wherein the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, the settlement in excess of twenty thousand dollars (\$20,000) must be approved by the private counsel. (1973, c. 1372.)

ARTICLE 33.

*Judicial Review of Decisions of Certain Administrative Agencies.*

**§ 143-306:** Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

**Cross References.** — For present provisions as to judicial review of decisions of administrative agencies, see §§ 150A-43 through 150A-52.

repealed provisions, see the Editor's note following the analysis to Chapter 150A.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

As to the effect of statutory references to the



§ 143-307: Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

**Cross References.** — For present provisions as to judicial review of decisions of administrative agencies, see §§ 150A-43 through 150A-52.

As to the effect of statutory references to the repealed provisions, see the Editor's note following the analysis to Chapter 150A.

§ 143-308: Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

**Cross References.** — For present provisions as to judicial review of decisions of administrative agencies, see §§ 150A-43 through 150A-52.

As to the effect of statutory references to the

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

**Applied** in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 143-309: Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

**Cross References.** — For present provisions as to judicial review of decisions of administrative agencies, see §§ 150A-43 through 150A-52.

As to the effect of statutory references to the repealed provisions, see the Editor's note following the analysis to Chapter 150A.

**Editor's Note.** — Session Laws 1973, c. 1331,

repealed provisions, see the Editor's note following the analysis to Chapter 150A.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

§§ 143-310 to 143-316: Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

**Cross References.** — For present provisions as to judicial review of decisions of administrative agencies, see §§ 150A-43 through 150A-52.

As to the effect of statutory references to the

s. 4, provides that the act shall not affect any pending administrative hearings.

**Right to Seek Declaratory Judgment.** — Persons who might have waived their right to review under this section were not foreclosed from seeking a declaratory judgment under §§ 1-253 through 1-267. *Webster v. Perry*, 367 F. Supp. 666 (M.D.N.C. 1973).

repealed provisions, see the Editor's note following the analysis to Chapter 150A.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

### ARTICLE 33A.

#### *Rules of Evidence in Administrative Proceedings before State Agencies.*

§ 143-317: Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

**Cross Reference.** — For present provisions as to evidence in administrative proceedings, see §§ 150A-28 through 150A-30.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

**State Administrative Agency Has Statewide Jurisdiction.** — A State administrative agency, as that term is used in this Article, means an authority, board, bureau, commission, committee, department, or officer whose jurisdiction is statewide. *Humble Oil & Ref. Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974).

**Article Is Not Applicable to County and Municipal Agencies.** — Since boards of aldermen and city councils are generally composed of laymen who do not always have the benefit of legal advice, they cannot reasonably be held to the standards required of judicial bodies. For that reason this Article, which requires that the rules of evidence as applied in the General Court of Justice shall be followed in proceedings before State agencies (with noted exceptions), was not made applicable to county and municipal agencies. *Humble Oil & Ref. Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974).



§ 143-318: Repealed by Session Laws 1973, c. 1331, s. 2, effective July 1, 1975.

**Cross Reference.** — For present provisions as to evidence in administrative proceedings, see §§ 150A-28 through 150A-30.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

**Hearings before the Commissioner of Insurance are not within the scope of this section** and § 143-317, requiring administrative

agencies to consider only evidence that would be admissible in court. The Commissioner is free to hear all evidence of any type having reasonable probative value, including any evidence of the type upon which responsible persons are accustomed to rely on the conduct of insurance affairs. State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 19 N.C. App. 263, 198 S.E.2d 575 (1973).

ARTICLE 33B.

*Meetings of Governmental Bodies.*

§ 143-318.1. **Public policy.**

**Stated** in Eggimann v. Wake County Bd. of Educ., 22 N.C. App. 459, 206 S.E.2d 754 (1974).

§ 143-318.4. **Exceptions.** — The agencies or groups following are excluded from the provisions of G.S. 143-318.2:

- (3) The N.C. State Department of Correction
- (4) The State Department of Correction

(1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in subdivision (3) and for "Probation Commission" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (3) and (4) are set out.

§ 143-318.6. **Mandamus and injunctive relief.**

**Application of Section Limited.** — The provisions of this section were intended to apply only to a situation where a citizen has

been refused access to a meeting required to be open. Eggimann v. Wake County Bd. of Educ., 22 N. C. App. 459, 206 S.E.2d 754 (1974).

ARTICLE 34.

*Local Affairs.*

§ 143-319: Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

§ 143-320. **Definitions.** — As used in this Article, unless the context otherwise requires:

"Council" means the Community and Economic Development Council.

"Department" means the Department of Natural and Economic Resources.

"Secretary" means the Secretary of Natural and Economic Resources.

"Recreation" means those interests that are diversionary in character and that aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature, and includes all governmental, private nonprofit and commercial recreation forms of the recreation field and includes parks, conservation, recreation travel, the use of natural resources, wilderness and high density recreation types and the variety of recreation interests in areas and programs which are incorporated in this range. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

**Cross References.**—As to the organization of the Department of Natural and Economic Resources, see §§ 143B-275 through 143B-279. As to the Community and Economic

Development Council, see §§ 143B-305 through 143B-307. As to the Parks and Recreation Council, see §§ 143B-311 through 143B-313.

**Editor's Note.** — The 1973 amendment,



effective July 1, 1974, rewrote the first three definitions, which formerly defined "Council" as the Advisory Council on Local Affairs, "Department" as the North Carolina

Department of Local Affairs and "Director" as the Director of Local Affairs, and deleted a definition of "Division."

§§ 143-321, 143-322: Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

**§ 143-323. Functions of Department of Natural and Economic Resources.** — (a) Recreation. — The Department of Natural and Economic Resources shall have the following powers and duties with respect to recreation:

- (1) To study and appraise the recreation needs of the State and to assemble and disseminate information relative to recreation.
- (2) To cooperate in the promotion and organization of local recreation systems for counties, municipalities, and other political subdivisions of the State, to aid them in the administration, finance, planning, personnel, coordination and cooperation of recreation organizations and programs.
- (3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.
- (4) To establish and promote recreation standards.
- (5) To cooperate with appropriate State, federal, and local agencies and private membership groups and commercial recreation interests in the promotion of recreation opportunities, and to represent the State in recreation conferences, study groups, and other matters of recreation concern.
- (6) To accept gifts, bequests, devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such gifts, bequests, and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.
- (7) To advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned or administered by the State for recreation programs and services on land and water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.
- (8) To act jointly, when advisable, with any other State, local or federal agency, institution, private individual or group in order to better carry out the Department's objectives and responsibilities.

(b) Law and Order. — The Department shall have the following powers and duties with respect to law and order:

- (1) To assist and participate with State and local law-enforcement agencies, at their request, to improve law enforcement and the administration of criminal justice.
- (2) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice.
- (3) To encourage public support and respect for law and order.
- (4) To seek ways to continue to make North Carolina a safe and secure State for its citizens.
- (5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work.
- (6) To make grants for use in pursuing its objectives, under such conditions as are deemed by the Department to be necessary.



(c) Local Planning Assistance. — The Department shall have the following powers and duties with respect to local planning assistance:

- (1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.
- (2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.
- (3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.
- (4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.
- (5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.
- (6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) Federal Assistance. — The Department, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the Executive Budget Act.

(e) General. — The Department shall have the following general powers and duties.

- (1) To study and to sponsor research on all aspects of local government and of relationships between the federal government, the State and local governments in North Carolina.
- (2) To collect, collate, analyze, publish, and disseminate information necessary for the effective operation of the Department and useful to local government.
- (3) To maintain an inventory of data and information, and to act as a clearinghouse of information and as a referral agency with respect to State, federal, and private services and programs available to local government; and to facilitate local participation in those programs by furnishing information, education, guidance, and technical assistance with respect to those programs.
- (4) To assist in coordinating State and federal activities relating to local government.
- (5) To assist local governments in the identification and solution of their problems.



- (6) To assist local officials in bringing specific governmental problems to the attention of the appropriate State, federal, and private agencies.
- (7) To advise and assist local governments with respect to intergovernmental contracts, joint service agreements, regional service arrangements, and other forms of intergovernmental cooperation.
- (8) To inform and advise the Governor on the affairs and problems of local government and on the need for administrative and legislative action with respect to local government. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and

Economic Resources" for "Department of Local Affairs" in the introductory paragraph.

**§ 143-324:** Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

**§ 143-325. Functions of committees. —** (a) Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

(c) Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

**Editor's Note. —** The 1973 amendment, effective July 1, 1974, repealed subsection (a), relating to the Committee on Recreation, and subsection (c), relating to other committees and advisory agencies.

As subsection (b) was not changed by the amendment, it is not set out.

**§ 143-326. Transfer of functions, records, property, etc.**

(c) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Community Planning of the Department of Conservation and Development are transferred to the Department of Local Affairs.

(1973, c. 1262, s. 51.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1974, deleted "effective July 1, 1969" at the end of subsection (c). Because this section relates to past events, no other changes have been made

in it pursuant to the 1973 amendatory act, which reorganized the Department of Natural and Economic Resources.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

**§ 143-327:** Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

ARTICLE 37A.

*Marine Science Council.*

**§ 143-347.2. Membership; terms; expenses. —** The North Carolina Marine Science Council shall consist of a chairman and 20 members appointed by the Governor from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the sea. The chairman shall serve at the pleasure of the Governor, and each of the other members shall serve for six-year terms or until their successors are appointed and qualified; provided, however, that four of the first 20 members of the Commission shall be appointed for four-year terms and four for two-year terms. In addition, the State Planning Officer, the Secretary of Natural and Economic Resources, the Secretary of Human Resources, the State Property Officer, the Secretary of Natural and Economic Resources, and the Director of the State Ports Authority, or their designees shall be ex officio members of the Council. The chairman and members of the Council shall serve without compensation for their services but shall be entitled to



reimbursement for the actual and necessary expenses incurred in the performance of their official duties to the same extent as allowed other State officers. (1971, c. 1191, s. 2; 1973, c. 476, s. 128; c. 1262, ss. 23, 86.)

**Editor's Note.** — The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "Director of the State Department of Conservation and Development" and for "Director of the State Department of Water and Air Resources" in the third sentence.

ARTICLE 38.

*Water Resources.*

**§ 143-350. Definitions.** — Definitions as used in this Article:

"Environmental Management Commission" means the Environmental Management Commission created by G.S. 143-214.

"Department" means the Department of Water and Air Resources [Department of Natural and Economic Resources] created by G.S. 143-212. (1959, c. 779, s. 1; 1967, c. 892, s. 12; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" and for "Board of Water and Air Resources." devolved upon the Department of Natural and Economic Resources, the editors have inserted "Department of Natural and Economic Resources" in brackets in this section as set out above.

The 1973 amendatory act, which reorganized the Department of Natural and Economic Resources, did not provide for substituting "Department of Natural and Economic Resources" for "Department of Water and Air Resources" throughout the General Statutes, but, because the functions of the former Department of Water and Air Resources have Sections 143-212 and 143-214, referred to in this section, were repealed by Session Laws 1973, c. 1262, s. 23. As to creation of the Department of Natural and Economic Resources, see § 143B-276. As to creation of the Environmental Management Commission, see § 143B-282.

**§ 143-354. Ordinary powers and duties of the Environmental Management Commission.** — (a) Powers and Duties in General. — Except as otherwise specified in this Article, the powers and duties of the Environmental Management Commission shall be as follows:

- (1) The Environmental Management Commission shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State. It shall investigate the long-range needs of counties and municipalities and other local governments for water supply storage available in federal projects.
- (2) The Environmental Management Commission shall advise the Governor as to how the State's present water research activities might be coordinated.
- (3) The Environmental Management Commission, based on information available, shall notify any municipality or other governmental unit of potential water shortages or emergencies foreseen by the Environmental Management Commission affecting the water supply of such municipality or unit together with the Environmental Management Commission's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or unit. Failure reasonably to follow such recommendations shall make such municipality or other governmental unit ineligible to receive any emergency diversion of waters as hereinafter provided.
- (4) The Environmental Management Commission is authorized to call upon



the Attorney General for such legal advice as is necessary to the functioning of the Environmental Management Commission.

- (5) Recognizing the complexity and difficulties attendant upon the recommendation of the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Environmental Management Commission shall solicit from the various water interests of the State their suggestions thereon.
  - (6) The Environmental Management Commission may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.
  - (7) All recommendations for proposed legislation made by the Environmental Management Commission shall be available to the public.
  - (8) The Environmental Management Commission shall adopt such rules and regulations as may be necessary to carry out the purposes of this Article.
  - (9) Any member of the Environmental Management Commission or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.
  - (10) The Environmental Management Commission is authorized to provide to federal agencies the required assurances, subject to availability of appropriations by the General Assembly or applicable funds or assurances from local governments, of nonfederal cooperation for water supply storage and other congressionally authorized purposes in federal projects.
  - (11) The Environmental Management Commission is authorized to assign or transfer to any county or municipality or other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon the assumption of repayment obligation therefor, or compensation to the State, by such local government. The Environmental Management Commission shall also have the authority to reassign or transfer interests in such storage held by local governments, if indicated by the investigation of needs made pursuant to subsection (a)(1) of this section, subject to equitable adjustment of financial responsibility.
- (b) Declaration of Water Emergency. — Upon the request of the governing body of a county, city or town the Environmental Management Commission shall conduct an investigation to determine whether the needs of human consumption, necessary sanitation and public safety require emergency action as hereinafter provided. Upon making such determination, the Environmental Management Commission shall conduct a public hearing on the question of the source of relief water after three days' written notice of such hearing has been given to any persons having the right to the immediate use of water at the point from which such water is proposed to be diverted. After determining the source of such relief water the Environmental Management Commission shall then notify the Governor and he shall have the authority to declare a water emergency in an area including said county, city or town and the source or sources of water available for the relief hereinafter provided; provided, however, that no emergency period shall exceed 30 days but the Governor may declare any number of successive emergencies upon request of the Environmental Management Commission.
- (c) Water Emergency Powers and Duties of the Environmental Management



**Commission.** — Whenever, pursuant to this Article, the Governor has declared the existence of a water emergency within a particular area of the State, the Environmental Management Commission shall have the following duties and powers to be exercised only within said area and only during such time as the Governor has, pursuant to this Article, designated as the period of emergency:

- (1) To authorize any county, city or town in which an emergency has been declared to divert water in the emergency area sufficient to take care of the needs of human consumption, necessary sanitation and public safety. Provided, however, there shall be no diversion of waters from any stream or body of water pursuant to this Article unless the person controlling the water or sewerage system into which such waters are diverted shall first have limited and restricted the use of water in such water or sewerage system to human consumption, necessary sanitation and public safety and shall have effectively enforced such restrictions. Diversion of waters shall cease upon the termination of the water emergency or upon the finding of the Environmental Management Commission that the person controlling the water or sewerage system using diverted waters has failed to enforce effectively the restrictions on use to human consumption and necessary sanitation and public safety. In the event waters are diverted pursuant to this Article, there shall be no diversion to the same person in any subsequent year unless the Environmental Management Commission finds as fact from evidence presented that the person controlling the water or sewerage system has made reasonable plans and acted with due diligence pursuant thereto to eliminate future emergencies by adequately enlarging such person's own water supply.
- (2) To make such reasonable rules and regulations governing the conservation and use of diverted waters within the emergency area as shall be necessary for the health and safety of the persons who reside within the emergency area; and the violation of such rules and regulations during the period of the emergency shall constitute a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year or both within the discretion of the court; provided, however, that before such rules and regulations shall become effective, they shall be published in not less than two consecutive issues of not less than one newspaper generally circulated in the emergency area.

(d) **Temporary Rights-of-Way.** — When any diversion of waters is ordered by the Environmental Management Commission pursuant to this Article, the person controlling the water or sewerage system into which such waters are diverted is hereby empowered to lay necessary temporary water lines for the period of such emergency across, under or above any and all properties to connect the emergency water supply to an intake of said water or sewerage system. The route of such water lines shall be prescribed by the Environmental Management Commission.

(e) **Compensation for Water Allocated during Water Emergency and Temporary Rights-of-Way.** — Whenever the Environmental Management Commission, pursuant to this Article has ordered any diversion of waters, the person controlling the waters or sewerage system into which such waters are diverted shall be liable to all persons suffering any loss or damage caused by or resulting from the diversion of such waters or caused by or resulting from the laying of temporary water lines to effectuate such diversion. The Environmental Management Commission, before ordering such diversion, shall require that the person against whom liability attaches hereunder to post bond with a surety approved by the Environmental Management Commission in an amount determined by the Environmental Management Commission and



conditioned upon the payment of such loss or damage. (1959, c. 779, s. 1; 1967, c. 1071, ss. 1, 2; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Board" and "Environmental Management Commission's" for "Board's" throughout the "Environmental Management Commission" for section.

**§ 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Natural and Economic Resources and of the Secretary of said Department.**

(b) **Functions to Be Performed.** — It shall be the duty of the Department of Natural and Economic Resources to perform the following functions:

- (1) To request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.
- (2) To initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.
- (3) To prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.
- (4) To make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects, and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.
- (5) To cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.
- (6) To cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.
- (7) To cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.
- (8) To provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.
- (9) To discuss, with federal, State, and municipal officials and other interested persons, a program of development of rivers, harbors, and related resources.
- (10) To make investigations and render reports requested by the Governor and the General Assembly.
- (11) To participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources.



- (12) To prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.
- (13) To formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.
- (14) To include in the biennial budget the cost of performing the additional functions indicated above.
- (15) To initiate, plan, study, and execute a long-range floodplain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of floodplain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate floodplain management programs.

This Department is directed to pursue an active educational program of floodplain management measures, to include in each biennial report a statement of flood damages, location where floodplain management is desirable, and suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(d) Investigation of Coasts, Ports and Waterways of State. — The Department of Natural and Economic Resources is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department of Natural and Economic Resources to represent the State in connection with such duties.

(e) Registration with Department of Natural and Economic Resources Required; Registration Periods. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, shall register annually with the North Carolina Department of Natural and Economic Resources on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year.

(f) Samples of Cuttings to Be Furnished the Department of Natural and Economic Resources When Requested. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department of Natural and Economic Resources samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required. — Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department of Natural and Economic Resources on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log



information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department of Natural and Economic Resources shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(k) **Water Use Information.** — Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department of Natural and Economic Resources showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the using, withdrawing, diverting or obtaining water required to be reported occurred. Provided, however, this provision does not include use for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department of Natural and Economic Resources. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1; 1973, c. 1262, ss. 23, 28, 86.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in subsections (b), (d), (e), (f), (g) and (k). Because

subsections (a) and (j) pertain to past events, they have not been changed pursuant to the 1973 amendatory act.

Only the subsections changed by the amendment are set out.

**§ 143-356. Continuation of Stream Sanitation Committee, Division of Water Pollution Control and Director of Division within Department of Water Resources.**

**Editor's Note.** —

Because this section relates to past events, no changes have been made in it pursuant to

Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

**§ 143-357. Transfer of property, records, and appropriations.**

**Editor's Note.** —

Session Laws 1973, c. 1262, s. 23(b)(60), effective July 1, 1974, provides: "Notwithstanding the conforming changes in the Executive Organization Act of 1973, G.S. 143-357(a) will remain as worded on the date of ratification of the Executive Organization Act of 1973."

Because subsections (b) and (c) of this section relate to past events, no changes have been made in those subsections pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

**§ 143-358. Cooperation of State officials and agencies.** — All State agencies and officials shall cooperate with and assist the State Environmental Management Commission in enforcing and carrying out the provisions of this Article and the rules, regulations and policies adopted by the Environmental Management Commission pursuant thereto. (1959, c. 779, s. 6; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water Resources" and for "Board."

**§ 143-359. Biennial reports of Environmental Management Commission.** — The Environmental Management Commission shall file with the Governor and the General Assembly a biennial report summarizing the activities of the Department for the preceding two years and recommending



changes deemed necessary in laws, policies and administrative organization for a more beneficial use of the State's water resources. (1959, c. 779, s. 7; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, "Environmental Management Commission" for effective July 1, 1974, substituted "Board."

#### ARTICLE 40.

##### *Advisory Commission for State Museum of Natural History.*

**§ 143-370. Commission created; membership.** — There is hereby created an Advisory Commission for the Museum of Natural History which shall determine its own organization. It shall consist of at least nine members, which shall include the Director of the Museum of Natural History, the Commissioner of Agriculture, the State Geologist and Secretary of the Department of Natural and Economic Resources, the Director of the Institute of Fisheries Research of the University of North Carolina, the Director of the Wildlife Resources Commission, the Superintendent of Public Instruction, or qualified representative of any or all of the above-named members, and at least three persons representing the East, the Piedmont, the Western areas of the State. Members appointed by the Governor shall serve for terms of two years with the first appointments to be made effective September 1, 1961. Any member may be removed by the Governor for cause. (1961, c. 1180, s. 1; 1973, c. 1262, s. 86.)

**Editor's Note.** — The 1973 amendment, Resources" for "State Forester of the effective July 1, 1974, substituted "Secretary of Department of Conservation and the Department of Natural and Economic Development."

#### ARTICLE 42.

##### *Board of Science and Technology.*

**§§ 143-378 to 143-383:** Repealed by Session Laws 1973, c. 1262, s. 79, effective July 1, 1974.

**Cross Reference.** — As to the Science and Technology Committee, see §§ 143B-331, 143B-332.

#### ARTICLE 53.

##### *North Carolina Drug Authority.*

**§ 143-472. Drug Authority — organization.** — (a) Membership. — The Drug Authority shall consist of the following 13 members: the Attorney General, the Secretary of Human Resources, the Secretary of Human Resources, the Secretary of Correction, the Secretary of Correction, the Superintendent of Public Instruction, the Chairman of the Board of Governors of the University of North Carolina, the Secretary of Human Resources, the executive officer of the State Board of Pharmacy, a member of the Board of Medical Examiners of the State of North Carolina appointed by the Board of Medical Examiners for a term of two years commencing July 1 of each odd-numbered year, a member of the North Carolina House of Representatives appointed by the Speaker of the House of Representatives for a term of two years commencing July 1 of each odd-numbered year, a member of the North Carolina Senate appointed by the President pro tempore of the Senate for a term of two years commencing July 1 of each odd-numbered year, and a youth member appointed by the Governor for a term of two years commencing July 1 of each odd-numbered year.

The officers and employees of the State listed above shall be deemed to serve as members ex officio of the Drug Authority and their membership on the Authority shall not be deemed to be constitutionally incompatible with the primary offices or places under the terms of the Constitution of North Carolina,



Article VI, Sec. 9. Any ex officio member may designate another person to represent him on the Authority.

(1973, c. 1262, s. 10.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in subsection (a). Pursuant to Session Laws 1973, c. 1262, s.

10, "Secretary of Correction" has also been substituted for "Commissioner of Juvenile Correction" in subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

## ARTICLE 56.

### *Emergency Medical Services Act of 1973.*

#### **§ 143-508. Department of Human Resources to establish program; rules and regulations of North Carolina Medical Care Commission.** —

The State Department of Human Resources shall establish and maintain a program for the improvement and upgrading of emergency medical services throughout the State. The Department shall consolidate all State functions relating to emergency medical services, both regulatory and developmental, under the auspices of this program.

The North Carolina Medical Care Commission is authorized and directed to adopt rules and regulations to carry out the purpose of this Article and Article 26 of Chapter 130 of the General Statutes of North Carolina. Such rules and regulations shall be adopted with the advice of the Emergency Medical Services Advisory Council. All rules and regulations not inconsistent with the provisions of this Article heretofore adopted by the State Board of Health or the Commission for Health Services shall remain in full force and effect until repealed or superseded by action of the North Carolina Medical Care Commission. (1973, c. 208, s. 2; c. 1224, s. 2.)

**Editor's Note.** — The 1973 amendment added the second paragraph of the section.

#### **§ 143-514. Training programs; utilization of emergency services personnel.** —

The Department of Human Resources in cooperation with educational institutions shall develop training programs for emergency medical service personnel. Upon successful completion of such training programs and other programs approved by the Board of Medical Examiners of the State of North Carolina, emergency medical services personnel may, in the course of their emergency medical services duties, perform such acts, tasks and functions as they have been trained to perform and as provided in rules and regulations of such Board, regardless of other provisions of law. (1973, c. 208, s. 8; c. 1121.)

**Editor's Note.** — The 1973 amendment added the second sentence.



**Chapter 143A.**

**State Government Reorganization.**

**Article 2.**

**Article 14.**

**Department of the Secretary of State.**

**Department of Social Rehabilitation and Control.**

Sec.

Sec.

143A-22. [Repealed.]

143A-163 to 143A-170. [Repealed.]

**Article 12.**

**Article 15.**

**Department of Natural and Economic Resources.**

**Department of Commerce.**

143A-109 to 143A-129. [Repealed.]

143A-181. Credit Union Commission.

**ARTICLE 2.**

*Department of the Secretary of State.*

§ 143A-22: Repealed by Session Laws 1973, c. 1409, s. 1.

**ARTICLE 12.**

*Department of Natural and Economic Resources.*

§§ 143A-109 to 143A-129: Repealed by Session Laws 1973, c. 1262, s. 86, effective July 1, 1974.

**Cross Reference.** — For present provisions as to the Department of Natural and Economic Resources, see § 143B-275 et seq.

**ARTICLE 14.**

*Department of Social Rehabilitation and Control.*

§§ 143A-163 to 143A-170: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

**Cross Reference.** — As to transfer of the functions of the Department of Social Rehabilitation and Control to the Department of Correction, see § 143B-262.

**ARTICLE 15.**

*Department of Commerce.*

§ 143A-181. **Credit Union Commission.** — (a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The Secretary of Commerce shall be ex officio a member of the Commission and serve as chairman of the Commission. On the initial Commission three members shall be appointed by the Governor for terms of two years and three members shall be appointed by the Governor for terms of four years. Thereafter all members of the Commission shall be appointed by the Governor for terms of four years. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Four members of the Commission shall be persons who have had three years' or more experience as a credit union director or in management of state-chartered credit unions. No two persons on the Commission shall be residents of the same senatorial district. No person on the Commission shall be on a board of directors or employed by another type of financial institution. The Commission shall meet at least every six months, or more often upon the call of the Secretary of Commerce or any three members of the Commission. A majority



of the members of the Commission shall constitute a quorum. The members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this Chapter as prescribed in G.S. 138-5.

(1973, c. 1254.)

**Editor's Note. —**

The second 1973 amendment substituted "Four members" for "Three members" at the beginning of the sixth sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.



**Chapter 143B.**

**Executive Organization Act of 1973.**

**Article 1.**

**General Provisions.**

Sec:

- 143B-2. Interim applicability of the Executive Organization Act of 1973.
- 143B-6. Principal departments.
- 143B-10. Powers and duties of heads of principal departments.
- 143B-14. Administrative services to commissions.

**Article 3.**

**Department of Human Resources.**

**Part 3. Commission for Health Services.**

- 143B-143. Commission for Health Services — members; selection; quorum; compensation.

**Part 10. North Carolina Medical Care Commission.**

- 143B-165. North Carolina Medical Care Commission — creation, powers and duties.
- 143B-166. North Carolina Medical Care Commission — members; selection; quorum; compensation.
- 143B-167. North Carolina Medical Care Commission—regular and special meetings.
- 143B-168. North Carolina Medical Care Commission—officers.

**Part 13. Council on Developmental Disabilities.**

- 143B-179. Council on Developmental Disabilities—members; selection; quorum; compensation.

**Part 19. Commission for Human Skills and Resource Development.**

- 143B-197. Legislative intent.
- 143B-198. Creation.
- 143B-199. Membership; appointment; terms; vacancies.
- 143B-200. Appointment of Commission staff.
- 143B-201. Power to make rules, enter contracts and accept gifts.
- 143B-202. Authority to receive grants-in-aid.
- 143B-203. Compensation of members.
- 143B-204 to 143B-216. [Reserved.]

**Article 5.**

**Department of Military and Veterans Affairs.**

**Part 3. Energy Division.**

Sec.

- 143B-254. Creation.
- 143B-255. Organization.
- 143B-256 to 143B-259. [Reserved.]

**Article 6.**

**Department of Correction.**

**Part 1. General Provisions.**

- 143B-260. Department of Correction — creation.
- 143B-261. Department of Correction — duties.
- 143B-262. Department of Correction — functions.
- 143B-263. Department of Correction — head.
- 143B-264. Department of Correction — organization.

**Part 2. Board of Correction.**

- 143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services.

**Part 3. Parole Commission.**

- 143B-266. Parole Commission — creation, powers and duties.
- 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services.
- 143B-268 to 143B-274. [Reserved.]

**Article 7.**

**Department of Natural and Economic Resources.**

**Part 1. General Provisions.**

- 143B-275. Department of Natural and Economic Resources — creation.
- 143B-276. Department of Natural and Economic Resources — duties.
- 143B-277. Department of Natural and Economic Resources — functions.
- 143B-278. Department of Natural and Economic Resources — head.
- 143B-279. Department of Natural and Economic Resources — organization.



- Part 2. Board of Natural and Economic Resources.
- Sec.  
143B-280. Board of Natural and Economic Resources — duties; members; selection; meetings; quorum; compensation; services.
- Part 3. Wildlife Resources Commission.
- 143B-281. Wildlife Resources Commission — transfer; independence preserved; appointment of Executive Director and employees.
- Part 4. Environmental Management Commission.
- 143B-282. Environmental Management Commission — creation; powers and duties.
- 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.
- 143B-284. Environmental Management Commission — officers.
- 143B-285. Environmental Management Commission — meetings.
- Part 5. Marine Fisheries Commission.
- 143B-286. Marine Fisheries Commission — creation; powers and duties.
- 143B-287. Marine Fisheries Commission — members; selection; removal; compensation; quorum; services.
- 143B-288. Marine Fisheries Commission — officers.
- 143B-289. Marine Fisheries Commission — meetings.
- Part 6. North Carolina Mining Commission.
- 143B-290. North Carolina Mining Commission — creation; powers and duties.
- 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services.
- 143B-292. North Carolina Mining Commission — officers.
- 143B-293. North Carolina Mining Commission — meetings.
- Part 7. Soil and Water Conservation Commission.
- 143B-294. Soil and Water Conservation Commission — creation; powers and duties.
- 143B-295. Soil and Water Conservation Commission — members; selection; removal; compensation; quorum; services.
- 143B-296. Soil and Water Conservation Commission — officers.
- Sec.  
143B-297. Soil and Water Conservation Commission — meetings.
- Part 8. Sedimentation Control Commission.
- 143B-298. Sedimentation Control Commission — creation; powers and duties.
- 143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.
- Part 9. Wastewater Treatment Plant Operators Certification Commission.
- 143B-300. Wastewater Treatment Plant Operators Certification Commission — creation; powers and duties.
- 143B-301. Wastewater Treatment Plant Operators Certification Commission — members; selection; removal; compensation; quorum; services.
- Part 10. Earth Resources Council.
- 143B-302. Earth Resources Council — creation; powers and duties.
- 143B-303. Earth Resources Council — members; chairman; selection; removal; compensation; quorum; services.
- 143B-304. Earth Resources Council — meetings.
- Part 11. Community and Economic Development Council.
- 143B-305. Community and Economic Development Council — creation; powers and duties.
- 143B-306. Community and Economic Development Council — members; chairman; selection; removal; compensation; quorum; services.
- 143B-307. Community and Economic Development Council — meetings.
- Part 12. Forestry Council.
- 143B-308. Forestry Council — creation; powers and duties.
- 143B-309. Forestry Council — members; chairman; selection; removal; compensation; quorum; services.
- 143B-310. Forestry Council — meetings.
- Part 13. Parks and Recreation Council.
- 143B-311. Parks and Recreation Council — creation; powers and duties.
- 143B-312. Parks and Recreation Council — members; chairman; selection; removal; compensation; quorum; services.
- 143B-313. Parks and Recreation Council — meetings.



Part 14. North Carolina Water Safety Council.

Sec.

- 143B-314. North Carolina Water Safety Council — creation; powers and duties.
- 143B-315. North Carolina Water Safety Council — members; officers; selection; removal; compensation; quorum; services.
- 143B-316. North Carolina Water Safety Council—meetings.

Part 15. Air Quality Council.

- 143B-317. Air Quality Council — creation; powers and duties.
- 143B-318. Air Quality Council — members; chairman; selection; removal; compensation; quorum; services.
- 143B-319. Air Quality Council — meetings.

Part 16. Water Quality Council.

- 143B-320. Water Quality Council — creation; powers and duties.
- 143B-321. Water Quality Council — members; chairman; selection; removal; compensation; quorum; services.

Part 17. North Carolina National Park, Parkway and Forests Development Council.

- 143B-322. North Carolina National Park, Parkway and Forests Development Council — creation; powers and duties.
- 143B-323. North Carolina National Park, Parkway and Forests Development Council — members; selection; officers; removal; compensation; quorum; services.
- 143B-324. North Carolina National Park, Parkway and Forests Development Council — meetings.

Part 18. Commercial and Sports Fisheries Committee.

- 143B-325. Commercial and Sports Fisheries

Sec.

- Committee — creation; powers and duties.
- 143B-326. Commercial and Sports Fisheries Committee — members; chairman; selection; removal; compensation; quorum; services.
- 143B-327. Commercial and Sports Fisheries Committee — meetings.

Part 19. John H. Kerr Reservoir Committee.

- 143B-328. John H. Kerr Reservoir Committee — creation; powers and duties.
- 143B-329. John H. Kerr Reservoir Committee — members; chairman; selection; removal; compensation; quorum; services.
- 143B-330. John H. Kerr Reservoir Committee — meetings.

Part 20. Science and Technology Committee.

- 143B-331. Science and Technology Committee — creation; powers and duties.
- 143B-332. Science and Technology Committee — members; selection; removal; chairman; compensation; quorum; services.

Part 21. North Carolina Trails Committee.

- 143B-333. North Carolina Trails Committee — creation; powers and duties.
- 143B-334. North Carolina Trails Committee — members; selection; removal; compensation.

Part 22. North Carolina Zoological Park Council.

- 143B-335. North Carolina Zoological Park Council — creation; powers and duties.
- 143B-336. North Carolina Zoological Park Council — members; selection; removal; chairman; compensation; quorum; services.

ARTICLE 1.

*General Provisions.*

§ 143B-2. **Interim applicability of the Executive Organization Act of 1973.** — The Executive Organization Act of 1973 shall be applicable only to the following named departments:

- (1) Department of Cultural Resources
- (2) Department of Human Resources
- (3) Department of Revenue
- (4) Department of Military and Veterans Affairs
- (5) Department of Correction



(6) Department of Natural and Economic Resources. (1973, c. 476, s. 2; c. 620, s. 9; c. 1262, ss. 10, 86.)

**Editor's Note.** — Session Laws 1973, c. 1262, ss. 10, 86, effective July 1, 1974, added subdivisions (5) and (6).

**§ 143B-6. Principal departments.** — In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

- (1) Department of Cultural Resources
- (2) Department of Human Resources
- (3) Department of Revenue
- (4) Department of Military and Veterans Affairs
- (5) Department of Correction
- (6) Department of Natural and Economic Resources. (1973, c. 476, s. 6; c. 620, s. 9; c. 1262, ss. 10, 86.)

**Editor's Note.** — Session Laws 1973, c. 1262, ss. 23, 86, effective July 1, 1974, added subdivisions (5) and (6).

**§ 143B-10. Powers and duties of heads of principal departments.**

(b) Reorganization by Department Heads. — With the approval of the Governor, each head of a principal State department may establish or abolish within his department any division. Each head of a principal State department may establish or abolish within his department any other administrative unit to achieve economy and efficiency and in accordance with sound administrative principles, practices, and procedures except as otherwise provided by law. When any such act of the head of the principal State department affects existing law the provisions of Article III, Sec. 5(10) of the Constitution of North Carolina shall be followed.

(d) The head of each principal department may create and appoint committees or councils to consult with and advise the department. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved by the Advisory Budget Commission.

(1973, c. 1416, ss. 1, 2.)

**Editor's Note.** — The 1973 amendment added the third sentence to subsection (b) and added "when approved by the Advisory Budget Commission" at the end of the second sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsections (b) and (d) are set out.

**§ 143B-14. Administrative services to commissions.**

(c) The Governor may assign to an appropriate commission created by the Executive Organization Act of 1973 duties of a quasi-legislative and quasi-judicial nature existing in the executive branch of State government which have not been assigned by this Chapter to any other commission. All such assignment of duties by the Governor to a commission shall be made in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina.

(1973, c. 1416, s. 3.)

**Editor's Note.** — The 1973 amendment deleted "by an executive order which has the

force and effect of law upon issuance but must be submitted to the General Assembly"



following "shall be made" in the second sentence of subsection (c). The amendatory act directed that the words be struck from "lines 5 and 6" of the subsection. In fact, the quoted language extended into line 7.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

### ARTICLE 3.

#### *Department of Human Resources.*

#### Part 3. Commission for Health Services.

**§ 143B-143. Commission for Health Services — members; selection; quorum; compensation.** — The Commission for Health Services of the Department of Human Resources shall consist of 12 members, four of whom shall be elected by the North Carolina Medical Society and eight of whom shall be appointed by the Governor.

One of the members appointed by the Governor shall be a licensed pharmacist, one a dairyman, one a licensed veterinarian, one a licensed optometrist, one a licensed dentist, and one a registered nurse. The initial members of the Commission shall be the members of the State Board of Health who shall serve for a period equal to the remainder of their current terms on the State Board of Health, three of whose appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The North Carolina Medical Society shall have the right to remove any member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor shall have the right to remove any member appointed by him for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. Vacancies on said Commission among the membership elected by the North Carolina Medical Society shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Commission among the membership appointed by the Governor shall be filled by the Governor for the unexpired term.

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 124; c. 1367, ss. 1, 2.)

**Editor's Note.** — The 1973 amendment "and one a registered nurse" near the end of substituted "12" for "11" and "eight" for the first sentence of the second paragraph. "seven" in the first paragraph and inserted

#### Part 10. North Carolina Medical Care Commission.

**§ 143B-165. North Carolina Medical Care Commission — creation, powers and duties.** — There is hereby created the North Carolina Medical Care Commission of the Department of Human Resources with the power and duty to promulgate rules and regulations to be followed in the construction and maintenance of public and private hospitals, medical centers, and related facilities with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.



- (1) The North Carolina Medical Care Commission has the duty to adopt statewide plans for the construction and maintenance of hospitals, medical centers, and related facilities, or such other as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto.
- (8) The Commission shall adopt such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina Medical Care Commission shall remain in full force and effect unless and until repealed or superseded by action of the North Carolina Medical Care Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.
- (9) The Commission shall have the power and duty to adopt rules and regulations with regard to emergency medical services in accordance with the provisions of Article 26 of Chapter 130 and Article 56 of Chapter 143 of the General Statutes of North Carolina. (1973, c. 476, s. 148; c. 1090, s. 2; c. 1224, s. 3.)

**Editor's Note.** — The first 1973 amendment substituted "North Carolina Medical Care Commission" for "Commission for Medical Facility Services and Licensure" in the introductory paragraph and subdivisions (1) and (8). The second 1973 amendment added subdivision (9). Only the introductory paragraph and the subdivisions added or changed by the amendments are set out.

**§ 143B-166. North Carolina Medical Care Commission — members; selection; quorum; compensation.** — The North Carolina Medical Care Commission of the Department of Human Resources shall consist of 17 members appointed by the Governor. Three of the members appointed by the Governor shall be nominated by the North Carolina Medical Society, one member shall be nominated by the North Carolina Nurses Association, one member shall be nominated by the North Carolina Pharmaceutical Association, one member nominated by the Duke Foundation and one member nominated by the North Carolina Hospital Association. The remaining 10 members of the North Carolina Medical Care Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interest groups in North Carolina. One such member appointed by the Governor shall be a dentist licensed to practice in North Carolina. The initial members of the Commission shall be 18 members of the North Carolina Medical Care Commission who shall serve for a period equal to the remainder of their current terms on the North Carolina Medical Care Commission, six of whose appointments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. To achieve the required 17 members the Governor shall appoint three members to the Commission upon the expiration of four members' initial terms on June 30, 1973. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

Vacancies on said Commission among the membership nominated by a society, association, or foundation as hereinabove provided shall be filled by the Executive Committee or other authorized agent of said society, association or foundation until the next meeting of the society, association or foundation at



which time the society, association or foundation shall nominate a member to fill the vacancy for the unexpired term.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 149; c. 1090, s. 2.)

**Editor's Note.** — The 1973 amendment Medical Facility Services and Licensure to changed the name of the Commission for North Carolina Medical Care Commission.

**§ 143B-167. North Carolina Medical Care Commission—regular and special meetings.** — The North Carolina Medical Care Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least nine members. (1973, c. 476, s. 150; c. 1090, s. 2.)

**Editor's Note.** — The 1973 amendment Medical Facility Services and Licensure to changed the name of the Commission for North Carolina Medical Care Commission.

**§ 143B-168. North Carolina Medical Care Commission—officers.** — The North Carolina Medical Care Commission shall have a chairman and vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 151; c. 1090, s. 2.)

**Editor's Note.** — The 1973 amendment Medical Facility Services and Licensure to changed the name of the Commission for North Carolina Medical Care Commission.

### Part 13. Council on Developmental Disabilities.

**§ 143B-179. Council on Developmental Disabilities — members; selection; quorum; compensation.** — The Council on Developmental Disabilities of the Department of Human Resources shall consist of 30 members appointed by the Governor. The composition of the council shall be as follows:

- (1) Fourteen members from the General Assembly and State government agencies as follows: two persons who are members of the Senate, two persons who are members of the House of Representatives, one representative of the Department of Public Education, one representative of the Department of Social Rehabilitation and Control, one representative of the Department of Administration, and seven representatives of the Department of Human Resources to include representatives from the areas of health services, mental health services, vocational rehabilitation services, Governor's Coordinating Council on Aging, services for the blind, social services and institutional services;
- (2) Ten members designated as consumers of services or representatives of consumers of services for the developmentally handicapped, of which at least three members shall be designated as representatives of advocate organizations as follows: one member from the North Carolina Association for Retarded Children, one member from the United Cerebral Palsy of North Carolina, and one member from the North Carolina Chapter of the Epilepsy Foundation of America; and
- (3) Six members at large, who by their interests and efforts have helped provide or may help provide improved services for those who are developmentally disabled, three of whom shall initially be appointed for a term of two years.



The initial members of the Council shall include the appointed members of the Council on Mental Retardation and Developmental Disabilities who shall serve for a period equal to the remainder of their current terms on the Council on Mental Retardation and Developmental Disabilities four of whose terms expire June 30, 1973, four of whose terms expire June 30, 1974, two of whose terms expire June 30, 1975; and three of whose terms expire June 30, 1976. At the end of the respective terms of office of the initial members of the Council, the appointments of all members, with the exception of those from the General Assembly and State agencies shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 169; c. 1117.)

**Editor's Note.** — The 1973 amendment substituted "30" for "21" in the first sentence, substituted "Fourteen" for "Seven" at the beginning of subdivision (1) of the first paragraph, added to subdivision (1) the provisions for seven representatives of the Department of Human Resources and substituted "Ten" for "Six" at the beginning of subdivision (2) of the first paragraph.

#### Part 19. Commission for Human Skills and Resource Development.

**§ 143B-197. Legislative intent.** — The General Assembly hereby declares that it shall be the policy of this State insofar as possible to train and utilize qualified individuals residing in local communities to make available adequate counseling and referral services for all North Carolinians. (1973, c. 961, s. 1.)

**§ 143B-198. Creation.** — There is hereby created within the Department of Human Resources the Commission for Human Skills and Resource Development (hereinafter called the "Commission") which shall provide the mechanism in each county in this State to develop counseling abilities among community resource personnel in helping professions and other appropriate persons. The purpose of this Commission shall be to develop programs to sensitize persons and groups working with individuals and families, to increase competence in counseling skills of selected persons, and to consider ways of dealing with factors which adversely affect the quality of life in North Carolina. (1973, c. 961, s. 2.)

**§ 143B-199. Membership; appointment; terms; vacancies.** — The Commission shall consist of 20 members. Fourteen members shall be appointed by the Governor, and six members shall be appointed from the General Assembly, three by the Speaker of the House of Representatives and three by the President of the Senate. Of the 14 members to be appointed by the Governor for the first Commission, four shall be appointed for a term of one year, five for a term of three years and five for a term of five years. As the terms of these Commissioners expire, the Governor shall appoint their successors for terms of five years. The six members appointed from the General Assembly shall serve



for a term of two years. Any vacancy arising for any cause other than the expiration of the term shall be filled by the original appointing authority for the unexpired term. The Governor shall designate the chairman from among the membership of the Commission. (1973, c. 961, s. 3.)

**§ 143B-200. Appointment of Commission staff.** — A chief administrator and executive officer, a planning officer, a secretary, and other appropriate staff shall be appointed according to the Executive Organization Act of 1973. No person employed by the Commission shall be a member thereof. (1973, c. 961, s. 4.)

**§ 143B-201. Power to make rules, enter contracts and accept gifts.** — The Commission shall make all rules and regulations necessary to its purpose as stated in G.S.143B-197 and is hereby authorized to enter into any agreement or contract, to purchase or lease property both real and personal, to adopt and accept grants and gifts of whatsoever nature, and to do all other things necessary to carry out the interest and purpose of such Commission. (1973, c. 961, s. 5.)

**§ 143B-202. Authority to receive grants-in-aid.** — The Commission is hereby authorized to receive grants-in-aid from the federal government for carrying out the provisions of this part. (1973, c. 961, s. 6.)

**§ 143B-203. Compensation of members.** — The members of the Commission shall receive no compensation for their services; but their travel and per diem expenses shall be paid as authorized for members of State Commissions under G.S. 138-5. (1973, c. 961, s. 7.)

§§ 143B-204 to 143B-216: Reserved for future codification purposes.

## ARTICLE 5.

### *Department of Military and Veterans Affairs.*

#### Part 3. Energy Division.

**§ 143B-254. Creation.** — There is hereby created in the Department of Military and Veterans Affairs a division to be known as the Energy Division. (1973, c. 1253, s. 1.)

**§ 143B-255. Organization.** — The Division shall be organized initially to include an allocations section and a research and conservation section. The Secretary of Military and Veterans Affairs, with the approval of the Governor, may establish additional sections. (1973, c. 1253, s. 2.)

§§ 143B-256 to 143B-259: Reserved for future codification purposes.

## ARTICLE 6.

### *Department of Correction.*

#### Part 1. General Provisions.

**§ 143B-260. Department of Correction — creation.** — There is hereby created and established a department to be known as the Department of Correction with the organization, powers, and duties hereafter defined in the Executive Organization Act of 1973. (1973, c. 1262, s. 2.)

**Editor's Note.** — Session Laws 1973, c. 1262, s. 87, makes the act effective July 1, 1974.



**§ 143B-261. Department of Correction — duties.** — It shall be the duty of the Department to provide the necessary custody, supervision, and treatment to control and rehabilitate criminal offenders and juvenile delinquents and thereby to reduce the rate and cost of crime and delinquency. (1973, c. 1262, s. 3.)

**§ 143B-262. Department of Correction — functions.** — (a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult offenders and juvenile delinquents including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

- (1) The State Department of Correction and Commission of Correction,
- (2) The State Board of Youth Development,
- (3) The State Probation Commission,
- (4) The State Board of Paroles,
- (5) The Interstate Agreement on Detainers, and
- (6) The Uniform Act for Out-of-State Parolee Supervision. (1973, c. 1262, s. 4.)

**§ 143B-263. Department of Correction — head.** — The Secretary of Correction shall be the head of the Department. (1973, c. 1262, s. 5.)

**§ 143B-264. Department of Correction — organization.** — The Department of Correction shall be organized initially to include the Parole Commission, the Board of Correction, the Division of Prisons, the Division of Youth Development, the Division of Adult Probation and Parole, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 1262, s. 6.)

#### Part 2. Board of Correction.

**§ 143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services.** — The Board of Correction shall consider and advise the Secretary of Correction upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Correction in the development of major programs and recommend priorities for the programs within the Department.

The Board of Correction shall have such other responsibilities and shall perform such other duties as may be specifically given to it by the Secretary of Correction.

The Board of Correction shall consist of nine members appointed by the Governor to serve at his pleasure. One member shall be a psychiatrist or a psychologist, one an attorney with experience in the criminal courts, one a judge in the General Court of Justice, five members appointed at large, and the Secretary of Correction who shall be a member and chairman ex officio. The initial composition of the Board of Correction shall include the chairman of the present State Probation Commission, the chairman of the present State Commission of Correction, and the chairman of the present State Board of Youth Development.



Members of the Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Board of Correction shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 7.)

### Part 3. Parole Commission.

**§ 143B-266. Parole Commission — creation, powers and duties.** — (a) There is hereby created a Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State in any prison, jail, or penal institution of this State or its political subdivisions as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release, indeterminate-sentence release, and release of youthful offenders shall have been recommended for release by the Secretary of Correction or his designee.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction. (1973, c. 1262, s. 8.)

**Editor's Note.** — Session Laws 1973, c. 1262, from which this Article was codified, became effective July 1, 1974. The Executive Organization Act of 1973, Session Laws 1973, c. 476, became effective July 1, 1973.

**§ 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services.** — The Parole Commission shall consist of five full-time members, all of whom shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The term of office of the members of the Commission shall be for four years and until their successors are appointed and qualify, the terms of the members shall expire on June 30 with one member's term expiring on June 30 of the first year of a Governor's term, two members' terms expiring on June 30 of the second year of a Governor's term, one member's term expiring on June 30 of the third year of a Governor's term, and one member's term expiring on June 30 of the fourth year of a Governor's term. The terms of the three members presently serving on the Board of Paroles will expire on June 30, 1974, June 30, 1975, and June 30, 1977,



respectively. Thereafter, the terms of individuals filling these positions will be for four years. The two additional members increasing the size of the Commission to five as provided for by this statute, shall be appointed for terms expiring on June 30, 1976, and June 30, 1978, respectively; and thereafter at the end of the respective terms of office of the two new members, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term only.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Commission to serve as chairman at the pleasure of the Governor.

The members of the Commission shall receive pay and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9.)

§§ 143B-268 to 143B-274: Reserved for future codification purposes.

#### ARTICLE 7.

### *Department of Natural and Economic Resources.*

#### Part 1. General Provisions.

§ 143B-275. **Department of Natural and Economic Resources — creation.** — There is hereby recreated and reconstituted a department known as the Department of Natural and Economic Resources with the organization, powers, and duties defined in the Executive Organization Act of 1973. (1973, c. 1262, s. 11.)

§ 143B-276. **Department of Natural and Economic Resources — duties.** — It shall be the duty of the Department:

- (1) To provide for management and protection of the State's natural resources and environment, and
- (2) To promote and assist in the economic development statewide. (1973, c. 1262, s. 12.)

§ 143B-277. **Department of Natural and Economic Resources — functions.** — (a) The functions of the Department of Natural and Economic Resources shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to economic development and the protection and management of natural resources and further including those prescribed powers, duties, and functions enumerated in Article 12 of Chapter 143A of the General Statutes of North Carolina.

(b) All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 12 of Chapter 143A of the General Statutes of North Carolina are hereby transferred to and vested in the Department of Natural and Economic Resources, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, functions of

- (1) The Geodetic Survey Division,



- (2) The North Carolina Board of Science and Technology,
- (3) The North Carolina Forestry Advisory Committee,
- (4) The Mining Council,
- (5) The Commercial and Sports Fisheries Advisory Board,
- (6) The North Carolina National Park, Parkway, and Forests Development Commission,
- (7) The Department of Conservation and Development,
- (8) The Department of Water and Air Resources,
- (9) The Board of Water and Air Resources,
- (10) The Water Control Advisory Council,
- (11) The Air Control Advisory Council,
- (12) The John H. Kerr Reservoir Development Commission,
- (13) The Lockhart Gaddy Wild Goose Refuge Commission,
- (14) The State Soil and Water Conservation Committee,
- (15) The North Carolina Water Safety Committee,
- (16) The Department of Local Affairs,
- (17) The Board of Conservation and Development,
- (18) The Atlantic States Marine Fisheries Commission,
- (19) The Interstate Mining Compact, and
- (20) The Committee on Recreation

and all other committees of the Department of Local Affairs, with the exception of the Committee on Law and Order. (1973, c. 1262, s. 13.)

**§ 143B-278. Department of Natural and Economic Resources — head.** — The Secretary of Natural and Economic Resources shall be the head of the Department. (1973, c. 1262, s. 14.)

**§ 143B-279. Department of Natural and Economic Resources — organization.** — The Department of Natural and Economic Resources shall be organized initially to include the Board of Natural and Economic Resources, the Wildlife Resources Commission, the Environmental Management Commission, the Marine Fisheries Commission, the North Carolina Mining Commission, the State Soil and Water Conservation Commission, the Sedimentation Control Commission, the Wastewater Treatment Plant Operators Commission of Certification, the Earth Resource Council, the Community and Economic Development Council, the Forestry Council, the Parks and Recreation Council, the North Carolina Zoological Park Council, the Water Safety Council, the Air Quality Council, the Water Quality Council, the North Carolina National Park, Parkway and Forests Development Council, the Commercial and Sports Fisheries Committee, the Science and Technology Committee, the federal reservoirs local committees, the North Carolina Trails Committee, the Division of Environmental Management, the Division of Commercial and Sports Fisheries, the Division of Earth Resources, the Division of Community and Economic Development, the Division of Forest Resources, and the Division of Parks and Recreation and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 1262, s. 15.)

## Part 2. Board of Natural and Economic Resources.

**§ 143B-280. Board of Natural and Economic Resources — duties; members; selection; meetings; quorum; compensation; services.** — The Board of Natural and Economic Resources shall consider and advise the Secretary of Natural and Economic Resources upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Natural and Economic Resources in the development of major programs and recommend priorities for programs within the Department.



The Board of Natural and Economic Resources shall perform such other duties as may be specifically given to it.

The Board of Natural and Economic Resources shall consist of the following 25 members. The chairman and one elected member from each of the following Commissions: the Wildlife Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission; the chairman and one elected member from each of the following Councils: the Earth Resources Council, the Community and Economic Development Council, the Forestry Council, and the Parks and Recreation Council; 10 members-at-large appointed by the Governor to serve at his pleasure; and the Secretary of Natural and Economic Resources who shall be a member and chairman ex officio.

The Board of Natural and Economic Resources shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

Members of the Board shall receive per diem and necessary travel expenses in accordance with the provisions of G.S. 138-5.

All clerical and other services required by the Board shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 16.)

#### Part 3. Wildlife Resources Commission.

**§ 143B-281. Wildlife Resources Commission — transfer; independence preserved; appointment of Executive Director and employees.** — The Wildlife Resources Commission, as contained in Chapters 75A, 113 and 143 of the General Statutes and the laws of this State, is hereby transferred to the Department of Natural and Economic Resources. The Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural and Economic Resources and, other provisions of this Chapter notwithstanding, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Any other provisions of this Chapter to the contrary notwithstanding, the Executive Director of the Wildlife Resources Commission shall be appointed by the Commission and the employees of the Commission shall be employed as now provided in G.S. 143-246 and the laws of this State.

Notwithstanding any provision of the Executive Organization Act of 1973 to the contrary, the Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural and Economic Resources to the end that the independence of the Wildlife Resources Commission be preserved, the Executive Organization Act of 1973 shall not be construed as amending or repealing the provisions of this section. (1973, c. 1262, s. 17.)

#### Part 4. Environmental Management Commission.

**§ 143B-282. Environmental Management Commission — creation; powers and duties.** — There is hereby created the Environmental Management Commission of the Department of Natural and Economic Resources with the power and duty to promulgate rules and regulations to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

- (1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:
  - a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S.



- 143-215.108 with regard to controlling sources of air and water pollution;
- b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established;
  - c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
  - d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3;
  - e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3;
  - f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111;
  - g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112;
  - h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112;
  - i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3;
  - j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56;
  - k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13;
  - l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15;
  - m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19;
  - n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29;
  - o. To halt dam construction pursuant to G.S. 143-215.29;
  - p. To grant final approval of dam construction work pursuant to G.S. 143-215.30;
  - q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31;
  - r. To direct the inspection of dams pursuant to G.S. 143-215.32;
  - s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107; and
  - t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter 143.
- (2) The Environmental Management Commission shall have the power and duty to establish standards and adopt rules and regulations:
- a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;
  - b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;
  - c. To implement water and air quality reporting pursuant to G.S. 143-215.68;



- d. To be applied in capacity use areas pursuant to G.S. 143-215.14;
  - e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;
  - f. For the protection of sand dunes pursuant to Chapter 104B of the General Statutes of North Carolina; and
  - g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
- (3) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
  - (4) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural and Economic Resources. (1973, c. 1262, s. 19.)

**§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.** — (a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

- (1) One who shall be a licensed physician;
- (2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have had experience in water and air pollution control activities;
- (3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;
- (4) One who shall, at the time of appointment, be a registered engineer experienced in the planning or conservation of water or air resources, or planning of water or sewer systems, or having experience in the field of industrial water supply or water and air pollution control, or have had practical experience in water supply and water and air pollution control problems of municipal government;
- (5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife activities of the State;
- (6) One who shall, at the time of appointment, be actively connected with or knowledgeable in the groundwater industry;
- (7) Five members interested in water and air pollution control, appointed from the public at large;
- (8) One who shall, at the time of appointment, be actively connected with industrial production or have had experience in the field of industrial air and water pollution control; and
- (9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government. The Governor, by executive order, shall promulgate criteria for determining the eligibility of persons under this section and for this purpose, may promulgate the rules, regulations or guidelines established by any federal agency interpreting and applying equivalent provisions of law.

(b) Members so appointed shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall



replace the member with a new member of like qualifications. The initial members of the Environmental Management Commission shall be those members of the present Board of Water and Air Resources who shall meet the above standards for membership on the Environmental Management Commission and who shall serve on the Environmental Management Commission for a period equal to the remainder of their current terms on the Board of Water and Air Resources four of whose appointments expire June 30, 1975, five of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1979. Any initial appointment to replace a member of the present Board of Water and Air Resources who does not meet the above standards for membership on the Environmental Management Commission shall be for a period equal to the replaced member's unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 20.)

**§ 143B-284. Environmental Management Commission — officers. —** The Environmental Management Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term whichever comes first. (1973, c. 1262, s. 21.)

**§ 143B-285. Environmental Management Commission — meetings. —** The Environmental Management Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 22.)

#### Part 5. Marine Fisheries Commission.

**§ 143B-286. Marine Fisheries Commission — creation; powers and duties. —** There is hereby created the Marine Fisheries Commission of the Department of Natural and Economic Resources with the power and duty to adopt rules and regulations to be followed in the protection, preservation, and enhancement of the commercial and sports fisheries resources of the State.

(1) The Marine Fisheries Commission shall have the following powers and duties:

- a. The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
  1. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
  2. Seasons for taking fish.
  3. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.
- b. To adopt regulations and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of oysters and clams in North Carolina both from public grounds and private beds as provided in G.S. 113-201;



- c. To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204;
  - d. In the interest of conservation of the marine and estuarine resources of North Carolina, the Commission may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Department as provided in G.S. 113-206(d);
  - e. To delegate to the Secretary of Natural and Economic Resources the authority by proclamation to suspend or implement, in whole or in part, particular regulations of the Commission which may be affected by variable conditions as provided in G.S. 113-221(e);
  - f. To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this [Subchapter] as provided by G.S. 113-223;
  - g. To make relevant provisions of federal laws and regulations as State regulations pursuant to G.S. 113-228; and
  - h. To control activities in coastal wetlands as provided in G.S. 113-230.
- (2) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules and regulations:
- a. Implementing the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134 of the General Statutes of the State of North Carolina.
  - b. For the disposition of confiscated property as set forth in G.S. 113-137;
  - c. Governing all license requirements and taxes prescribed in Chapter 113, Article 14;
  - d. Governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina as provided in G.S. 113-160;
  - e. Governing the possession, transportation and disposition of seafood as provided in G.S. 113-164;
  - f. Regarding the disposition of the young of edible fish taken incidentally and unavoidably as provided by G.S. 113-185;
  - g. Regarding the leasing of public grounds for oysters and clam production as provided in G.S. 113-202;
  - h. Governing utilization of private fisheries as provided in G.S. 113-205;
  - i. Regarding permits to dredge or fill as provided in G.S. 113-229; and
  - j. Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters as provided in G.S. 113-265.
- (3) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:
- a. The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department.
  - b. The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties as provided in G.S. 113-182.
- (4) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for coastal



resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

- (5) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural and Economic Resources. (1973, c. 1262, s. 24.)

**Editor's Note.** — The word "Subchapter" Chapter contains no Subchapters and the in subdivision (1)f of this section has meaning of the reference is unclear. been enclosed in brackets because this

**§ 143B-287. Marine Fisheries Commission — members; selection; removal; compensation; quorum; services.** — The Marine Fisheries Commission shall consist of seven members appointed by the Governor. The Governor shall select the members so that all the following interests are represented:

- (1) One who shall at the time of appointment be actively connected with and have experience in commercial fishing,
- (2) One who shall at the time of appointment be actively connected with and have experience in wildlife or sport fishing,
- (3) One who shall at the time of appointment have special training and expertise in marine ecology,
- (4) One who shall at the time of appointment be actively connected with and have experience in coastal land development,
- (5) One who shall at the time of appointment be actively connected with and have experience in seafood processing and distribution, and
- (6) Two at large who shall at the time of appointment be residents of the coastal area.

Members so appointed shall serve terms of office of six years. Two of the initial members shall be appointed for two years, two for four years, and three for six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 25.)

**§ 143B-288. Marine Fisheries Commission — officers.** — The Marine Fisheries Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term, whichever comes first. (1973, c. 1262, s. 26.)

**§ 143B-289. Marine Fisheries Commission — meetings.** — The Marine Fisheries Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 27.)



## Part 6. North Carolina Mining Commission.

**§ 143B-290. North Carolina Mining Commission — creation; powers and duties.** — There is hereby created the North Carolina Mining Commission of the Department of Natural and Economic Resources with the power and duty to promulgate rules and regulations for the enhancement of the mining resources of the State.

- (1) The North Carolina Mining Commission shall have the following powers and duties:
  - a. To act as the advisory body to the Interstate Mining Compact pursuant to G.S. 74-38(a);
  - b. To adopt and modify rules and regulations to implement Chapter 74, Article 6, pursuant to G.S. 74-44(b);
  - c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61; and
  - d. To promulgate rules and regulations necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.
- (2) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (3) The Commission shall make such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural and Economic Resources. (1973, c. 1262, s. 29.)

**§ 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services.** — The North Carolina Mining Commission shall consist of nine members appointed by the Governor. The Commission shall be composed of the following: one member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.

The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The remaining initial members shall be appointed by the Governor to staggered terms of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.



All clerical and other services required by the Commission shall be supplied by the Secretary of the Department. (1973, c. 1262, s. 30.)

**§ 143B-292. North Carolina Mining Commission — officers.** — The North Carolina Mining Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 1262, s. 31.)

**§ 143B-293. North Carolina Mining Commission — meetings.** — The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 32.)

#### Part 7. Soil and Water Conservation Commission.

**§ 143B-294. Soil and Water Conservation Commission — creation; powers and duties.** — There is hereby created the Soil and Water Conservation Commission of the Department of Natural and Economic Resources with the power and duty to adopt rules and regulations to be followed in the development and implementation of a soil and water conservation program.

- (1) The Soil and Water Conservation Commission has the following powers and duties:
  - a. To approve petitions for soil conservation districts;
  - b. To approve application for watershed plans; and
  - c. Such other duties as specified in Chapter 139.
- (2) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural and Economic Resources. (1973, c. 1262, s. 34.)

**§ 143B-295. Soil and Water Conservation Commission — members; selection; removal; compensation; quorum; services.** — The Soil and Water Conservation Commission of the Department of Natural and Economic Resources shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

- (1) The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these positions shall be filled through appointment by the Governor upon the nomination by the executive committee of the North Carolina Association of Soil and Water Conservation Districts;
- (2) Three supervisor members nominated by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State and appointed by the Governor;
- (3) One member appointed at large by the Governor.

The initial members of the Commission shall be the members of the Soil Conservation Committee who shall serve for a period equal to the remainder of



their current terms on the Soil Conservation Committee. At the end of the respective terms of office of the initial members of the Commission, their successors, except those members serving in an ex officio capacity, shall be appointed for terms of three years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 35.)

**§ 143B-296. Soil and Water Conservation Commission — officers.** — The Soil and Water Conservation Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 1262, s. 36.)

**§ 143B-297. Soil and Water Conservation Commission — meetings.** — The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 1262, s. 37.)

#### Part 8. Sedimentation Control Commission.

**§ 143B-298. Sedimentation Control Commission — creation; powers and duties.** — There is hereby created the Sedimentation Control Commission of the Department of Natural and Economic Resources with the power and duty to develop and administer a sedimentation control program as herein provided.

The Sedimentation Control Commission has the following powers and duties:

- (1) In cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.
- (2) Develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation pursuant to G.S. 113A-54.
- (3) Conduct public hearings pursuant to G.S. 113A-54.
- (4) Assist local governments in developing erosion and sedimentation control programs pursuant to G.S. 113A-60.
- (5) Assist and encourage other State agencies in developing erosion and sedimentation control programs pursuant to G.S. 113A-56.
- (6) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques pursuant to G.S. 113A-54. (1973, c. 1262, s. 39.)

**§ 143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.** — (a) There is hereby created in the Department of Natural and Economic Resources the North Carolina



Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

- (1) The Secretary of the Department of Natural and Economic Resources, who shall be chairman, and who may designate some other officer in the Department to act in his stead;
- (2) A person to be nominated by the Board of the North Carolina Home Builders Association;
- (3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;
- (4) The president, vice-president, or general counsel of a North Carolina public utility company;
- (5) The Director of the North Carolina Water Resources Research Institute;
- (6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
- (7) A member of the State Soil and Water Conservation Commission;
- (8) A member of the Environmental Management Commission;
- (9) A soil scientist from the faculty of North Carolina State University; and
- (10) Two persons who shall be representatives of nongovernmental conservation interests.

(b) Appointment. — The Commission members shall be appointed by the Governor and all initial appointments shall be made on or before August 1, 1973. All Commission members, except the person filling position number five, as specified above, shall serve staggered terms of office of four years. The person filling position number five shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as he continues as Director of the Water Resources Research Institute. The initial terms of office for members filling positions two, three, and four, as specified above, shall expire June 30, 1975; thereafter, the terms of office for members filling those positions shall be four years. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or, in the case of members filling positions one, five, six, seven, eight, and nine, as specified above, because they no longer possess the required qualifications for membership. In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(c) Compensation. — The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.



(d) Meetings of Commission. — The Commission shall meet at the call of the chairman and shall hold special meetings at the call of a majority of the members. (1973, c. 1262, s. 40.)

Section 113A-53, Subdivision (a)(1) and Subsection (b) as Amended by Session Laws 1973, c. 1417, Effective April 13, 1974.— Session Laws 1973, c. 1417, s. 2, ratified April 13, 1974, and made effective on ratification, rewrote subdivision (1) of subsection (a) of 113A-53 to read as follows:

“(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;”

Session Laws 1973, c. 1417, s. 2, ratified April 13, 1974, and effective on ratification, amended subsection (b) of § 113A-53 to read as follows:

“(b) Appointment. — The Commission members shall be appointed by the Governor and all initial appointments shall be made on or before August 1, 1973. All Commission members, except the person filling position number five, as specified in G.S. 113A-53(a), above, shall serve staggered terms of office of four years. The person filling position number five shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as he continues as Director of the Water Resources Research Institute. The initial terms of office for members filling positions one, two, three and four, as specified in G.S. 113A-53(a), above, shall expire June 30, 1975; thereafter the terms of office for members filling those positions shall be four years. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time, remove any member of the

Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or, in the case of members filling positions one, five, six, seven, eight, and nine, as specified in G.S. 113A-53(a), above, because they no longer possess the required qualifications for membership. In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9 of the North Carolina Constitution. The Governor shall designate a member of the Commission to serve as chairman.”

Section 113A-53 was repealed by Session Laws 1973, c. 1262, s. 41, ratified April 13, 1974, and effective July 1, 1974, and its provisions were incorporated in c. 1262, s. 40, codified above as § 143B-299. Session Laws 1973, c. 1417, ratified April 13, 1974, and effective on ratification, amended subdivision (a)(1) and subsection (b) of repealed § 113A-53 to read as set out in this note. In an opinion of the Attorney General to Mr. James E. Harrington, Secretary of Natural and Economic Resources, July 10, 1974, it was concluded that Session Laws 1973, c. 1417, s. 2, had the effect of amending Session Laws 1973, c. 1262, s. 40, so as to permanently remove the Secretary of Natural and Economic Resources from his position as chairman of the Sedimentation Control Commission.

## Part 9. Wastewater Treatment Plant Operators Certification Commission.

**§ 143B-300. Wastewater Treatment Plant Operators Certification Commission — creation; powers and duties.** — There is hereby created the Wastewater Treatment Plant Operators Certification Commission of the Department of Natural and Economic Resources with the power and duty to adopt rules and regulations with respect to the certification of wastewater treatment plant operators as provided by Article 3 of Chapter 90A of the General Statutes of North Carolina.

The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for programs concerned with the certification of wastewater treatment plant operators which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid. (1973, c. 1262, s. 42.)



**§ 143B-301. Wastewater Treatment Plant Operators Certification Commission — members; selection; removal; compensation; quorum; services.** — The Wastewater Treatment Plant Operators Certification Commission of the Department of Natural and Economic Resources shall consist of seven members appointed by the Secretary of Natural and Economic Resources with the approval of the Environmental Management Commission with the following qualifications:

- (1) Two members shall be currently employed as wastewater treatment plant operators, wastewater plant superintendents, water and sewer superintendents, or equivalent positions with a North Carolina municipality;
- (2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;
- (3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;
- (4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;
- (5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment; and
- (6) One member who is employed by the Department of Natural and Economic Resources and works in the field of water pollution control, who shall serve as chairman of the Certification Commission.

The initial members of the Commission shall be the members of the Wastewater Treatment Plant Operators Board of Certification who shall serve for a period equal to the remainder of their current terms on the Wastewater Treatment Plant Operators Board of Certification. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms of three years and until their successors are appointed and qualify.

The chairman of the Wastewater Treatment Plant Operators Certification Commission shall serve at the pleasure of the Secretary of Natural and Economic Resources.

Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department. (1973, c. 1262, s. 43.)

#### Part 10. Earth Resources Council.

**§ 143B-302. Earth Resources Council — creation; powers and duties.** — There is hereby created the Earth Resources Council of the Department of Natural and Economic Resources. The Earth Resources Council shall have the following functions and duties:

- (1) To advise the Secretary of Natural and Economic Resources with regard



to improving the general welfare of the citizens of the State through the wise use and conservation of its soil, water, mineral and land resources; and

- (2) The Council shall consider and advise the Secretary of Natural and Economic Resources upon any matter that the Secretary may refer to it. (1973, c. 1262, s. 45.)

**§ 143B-303. Earth Resources Council — members; chairman; selection; removal; compensation; quorum; services.** — The Earth Resources Council of the Department of Natural and Economic Resources shall consist of 10 members appointed by the Governor. The composition of the Council shall be as follows: one representative of commercial oil interests, one official of a regional council of government, one land-use planner, one land surveyor, one representative of the mining industry, one geologist, one representative of the construction industry, one engineer, and two representatives of nongovernmental conservation interests.

The Governor shall designate one member of the Council as chairman to serve in such capacity at the pleasure of the Governor.

Of the initial members of the Council, six shall be appointed by the Governor for terms of two years and four shall be appointed for terms of four years. At the end of the respective terms of office of the initial members of the Council, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 46.)

**§ 143B-304. Earth Resources Council—meetings.** — The Earth Resources Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 47.)

**Editor's Note.** — This section originally referred to the Earth Resources Advisory Council. The name of the Council as created by Session Laws 1973, c. 1262, s. 45, is the Earth Resources Council. Therefore the word "Advisory" has been deleted.

## Part 11. Community and Economic Development Council.

**§ 143B-305. Community and Economic Development Council—creation; powers and duties.** — There is hereby created the Community and Economic Development Council of the Department of Natural and Economic Resources. The Community and Economic Development Council shall have the following functions and duties:

- (1) To advise the Secretary of Natural and Economic Resources with respect to the attraction of new commerce and industry, expansion of the existing commerce and industry and the creation of new and better job opportunities for the people of the State;
- (2) To advise the Secretary of Natural and Economic Resources with



respect to the type and effectiveness of planning and management services provided to local government;

- (3) To advise the Secretary of Natural and Economic Resources with respect to the development of scientific and technological industry within the State;
  - (4) To advise the Secretary of Natural and Economic Resources with respect to the orderly development of the travel industry within the State; and
  - (5) The Council shall consider and advise the Secretary of Natural and Economic Resources upon any matter the Secretary may refer to it.
- (1973, c. 1262, s. 48.)

**§ 143B-306. Community and Economic Development Council—members; chairman; selection; removal; compensation; quorum; services.** — The Community and Economic Development Council of the Department of Natural and Economic Resources shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: one member who shall be a local government official, one member who shall be the Executive Secretary of the League of Municipalities, one who shall be the Executive Secretary of the County Commissioners Association, one representative of the tourist industry, one representative of a scientific and technological industry, one member who shall be the president of the North Carolina Industrial Developers Association, one member who shall represent industry at large, one member who shall represent labor, and three members at large, one who shall be a resident of the eastern section, one of the western section and one of the Piedmont section of the State of North Carolina.

The Governor shall designate one member of the Council to serve as chairman at the pleasure of the Governor.

The initial members of the Council other than those members serving in an ex officio capacity shall be appointed to serve for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 49.)

**§ 143B-307. Community and Economic Development Council — meetings.** — The Community and Economic Development Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 50.)

## Part 12. Forestry Council.

**§ 143B-308. Forestry Council — creation; powers and duties.** — There is hereby created the Forestry Council of the Department of Natural and Economic Resources. The Forestry Council shall have the following functions and duties:

- (1) To advise the Secretary of Natural and Economic Resources with respect to all matters concerning the conservation and development of



both state-owned and privately-owned forests in the State, including, the promotion of a more profitable use of forest lands;

- (2) To undertake such studies and make such reports to the Secretary of Natural and Economic Resources as the Secretary may direct; and
- (3) To advise the Secretary of Natural and Economic Resources upon any matter the Secretary may refer to it. (1973, c. 1262, s. 52.)

**§ 143B-309. Forestry Council—members; chairman; selection; removal; compensation; quorum; services.** — The Forestry Advisory Council of the Department of Natural and Economic Resources shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: Three members shall represent wood-using industries; two members shall represent farmers or other private, nonindustrial forest landowners; two members shall represent forestry interests not primarily concerned with the production of commercial timber, those interests to include but not be limited to watershed protection and environmental protection; one member who shall represent forestry organizations; one member who shall represent banking and financial interests; and two members who shall represent the general public.

The Governor shall designate one member of the Council to serve as chairman at the pleasure of the Governor.

The initial members of the Council shall be appointed as follows: five members for two-year terms and six members for four-year terms. At the end of the respective terms of office of the initial members of the Council, the appointments of all members shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 53.)

**§ 143B-310. Forestry Council—meetings.** — The Forestry Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 54.)

#### Part 13. Parks and Recreation Council.

**§ 143B-311. Parks and Recreation Council—creation; powers and duties.** — There is hereby created the Parks and Recreation Council for the Department of Natural and Economic Resources. The Parks and Recreation Council shall have the following functions and duties:

- (1) To advise the Secretary of Natural and Economic Resources with respect to the promotion, development and administration of the State's recreation and park system;
- (2) To advise the Secretary of Natural and Economic Resources with respect to the quality and quantity of the total recreation services provided to the citizens of the State and out-of-state visitors by governmental units, private agencies and commercial organizations;



- (3) To advise the Secretary of Natural and Economic Resources with respect to the development and maintenance of a feasible and effective action program to assure an adequate environment for satisfying recreation experiences;
- (4) To educate and inform the citizens of the State with respect to both the needs and the opportunities of the recreation and park system; and
- (5) The Council shall consider and advise the Secretary of Natural and Economic Resources upon any matter the Secretary may refer to it. (1973, c. 1262, s. 55.)

**§ 143B-312. Parks and Recreation Council—members; chairman; selection; removal; compensation; quorum; services.** — The Parks and Recreation Council shall be composed of 13 members appointed by the Governor. Four of the members must reside in the western part of the State, four must reside in the Piedmont, and four must reside in the eastern part of the State. The composition of the Council shall be as follows: one person who is an active professor in the area of parks and recreation; one person who is an active professor of biology; one local government official who is involved in recreation planning and is aware of the recreational needs of communities; one person who represents private recreational interests; one person who is the chairman of the Zoological Park Council; one person who is the chairman of one of the local federal reservoir advisory committees; and six persons who are citizens of the State and have both knowledge and interest in parks and recreation management. The president of the North Carolina Recreation and Parks Society, Incorporated shall serve as ex officio member of the Council.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

The members of the Council shall be appointed to terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 56.)

**§ 143B-313. Parks and Recreation Council—meetings.** — The Parks and Recreation Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. (1973, c. 1262, s. 57.)

#### Part 14. North Carolina Water Safety Council.

**§ 143B-314. North Carolina Water Safety Council—creation; powers and duties.** — There is hereby created the North Carolina Water Safety Council of the Department of Natural and Economic Resources. The North Carolina Water Safety Council shall have the following functions and duties:

- (1) To advise the Wildlife Resources Commission with respect to the activities of the various public and private agencies, organizations, corporations, and individuals with responsibilities or interests relevant to the maintenance of an effective program of water safety in North Carolina; and



- (2) The Council shall consider and advise the Wildlife Resources Commission upon any matter that the Commission may refer to it. (1973, c. 1262, s. 58.)

**§ 143B-315. North Carolina Water Safety Council — members; officers; selection; removal; compensation; quorum; services.** — The North Carolina Water Safety Council shall consist of 15 members appointed by the Governor. They must represent the various viewpoints and interests respecting water safety that exist within the State.

The Governor shall designate one member of the Council to serve as chairman at his pleasure. The Council shall annually elect one member as vice-chairman to serve in the absence of the chairman.

In order to achieve staggered terms, the Governor shall initially appoint eight members for terms of two years and seven members for terms of four years. After the initial appointments, subsequent appointments of all members of the Council shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 59.)

**§ 143B-316. North Carolina Water Safety Council — meetings.** — The Council shall meet at least semiannually and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least 10 members. (1973, c. 1262, s. 60.)

#### Part 15. Air Quality Council.

**§ 143B-317. Air Quality Council — creation; powers and duties.** — There is hereby created the Air Quality Council of the Department of Natural and Economic Resources. The Air Quality Council shall have the following functions and duties:

- (1) To advise the Environmental Management Commission in the development of rules, regulations and quality standards for air; and
- (2) To consider and to advise the Commission upon any matter the Commission may refer to it. (1973, c. 1262, s. 61.)

**§ 143B-318. Air Quality Council — members; chairman; selection; removal; compensation; quorum; services.** — The Air Quality Council of the Department of Natural and Economic Resources shall consist of nine members appointed by the Governor. The composition of the Council shall be as follows: one registered professional engineer knowledgeable in matters of air pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of air pollution; and one practicing biologist knowledgeable in the principles of air quality management.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.



In order to achieve staggered terms, the Governor shall initially appoint three members for terms of two years, three members for terms of four years, and three members for terms of six years. At the end of the respective terms of office of the initial members, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 62.)

**§ 143B-319. Air Quality Council — meetings.** — The Council shall meet at least semiannually and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 63.)

#### Part 16. Water Quality Council.

**§ 143B-320. Water Quality Council — creation; powers and duties.** — There is hereby created the Water Quality Council of the Department of Natural and Economic Resources. The Water Quality Council shall have the following functions and duties:

- (1) To advise the Environmental Management Commission in the development of rules, regulations and quality standards for water; and
- (2) To consider and to advise the Commission upon any matter the Commission may refer to it. (1973, c. 1262, s. 64.)

**§ 143B-321. Water Quality Council — members; chairman; selection; removal; compensation; quorum; services.** — The Water Quality Council of the Department of Natural and Economic Resources shall consist of nine members appointed by the Governor. The composition of the Council shall be as follows: one registered professional engineer knowledgeable in matters of water pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of water pollution, and one practicing biologist knowledgeable in the principles of water quality management.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

In order to achieve staggered terms, the Governor shall initially appoint three members for terms of two years, three members for terms of four years, and three members for terms of six years. At the end of the respective terms of office of the initial members of the Council, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from



office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 65.)

Part 17. North Carolina National Park, Parkway and Forests  
Development Council.

**§ 143B-322. North Carolina National Park, Parkway and Forests Development Council — creation; powers and duties.** — There is hereby created the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources. The North Carolina National Park, Parkway and Forests Development Council shall have the following functions and duties:

The Council shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah national forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway or the Pisgah or Nantahala national forests. It shall be the duty of the Council to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissioners and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the National Park Service of the federal government, and the North Carolina Department of Transportation through the Department of Natural and Economic Resources. The Council shall provide information to the Department of Natural and Economic Resources to be included in the Department's annual report. It shall also file any suggestions or recommendations as it deems proper with the Department of Natural and Economic Resources in respect to such matters as might be of interest to or affect any department of State government. It shall advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 1262, s. 66.)

**§ 143B-323. North Carolina National Park, Parkway and Forests Development Council — members; selection; officers; removal; compensation; quorum; services.** — The North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and



Economic Resources shall consist of seven members appointed by the Governor. The composition of the Council shall be as follows: one member shall be a resident of Buncombe County, one member a resident of Haywood County, one member a resident of Jackson County, one member a resident of Swain County, three members residents of counties adjacent to the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala national forests. The initial members of the Council shall be the appointed members of the National Park, Parkway and Forests Development Commission who shall serve for a period equal to the remainder of their current terms on the National Park, Parkway and Forests Development Commission. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be for terms of four years, or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The current officers of the North Carolina National Park, Parkway and Forests Development Commission shall continue to serve in that capacity for the remainder of their current terms. Thereafter, the Council shall elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Council, but the secretary need not be a member of the Council. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be reelected. In case of vacancies by resignation or death, the office shall be filled by the Council for the unexpired term of said officer.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973.

Five members of the Council shall constitute a quorum for the transaction of business. (1973, c. 1262, s. 67.)

**§ 143B-324. North Carolina National Park, Parkway and Forests Development Council — meetings.** — The North Carolina National Park, Parkway and Forests Development Council shall meet monthly and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. (1973, c. 1262, s. 68.)

#### Part 18. Commercial and Sports Fisheries Committee.

**§ 143B-325. Commercial and Sports Fisheries Committee — creation; powers and duties.** — There is hereby created the Commercial and Sports Fisheries Committee of the Department of Natural and Economic Resources. The Commercial and Sports Fisheries Committee shall have the following functions and duties:

- (1) To study all matters and activities in connection with the conservation of marine and estuarine resources and make recommendations to the Secretary of Natural and Economic Resources;
- (2) To act as a liaison group between sports and commercial fishermen, and others interested in the beneficial utilization of the marine and estuarine resources, and the Secretary of Natural and Economic Resources;
- (3) The Committee shall consider and advise the Secretary of Natural and Economic Resources upon any matter the Secretary may refer to it; and
- (4) The Committee may originate its own studies on various matters within



the scope of its interests and report on such matters to the public or to the agency or official appropriately concerned. (1973, c. 1262, s. 69.)

**§ 143B-326. Commercial and Sports Fisheries Committee — members; chairman; selection; removal; compensation; quorum; services.** — The Commercial and Sports Fisheries Committee shall consist of nine members appointed by the Governor. The composition of the Committee shall be as follows: three members who are sports fishermen, three members who are commercial fishermen, and three members who are professional scientists with backgrounds relevant to the conservation of marine and estuarine resources.

The Governor shall designate one member of the Committee to serve as chairman at his pleasure.

The initial members of the Committee shall be appointed as follows: four members for two years and five members for four years. At the end of the respective terms of office of the initial members of the Committee, appointments shall be made for four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 70.)

**§ 143B-327. Commercial and Sports Fisheries Committee — meetings.** — The Commercial and Sports Fisheries Committee shall meet at least semiannually and may hold special meetings at any time or place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 71.)

#### Part 19. John H. Kerr Reservoir Committee.

**§ 143B-328. John H. Kerr Reservoir Committee — creation; powers and duties.** — There is hereby created the John H. Kerr Reservoir Committee for the Department of Natural and Economic Resources. The John H. Kerr Reservoir Committee shall have the following functions and duties:

- (1) To study the development of the John H. Kerr area and recommend to the Secretary of Natural and Economic Resources policies and programs that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation;
- (2) To recommend to the Secretary of Natural and Economic Resources reasonable rules and regulations for the use by the public of all real and personal property under jurisdiction of the John H. Kerr Reservoir;
- (3) To consider and advise the Secretary of Natural and Economic Resources upon any matter the Secretary may refer to it; and
- (4) To stimulate, inform and educate the citizens of the State about the needs as well as the opportunities of the John H. Kerr Reservoir. (1973, c. 1262, s. 73.)

**§ 143B-329. John H. Kerr Reservoir Committee — members; chairman; selection; removal; compensation; quorum; services.** — The John H. Kerr



Reservoir Committee shall be composed of nine members appointed by the Governor. Six of these shall be residents of three counties that are contiguous to the John H. Kerr Reservoir: two from Vance County; two from Granville County; and two from Warren County. The remaining three members may be appointed at large.

The Governor shall designate one member of the Committee to serve as chairman at his pleasure.

The initial members of the Committee shall be the appointed members of the John H. Kerr Reservoir Development Commission who shall serve for a period equal to the remainder of their current terms on the John H. Kerr Reservoir Development Commission, five of whose terms expire July 26, 1973, three of whose terms expire July 26, 1975, and one of whose term expires July 26, 1977. At the end of the respective terms of office of the initial members of the Committee, the appointments of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 74.)

**§ 143B-330. John H. Kerr Reservoir Committee — meetings.** — The John H. Kerr Reservoir Committee shall meet at least semiannually and may hold special meetings at any time, any place, within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 75.)

#### Part 20. Science and Technology Committee.

**§ 143B-331. Science and Technology Committee — creation; powers and duties.** — There is hereby created the Science and Technology Committee of the Department of Natural and Economic Resources. The Committee shall have the following functions and duties:

- (1) The Committee shall be responsible for the allocation of funds for, but not necessarily limited to, such objects as grants for scientific engineering or technological projects, the support of scientific or research personnel, the purchase of equipment or supplies, the construction or modification of facilities, and the employment of consultants. In general, such allocations will be made for the support of activities, equipment and facilities in the space and associated science fields relevant to the objectives of the Committee which are associated with the existing public or private agencies in the State, such as the public and private institutions of higher education, the Research Triangle Institute and similar entities.
- (2) The Committee's activities shall be centered in the Research Triangle, and will be closely allied to the Research Triangle Institute.
- (3) The Committee shall encourage liaison between industry, educational institutions, the Research Triangle of North Carolina, and federal agencies, such as the National Aeronautics and Space Administration, the Atomic Energy Commission, the Department of Defense, the National Science Foundation, and the National Institute of Health.



- (4) The Committee shall hold regular meetings to inform industry of the possible space and nuclear applications which can accelerate the growth of the North Carolina industrial economy.
- (5) The Committee shall encourage the cooperation of the State's industrial community, to the end that industry shall assist in screening and identifying research results for possible industrial applications.
- (6) The Committee will from time to time, arrange to have seminars, short courses, visits and practical demonstrations held to foster interest in the results of research as a means of achieving economic progress.
- (7) To advise the Secretary of Natural and Economic Resources upon any matter the Secretary might refer to it. (1973, c. 1262, s. 77.)

**§ 143B-332. Science and Technology Committee — members; selection; removal; chairman; compensation; quorum; services.** — The Science and Technology Committee shall consist of 15 members appointed by the Governor as follows: Two members shall be from the University of North Carolina at Chapel Hill; two members shall be from North Carolina State University at Raleigh; two members shall be from Duke University; three members shall be from the membership of the General Assembly; three members shall be from industry within the State; one member shall be appointed upon nomination of the Executive Committee of the Board of the Research Triangle Institute; and two members shall be appointed by the Governor at large. The members appointed from the University of North Carolina at Chapel Hill and from North Carolina State University at Raleigh shall be nominated by the President of the University of North Carolina System. The members appointed from Duke University shall be nominated by the President of Duke University. The initial members of the Science and Technology Committee appointed by the Governor shall include the members of the Board of Science and Technology who shall serve for a period equal to the remainder of their current terms on the Board of Science and Technology, six of whose appointments expire June 30, 1973, and eight of whose appointments expire June 30, 1975. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 78.)

#### Part 21. North Carolina Trails Committee.

**§ 143B-333. North Carolina Trails Committee — creation; powers and duties.** — There is hereby created the North Carolina Trails Committee of the Department of Natural and Economic Resources. The Committee shall have the following functions and duties:

- (1) To meet not less than two times annually to advise the Department on all matters directly or indirectly pertaining to trails, their use, extent, location, and the other objectives and purposes of G.S. 113A-88.



- (2) To coordinate trail development among local governments, and to assist local governments in the formation of their trail plans and advise the Department of its findings.
- (3) To advise the Secretary of trail needs and potentials pursuant to G.S. 113A-88. (1973, c. 1262, s. 80.)

**§ 143B-334. North Carolina Trails Committee — members; selection; removal; compensation.** — The North Carolina Trails Committee shall consist of seven members appointed by the Secretary of Natural and Economic Resources. Two members shall be from the mountain section, two from the Piedmont section, two from the coastal plain, and one at large. They shall as much as possible represent various trail users.

The initial members of the North Carolina Trails Committee shall be the members of the current North Carolina Trails Committee who shall serve for a period equal to the remainder of their current term on the North Carolina Trails Committee. At the end of the respective terms of office of the initial members of the Committee, the appointment of their successors shall be for staggered terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Secretary of Natural and Economic Resources shall designate a member of the Committee to serve as chairman at the pleasure of the Governor.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973. (1973, c. 1262, s. 81.)

#### Part 22. North Carolina Zoological Park Council.

**§ 143B-335. North Carolina Zoological Park Council — creation; powers and duties.** — There is hereby created the North Carolina Zoological Park Council of the Department of Natural and Economic Resources. The North Carolina Zoological Park Council shall have the following functions and duties:

- (1) To advise the Secretary on the basic concepts of and for the Zoological Park, approve conceptual plans for the Zoological Park and its building;
- (2) To advise on the construction, furnishings, equipment and operations of the North Carolina Zoological Park;
- (3) To recommend programs to promote public appreciation of the North Carolina Zoological Park;
- (4) To disseminate information on animals and the park as deemed necessary;
- (5) To develop effective public support of the North Carolina Zoological Park through whatever means are desirable and necessary;
- (6) To solicit financial and material support from various private sources within and without the State of North Carolina; and
- (7) To advise the Secretary of Natural and Economic Resources upon any matter the Secretary may refer to it. (1973, c. 1262, s. 83.)

**§ 143B-336. North Carolina Zoological Park Council — members; selection; removal; chairman; compensation; quorum; services.** — The North Carolina Zoological Park Council of the Department of Natural and Economic Resources shall consist of 15 members appointed by the Governor. The initial members of the Council shall be the members of the Board of



Directors of the North Carolina Zoo Authority who shall serve for a period equal to the remainder of their current terms on the Board of Directors of the North Carolina Zoological Authority, all of whose terms expire July 15, 1975. At the end of the respective terms of office of the initial members of the Council, the Governor, to achieve staggered terms, shall appoint five members for terms of two years, five members for terms of four years and five members for terms of six years. Thereafter, the appointment of their successors shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural and Economic Resources. (1973, c. 1262, s. 84.)



**Chapter 146.  
State Lands.**

**SUBCHAPTER I. UNALLOCATED STATE LANDS.**

**Article 8.  
Miscellaneous Provisions.**

**Article 2.  
Dispositions.**

**Sec.** 146-33. State agencies to locate and mark boundaries of lands.

**Sec.**  
146-6.1. Protection of marshes and tidelands.  
146-8. Disposition of mineral deposits in State lands under water.

**SUBCHAPTER II. ALLOCATED STATE LANDS.**

**Article 6.  
Acquisitions.**

146-22.1. Acquisition of property.  
146-25.1. Proposals to be secured for leases.

**SUBCHAPTER I. UNALLOCATED STATE LANDS.**

**ARTICLE 2.  
Dispositions.**

**§ 146-6.1. Protection of marshes and tidelands.** — (a) Any person, firm, or corporation owning, leasing, or otherwise being in possession of power-operated earth-moving equipment operating or to be operated in or on publicly owned tidelands, publicly owned beaches, publicly owned marshlands, or navigable waters within the State shall register the same with the Department of Natural and Economic Resources on or before October 1, 1967. Registration as herein provided shall also be required for power-operated equipment used in projects of hauling and placing materials of any sort in areas below the mean high tide. As used herein, the term power-operated earth-moving equipment shall include, but not be limited to, dredges, draglines, bulldozers, motor graders, trucks and like equipment. Unregistered equipment may be used to supplement registered equipment in construction of approved projects.

(d) Any change of ownership of equipment registered under this section, whether by lease, sale or other disposition shall be reported in writing to the Department of Natural and Economic Resources or its successor, which report shall include the name and address of the person, firm or corporation to whom the transfer is made, and such person, firm or corporation shall within 10 days from the date of transfer, register such equipment with the Department of Natural and Economic Resources as heretofore set forth.

(f) The Department of Natural and Economic Resources or its successor shall be responsible for the administration of this section.  
(1973, c. 1262, s. 23.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of

Water Resources" in subsections (a), (d) and (f). As the rest of the section was not changed by the amendment, only subsections (a), (d) and (f) are set out.

**§ 146-8. Disposition of mineral deposits in State lands under water.** — The State, acting at the request of the Department of Natural and Economic Resources, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Natural and Economic Resources, is authorized and empowered to convey or lease to such person or persons as



it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Natural and Economic Resources, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Natural and Economic Resources in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 285; G. S., s. 113-26; 1959, c. 683, s. 1; 1973, c. 1262, s. 86.)

**Editor's Note.** — The 1973 amendment, "Department of Conservation and effective July 1, 1974, substituted "Department Development" in four places. of Natural and Economic Resources" for

### § 146-12. Easements in lands covered by water.

**Local Modification.** — Craven: 1973, c. 1129.

## SUBCHAPTER II. ALLOCATED STATE LANDS.

### ARTICLE 6.

#### *Acquisitions.*

**§ 146-22.1. Acquisition of property.** — In order to carry out the duties of the Department of Administration as set forth in Chapters 143 and 146 of the General Statutes, the Department of Administration is authorized and empowered to acquire by purchase, gift, condemnation or otherwise:

- (13) Lands necessary for acquisition of all or part of an area of environmental concern, as requested pursuant to G.S. 113A-123. (1969, c. 1091, s. 1; 1973, c. 1284, s. 2.)

**Editor's Note.**—The 1973 amendment added subdivision (13).

Session Laws 1973, c. 1284, s. 3, provides: "This act shall become effective July 1, 1974, except that the provisions of this act relating to the selection of the initial Commission shall

become effective upon ratification, and the entire act shall expire on June 30, 1981." The act was ratified April 12, 1974.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (13) are set out.

**§ 146-25.1. Proposals to be secured for leases.** — (a) When it becomes necessary for any agency of the State to lease space within any city or county of the State, where the rental exceeds seven thousand five hundred dollars (\$7,500) per year or the term exceeds three years, said agency shall prepare a set of specifications of its needs for the space, and shall advertise said specifications in a newspaper of general circulation in the city for proposals from prospective lessors of said space. The advertisement shall be run for at least three consecutive weeks, and shall provide that proposals shall be received for at least 20 days from the date of the last advertisement; provided, the provisions of G.S. 146-25.1 do not apply to property owned by governmental agencies and leased to other governmental agencies.

(b) After receipt of the proposals, the agency may then negotiate with the



prospective lessors for leasing of the needed space, taking into account not only the rental offered, but the type of space, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors. The agency shall then present its application to the Department of Administration for the proposed lease as provided by G.S. 146-23; provided, however, that if the lowest rental proposal is not presented, a statement of justification must be submitted to the Department of Administration.

(c) The Department of Administration shall then investigate as provided by this Article, and must present the proposed transaction to the Council of State for its consideration as provided by this Article. In the event the lowest rental proposed is not presented to the Council of State, that body may require a statement of justification, and may examine all proposals. (1973, c. 1448.)

Section Is Applicable to Nonbinding Agreements to Lease Made Prior to April 13, 1974; to Leases Which Expire After April 13, 1974, and Must Be Renegotiated; and to "Emergency Situations". — See Opinion of Attorney General to Mr. M.E. White, N.C. Department of Administration, 43 N.C.A.G. 402 (1974).

## ARTICLE 8.

### *Miscellaneous Provisions.*

§ 146-33. **State agencies to locate and mark boundaries of lands.** — Every State agency shall locate and identify, and shall mark and keep marked, the boundaries of all lands allocated to that agency or under its control. The Department of Administration shall locate and identify, and mark and keep marked, the boundaries of all State lands not allocated to or under the control of any other State agency. The chief administrative officer of every State agency is authorized to contract with the State Department of Correction for the furnishing, upon such conditions as may be agreed upon from time to time between the State Department of Correction and the chief administrative officer of that agency, of prison labor for use where feasible in the performance of these duties. (1957, c. 584, s. 2; G.S., s. 143-145.1; 1959, c. 683, s. 1; 1967, c. 996, s. 13.)

**Editor's Note.** — This section is set out to correct an error in the replacement volume.



**Chapter 147.  
State Officers.**

**Article 3.  
The Governor.**

Sec.  
147-12. Powers and duties of Governor.

Sec.  
147-45. Distribution of copies of State publications.  
147-54.2. Filing of official appointments.

**Article 4.**

**Secretary of State.**

147-36. Duties of Secretary of State.

**Article 5.**

**Auditor.**

147-58. Duties and authority of State Auditor.

**ARTICLE 3.**

*The Governor.*

**§ 147-12. Powers and duties of Governor.** — In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

- (11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. 20-16.2(h), are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, he, if such information warrants, is authorized to declare that a state of emergency exists in the affected area, and is further authorized to order that the Highway Patrol and/or national guard remove the offending vehicles or other causes of the blockade from the emergency area. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C. S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148.)

**Editor's Note.** — The 1973 amendment added subdivision (11). the amendment, only the introductory language and subdivision (11) are set out.

As the rest of the section was not changed by

**ARTICLE 4.**

*Secretary of State.*

**§ 147-36. Duties of Secretary of State.** — It is the duty of the Secretary of State:

- (14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C. S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543; 1967, c. 691, s. 53; 1973, c. 1379, s. 1.)

**Editor's Note.** — The 1973 amendment added subdivision (14). the amendment, only the introductory language and subdivision (14) are set out.

As the rest of the section was not changed by

**§ 147-45. Distribution of copies of State publications.** — The Secretary of State (and the Administrative Officer of the Courts, with respect to Appellate Division Reports) shall, at the State's expense, as soon as possible after publication, distribute such number of copies of the Session Laws, and Senate and House Journals, to federal, State and local governmental officials,



departments and agencies, and to educational institutions for instructional and exchange use, as is set out in the table below:

	Session Laws	House and Senate Journals	Appellate Division Reports
<b>State Departments and Officials:</b>			
Governor	3	1	1
Lieutenant Governor	1	1	1
Auditor	3	1	1
Treasurer	3	1	1
Secretary of State	3	1	1
Superintendent of Public Instruction	3	1	1
Attorney General	10	1	11
Commissioner of Agriculture	3	1	1
Commissioner of Labor	3	1	1
Commissioner of Insurance	3	1	1
Department of Human Resources [Commission for Health Services]	3	1	0
Board of Transportation	3	1	1
Department of Human Resources [Social Services Commission]	3	1	0
Adjutant General	2	0	0
Commissioner of Banks	2	0	0
Secretary of Revenue	5	0	1
Commissioner of Motor Vehicles	1	0	0
Utilities Commission	8	1	8
State School Commission	2	0	0
State Board of Elections	2	0	0
Local Government Commission	2	0	1
Budget Bureau	2	1	1
State Bureau of Investigation	1	0	1
Secretary of Correction	2	0	1
Department of Correction	2	0	1
Department of Natural and Economic Resources	3	1	0
Veterans' Loan Commission	1	0	0
Industrial Commission	7	0	11
State Board of Alcoholic Beverage Control	2	0	0
Division of Purchase and Contract	2	0	0
Division of Property Control	1	0	1
Justices of the Supreme Court	1	1	1
Judges of the Court of Appeals	each 1	each 1	each 1
Clerk of the Supreme Court	each 1	each 1	each 0
Clerk of the Court of Appeals	1	1	0
Judges of the Superior Court	1	0	1
Emergency Judges of the Superior Court	each 1	0	each 1
Special Judges of the Superior Court	each 1	0	each 1
Solicitors of the Superior Court	each 1	0	each 1
Employment Security Commission	1	1	1
State Employment Service	1	0	0



	Session Laws	House and Senate Journals	Appellate Division Reports
Department of Human Resources [Commission for the Blind] . . . . .	1	0	1
State Prison . . . . .	1	0	0
Western North Carolina Sanatorium . . . . .	1	0	0
Eastern North Carolina Sanatorium . . . . .	1	0	0
Department of Cultural Resources [North Carolina Historical Commission] . . . . .	3	0	0
Department of Cultural Resources [State Library] . . . . .	5	5	3
Legislative Building Library . . . . .	25	15	2
Supreme Court Library . . . . .		as many as requested	
Appellate Division Reporter . . . . .	0	0	1
Soil and Water Conservation Commission . . . . .	1	0	0
General Assembly Members and Officials: Representatives of General Assembly . . . . .	1 each	1 each	0
State Senators . . . . .	1 each	1 each	0
Principal Clerk—Senate . . . . .	1	1	0
Reading Clerk—Senate . . . . .	1	1	0
Sergeant at Arms—Senate . . . . .	1	1	0
Principal Clerk—House . . . . .	1	1	0
Reading Clerk—House . . . . .	1	1	0
Sergeant at Arms—House . . . . .	1	1	0
Enrolling Clerk . . . . .	1	0	0
Engrossing Clerk—House . . . . .	1	1	0
Indexer of the Laws . . . . .	1	0	0
Schools and Hospitals:			
University of North Carolina at Chapel Hill . . . . .	65	56	71
University of North Carolina at Charlotte . . . . .	3	1	1
North Carolina State University at Raleigh . . . . .	5	1	1
University of North Carolina at Greensboro . . . . .	3	1	1
Duke University . . . . .	25	25	25
Davidson College . . . . .	1	1	1
Wake Forest University . . . . .	5	5	25
Western Carolina University . . . . .	1	1	1
Appalachian State University . . . . .	1	1	1
Lenoir Rhyne College . . . . .	1	1	1
Elon College . . . . .	1	1	1
Guilford College . . . . .	1	1	1
Wingate College . . . . .	1	1	0
Pfeiffer College . . . . .	1	1	0
Barbara Scotia College . . . . .	1	1	0
East Carolina University . . . . .	1	1	1
Catawba College . . . . .	0	0	1
Atlantic Christian College . . . . .	1	1	1
North Carolina School for the Deaf . . . . .	1	0	0
State Hospital at Raleigh . . . . .	1	0	0
Broughton Hospital . . . . .	1	0	0
State Hospital at Goldsboro . . . . .	1	0	0
Caswell Training School . . . . .	1	0	0



	Session Laws	House and Senate Journals	Appellate Division Reports
School for the Blind and Deaf .....	1	0	0
State Normal School at Fayetteville .....	1	0	1
North Carolina Central University .....	5	5	5
Asheville-Biltmore College .....	1	1	1
Elizabeth City State University .....	1	1	0
Local Officials:			
Clerks of the Superior Courts .....	1 each	1 each	1 each
Register of Deeds of the Counties .....	1 each	0	0
Federal, Out-of-State, and Foreign Officials and Agencies:			
Secretary to President .....	1	0	1
Secretary of State .....	1	1	1
Secretary of Defense .....		0	1
Secretary of Agriculture .....	1	0	1
Attorney General .....	1	0	1
Postmaster General .....	1	0	1
Marshal of United States Supreme Court .....	1	0	1
Department of Justice .....	1	0	1
Bureau of Census .....	1	0	1
Treasury Department .....	1	0	1
Department of Internal Revenue .....	1	0	1
Department of Labor .....	1	1	1
Bureau of Public Roads .....	1	0	1
Department of Commerce .....	1	1	1
Department of Interior .....	1	0	1
Veteran's Administration .....	1	0	1
Securities and Exchange Commission .....	1	0	1
Social Security Board .....	1	0	1
Farm Credit Administration .....	1	0	1
Library of Congress .....	8	2	5
Federal Judges resident in North Carolina .....	1 each	0	1 each
Federal District Attorneys resident in North Carolina .....	1 each	0	1 each
Clerks of Federal Court resident in North Carolina .....	1 each	0	1 each
Chief executives or designated libraries or governments of other states, territories and countries, including Canada, Canal Zone, Puerto Rico, Alaska and Philippine Islands, provided such governments exchange publications with the Supreme Court Library .....	1 each	0	1 each

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for his private use one complete and up-to-date set of the Appellate Division Reports. The copies of Reports furnished each justice or judge as set



out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of Reports.

One copy each of the Public Laws, the Public-Local Laws and the Appellate Division Reports shall be furnished the head of any department of State government created in the future.

Five complete sets of the Public Laws, the Public-Local and Private Laws, the Senate and House Journals and the Appellate Division Reports heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes.

One complete set of the Public Laws, Public-Local Laws, Private Laws, and the Senate and House Journals heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to Elizabeth City State University.

The Governor may delete from the above list, in his discretion, any government official, department, agency or educational institution.

The office of the Attorney General shall receive from the Administrative Office of the Courts 11 copies of the Court of Appeals Reports and advance sheets of the Court of Appeals Reports at no cost to the Attorney General's office. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38.)

**Editor's Note.** —

The sixth 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Director of Probation," "Department of Correction" for "Commissioner of Paroles," "Department of Natural and Economic Resources" for "Department of Conservation and Development" and "Soil and Water Conservation Commission" for "State Soil and

Water Conservation Committee." The sixth amendatory act directed, in s. 38, that "State Soil Conservation Commission" be substituted for "State Soil and Water Conservation Committee" throughout the General Statutes. Section 34 (§ 143B-294) of the sixth 1973 act, however, creates the Soil and Water Conservation Commission, and that title has been used in this section.

**§ 147-54.2. Filing of official appointments.** — All appointments to any State board, agency, commission, council or authority made on or after June 1, 1974, shall be filed in the office of the Secretary of State of North Carolina. All appointments which are required by this section to be filed shall contain the date of the appointment, the legal authority for the appointment, and the date on which such appointment expires.

Appointments made pursuant to this act between January 1, 1973, and June 1, 1974, shall be filed within 10 days of date of appointment or ratification, whichever occurs last. (1973, c. 1379, s. 2.)

**Editor's Note.** — Session Laws 1973, c. 1379, which added this section, was ratified April 12, 1974.

ARTICLE 5.

*Auditor.*

**§ 147-58. Duties and authority of State Auditor.** — The duties and authority of the State Auditor shall be as follows:

- (9) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions or recommendations he deems desirable concerning any aspect of such agency's activities and operations. He shall, from time to time as he deems desirable, make review concerning economy, and efficiency of agencies operation and program effectiveness and file reports of said



operations review with the agency head, the Governor and the Advisory Budget Commission.

- (20) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited in the General Fund as nontax revenue.

(1973, c. 1211; c. 1415.)

**Editor's Note. —**

The third 1973 amendment rewrote the first sentence of subdivision (20), which formerly listed a number of specific agencies and further provided for collection of costs from "any other agency which operates entirely within its own receipts from revenue derived from sources other than the general fund."

The fourth 1973 amendment added the second sentence to subdivision (9).

A provision similar to subdivision (23) of this section was enacted by Session Laws 1973, c. 1463, effective July 1, 1974.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (9) and (20) are set out.



**Chapter 148.**  
**State Prison System.**

**Article 1.**

**Organization and Management.**

- Sec.  
148-1. [Repealed.]  
148-2. Prison moneys and earnings.  
148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.  
148-5. Secretary to manage prison property.

**Article 2.**

**Prison Regulations.**

- 148-11. Authority to make regulations.  
148-12. Diagnostic and classification programs.  
148-18. Wages, allowances and loans.  
148-19. Health services.  
148-20. Corporal punishment of prisoners prohibited.  
148-24. Religious services.  
148-25. Secretary to investigate death of convicts.

**Article 3.**

**Labor of Prisoners.**

- 148-26. State policy on employment of prisoners.  
148-28. Sentencing prisoners to Central Prison; youthful offenders.  
148-33. Prison labor furnished other State agencies.  
148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.  
148-36. Secretary of Correction to control classification and operation of prison facilities.  
148-37. Additional facilities authorized; contractual arrangements.  
148-41. Recapture of escaping prisoners; reward.  
148-42. Indeterminate sentences.  
148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.  
148-48. Parole powers of Parole Commission unaffected.

**Article 3A.**

**Facilities and Programs for Youthful Offenders.**

- 148-49.1. Purpose of Article.

Sec.

- 148-49.2. Definitions.  
148-49.4. Sentencing a youthful offender.  
148-49.5. Classification studies.  
148-49.6. Placement of youthful offenders.  
148-49.7. Treatment of youthful offenders.  
148-49.8. Release of youthful offenders.  
148-49.9. Supervision of released youthful offenders.

**Article 4.**

**Paroles.**

- 148-52. [Repealed.]  
148-52.1. Prohibited political activities of member of Parole Commission or employee of Department.  
148-53. Investigators and investigations of cases of prisoners.  
148-54. Parole supervisors provided for; duties.  
148-55. [Repealed.]  
148-56. Assistance in supervision of parolees and preparation of case histories.  
148-57. Rules and regulations for parole consideration.  
148-58. Time of eligibility of prisoners to have cases considered.  
148-58.1. Limitations on discharge from parole; effect of discharge; relief from further reports; permission to leave State or county.  
148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.  
148-60.1. Allowances for paroled prisoner.  
148-61.1. Revocation of parole by Commission; conditional or temporary revocation.  
148-62. Discretionary revocation of parole upon conviction of crime.  
148-62.1. Entitlement of indigent parolee to counsel, in discretion of Board of Paroles, at revocation hearings.  
148-64. Cooperation of prison and parole officials and employees.

**Article 4A.**

**Out-of-State Parolee Supervision.**

- 148-65.1A. Interstate parole and probation hearing procedures.

**Article 7.**

**Records, Statistics, Research and Planning.**

- 148-74. Records Section.  
148-78. Reports.



**Article 8.**

**Compensation to Persons Erroneously Convicted of Felonies.**

Sec.

- 148-83. Form, requisites and contents of petition; nature of hearing.
- 148-84. Evidence; action by Parole Commission; payment and amount of compensation.

**Article 10.**

**Interstate Agreement on Detainers.**

- 148-89 to 148-95. [Transferred.]
- 148-96 to 148-100. [Reserved.]

**Article 11.**

**Inmate Grievance Commission.**

- 148-101. Commission established; appointment and terms of members; chairman, vacancies; compensation.

Sec.

- 148-102. Appointment and salary of Executive Director, hearing examiners and other personnel.
- 148-103. Removal of members.
- 148-104. Submission of grievance or complaint.
- 148-105. Preliminary review.
- 148-106. Hearing and disposition by Commission; review by Secretary of Correction.
- 148-107. Hearing by examiner; review; disposition.
- 148-108. Access to documentary evidence; subpoenas; oaths and affirmations.
- 148-109. Right of inmate to appear at hearing; opportunity to call witnesses; representation.
- 148-110. Record of complaints.
- 148-111. Conduct of hearing at institutions.
- 148-112. Rules and regulations.
- 148-113. Judicial review.

**ARTICLE 1.**

*Organization and Management.*

§ 148-1: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

**Cross Reference.** — For present provisions as to Department of Correction, see § 143B-260 et seq.

§ 148-2. **Prison moneys and earnings.** — (a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the Department of Correction, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Commission of Correction" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 148-4. **Control and custody of prisoners; authorizing prisoner to leave place of confinement.** — The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned



by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

- (1) Contact prospective employers; or
- (2) Secure a suitable residence for use when released on parole or upon discharge; or
- (3) Obtain medical services not otherwise available; or
- (4) Participate in a training program in the community; or
- (5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister; or
- (6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, and other programs determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109; 1965, c. 1042; 1967, c. 996, ss. 13, 15; 1973, c. 902; c. 1262, s. 10.)

**Editor's Note. —**

The first 1973 amendment added subdivision (6) to the second paragraph.

The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction"

for "Commissioner of Correction" and "Secretary" for "Commissioner" throughout the section.

Cited in *State v. Stewart*, 19 N.C. App. 112, 198 S.E.2d 30 (1973).

**§ 148-5. Secretary to manage prison property. —** The Secretary of Correction shall manage and have charge of all the property and effects of the State prison system, and conduct all its affairs subject to the provisions of this Chapter and the rules and regulations legally adopted for the government thereof. (1933, c. 172, s. 4; 1955, c. 238, s. 3; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

**Editor's Note. —** The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."



ARTICLE 2.

*Prison Regulations.*

**§ 148-11. Authority to make regulations.** — The Secretary shall propose rules and regulations for the government of the State prison system, which shall become effective when approved by the Department of Correction. The Secretary shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C. S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4; 1967, c. 996, ss. 14, 15; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary" for "Commissioner" and "Department of Correction" for "Commission of Correction."

**§ 148-12. Diagnostic and classification programs.**

(c) Any prisoner confined in the State prison system while under a sentence of imprisonment imposed upon conviction of a felony shall be classified and treated as a convicted felon even if, before beginning service of the felony sentence, such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 5; 1959, c. 50; 1967, c. 996, s. 2; 1973, c. 1446, s. 27.)

**Editor's Note.** — The 1973 amendment substituted "of" for "to" following "while under a sentence" near the beginning of subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.

**§ 148-18. Wages, allowances and loans.**

(c) The Department of Correction shall establish a revolving fund from inmate welfare funds available to the Department to be used for loans to prisoners and parolees in accordance with regulations approved by the Department of Correction. (1935, c. 414, s. 19; 1967, c. 996, s. 3; 1969, c. 982; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Commission of Correction" at the end of subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.

**§ 148-19. Health services.**

(b) Upon request of the Secretary of Correction, the Secretary of Human Resources may detail personnel employed by the Department of Human Resources to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Human Resources, and reimbursed from applicable appropriations to the Department of Correction. The Secretary of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services. (1973, c. 1262, s. 10.)

**Editor's Note.** — The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in subsection (b). As the rest of the section was not changed by the amendment, only subsection (b) is set out.



**§ 148-20. Corporal punishment of prisoners prohibited.** — It is unlawful for the Secretary of Correction or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

**§ 148-24. Religious services.** — The general policies, rules and regulations of the Department of Correction shall provide for religious services to be held in all units of the State prison system on Sunday and at such other times as may be deemed appropriate. Attendance of prisoners at religious services shall be voluntary. The Secretary of Correction shall if possible secure the visits of some minister at the prison hospitals to administer to the spiritual wants of the sick. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163; c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 6; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

**§ 148-25. Secretary to investigate death of convicts.** — The Secretary of Correction, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Secretary may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C. S., s. 7746; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary" for "Commissioner."

### ARTICLE 3.

#### *Labor of Prisoners.*

**§ 148-26. State policy on employment of prisoners.**

(e) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Secretary of Natural and Economic Resources as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in subsection (e). As the rest of the section was not changed by the amendment, only subsection (e) is set out.

**§ 148-28. Sentencing prisoners to Central Prison; youthful offenders.** — The several judges of the superior courts of this State are hereby given



express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offense or the character or condition of the defendant makes it advisable to do so, to sentence such person to the Central Prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the Central Prison. Provided, that a person under 16 years of age convicted of a felony shall not be sentenced to or imprisoned in the Central Prison at Raleigh unless (i) said person was convicted of a capital felony or (ii) has previously been imprisoned in a county jail or under the authority of the Department of Correction upon conviction of a felony. This provision shall not limit the authority of the Secretary of Correction from transferring a person under 16 years of age to Central Prison when in the Secretary's determination this person would not benefit from confinement in separate facilities for youthful offenders or when it has been determined that his presence would be detrimental to the implementation of programs designed for the benefit of other youthful offenders. Nor shall this provision limit the authority of the judges of the superior courts of this State or the Secretary of Correction from committing or transferring a person under 16 years of age to Central Prison for medical or psychiatric treatment. (1933, c. 172, s. 7; 1971, c. 691; 1973, c. 1262, s. 10.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary's" for "Commissioner's."

**§ 148-33. Prison labor furnished other State agencies.** — The State Department of Correction may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such Department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of G.S. 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. Provided, further, that notwithstanding any provisions of law contained in this Article or in this Chapter, no male prisoner or group of male prisoners may be assigned to work in any building utilized by any State department, agency, or institution where women are housed or employed unless a duly designated custodial agent of the Secretary of Correction is assigned to the building to maintain supervision and control of the prisoner or prisoners working there. (1933, c. 172, s. 30; 1957, c. 349, s. 10; 1961, c. 966; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

**§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.**

(b) The Parole Commission of this State may authorize the State Department of Correction to grant work-release privileges to any inmate of the State prison system serving a term of imprisonment: Provided, in any case where the inmate being considered for work-release privileges has not yet served a fourth of his sentence if determinate or a fourth of his minimum sentence if indeterminate, the Parole Commission shall not authorize the Department of Correction to grant him work-release privileges without considering the recommendations of the presiding judge of the court which imposed the sentence.

(d) The Parole Commission is authorized and directed to establish a work-release plan under which an eligible prisoner may be released from actual custody during the time necessary to proceed to the place of his employment,



perform his work, and return to quarters designated by the prison authorities. No prisoner shall be granted work-release privileges except upon recommendation of the presiding judge set forth in the judgment of imprisonment or written authorization of the Parole Commission. If the prisoner shall violate any of the conditions prescribed by prison rules and regulations for the administration of the work-release plan, then such prisoner may be withdrawn from work-release privileges, and the prisoner may be transferred to the general prison population to serve out the remainder of his sentence. Rules and regulations for the administration of the work-release plan shall be established in the same manner as other rules and regulations for the government of the State prison system.

(1973, c. 1262, s. 10.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" in two places in subsection (b) and in one place in subsection (d). The amendment also substituted "Parole

Commission" for "State Department of Correction" in the first sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsections (b) and (d) are set out.

**§ 148-36. Secretary of Correction to control classification and operation of prison facilities.** — All facilities established or acquired by the State Department of Correction shall be under the administrative control and direction of the Secretary of Correction, and operated under rules and regulations proposed by the Secretary and adopted by the Department of Correction as provided in G.S. 148-11. Subject to such rules and regulations, the Secretary shall classify the facilities of the State prison system and develop a variety of programs so as to permit proper segregation and treatment of prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and correctional treatment of persons committed to the Department. The Secretary of Correction, or his authorized representative, shall designate the places of confinement where sentences to imprisonment in the State's prison system shall be served. The Secretary or his representative may designate any available facility appropriate for the individual in view of custodial and correctional considerations. (1931, c. 145, s. 28; c. 277, s. 8; 1933, c. 46, ss. 3, 4; c. 172, ss. 4, 17; 1943, c. 409; 1955, c. 238, s. 7; 1957, c. 349, s. 10; 1967, c. 996, s. 7; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary" for "Commissioner" throughout the section

and substituted "Department of Correction" for "Commission of Correction" near the end of the first sentence.

**§ 148-37. Additional facilities authorized; contractual arrangements.**

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in federal, county or city facilities located in North Carolina, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Any contract made under the authority of this section shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts for receiving federal, county, and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund



to compensate for the additional care and maintenance of such prisoners as are received under such contracts. (1933, c. 172, s. 19; 1957, c. 349, s. 10; 1967, c. 996, s. 8; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in subsection (b). As subsection (a) was not changed by the amendment, it is not set out.

**§ 148-41. Recapture of escaping prisoners; reward.** — The Secretary of Correction shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Secretary shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem desirable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Department of Correction and accounted for as a part of the expense of maintaining the State's prisons. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407; 1917, c. 236; c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; 1955, c. 238, s. 9; c. 279, s. 3; 1957, c. 349, s. 10; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary" for "Commissioner."

**§ 148-42. Indeterminate sentences.** — The several judges of the superior court are authorized in their discretion in sentencing prisoners to imprisonment to commit the prisoner to the custody of the Secretary of Correction for a minimum and maximum term. The maximum term imposed shall not exceed the limit otherwise prescribed by law for the offense of which the person is convicted. At any time after the prisoner has served the minimum term less earned allowances for good behavior, the Secretary is authorized to discharge such person unconditionally or release him from confinement under conditions prescribed by the Parole Commission. The conditions of release may be modified or the conditional release may be revoked by the Parole Commission at any time during the period the person is committed to the Secretary's custody, but the total time served in confinement and on conditional release shall not exceed the maximum term for which he was sentenced to the custody of the Secretary of Correction. If a conditional release is revoked, the revocation order shall constitute authority for any prison, parole, or peace officer to arrest the prisoner without a warrant and return him to a facility of the State prison system. (1933, c. 172, s. 24; 1955, c. 238, s. 9; 1967, c. 996, s. 9; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in the first sentence and at the end of the fourth sentence, substituted "Secretary" for "Commissioner" near the middle of the third sentence and "Secretary's" for "Commissioner's" in the fourth sentence and substituted "Parole Commission" for "Commissioner" at the end of the third sentence and for "Commissioner of Correction" near the middle of the fourth sentence. The amendment also deleted the former last sentence, relating to consultation and cooperation between the former Commissioner of Correction and the former Board of Paroles.

**§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.** — (a) Any person in the custody of the Department of Correction in any of the classifications hereinafter set forth who shall escape or attempt to escape from the State prison system, shall for the first such offense be guilty of a



misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year:

- (1) A prisoner serving a sentence imposed upon conviction of a misdemeanor;
- (2) A person who has been charged with a misdemeanor and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;
- (3) A person who shall have been convicted of a misdemeanor and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or
- (4) A person who shall have been convicted of a misdemeanor and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b) or G.S. 148-49.3.

(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape or attempt to escape from the State prison system, shall for the first such offense be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years:

- (1) A prisoner serving a sentence imposed upon conviction of a felony;
- (2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;
- (3) A person who shall have been convicted of a felony and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or
- (4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b) or G.S. 148-49.3.

(c) Any person convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom, shall be guilty of a felony and upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years.

(d) Any person who aids or assists other persons to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned at the discretion of the court.

(e) Unless otherwise specifically ordered by the presiding judge, any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the person is held at the time an offense defined by this section is committed by such person.

(f) Any person convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felon even if such person has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(g) Any person convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any convicted person in the custody of the North Carolina Department of Correction and on temporary parole by permission of the State Parole Commission or other authority of law, or any youthful offender granted relief under G.S. 148-49.1 et seq., who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the applicable provisions of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, wilful failure to return to an appointed place and at an appointed time as ordered. (1933, c. 172, s. 26; 1955,



c. 279, s. 2; 1963, c. 681; 1965, c. 283; 1967, c. 996, s. 13; 1973, c. 1120; c. 1262, s. 10.)

**Editor's Note.** —

The first 1973 amendment rewrote the section.

The second 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" near the middle of the first sentence of subsection (g). The second amendatory act directed that the change be made in subsection (b) of the section as it stood before the first 1973 amendment. Subsection (g) of the section as rewritten by the first 1973 amendment is similar to former subsection (b), and subsection (g) has, therefore, been treated as amended.

**A second escape is a felony.** —

A second escape is a felony, even though the first escape came at a time when the prisoner was serving another sentence. *State v. Stone*, 22 N.C. App. 352, 206 S.E.2d 389 (1974).

The intent of the General Assembly was to declare a second offense of escape, or attempted escape, a felony regardless of the time elapsing or events occurring between the two offenses. *State v. Stone*, 22 N.C. App. 352, 206 S.E.2d 389 (1974).

**§ 148-48. Parole powers of Parole Commission unaffected.** — Nothing in this Chapter shall be construed to limit or restrict the power of the Parole Commission to parole prisoners under such conditions as it may impose or prevent the reimprisonment of such prisoners upon violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29; 1955, c. 867, s. 8; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

## ARTICLE 3A.

### *Facilities and Programs for Youthful Offenders.*

**§ 148-49.1. Purpose of Article.** — The purposes of this Article are to improve the chances of correction, rehabilitation and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, conditional release, and final discharge. It is the intent of this Article to provide the courts with an additional sentencing possibility to be used in the court's discretion for correctional punishment and treatment in cases where, in the opinion of the court, a youthful offender requires a period of imprisonment, but no longer than necessary for the Parole Commission to determine that the offender is suitable for a return to freedom and is ready for a period of supervised freedom as a step toward unconditional discharge and restoration of the rights of citizenship. (1949, c. 297, s. 1; 1951, c. 250; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" in the second sentence.

**Prejudicial Error Not to Charge Jury, etc.** —

The court erred where it did not require the jury to find beyond a reasonable doubt that the defendant was serving a felony sentence in a prosecution under this section. *State v. Johnson*, 21 N.C. App. 85, 203 S.E.2d 424 (1974).

**Evidence Required under Indictment for Fifth Offense of Escape.** — Where the indictment alleges a fifth offense of escape, this creates the chore of offering competent evidence of four prior convictions for the offense of escape. Under this section the maximum punishment which can be imposed for an offense of escape is authorized for a second offense. If the indictment had charged second offense, instead of fifth, the State would have needed to prove only one of the prior convictions. *State v. Chapman*, 20 N.C. App. 456, 201 S.E.2d 579 (1974).

**Applied** in *State v. Stewart*, 19 N.C. App. 112, 198 S.E.2d 30 (1973); *State v. Sadler*, 19 N.C. App. 641, 199 S.E.2d 702 (1973); *State v. Lowe*, 21 N.C. App. 98, 203 S.E.2d 96 (1974).

**Applied** in *State v. McClinton*, 19 N.C. App. 734, 200 S.E.2d 197 (1973); *State v. Thompson*, 22 N.C. App. 178, 205 S.E.2d 772 (1974).



**§ 148-49.2. Definitions.** — As used in this Article, a “youthful offender” is a person under the age of 21 at the time of conviction, and a “committed youthful offender” is one committed to the custody of the Secretary of Correction under the provisions of this Article. Inmates of the State prison system segregated as youthful offenders on July 31, 1967, under the provisions of Article 21 of Chapter 15 of the General Statutes of North Carolina, or who shall be so sentenced prior to August 1, 1967, but who begin to serve such sentences after that date, shall be extended the benefits of this Article as far as practicable and consistent with their sentences. (1949, c. 297, s. 2; 1967, c. 996, s. 10; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted “Secretary of Correction” for “Commissioner of Correction.”

**§ 148-49.4. Sentencing a youthful offender.** — When a youthful offender is convicted of an offense punishable by imprisonment, and the court does not suspend the imposition or execution of sentence and place the offender on probation, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youthful offender to the custody of the Secretary of Correction for treatment and supervision pursuant to this Article until discharged at the expiration of the maximum term imposed or until conditionally released or unconditionally discharged by the Parole Commission as provided in this Article. At the time of commitment the court shall fix a maximum term not to exceed the limit otherwise prescribed by law for the offense of which the person is convicted. When the maximum permitted penalty for the offense is imprisonment for one year or longer, the maximum term imposed shall not be for less than one year. If the court shall find that the youthful offender will not derive benefit from treatment and supervision pursuant to this Article, then the court may sentence the youthful offender under any other applicable penalty provision. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted “Secretary of Correction” for “Commissioner of Correction” and “Parole Commission” for “Board of Paroles” in the first sentence.

**§ 148-49.5. Classification studies.** — Every committed youthful offender shall first be sent to a diagnostic and classification center for a complete study, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school and family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency and criminal activities. All agencies of State and local government in North Carolina shall cooperate with the State Department of Correction in supplying or verifying information helpful for diagnosis, classification, and program planning for committed youthful offenders. A report of the findings and recommendations of the diagnostic and classification center shall be sent to the Secretary of Correction and to the Parole Commission. (1949, c. 297, s. 5; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted “Secretary of Correction” for “Commissioner of Correction” and “Parole Commission” for “Board of Paroles.”

**§ 148-49.6. Placement of youthful offenders.** — On receipt of the report and recommendations from the diagnostic and classification center, the Secretary of Correction may (i) recommend to the Parole Commission that the committed youthful offender be released conditionally under supervision, (ii) order the committed youthful offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public. The Secretary of Correction shall have authority to terminate the segregation and



treatment as a committed youthful offender of any prisoner who, in the opinion of the Secretary, exercises a bad influence upon his fellow prisoners, or fails to take proper advantage of the opportunities offered by such segregation and treatment. (1953, c. 1249; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction," "Secretary" for "Commissioner" and "Parole Commission" for "Board of Paroles."

**§ 148-49.7. Treatment of youthful offenders.** — (a) The Secretary of Correction shall from time to time designate and adapt facilities under his control for treatment of committed youthful offenders, and such youthful offenders shall be segregated from other offenders, and classes of committed youthful offenders shall be segregated according to their needs for treatment, insofar as practical. The Secretary of Correction shall, insofar as possible, provide personnel specially qualified by training, experience, and personality to operate facilities for committed youthful offenders.

(b) The Department of Human Resources is authorized to establish and construct on any property of the State under its supervision and control modern facilities where youthful offenders committed to the custody of the Secretary of Correction may be sent for treatment, training, and work under rules and regulations jointly adopted by the Department of Human Resources and the State Department of Correction. The plans, specifications and construction of such facilities shall meet the requirements of the Secretary of Correction. The cost of the maintenance of committed youthful offenders assigned to such facilities by the Secretary of Correction and employed in work for the benefit of the Department of Human Resources shall be borne by the Department of Human Resources. The committed youthful offenders assigned to such facilities shall be under the care and supervision of agents and employees of the State Department of Correction or of agents and employees of the Department of Human Resources as may be agreed upon by the two State agencies. The Department of Correction may provide, in cooperation with the Department of Human Resources, for the payment of wages to the committed youthful offenders for the work they do while assigned to such facilities.

(c) Committed youthful offenders may be required to participate in vocational, educational and correctional training and activities. Appropriate use shall be made of other methods of treatment, including medical and psychiatric. The Secretary of Correction may extend the limits of the place of confinement of a committed youthful offender as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time for any purpose consistent with the public interest. Willful failure to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary as provided in G.S. 148-45.

(d) The Secretary of Correction may contract with any appropriate public or private agency not under his control for treatment and training services to committed youthful offenders when this is the most economical or effective way to provide needed services. (1967, c. 996, s. 10; 1973, c. 476, s. 133; c. 1262, s. 10.)

**Editor's Note.** — The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary" for "Commissioner."

**§ 148-49.8. Release of youthful offenders.** — (a) When, in the judgment of the Secretary of Correction, a committed youthful offender is ready for



conditional release under supervision, the Secretary shall so report to the Parole Commission with his recommendations. The Parole Commission may at any time after reasonable notice to the Secretary of Correction release conditionally under supervision a committed youthful offender.

(b) A committed youthful offender shall be released conditionally under supervision on or before the expiration of four years from the date of his commitment and may be discharged unconditionally before the expiration of the maximum term imposed.

(b1) The Parole Commission, without the approval of the Secretary of Correction, may release a committed youthful offender on conditional release within the last 90 days of his maximum term of commitment.

(c) The Parole Commission may revoke or modify any of its orders respecting a committed youthful offender except an order of unconditional discharge. Upon the unconditional discharge by the Parole Commission of a committed youthful offender before the expiration of the maximum sentence imposed upon him, all rights of citizenship which he forfeited on conviction shall be automatically restored and the Parole Commission shall issue to the youthful offender a certificate to that effect. (1967, c. 996, s. 10; 1973, c. 1153; c. 1262, s. 10.)

**Editor's Note.** — The first 1973 amendment added subsection (b1).

The second 1973 amendment, effective July 1, 1974, substituted "Secretary" for "Commissioner" in three places in subsection (a) and in subsection (b1) and substituted "Parole Commission" for "Board of Paroles" throughout

subsections (a) and (c). "Parole Commission" has also been substituted for "Board of Paroles" in subsection (b1), for consistency with the amendments to subsections (a) and (c), although a literal compliance with the second 1973 amendatory act would have required the substitution of "Department of Correction."

**§ 148-49.9. Supervision of released youthful offenders.** — (a) Committed youthful offenders conditionally released shall be under the supervision of agents and employees of the Department of Correction. The Department of Correction is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by rules and regulations adopted by the Parole Commission.

(b) If, at any time before the unconditional discharge of a committed youthful offender, the Parole Commission is of the opinion that such youthful offender will be benefited by further treatment in a facility for committed youthful offenders, any member of the Commission may direct the offender's return to custody or, if necessary, may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a State parole officer or by any officer of the State Department of Correction, using the assistance of any law-enforcement officer when necessary. Upon return to custody, such youthful offender shall be given an opportunity to appear before the Parole Commission or a member thereof. The Parole Commission may then or at its discretion revoke the order of conditional release. (1967, c. 996, s. 10; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in the first and second sentences of subsection (a) and

substituted "Parole Commission" for "Board of Paroles" and "Commission" for "Board" throughout the remainder of the section.

#### ARTICLE 4.

##### *Paroles.*

**§ 148-52:** Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

**Cross Reference.** — As to transfer of the functions of the Board of Paroles to the Department of Correction, see § 143B-262.



**§ 148-52.1. Prohibited political activities of member of Parole Commission or employee of Department.** — No member of the Parole Commission or employee of the Department of Correction shall be permitted to use his position to influence elections or the political action of any person, serve as a member of the campaign committee of any political party, interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or be in any manner concerned in the demanding, soliciting or receiving of any assessments, subscriptions or contributions, whether voluntary or involuntary, to any political party. Any Parole Commission member or employee of the Department who shall violate any of the provisions of this section shall be subject to dismissal from office or employment. (1953, c. 17, s. 4; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in the first sentence and "Department" for "Board" near the middle of the second sentence and

substituted "Parole Commission" for "Board" near the beginning of the second sentence. The amendment also inserted "of the Parole Commission" following "No member" near the beginning of the first sentence.

**§ 148-53. Investigators and investigations of cases of prisoners.** — For the purpose of investigating the cases of prisoners serving both determinate and indeterminate sentences in the State prison, in prison camps, and on prison farms, the Department of Correction is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the rules and regulations duly adopted by the Parole Commission, investigate all cases designated by it, and otherwise aid the Commission in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair, and just consideration. (1935, c. 414, s. 3; 1955, c. 867, s. 2; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" near the beginning of the section and "Parole Commission" for "Board of Paroles" and

"Commission" for "Board" near the end of the section. The amendment also substituted "rules and regulations duly adopted by" for "direction of" near the middle of the section.

**§ 148-54. Parole supervisors provided for; duties.** — The Department of Correction is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted to the work required of them, and who shall, under the direction of the Department of Correction and under regulations prescribed by the Commission exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law-abiding citizens. The supervisors shall also, under the direction of the Department of Correction, maintain frequent contacts with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions of their paroles, and they shall perform such other duties in connection with paroled prisoners as the Parole Commission may require. The number of supervisors may be increased by the Department of Correction as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4; 1955, c. 867, s. 11; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in four places and "Parole Commission" for "Board of

Paroles" in one place. The amendment also substituted "the Commission" for "it" near the middle of the first sentence.

**§ 148-55:** Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.



**§ 148-56. Assistance in supervision of parolees and preparation of case histories.** — Upon request by the Parole Commission, the county directors of social services shall assist in the supervision of parolees and shall prepare and submit to the Parole Commission case histories or other information in connection with any case under consideration for parole or some form of executive clemency. (1935, c. 414, s. 6; 1955, c. 867, s. 9; 1961, c. 186; 1969, c. 982; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" in two places.

**§ 148-57. Rules and regulations for parole consideration.** — The Parole Commission is hereby authorized and empowered to set up and establish rules and regulations in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. (1935, c. 414, s. 7; 1955, c. 867, s. 4; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

**§ 148-58. Time of eligibility of prisoners to have cases considered.** — All prisoners shall be eligible to have their cases considered for parole when they have served a fourth of their sentence, if their sentence is determinate, and a fourth of their minimum sentence, if their sentence is indeterminate; provided, that any prisoner serving sentence for life shall be eligible for such consideration when he has served 20 years of his sentence. Nothing in this section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case upon its merits. (1935, c. 414, s. 8; 1955, c. 867, s. 5; 1973, c. 1201, s. 5.)

**Editor's Note.** — The 1973 amendment substituted "20 years" for "10 years" near the end of the first sentence. The 1973 amendatory act became effective April 8, 1974, and provides that it shall be applicable to all offenses thereafter committed.

**§ 148-58.1. Limitations on discharge from parole; effect of discharge; relief from further reports; permission to leave State or county.** — (a) No person released on parole (except temporary parole) shall be discharged from parole prior to the expiration of a period of one year. The official discharge by the Parole Commission of a parolee shall have the effect of terminating the sentence or sentences under which the parolee was paroled.

(b) The Parole Commission may relieve a person on parole from making reports and may permit such person to leave the State or county if fully satisfied that this is for the best interest of both the parolee and society. (1953, c. 17, s. 7; 1955, c. 867, s. 10; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

**§ 148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.** — The several clerks of the superior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Parole Commission shall by regulations prescribe, which information shall contain, among other things, the following:

- (1) The court in which the prisoner was tried;
- (2) The name of the prisoner and of all codefendants;
- (3) The date or session when the prisoner was tried;



- (4) The offense with which the prisoner was charged and the offense for which convicted;
- (5) The judgment of the court and the date of the beginning of the sentence;
- (6) The name and address of the presiding judge;
- (7) The name and address of the prosecuting solicitor;
- (8) The name and address of private prosecuting attorney, if any;
- (9) The name and address of the arresting officer; and
- (10) All available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Department of Correction, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 108, s. 90; c. 1262, s. 10.)

**Editor's Note.** —

The second 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" in the introductory clause

of the first paragraph and substituted "Department of Correction" for "Board of Paroles" in the first sentence of the second paragraph.

### § 148-60. Time for release of prisoners discretionary.

**Granting of Parole Is Matter of Discretion.**

— The granting of parole is a function which necessarily is a matter that must be left to the discretion of parole officials. *Bradford v. Weinstein*, 357 F. Supp. 1127 (E.D.N.C. 1973).

**The Parole Commission must weigh all possible benefits of parole as against the possible risks** in releasing to society a person who has proved unwilling to obey the law and comport with acceptable social standards. *Bradford v. Weinstein*, 357 F. Supp. 1127 (E.D.N.C. 1973).

**The due process clause does not apply** in procedures designed to determine suitability for parole. *Bradford v. Weinstein*, 357 F. Supp. 1127 (E.D.N.C. 1973).

**Right to Challenge Participation of Member of Commission.** — Since the Parole Commission is not a jury, an inmate has no right to challenge the participation of a member of the Commission who is reviewing his suitability for parole. *Bradford v. Weinstein*, 357 F. Supp. 1127 (E.D.N.C. 1973).

**§ 148-60.1. Allowances for paroled prisoner.** — Upon the release of any prisoner upon parole, the superintendent or warden of the institution shall provide the prisoner with suitable clothing and, if needed, an amount of money sufficient to purchase transportation to the place within the State where the prisoner is to reside. The Parole Commission may, in its discretion, provide that the prisoner shall upon his release on parole receive a sum of money not to exceed twenty-five dollars (\$25.00). (1953, c. 17, s. 8; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

**§ 148-61.1. Revocation of parole by Commission; conditional or temporary revocation.** — (a) The Parole Commission may at any time, in its discretion, revoke the order of parole of any parolee. The time a parolee is at liberty on regular parole shall not be counted as any portion of or part of the time served on his sentence, and if any parolee shall have his parole revoked, he shall thereafter be returned to the penal institution having custodial jurisdiction over him.

(b) The Parole Commission may, in its discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without



warrant by any peace officer or parole officer. After such conditional or temporary revocation of parole, the parolee shall be held for a reasonable length of time during which the Parole Commission shall determine whether or not the conditions of said parole have been violated. If it is determined by the Parole Commission that the conditions of said parole have been violated, the Parole Commission may in its discretion revoke the order of parole. If it is determined by the Parole Commission that there has been no violation of the conditions of said parole, then such parolee or paroled prisoner shall be reinstated upon his original parole. (1951, c. 947, s. 1; 1955, c. 867, s. 6; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

**Time spent on parole is not to be credited on an active sentence.** *State v. Davis*, 19 N.C. App. 459, 199 S.E.2d 37 (1973).

While defendant on parole may have been

under supervision of rules and regulations of Parole Commission and Department of Correction, nevertheless, he was "at liberty," and is not entitled to any credit on his prison sentence. *State v. Davis*, 19 N.C. App. 459, 199 S.E.2d 37 (1973).

### § 148-62. Discretionary revocation of parole upon conviction of crime.

— If any parolee, while being at large upon parole, shall commit a new or fresh crime, and shall enter a plea of guilty or be convicted thereof in any court of record, then, in that event, his parole may be revoked according to the discretion of the Parole Commission and at such time as the Parole Commission may think proper. If such parolee, while being at large upon parole, shall commit a new or fresh crime and shall have his parole revoked, as provided above, he shall be subject, in the discretion of the Parole Commission, to serve the remainder of the first or original sentence upon which his parole was granted, after the completion or termination of the sentence for said new or fresh crime. Said remainder of the original sentence shall commence from the termination of his liability upon said sentence for said new or fresh crime. The Parole Commission, however, may, in its discretion, direct that said remainder of the original sentence shall be served concurrently with said second sentence for said new or fresh crime. (1935, c. 414, s. 12; 1951, c. 947, s. 2; 1955, c. 867, s. 12; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

**§ 148-62.1. Entitlement of indigent parolee to counsel, in discretion of Board of Paroles, at revocation hearings.** — Any parolee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the North Carolina Board of Paroles, to the services of counsel at State expense at a parole revocation hearing at which either:

- (1) The parolee claims not to have committed the alleged violation of the parole conditions; or
- (2) The parolee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or
- (3) The parolee is incapable of speaking effectively for himself; and where the Board feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness. (1973, c. 1116, s. 2.)

**Editor's Note.** — Session Laws 1973, c. 1116, s. 3, makes the act effective July 1, 1974.

**§ 148-64. Cooperation of prison and parole officials and employees.** — The officials and employees of the Department of Correction and the [Parole Commission] shall at all times cooperate with and furnish each



other such information and assistance as will promote the purposes of this Chapter and the purposes for which these agencies were established. The Parole Commission shall have free access to all prisoners. (1935, c. 414, s. 14; 1955, c. 867, s. 7; 1967, c. 996, ss. 11, 15; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, deleted "and its officers and employees" preceding "shall at all times" in the first sentence and substituted "Parole Commission" for "Board of Paroles and its staff" in the second sentence. "Parole Commission" has also been substituted, in brackets, for "Board of Paroles" in the first sentence, although a literal compliance with the

1973 amendatory act would have required the substitution of "Department of Correction." In amending the second sentence of this section, the 1973 act referred to line 4 of the section; the words "Board of Paroles" appeared in lines 4 and 5 of the section in the 1971 Cumulative Supplement to Volume 3C of the General Statutes, and in line 5 of the section in 1974 Replacement Volume 3C.

#### ARTICLE 4A.

#### *Out-of-State Parolee Supervision.*

**§ 148-65.1A. Interstate parole and probation hearing procedures.** — (a) Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact for the Supervision of Parolees and Probationers, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for the Supervision of Parolees and Probationers, a deputy of such Administrator, or any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the parolee or probationer:

- (1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.
- (2) Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.
- (3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.
- (4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

(d) In any case of alleged parole or probation violation by a person being



supervised in another state pursuant to the Interstate Compact for the Supervision of Parolees and Probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this section, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter. (1973, c. 1352.)

#### ARTICLE 7.

##### *Records, Statistics, Research and Planning.*

**§ 148-74. Records Section.**—Case records and related materials compiled for the use of the Secretary of Correction and the Parole Commission shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period on probation, the probation files on that individual shall be made a part of the combined files used by the Department of Correction and the Parole Commission. The Secretary of Correction shall cooperate with the Secretary of Correction and the Secretary of Correction in joint efforts aimed at developing accurate and comprehensive case records on individual offenders. The administration of the Records Section shall be under the control and direction of the Secretary of Correction. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Parole Commission" for "Board of Paroles" in the first sentence, substituted "Parole Commission" for "Board of Paroles" at the end of the second sentence, substituted "Secretary of Correction" for "Director of Probation," "Commissioner of Correction" and

"chairman of the Board of Paroles" in the third sentence and substituted "Secretary of Correction" for "Director of Probation, the Commissioner of Correction and the chairman of the Board of Paroles" in the last sentence. In the third sentence of the section as set out above, the direction of Session Laws 1973, c. 1262, s. 10(a)(1) has been literally followed.

**§ 148-78. Reports.** — The Secretary of Correction may prepare and release reports on the work of the Department of Correction, including statistics and other data, accounts of research, and recommendations for legislation. (1925, c. 228, s. 5; 1953, c. 55, s. 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

#### ARTICLE 8.

##### *Compensation to Persons Erroneously Convicted of Felonies.*

**§ 148-83. Form, requisites and contents of petition; nature of hearing.** — Such petition shall be addressed to the Department of Correction, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Department of Correction shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor. (1947, c. 465, s. 2; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department

of Correction" for "Board of Paroles" in two places.



**§ 148-84. Evidence; action by Parole Commission; payment and amount of compensation.** — At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the Parole Commission finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Parole Commission shall report the facts, together with his [its] conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars (\$500.00) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of five thousand dollars (\$5,000). (1947, c. 465, s. 3; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

#### ARTICLE 10.

##### *Interstate Agreement on Detainers.*

**§§ 148-89 to 148-95:** Transferred to §§ 15A-761 to 15A-767 by Session Laws 1973, c. 1286, s. 22, effective July 1, 1975.

**§§ 148-96 to 148-100:** Reserved for future codification purposes.

#### ARTICLE 11.

##### *Inmate Grievance Commission.*

**§ 148-101. Commission established; appointment and terms of members; chairman, vacancies; compensation.** — The Inmate Grievance Commission is established as a separate agency within the Department of Correction. It shall consist of five members appointed by the Governor from a list of 10 persons recommended by the Council of the North Carolina State Bar. Of the five members so appointed, not less than two shall be attorneys admitted to practice law in the State of North Carolina and not less than two of the remaining three members shall be persons of knowledge and experience in one or more of the fields under the jurisdiction of the Secretary of Correction. Of the members initially appointed, two shall be for a term of four years, one shall be for a term of three years, and one shall be for a term of two years and one shall be for a term of one year. Thereafter, all appointments shall be for a term of four years. The Governor shall designate the chairman from time to time. The Governor, with the advice of the Council of the North Carolina State Bar, shall fill any vacancy which occurs before the expiration of a term for the balance of the term so remaining. Each member of the Commission shall receive per diem and travel expenses as authorized for members of State commissions under G.S. 138-5. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 1307, "Department of Social Rehabilitation and Control" and "Secretary of Correction" has been substituted for "Secretary of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter

s. 2, makes the act effective July 1, 1974. Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Department of Correction" has been substituted for



1262 did not expressly refer to the Department or Secretary of Social Rehabilitation and Control, but repealed Article 14 of Chapter

143A, setting up that Department, and reorganized the Department of Correction.

**§ 148-102. Appointment and salary of Executive Director, hearing examiners and other personnel.** — (a) The Commission, with the approval of the Governor, shall appoint an Executive Director of the Commission who shall serve at the pleasure of the Commission, and who shall be subject to the State Personnel Act.

(b) Upon the request of the Executive Director with the approval of the Commission, the Secretary of Correction shall authorize the appointment by the Executive Director of hearing examiners in such numbers as may be necessary for the efficient administration of the powers and duties of the Commission. Hearing examiners shall serve at the pleasure of the Commission and shall be subject to the State Personnel Act.

(c) The Secretary of Correction shall provide the Commission and hearing examiners with such investigative, secretarial and clerical employees as may be necessary for the efficient administration of the powers and duties of the Commission. Said employees shall be subject to the State Personnel Act. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter

1262 did not expressly refer to the Secretary or the Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, which set up the Department, and enacted Article 6 of Chapter 143B reorganizing the Department of Correction.

**§ 148-103. Removal of members.** — The governor may remove any member of the Commission for one or more of the following reasons:

- (1) Conviction of a crime involving moral turpitude or of any criminal offense the effect of which is to prevent or interfere with the performance of Commission duties.
- (2) Failure to regularly attend meetings of the Commission.
- (3) Failure to carry out duties assigned by the Commission or its chairman.
- (4) Acceptance of another office or the conduct of other business conflicting with or tending to conflict with the performance of Commission duties.
- (5) Any other ground which, under law, necessitates or justifies the removal of a State employee. (1973, c. 1307, s. 1.)

**§ 148-104. Submission of grievance or complaint.** — Any person confined to a facility within the department of the Secretary of Correction, or otherwise in the custody of the Secretary of Correction, who has any grievance or complaint against any officials or employees of the Department of Correction, may submit such grievance or complaint to the Inmate Grievance Commission within such time and in such manner as prescribed by regulations promulgated by the Commission. If, and to the extent that, the Department of Correction has a grievance or complaint procedure applicable to an inmate's particular grievance or complaint, and if the Inmate Grievance Commission deems such procedure reasonable and fair, the Commission shall by regulations require that such procedure be exhausted prior to the submission of the grievance or complaint to the Commission. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted

for "Commissioner of Correction" in this section as enacted by Session Laws 1973, c. 1307.

**§ 148-105. Preliminary review.** — When a grievance or complaint is submitted to the Inmate Grievance Commission, the Commission, or any member thereof or the Executive Director, if so provided by the Commission's regulations, shall preliminarily review the grievance or complaint. If upon such



preliminary review the grievance or complaint is determined to be on its face wholly lacking in merit, it may be dismissed by the reviewing commissioners or commissioner or Executive Director as the case may be, without a hearing or without specific findings of fact. If, after the preliminary review, it is determined that the nature of the grievance or complaint is outside the scope of authority of the Commission, the complaint shall be dismissed with recommendation as to how the inmate should proceed. Such order of dismissal shall be promptly forwarded to the complainant and shall constitute the final decision of the Secretary of Correction for purposes of any judicial review. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter

1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

**§ 148-106. Hearing and disposition by Commission; review by Secretary of Correction.** — Whenever, after the preliminary review provided for in G.S. 148-105, a grievance or complaint is found to be on its face not wholly lacking in merit, the Commission shall hold, as promptly as practicable, a hearing on the grievance or complaint. At least three members of the Commission shall sit at any hearing, and decisions shall be by a majority of those sitting. A record of the testimony presented at the hearing may be kept, according to the rules and regulations promulgated by the Commission. The Commission's decision shall be issued in the form of an order which shall include a statement of the findings of fact, the Commission's conclusions and its disposition of the grievance or complaint. The types of disposition shall be as follows:

- (1) If after the hearing, the Commission finds in its order that the grievance or complaint is wholly lacking in merit and should be dismissed, such an order of dismissal shall be promptly forwarded to the complainant, and for the purpose of any judicial review, shall constitute the final decision of the Secretary of Correction.
- (2) However, if after the hearing, the Commission in its order finds that the inmate's grievance or complaint was in whole or in part meritorious, such order shall be promptly forwarded to the Secretary of Correction. Within 15 days of the receipt of such an order, the Secretary, by order, shall affirm the order of the Commission, or shall reverse or modify the order if he disagrees with the findings and conclusions of the Commission. The Secretary shall order that the appropriate official of the facility in question accept, in whole or in part, the recommendation of the Commission or the Secretary may take whatever action he deems appropriate in light of the Commission's findings. The order of the Secretary shall be promptly forwarded to the complainant, and for the purpose of judicial review, the Secretary's order shall be final. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter

1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

**§ 148-107. Hearing by examiner; review; disposition.** — Whenever, after the preliminary review provided for in G.S. 148-105, a grievance or complaint is found to be on its face not wholly lacking in merit, and if hearing examiners are utilized, the Executive Director may designate an examiner to conduct a hearing as promptly as practicable. The examiner shall record the testimony



presented at the hearing in accordance with the rules and regulations of the Commission. After the hearing, the examiner shall set forth, in the form of a recommendation, his findings of facts and conclusions. The examiner's recommendation shall be forwarded to the Commission. At least three members of the Commission shall review the record accumulated and assembled by the examiner and shall, within 30 days after the receipt of the recommendation, by majority vote, adopt, modify or reject it. The reviewing commissioners may also remand the grievance or complaint to the hearing examiner, or another examiner, for further proceedings. Disposition thereafter shall be in accordance with the types of disposition set forth in G.S. 148-106. (1973, c. 1307, s. 1.)

**§ 148-108. Access to documentary evidence; subpoenas; oaths and affirmations.** — The Commission, Executive Director, commissioner or examiner, with the approval of the Secretary of Correction, shall at all reasonable times have access to, for the purposes of examination, and the right to copy, any documentary evidence of any person or institution being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The presiding commissioner or examiner at a hearing may administer oaths and affirmations. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter

1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

**§ 148-109. Right of inmate to appear at hearing; opportunity to call witnesses; representation.** — The complaining inmate shall have the right to appear at a hearing before the Commission or examiner and shall have the opportunity to call a witness, or a reasonable number of witnesses, depending upon the circumstances and the nature of the complaint, subject to the discretion of the Commission or examiner as to the relevancy of the testimony, questions and the number of witnesses sought to be called. The inmate shall have a reasonable opportunity to question any witnesses who testify at the hearing. Such rights of the inmate shall not be unreasonably withheld or restricted by the Commission or examiner. The inmate may, if he wishes, be represented by an employee of the Department of Correction. The rules of evidence as applied in the superior and district court divisions of the General Court of Justice need not be followed. (1973, c. 1307, s. 1.)

**§ 148-110. Record of complaints.** — A record shall be kept of all complaints and the dispositions thereof. (1973, c. 1307, s. 1.)

**§ 148-111. Conduct of hearing at institutions.** — For the performance of its duties, the Commission or examiner shall conduct hearings at the facilities under the supervision and control of the Secretary of Correction. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted

for "Commissioner of Correction" in this section as enacted by Session Laws 1973, c. 1307.

**§ 148-112. Rules and regulations.** — The Commission shall have the power to adopt rules and regulations for the conduct of its proceedings as provided for in this Article. (1973, c. 1307, s. 1.)

**§ 148-113. Judicial Review.** — No court shall entertain an inmate's grievance or complaint within the jurisdiction of the Inmate Grievance Commission unless and until the complainant has exhausted the remedies



provided in this section. Upon the final decision of the Secretary of Correction, the complainant shall be entitled to judicial review thereof. Proceedings for review shall be instituted in the General Court of Justice of Wake County, Superior Court Division. Review by the court shall be on the record of the proceedings before the Commission and the Secretary's order, if any, pursuant to such proceedings and shall be limited to a determination of whether there was a substantial basis to support the action or ruling of the Secretary and whether there was a violation of any right of the inmate protected by federal or State constitutional requirements or laws. No judicial review order or judgment provided for in this section shall have the effect of res judicata or collateral estoppel in any action brought by an inmate in a United States District Court. (1973, c. 1262, s. 10; c. 1307, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter

1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.



## Chapter 149.

## State Song and Toast.

Sec.

149-1. "The Old North State."

§ 149-1. "The Old North State". — The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!

While we live we will cherish, protect and defend her;

Though the scorner may sneer at and wittlings defame her,

Our hearts swell with gladness whenever we name her.

Hurrah! Hurrah! The Old North State forever!

Hurrah! Hurrah! The good Old North State!

Though she envies not others their merited glory,

Say, whose name stands the foremost in Liberty's story!

Though too true to herself e'er to crouch to oppression,

Who can yield to just rule more loyal submission?

Plain and artless her sons, but whose doors open faster

At the knock of a stranger, or the tale of disaster?

How like to the rudeness of their dear native mountains,

With rich ore in their bosoms and life in their fountains.

And her daughters, the Queen of the Forest resembling—

So graceful, so constant, yet to gentlest breath trembling;

And true lightwood at heart, let the match be applied them,

How they kindle and flame! Oh! none know but who've tried them.

Then let all who love us, love the land that we live in

(As happy a region on this side of Heaven),

Where Plenty and Freedom, Love and Peace smile before us,

Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1; 1973, c. 1446, s. 16.)

Editor's Note. — The 1973 amendment corrected an error in the Replacement Volume

by capitalizing the word "Old" in the line "Hurrah! Hurrah! The good Old North State!"



**Chapter 150.****Uniform Revocation of Licenses.**

**§§ 150-1 to 150-34:** Repealed by Session Laws 1973, c. 1331, effective July 1, 1975.

**Cross References.** — For present provisions as to administrative hearings, see §§ 150A-23 through 150A-37. As to judicial review of administrative decisions, see §§ 150A-43 through 150A-52.

As to the effect of statutory references to the

repealed provisions, see the Editor's note following the analysis to Chapter 150A.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.



**Chapter 150A.**  
**Administrative Procedure Act.**

**Article 1.****General Provisions.**

Sec.

- 150A-1. Scope and policy.  
150A-2. Definitions.  
150A-3. Special provisions on licensing.  
150A-4 to 150A-8. [Reserved.]

**Article 2.****Rule Making.**

- 150A-9. Minimum procedural requirements.  
150A-10. Definition.  
150A-11. Special requirements.  
150A-12. Procedure for adoption of rules.  
150A-13. Emergency rules.  
150A-14. Adoption by reference.  
150A-15. Continuation of rules.  
150A-16. Petition for adoption of rules.  
150A-17. Declaratory rulings.  
150A-18 to 150A-22. [Reserved.]

**Article 3.****Administrative Hearings.**

- 150A-23. Hearing required; notice; intervention.  
150A-24. Venue of hearing.  
150A-25. Conduct of hearing; answer.  
150A-26. Consolidation.  
150A-27. Subpoena.  
150A-28. Depositions and discovery.  
150A-29. Rules of evidence.  
150A-30. Official notice.  
150A-31. Stipulations.  
150A-32. Designation of hearing officer.  
150A-33. Powers of hearing officer.  
150A-34. Proposal for decision.  
150A-35. No ex parte communication; exceptions.  
150A-36. Final agency decision.

**Editor's Note.** — Session Laws 1973, c. 1331, s. 4, makes this Chapter effective on and after July 1, 1975, and provides that it shall not affect any pending administrative hearings.

Session Laws 1973, c. 1331, s. 3, provides: "All references in the General Statutes to a section of Chapter 150 of the General Statutes not contained in this act and all references in the

Sec.

- 150A-37. Official record.  
150A-38 to 150A-42. [Reserved.]

**Article 4.****Judicial Review.**

- 150A-43. Right to judicial review.  
150A-44. Right to judicial intervention when agency unreasonably delays decision.  
150A-45. Manner of seeking review; time for filing petition; waiver.  
150A-46. Contents of petition; copies served on all parties; intervention.  
150A-47. Record filed by agency with clerk of superior court; contents of record; costs.  
150A-48. Stay of board order.  
150A-49. Procedure for taking newly discovered evidence.  
150A-50. Review by court without jury on the record.  
150A-51. Scope of review; power of court in disposing of case.  
150A-52. Appeal to appellate division; obtaining stay of court's decision.  
150A-53 to 150A-57. [Reserved.]

**Article 5.****Publication of Administrative Rules.**

- 150A-58. Short title and definition.  
150A-59. Filing of rules.  
150A-60. Form of rules.  
150A-61. Authority of Attorney General to revise form.  
150A-62. Public inspection and notification of current and replaced rules.  
150A-63. Publication of rules.  
150A-64. Judicial and official notice.

General Statutes to Article 18 of Chapter 143 or any of the sections contained therein (143-195 — 143-198.1) or to Article 33 of Chapter 143 or any of the sections contained therein (143-306 — 143-316) are hereby amended to read 'Chapter 150[A] of the General Statutes.'

**ARTICLE 1.***General Provisions.*

**§ 150A-1. Scope and policy.** — (a) This Chapter shall apply except to the extent and in the particulars that any statute makes specific provisions to the contrary. The following are specifically exempted from the provisions of this



Chapter: the Employment Security Commission; the Industrial Commission; the Occupational Safety and Health Review Board; and the Utilities Commission. However, Articles 2 and 3 of this Chapter shall not apply to the Department of Motor Vehicles or the Department of Revenue.

(b) The purpose and intent of this Chapter shall be to establish as nearly as possible a uniform system of administrative procedure for State agencies. (1973, c. 1331, s. 1.)

**§ 150A-2. Definitions.** — As used in this Chapter,

- (1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina but does not include those agencies in the legislative or judicial branches of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or county or city boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.
- (2) "Contested case" is any agency proceeding, by whatever name called, wherein the legal rights, duties or privileges of specific parties are to be determined. Contested cases include, but are not limited to, proceedings involving rate making, price fixing and licensing. Contested cases shall not be deemed to include rule making and declaratory rulings.
- (3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in a trade, occupation, or other activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes.
- (4) "Licensing" means any administrative action issuing, failing to issue, suspending or revoking a license.
- (5) "Party" means each person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the hearing agency where appropriate; provided, this shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.
- (6) "Person aggrieved" means any person, firm, corporation, or group of persons of common interest who are directly or indirectly affected substantially in their person, property, or public office or employment by an agency decision.
- (7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) "Residence" means domicile or principal place of business. (1973, c. 1331, s. 1.)

**§ 150A-3. Special provisions on licensing.** — (a) When a licensee makes timely and sufficient application for renewal of a license or a new license (including the payment of any required license fee) with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending such license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, an agency shall give notice to the licensee, pursuant to the provisions of G.S. 150A-23(c), of alleged facts or alleged conduct which warrant the intended



action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to July 1, 1975, which provide for the summary suspension of a license. (1973, c. 1331, s. 1.)

§§ 150A-4 to 150A-8: Reserved for future codification purposes.

## ARTICLE 2.

### *Rule Making.*

§ 150A-9. **Minimum procedural requirements.** — It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in G.S. 150A-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any agency thereof. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article. (1973, c. 1331, s. 1.)

§ 150A-10. **Definition.** — As used in this Article, "rule" means each agency regulation, standard or statement of general applicability that implements or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

- (1) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
- (2) Declaratory rulings issued pursuant to G.S. 150A-17;
- (3) Intraagency memoranda, except those to agency staff which implement or prescribe law or policy;
- (4) Statements of policy or interpretations that are made in the decision of a contested case;
- (5) Rules concerning the use or creation of public roads or facilities which are communicated to the public by use of signs or symbols;
- (6) Interpretative rules and general statements of policy of the agency. (1973, c. 1331, s. 1.)

§ 150A-11. **Special requirements.** — In addition to other rule-making requirements imposed by law, each agency shall:

- (1) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.
- (2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions.
- (3) With respect to all final orders, decisions, and opinions made after July 1, 1975, make available for public inspection together with all materials that were before the deciding officers at the time the final order, decision, or opinion was made, except materials properly for good cause held confidential. (1973, c. 1331, s. 1.)



**§ 150A-12. Procedure for adoption of rules.** — (a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 10 days before the public hearing and at least 20 days before the adoption, amendment, or repeal of the rule. The notice shall include:

- (1) A reference to the statutory authority under which the action is proposed.
- (2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the agency either at the hearing or at other times by any person.
- (3) A statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule.

(b) The agency shall transmit copies of the notice to the Attorney General and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) The agency shall publish the notice as prescribed in any applicable statute or, if none, shall publish the notice in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications. If the persons likely to be affected by the proposed rule are unorganized or diffuse in character and location, then the agency shall publish the notice as a display advertisement in at least three newspapers of general circulation in different parts of the State.

(d) The public hearing shall comply with any applicable statute but is not subject to the provisions of this Chapter governing contested cases, unless a rule is required by law to be adopted pursuant to adjudicatory procedures.

(e) The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption. (1973, c. 1331, s. 1.)

**§ 150A-13. Emergency rules.** — If any agency finds that an imminent peril to the public health, safety, or welfare requires adoption, amendment, or repeal of a rule, without notice or upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. This rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under G.S. 150A-12 is not precluded. (1973, c. 1331, s. 1.)

**§ 150A-14. Adoption by reference.** — An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by an agency of this State or of the United States or by a generally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule, it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies



of the adopted matter can be obtained and any charge therefor as of the time the rule is adopted. (1973, c. 1331, s. 1.)

**§ 150A-15. Continuation of rules.** — When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the repeal of such law or the abolition of the agency. (1973, c. 1331, s. 1.)

**§ 150A-16. Petition for adoption of rules.** — Any person may petition an agency requesting the promulgation, amendment, or repeal of a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with G.S. 150A-12 and G.S. 150A-13. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review, which shall be limited to questions of abuse of discretion. (1973, c. 1331, s. 1.)

**§ 150A-17. Declaratory rulings.** — On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review. (1973, c. 1331, s. 1.)

**§§ 150A-18 to 150A-22:** Reserved for future codification purposes.

### ARTICLE 3.

#### *Administrative Hearings.*

**§ 150A-23. Hearing required; notice; intervention.** — (a) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given a reasonable notice of the hearing, which notice shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved;  
and
- (3) A short and plain statement of the factual allegations.



(c) Notice shall be given personally or by registered mail. If given by registered mail, it shall be deemed to have been given on the date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by registered mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(d) Any person may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. In addition, any person interested in an agency proceeding may intervene and participate in that proceeding to the extent deemed appropriate by the hearing agency.

(e) All hearings under this Chapter shall be open to the public. (1973, c. 1331, s. 1.)

**§ 150A-24. Venue of hearing.** — When a hearing on a contested case is conducted by a hearing officer or less than a majority of an agency, the hearing shall be conducted in a county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence.

If the hearing is conducted by a majority of the agency, then the hearing shall be held in the county where the agency maintains its principal office.

When a different county would promote the ends of justice or better serve the convenience of witnesses, the agency hearing the case may in its discretion designate another county. In any case, however, the person whose property or rights are involved and the agency hearing the case may agree that the hearing is to be held in some other county.

The person whose property or rights are the subject matter of the hearing shall not be deemed to have waived any objection to venue merely by proceeding in the hearing. (1973, c. 1331, s. 1.)

**§ 150A-25. Conduct of hearing; answer.** — (a) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence. (1973, c. 1331, s. 1.)

**§ 150A-26. Consolidation.** — When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any or all of the matters in issue in the cases, may order all of the cases consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (1973, c. 1331, s. 1.)

**§ 150A-27. Subpoena.** — An agency is hereby authorized to issue subpoenas upon its own motion or upon a written request. When such written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if, upon a hearing the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. (1973, c. 1331, s. 1.)



**§ 150A-28. Depositions and discovery.** — (a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. An agency authorized to adjudicate contested cases may adopt rules providing for discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall make such records promptly available to a party. (1973, c. 1331, s. 1.)

**§ 150A-29. Rules of evidence.** — (a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150A-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1.)

**§ 150A-30. Official notice.** — Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. (1973, c. 1331, s. 1.)

**§ 150A-31. Stipulations.** — (a) The parties in a contested case by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties. (1973, c. 1331, s. 1.)

**§ 150A-32. Designation of hearing officer.** — (a) An agency, one or more members of the agency, a person or group of persons designated by statute or one or more hearing officers designated and authorized by the agency to handle contested cases, shall be hearing officers in contested cases. Hearings shall be conducted in an impartial manner.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with



the case unless it is shown that substantial prejudice to any party will result therefrom, in which event a new hearing shall be held or the case dismissed without prejudice. (1973, c. 1331, s. 1.)

**§ 150A-33. Powers of hearing officer.** — A hearing officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and
- (6) Apply to the General Court of Justice, Superior Court Division, during or subsequent to a hearing for an order to show cause why any person should not be held in contempt of the agency and its processes, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court. (1973, c. 1331, s. 1.)

**§ 150A-34. Proposal for decision.** — (a) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case, the decision shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the officials who are to make the decision.

(b) The proposal for decision shall contain proposed findings of fact and proposed conclusions of law. This proposal for decision shall be prepared by a person who conducted the hearing unless he becomes unavailable to the agency. If no such person is available, the findings may be prepared by one who has read the record, unless demeanor of witnesses is a factor. If demeanor is a factor, the portions of the hearing involving demeanor shall be held again, or the case shall be dismissed without prejudice.

(c) The parties, by written stipulation or at the hearing, may waive compliance with this section. (1973, c. 1331, s. 1.)

**§ 150A-35. No ex parte communication; exceptions.** — Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party or his representative, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis, or rate making in a contested case insofar as the case involves rate making or financial practices or conditions. (1973, c. 1331, s. 1.)

**§ 150A-36. Final agency decision.** — A final decision or order of an agency in a contested case shall be made, after review of the official record as defined in G.S. 150A-37(a), in writing and shall include findings of fact and conclusions



of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150A-29(a) or G.S. 150A-30 or G.S. 150A-31. A copy of the decision or order shall be served upon each party personally or by registered mail and a copy furnished to his attorney of record. (1973, c. 1331, s. 1.)

**§ 150A-37. Official record.** — (a) An agency shall prepare an official record of a hearing which shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests. (1973, c. 1331, s. 1.)

**§§ 150A-38 to 150A-42:** Reserved for future codification purposes.

#### ARTICLE 4.

#### *Judicial Review.*

**§ 150A-43. Right to judicial review.** — Any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article. (1973, c. 1331, s. 1.)

**§ 150A-44. Right to judicial intervention when agency unreasonably delays decision.** — Unreasonable delay on the part of any agency in reaching a final decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency. (1973, c. 1331, s. 1.)

**§ 150A-45. Manner of seeking review; time for filing petition; waiver.** — In order to obtain judicial review of a final agency decision under this Chapter, the person seeking review must file a petition in the Superior Court of Wake County; except that where the original determination in the matter was made by a local agency or local board and appealed to the State board, the petition may be filed in the superior court of the county where the original determination was made. Such petition may be filed at any time after final decision, but must be filed not later than 30 days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the



agency decision under this Chapter notwithstanding such waiver. (1973, c. 1331, s. 1.)

**§ 150A-46. Contents of petition; copies served on all parties; intervention.** — The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by personal service or by registered mail upon the agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1.)

**§ 150A-47. Record filed by agency with clerk of superior court; contents of record; costs.** — Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1.)

**§ 150A-48. Stay of board order.** — At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the agency decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1.)

**§ 150A-49. Procedure for taking newly discovered evidence.** — At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be taken. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision. (1973, c. 1331, s. 1.)

**§ 150A-50. Review by court without jury on the record.** — The review of agency decisions under this Chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo. (1973, c. 1331, s. 1.)

**§ 150A-51. Scope of review; power of court in disposing of case.** — The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:



- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150A-29(a) or G.S. 150A-30 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1973, c. 1331, s. 1.)

**§ 150A-52. Appeal to appellate division; obtaining stay of court's decision.** — Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the agency decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1973, c. 1331, s. 1.)

§§ 150A-53 to 150A-57: Reserved for future codification purposes.

#### ARTICLE 5.

##### *Publication of Administrative Rules.*

**§ 150A-58. Short title and definition.** — (a) This Article may be cited as "The Registration of State Administrative Rules Act."

(b) As used in this Article, "rule" means every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency and shall include rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

"Rule" shall not include:

- (1) Rules, procedures, or regulations which relate only to the internal management of any agency;
- (2) Directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;
- (3) Dispositions of any specific issue or matter by the process of adjudication; and
- (4) Orders establishing or fixing rates or tariffs. (1973, c. 1331, s. 1.)

**§ 150A-59. Filing of rules.** — (a) Rules adopted by any agency on or after July 1, 1975, shall be filed with the Attorney General. All rules shall become effective 30 days after filing, unless the agency shall certify the existence of good cause for, and shall specify, an earlier or later effective date. The certification shall state the agency's finding and reasons. An earlier effective date shall not precede the date of filing.

(b) The acceptance for filing of a rule by the Attorney General, by his notation on the face thereof, shall constitute prima facie evidence of compliance with this Article.

(c) Rules previously in existence shall be ineffective after June 30, 1975, except that they shall immediately become effective upon filing in accordance with the provisions of this Article. (1973, c. 1331, s. 1.)

**§ 150A-60. Form of rules.** — In order to be acceptable for filing, the rule must:

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;



- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements; and
- (4) Be in the physical form specified by the Attorney General. (1973, c. 1331, s. 1.)

**§ 150A-61. Authority of Attorney General to revise form.** — The Attorney General shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, chapters, subchapters, articles, sections, paragraphs, and other divisions or subdivisions;
- (2) To provide or revise titles or catchlines;
- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists; and
- (5) To make other changes in arrangement or in form that in the opinion of the Attorney General do not alter the substance of the rule and that the Attorney General determines are necessary or desirable for an accurate, clear, and orderly arrangement of rules.

Revision of form by the Attorney General shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency. (1973, c. 1331, s. 1.)

**§ 150A-62. Public inspection and notification of current and replaced rules.** — (a) Immediately upon notation of a filing as specified in G.S. 150A-59(b), the Attorney General shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150A-61.

(b) The Attorney General shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 25 days of the acceptance by the Attorney General of a rule for filing, the agency filing the rule:

- (1) Shall publish the rule as prescribed in any applicable statute; and
- (2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule. The rule so published or distributed shall contain the legend: "The form of this rule may be revised by the Attorney General pursuant to the provisions of G.S. 150A-61."

(d) The Attorney General is authorized to prepare and distribute summaries of rules filed pursuant to this Article in a manner selected by him as best calculated to give notice to the public. (1973, c. 1331, s. 1.)

**§ 150A-63. Publication of rules.** — (a) The Attorney General shall compile, index, and publish all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Attorney General determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1975, the Attorney General shall



publish a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually, or more frequently in the discretion of the Attorney General. Recompilations shall be made in the discretion of the Attorney General. (1973, c. 1331, s. 1.)

**§ 150A-64. Judicial and official notice.** — The courts and administrative agencies shall take judicial or official notice, respectively, of any rule effective under this Article. (1973, c. 1331, s. 1.)



**Chapter 152.****Coroners.****§ 152-1. Election; vacancies in office; appointment by clerk in special cases.**

**Local Modification.** — Craven, Davidson Northampton, Orange, Pender and (office of coroner abolished): 1973, c. 1049; Perquimans (office of coroner abolished): 1973, Davie (office of coroner abolished): 1973, c. 1146; Gaston (assistant coroner): 1973, c. 1371; c. 1146.

**§ 152-5. Fees of coroners.**

**Local Modification.** — Halifax: 1973, c. 924, amending 1953, c. 362.



**Chapter 153A.**

**Counties.**

**Article 3.**

**Boundaries.**

Sec.

153A-21. [Repealed.]

**Article 6.**

**Delegation and Exercise of the General Police Power.**

153A-132.1. To provide for the removal and disposal of trash, garbage, etc.

**Article 7.**

**Taxation.**

153A-149. Property taxes; authorized purposes; rate limitation.

**Article 10.**

**Law Enforcement and Confinement Facilities.**

Part 2. Local Confinement Facilities.

153A-221.1. Standards and inspections.

**ARTICLE 3.**

*Boundaries.*

§ 153A-21: Repealed by Session Laws 1973, c. 884, effective February 1, 1974.

**ARTICLE 6.**

*Delegation and Exercise of the General Police Power.*

§ 153A-122. **Territorial jurisdiction of county ordinances.**

**A City Is Not Required to Approve by Resolution County Parking Ordinances Pertaining to County Property Located** within the City. — See opinion of Attorney General to Mr. F.L. Carr, 43 N.C.A.G. 409 (1974).

§ 153A-132.1. **To provide for the removal and disposal of trash, garbage, etc.** — The board of county commissioners of any county is hereby authorized to enact ordinances governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county. An ordinance adopted pursuant hereto may make it unlawful to place, discard, dispose, leave or dump any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever upon a street or highway located within that county or upon property owned or operated by the county unless such trash, debris, garbage, litter, discarded cans or receptacles or any waste matter is placed in a designated location or container for removal by a specific garbage or trash service collector.

Boards of county commissioners may also provide by ordinance enacted pursuant to this section, that the placing, discarding, disposing, leaving or dumping of the articles forbidden by this section shall, for each day or portion thereof the articles or matter



are left, constitute a separate offense, and that a person in violation of the ordinance may be punished by a fine not exceeding fifty dollars (\$50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 952.)

ARTICLE 7.

*Taxation.*

**§ 153A-149. Property taxes; authorized purposes; rate limitation.**

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) appraised value of property subject to taxation before the application of any assessment ratio. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents (\$1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

- (1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county tax supervisor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
- (2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
- (3) Air Pollution. — To maintain and administer air pollution control programs.
- (4) Airports. — To establish and maintain airports and related aeronautical facilities.
- (5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.
- (6) Animal Protection and Control. — To provide animal protection and control programs.
- (7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.
- (8) Cemeteries. — To provide for cemeteries.
- (9) Civil Defense. — To provide for civil defense programs.
- (10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.
- (11) Fire Protection. — To provide fire protection services and fire prevention programs.
- (12) Forest Protection. — To provide forest management and protection programs.
- (13) Health. — To provide for the county's share of maintaining and administering services offered by or through the county or district health department.
- (14) Historic Preservation. — To undertake historic preservation programs and projects.
- (15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facility, or to aid any private, nonprofit hospital, clinic, related facilities, or other health program or facility.
- (16) Human Relations. — To undertake human relations programs.



- (17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
  - (18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.
  - (19) Libraries. — To establish and maintain public libraries.
  - (20) Mapping. — To provide for mapping the lands of the county.
  - (21) Medical Examiner. — To provide for the county medical examiner or coroner.
  - (22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the county or area mental health department.
  - (23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.
  - (24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
  - (25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
  - (26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 17 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
  - (27) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.
  - (28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.
  - (29) Sewage. — To provide sewage collection and treatment services.
  - (30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108 and 111 of the General Statutes, and by establishing and maintaining a county home.
  - (31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
  - (32) Surveyor. — To provide for a county surveyor.
  - (33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.
  - (34) Water. — To provide water supply and distribution systems.
  - (35) Watershed Improvement. — To undertake watershed improvement projects.
  - (36) Water Resources — To participate in federal water resources development projects.
  - (37) Armories. — To supplement available State or federal funds to be used for the construction, (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.
- (d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice



of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

- (1) Shall ..... County be authorized to levy annually a property tax at an effective rate not in excess of ..... cents on the one hundred dollars (\$100.00) value of property subject to taxation for the purpose of .....?
- (2) Shall ..... County be authorized to levy annually a property tax at a rate not in excess of that which will produce \$. ..... for the purpose of .....
- (3) Shall ..... County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of .....

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(1973, c. 963; c. 1446, s. 25.)

**Editor's Note. —**

The first 1973 amendment added subdivision (37) to subsection (c).

The second 1973 amendment substituted "subsection (c)" for "subsection (d)" near the end of the last paragraph of subsection (d).

As the rest of the section was not changed by the amendments, only subsections (c) and (d) are set out.



ARTICLE 8.

*County Property.*

Part 3. Disposition of County Property.

§ 153A-176. **Disposition of property.**

**Commissioners Act as Fiduciaries or Trustees.** — Boards of commissioners, in selling or leasing real property belonging to the county, are acting as fiduciaries or trustees for the taxpayers and citizens of the county and

must exercise their best judgment and skill, as reasonable men, to obtain the best price for the land. *Puett v. Gaston County*, 19 N.C. App. 231, 198 S.E.2d 440 (1973).

ARTICLE 10.

*Law Enforcement and Confinement Facilities.*

Part 2. Local Confinement Facilities.

§ 153A-220. **Jail and detention services.**

**Cross Reference.** — As to juvenile detention services, see § 134-35 et seq.

§ 153A-221.1. **Standards and inspections.** — The legal responsibility of the Secretary of Human Resources and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Department of Human Resources is hereby expanded to give said Department the same legal responsibility as to the state-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134-37.

The Secretary of Human Resources shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by G.S. 134-36 in line with the recommendations of the report entitled *Juvenile Detention in North Carolina: A Study Report* (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Human Resources shall also develop standards under which a local jail may be approved as a holdover facility for not more than 72 hours pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10.)

**Editor's Note.** — Session Laws 1973, c. 1230, s. 4, provides that the act shall become effective July 1, 1975.

The 1973 amendment substituted "Department of Correction" for "Department of Youth Development" near the end of the first paragraph.

The 1973 amendment substituted "Depart-

§ 153A-225. **Medical care of prisoners.** — (a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

- (1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;
- (2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;



(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director, upon a determination that the plan is adequate to protect the health and welfare of the prisoners, and must be adopted by the governing body.

(1973, c. 1140, s. 3.)

**Editor's Note.—**

Session Laws 1973, c. 1140, s. 3, substituted, in subdivision (3) of subsection (a), "the detection, examination and treatment of prisoners who are infected with tuberculosis or

venereal diseases" for "compliance with the requirements of G.S. 130-97 and G.S. 130-121."

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

**§ 153A-229. Jailer's report of jailed defendants.** — A person having administrative control of a local confinement facility each week must file a report with the clerk of court listing the name and period of confinement of each person confined in that facility on Friday noon preceding submission of the report. (1973, c. 1286, s. 23.)

**Editor's Note.** — Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and

each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

**§§ 153A-230 to 153A-232:** Reserved for further codification purposes.

ARTICLE 15.

*Public Enterprises.*

Part 1. General Provisions.

**§ 153A-274. "Public enterprise" defined.** — As used in this Article, "public enterprise" includes:

(6) Bus lines and mass transit systems. (1955, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214.)

**Editor's Note.** — The 1973 amendment added subdivision (6).

the amendment, only the introductory language and subdivision (6) are set out.

As the rest of the section was not changed by

Part 3. Special Provisions for Solid Waste Collection and Disposal.

**§ 153A-292. County collection and disposal; tax levy.**

**County Ordinances Involving Sanitation May Not Be Less Stringent Than State Regulations Adopted pursuant to G.S. 130-**

**166.18.** — See opinion of Attorney General to Mr. R. Kason Keiger, Town Attorney, Kernersville, N.C., 44 N.C.A.G. 40 (1974).

ARTICLE 16.

*County Service Districts.*

**§ 153A-301. Purposes for which districts may be established.** — The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:



- (1) Beach erosion control and flood and hurricane protection works;
- (2) Fire protection;
- (3) Recreation;
- (4) Sewage collection and disposal systems;
- (5) Solid waste collection and disposal systems;
- (6) Water supply and distribution systems;
- (7) Ambulance and rescue. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375.)

**Editor's Note.** — The 1973 amendment added subdivision (7).

#### ARTICLE 18.

##### *Planning and Regulation of Development.*

##### Part 3. Zoning.

#### § 153A-345. Board of adjustment.

**Decisions of a board of adjustment are not, etc.**—

This section prevents collateral attacks on decisions of the Board of Adjustment. Forsyth County v. York, 19 N.C. App. 361, 198 S.E.2d

770 (1973), holding that defendant in action for violating zoning ordinance, having failed to exhaust his statutory remedies, could not challenge validity of ordinance.

#### ARTICLE 19.

##### *Regional Planning Commissions.*

#### § 153A-391. Creation; admission of new members.

**Local Modification.** — Cherokee, Graham, Jackson and Swain: 1973, c. 1406.

#### ARTICLE 23.

##### *Miscellaneous Provisions.*

#### § 153A-445. Miscellaneous powers found in Chapter 160A.

**Cross Reference.** — As to authority of counties, cities and towns to appropriate money for payment to the North Carolina Association of County Commissioners and the North

Carolina League of Municipalities for the purpose of financing a local government center in the City of Raleigh, see § 160A-495.



**Chapter 156.**

**Drainage.**

SUBCHAPTER III. DRAINAGE DISTRICTS.

Sec.

156-76. Compensation of board of viewers.

**Article 5.**

**Article 7.**

**Establishment of Districts.**

**Construction of Improvement.**

Sec.

156-59. Board of viewers appointed by clerk.

156-83. Superintendent of construction.

156-74. Adjudication upon final report.

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

*Establishment of Districts.*

**§ 156-59. Board of viewers appointed by clerk.** — The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Natural and Economic Resources; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C. S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of substituted "Department of Natural and Water Resources" in the second sentence.

**§ 156-74. Adjudication upon final report.** — At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Natural and Economic Resources may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

- (1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or



- (2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C. S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in the fourth sentence of the first paragraph.

**§ 156-76. Compensation of board of viewers.** — The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Natural and Economic Resources and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C. S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in the second sentence.

#### ARTICLE 7.

#### *Construction of Improvement.*

**§ 156-83. Superintendent of construction.** — The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Natural and Economic Resources, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C. S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5; 1973, c. 1262, s. 23.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in the second sentence of the first paragraph.



## STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*November 1, 1974*

I, James H. Carson, Jr., Attorney General of North Carolina, do hereby certify that the foregoing 1974 Supplement to the General Statutes of North Carolina was prepared and published by the Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

JAMES H. CARSON, JR.

*Attorney General of North Carolina*

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