THE GENERAL STATUTES OF NORTH CAROLINA

1981 CUMULATIVE SUPPLEMENT

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

Under the Direction of
D. P. HARRIMAN, S. C. WILLARD, SYLVIA FAULKNER AND D. E. SELBY, JR.

Volume 3C

1978 Replacement

Annotated through 302 N.C. 222 and 50 N.C. App. 567. For complete scope of annotations, see scope of volume page.

Place with Corresponding Volume of Main Set. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Supplement to Replacement Volume 3C contains the general laws of a permanent nature enacted by the General Assembly at the Second 1977 Session, the First and Second 1979 Sessions and the 1981 Session through October 10, 1981, which are within the scope of such volume, and brings to date the annotations included therein.

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 chapters 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.

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

Statutes:

Permanent portions of the general laws enacted by the General Assembly at the Second 1977 Session, the First and Second 1979 Sessions and the 1981 Session through October 10, 1981, affecting Chapters 138 through 156 of the General Statutes.

Annotations:

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

North Carolina Reports through volume 302, p. 222.
North Carolina Court of Appeals Reports through volume 50, p. 567.
Federal Reporter 2nd Series volumes through volume 650, p. 292.
Federal Supplement through volume 515, p. 55.
Federal Rules Decision through volume 89, p. 719.
Bankruptcy Reporter through volume 11, p. 138.
United States Reports through volume 449, p. 410.
Supreme Court Reporter through volume 101, p. 2881.
North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

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Annotations:

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

North Carolina Reports through volume 302, p. 222.
North Carolina Court of Appeals Reports through volume 50, p. 807.
Federal Reporter 2nd Series volumes through volume 650, p. 282.
Federal Supplement through volume 515, p. 55.
Federal Rules Decision through volume 89, p. 719.
Bankruptcy Reporter through volume 11, p. 158.
United States Reports through volume 449, p. 410.
Supreme Court Reporter through volume 101, p. 2881.
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The General Statutes of North Carolina

1981 Cumulative Supplement

VOLUME 3C

Chapter 138.

Salaries, Fees and Allowances.

§ 138-5. Per diem and allowances of State boards, etc.

(a) Except as provided in subsections (c) and (f) 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 subsections (c) and (f) 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) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 29, effective July 1, 1980.

(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.

(f) Members of all State boards, commissions and councils whose salaries or any portion of whose salaries are paid from State funds shall receive no per

diem compensation from State funds for their services; provided, however, that members of State boards, commissions and councils who are also members of the General Assembly shall receive, when the General Assembly is not in session, subsistence and travel allowances at the rate set forth in G.S. 120-3.1(4) [120-3.1(a)(4)]. (1961, c. 833, s. 5; 1963, c. 1049, s. 1; 1965, c. 169; 1971, c. 1139; 1973, c. 1397; 1979, c. 838, s. 18; 1979, 2nd Sess., c. 1137, s. 29.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added subsection (f), and near the beginning of the first sentences in subsections (a) and (b), inserted "and (f)" after "(c)."

The 1979, 2nd Sess., amendment, effective July 1, 1980, repealed subsection (c), which provided for subsistence and travel allowances for members of the Advisory Budget Commission. For present provisions as to subsistence and travel allowances of the Advisory Budget Commission, see § 143-4.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 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, twenty-five cents (25¢) per mile of travel and the actual cost of tolls paid. No reimbursement shall be made for the use of a personal car in commuting from an employee's home to his duty station in connection with regularly scheduled work hours. Any designation of an employee's home as his duty station by a department head shall require prior approval by the Office of State Budget and Management on an annual basis. The State Auditor shall in the routine audit of an agency determine compliance with this subdivision.

(2) For bus, railroad, Pullman, or other conveyance, actual fare.

(3) In lieu of actual expenses incurred for subsistence, payment of thirty-five dollars ($35.00) per day when traveling in-state or forty-five dollars ($45.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;

b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business.

(4) For convention registration fees not to exceed thirty dollars ($30.00) per convention.

(b) Out-of-state 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 only upon authorization obtained in the manner prescribed by the Director of the Budget.

(c) Costs of overnight stays, whether in-state or out-of-state, shall not be reimbursed without prior written approval of the official designated by the head of the department or agency. The statement of prior approval shall be

attached to the reimbursement request. All reimbursement requests shall be filed for approval and payment within 30 days after the travel period for which the reimbursement is being requested. (1961, c. 833, s. 6; 1963, c. 1049, s. 2; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, ss. 1, 2; 1973, c. 595, s. 1; 1973, c. 1456; 1975, c. 892, s. 1; 1977, c. 928; 1977, 2nd Sess., c. 1136, s. 38.1; c. 1237, ss. 1, 2; 1979, c. 34, s. 1; c. 1002, s. 1; c. 1050, s. 1; 1979, 2nd Sess., c. 1137, s. 26; 1981, c. 859, ss. 57-59.)

Cross References. —

As to travel expenses incurred by Department of Agriculture employees while testing a manufacturer's weighing or measuring device, see § 81A-10.

Effect of Amendments. — The first 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "seventeen cents (17¢)" for "fifteen cents (15¢)" in subdivision (a)(1).

The second 1977, 2nd Sess., amendment, effective July 1, 1978, increased the amounts in the first sentence of subdivision (a)(3) from $23.00 to $27.00 and from $35.00 to $39.00 and increased the amount in subdivision (a)(4) from $15.00 to $30.00.

The first 1979 amendment, effective July 1, 1979, deleted the former last sentence of subdivision (a)(3), which read: "This shall not apply to those employees who are employed by the North Carolina State Burial Association Commission."

The second 1979 amendment, effective July 1, 1979, increased the reimbursement rate for transportation by privately owned automobile, in subdivision (1) of subsection (a), from 17¢ to 19¢ per mile.

The third 1979 amendment, effective July 1, 1979, increased the in-state subsistence allowance in subdivision (3) of subsection (a) from $27.00 to $31.00.

The 1979, 2nd Sess., amendment, effective July 1, 1980, increased the mileage in subdivision (a) (1) from 19¢ to 25¢, and increased the amounts in the first sentence of subdivision (a) (3) from $31.00 to $35.00 and from $39.00 to $45.00.

The 1981 amendment, effective July 1, 1981, added the second, third and fourth sentences of subdivision (1) of subsection (a), added the third and fourth sentences of subdivision (3) of subsection (a), and added subsection (c).

Session Laws 1977, 2nd Sess., c. 1237, s. 3, provides: "The heads of departments shall administer the provisions of Section 1 and Section 2 above [subdivisions (3) and (4) of this section] in a manner to assure that these provisions are funded from within existing authorized budgets."

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

Session Laws 1981, c. 859, s. 97 contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

The proration of the daily subsistence allowance as promulgated pursuant to subdivision (a)(3) of this section by the Division of State Budget, for the reimbursement of State employees for expenses incurred for lodging and meals when travel involves less than a twenty-four hour period, is applicable to occupational licensing board members. See opinion of Attorney General to Mr. Henry L. Bridges, State Auditor, Nov. 4, 1979.

§ 138-7. Exceptions to §§ 138-5 and 138-6.

Expenditures in excess of the maximum amounts set forth in G.S. 138-5 and 138-6 for travel and subsistence may be reimbursed if the prior approval of the department head is obtained. The Director of the Budget shall establish and publish uniform standards and criteria under which actual expenses in excess of the travel and subsistence allowances and convention registration fees as prescribed in G.S. 138-5 and 138-6 may be authorized by department heads for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business. (1961, c. 833, s. 6.1; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, s. 3; 1973, c. 595, s. 2; 1979, c. 838, s. 17.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added the first sentence, deleted "with the approval of the Advisory Budget Commission" after "Budget"

near the beginning of the second sentence, and deleted the former third sentence which read: "No expenditures in excess of the maximum amounts set forth in G.S. 138-5 and 138-6 shall be reimbursed unless the head of the State department, agency or institution involved has secured the approval of the Director of the Budget prior to the making of such expenditures."

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 138-8. Moving expenses of State employees.

Subject to the rules and regulations promulgated by the Office of State Budget and Management and approved by the Director of the Budget, any department, institution or agency of the State is hereby authorized to pay, from funds available to it, reasonable expenses for transporting the household goods of an employee and members of his household when the transfer of the employee is considered by the Director of the Budget to be in the best interests of the State. (1977, c. 802, s. 15; 1979, 2nd Sess., c. 1137, s. 27.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" near the beginning of the section.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

Travel Expenses of Members of Occupational Licensing Boards. — This section does not authorize the payment of actual travel expenses to members of occupational licensing boards, over and above the amounts provided in the schedule in § 138-6(a)(3) for officers and employees of State departments. See opinion of Attorney General to Mr. Henry L. Bridges, State Auditor, Sept. 14, 1979.

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

§ 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.

(8) To supervise and review small watershed work plans pursuant to G.S. 139-41.2 and 139-47. (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; 1981, c. 326, s. 1.)

Effect of Amendments. — The 1981 amendment added subdivision (d)(8).

§ 139-6. District board of supervisors — elective members; certain duties.

After the issuance of the certificate of organization of the soil conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections. No absentee ballots shall be permitted in the election.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no later than 12:00 noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars ($5.00) at the time he files the notice of candidacy.

Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years. If the position of district supervisor is not filled by failure to elect, then the office shall be deemed vacant upon the expiration of the term of the incumbent, and the office shall be filled as provided in G.S. 139-7.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance

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ERRATA

Editor's note. *— Section 139-6 in Volume 3C, as set out in the 1981 Cumulative Supplement, does not include a 1981 amendment. The section, as amended in 1981, should read as set forth below. Use the adhesive strip on the reverse side to attach between pages 12 and 13.*

§ 139-6. District board of supervisors — elective members; certain duties.

After the issuance of the certificate of organization of the soil conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no later than 12:00 noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars ($5.00) at the time he files the notice of candidacy.

Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years. If the position of district supervisor is not filled by failure to elect, then the office shall be deemed vacant upon the expiration of the term of the incumbent, and the office shall be filled as provided in G.S. 139-7.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1; 1975, c. 798, s. 4; 1979, c. 519, s. 1; 1981, c. 560, s. 3.)

Effect of Amendments. — The 1979 amendment added the second sentence of the fifth paragraph.

The 1981 amendment deleted the former last sentence of the third paragraph, which read: "No absentee ballots shall be permitted in the election."

with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1; 1975, c. 798, s. 4; 1979, c. 519, s. 1.)

Effect of Amendments. — The 1979 amendment added the second sentence of the fifth paragraph.

§ 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 board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and 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 November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. 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 person from the district without recommendation from the board of 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 Resources and Community Development.

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; 1977, c. 387; c. 771, s. 4; 1979, c. 519, s. 2; 1981, c. 330.)

Effect of Amendments. — The 1979 amendment inserted "from the district" near the end of the second sentence of the first paragraph, inserted "the office shall be deemed vacant on the date the term is set to expire and" near the beginning of the third sentence of that paragraph, and substituted "person from the district" for "district supervisor" near the middle of the first sentence of the second paragraph.

The 1981 amendment substituted "board of" for "elective" near the beginning of the second sentence of the first paragraph and near the middle of the first sentence of the second paragraph.

ARTICLE 2.

Watershed Improvement Districts.

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

(a) The trustees shall estimate: The total or amortized portion of capital costs, including incidental expenses and debt service charges, of the contemplated works of improvement to be completed, for which the district shall be obligated during the assessment period; and the amount of all other expenses of the district, including the expenses of administering the district and maintaining the works of improvement. Initially such estimate will include all such costs and expenses which have accrued or will accrue prior to the beginning of the first fiscal year of the district in which assessments are turned over to the county authorities for collection, and that will accrue during the first and the two succeeding fiscal years. (The fiscal year of the district shall begin on July 1 and end on June 30.) The trustees shall thereupon make an assessment of the sum of the estimate calculated pursuant to the above. For that purpose the trustees shall make out an assessment roll in which shall be entered the names of the landowners assessed so far as the same can be ascertained and the amounts assessed against them respectively, with a brief description of the parcels or tracts of land assessed. The assessment roll shall indicate the amount of assessment installments which shall be paid by landowners electing to pay the assessment in installments.

(b) Immediately after such assessment roll has been completed the trustees shall publish at least once a week for two consecutive weeks a notice of the completion of the assessment roll. Such notice shall describe the proposed improvement in general terms, state where and when the assessment roll will be available for inspection, and specify the time and place for a meeting of the trustees to hear objections to the assessments. In addition, the trustees shall, with respect to land against which an assessment has been made, mail a copy of the notice to the owner, and at the address, as shown on the tax records. The certificates of the person designated to mail the notices that such notices were mailed, giving the mailing date, shall be conclusive in the absence of fraud. The meeting shall be held not earlier than 10 days from the first publication of the notice or the certified mailing date of the notices whichever occurred last.

(c) At such meeting the trustees shall hear the objections of all interested persons who appear and offer proof in relation thereto. The trustees shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on said roll, either by confirming the prima facie assessment against any or all tracts or parcels described therein, or by canceling, increasing or reducing the same according to the special benefits which the trustees decide each tract or parcel has received or will receive on account of the activities of the district during the period of the assessment. If any property subject to assessment has been omitted from the roll or if the prima facie assessment has not been made against it, the trustees may place on the roll an apportionment against such property. The trustees may thereupon confirm the roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits. Whenever the trustees shall confirm an assessment roll the secretary-treasurer shall enter in the minute books of the district the date, hour and minute of such confirmation, and he shall immediately cause the assessment roll to be filed with the tax collector of the county wherein the land is located and from that time the assessment shall constitute a lien on the real property against which the same is assessed. Subsequent assessments levied in accor-

dance with this Article shall be a lien against real property from the date of filing of said assessment.

(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 Soil and Water Conservation Commission. Within 20 days after such confirmation or after the last day of the classification hearing, respectively, he must file with the Soil and Water Conservation Commission and the secretary-treasurer of the district a brief statement of the grounds for his dissatisfaction with the ruling of the trustees. The Soil and Water Conservation 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 Soil and Water Conservation Commission from the district and the landowner, both of whom shall have the right to be represented by counsel. After hearing the evidence, the Soil and Water Conservation 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 Soil and Water Conservation Commission to the superior court of the county wherein the land is located for trial de novo. The appeal from the trustees or the Soil and Water Conservation Commission shall not delay or stop the operation of the district or any of its works of improvement. The Soil and Water Conservation Commission in order to fulfill the duties herein granted shall have the powers given it under G.S. 139-41.2(e). The Soil and Water Conservation 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.

(e) The trustees may correct, cancel or remit any assessment, and may remit, cancel or adjust the interest or penalties thereon. The trustees have the power, when in their judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto to set aside the whole of the assassment made by them, and thereupon to make a reassessment. The trustees' power of correction, cancellation, remission or adjustment of any particular benefit assessment or of the interest or penalty thereon, or of setting aside a general assessment, shall not limit or abridge the duty and responsibility hereby imposed upon the trustees to preserve the fiscal integrity of the district, and to provide by reassessment or otherwise, for the repayment of all principal, interest and other debt service charges on assessment bonds, notices, or other evidence of indebtedness issued by the district to pay for works of improvement or any other expenses of the district. The proceedings shall be in all respects as in the case of the original assessment, and the reassessment shall have the same force as if it had originally been properly made. In the event of a reassessment the trustees may, if necessary, postpone the dates for payment of assessments and installments and for performance of other acts required to be performed on or before designated dates.

(f) No change of ownership of any property or interest therein after the last day of the classification hearing shall in any manner affect subsequent proceedings, and the works of improvement may be completed and assessments made therefor as if there had been no change of ownership.

(g) The following provisions of the General Statutes concerning municipal special assessments with modifications as specified, shall apply to assessments by watershed improvement districts:

General Statutes 160-95 to 160-97, which relate to assessments in case of tenants for life or years;

General Statutes 160-98, which relates to liens in favor of cotenants or joint tenants paying assessments;

General Statutes 160-101, which relates to apportionment of assessments where property has been or is about to be subdivided (except that for "governing body," read "trustees").

(h) Subsequent to the initial assessment the trustees may annually, biennially, or triennially, at their discretion, levy additional assessments to meet: The total, or amortized portion, of capital costs, including debt service charges consisting of principal, interest, and other charges on borrowed funds to be paid during the assessment period, and further including costs and expenses incidental to the construction of contemplated additional works of improvement to be completed during the assessment period; and all other expenses of the district, including the expenses of administering the district, maintaining all works of improvement, and interest on borrowed funds, that will accrue during the ensuing fiscal year, biennium or triennium, as the case may be.

The trustees shall prepare estimates, make out the assessment roll, hold hearings and in all other respects proceed as in the case of the initial assessment, except that:

(1) The estimate shall be prepared on or before May 20 preceding the fiscal year during which the assessment (or the first installment thereof) shall come due, but failure to comply with this requirement shall not affect the validity of subsequent proceedings;

(2) The period covered by the estimate of "all other expenses" shall be the succeeding fiscal year, biennium or triennium, as the case may be; and

(3) The assessment installments, if any, to be indicated on the assessment roll shall be those to be paid during each year of the fiscal biennium or triennium, as the case may be, by landowners electing to pay in installments.

(i) The assessment rate on any assessment roll shall not exceed a maximum annual rate of seven dollars ($7.00) per acre. (1959, c. 781, s. 8; 1963, c. 1025, s. 2; c. 1151, s. 2; c. 1228, ss. 1-4; 1973, c. 1262, s. 38; 1981, c. 326, s. 2.)

Effect of Amendments. — The 1981 amendment substituted "Soil and Water Conservation Commission" for "Environmental Management Commission" throughout subsection (d), and substituted "G.S. 139-41.2(e)" for "G.S. 139-35(e)" at the end of the next to the last sentence of subsection (d).

§ 139-35. Supervision by Soil and Water Conservation Commission.

Watershed improvement districts as provided for under this Article shall be subject to the supervision by the Soil and Water Conservation Commission pursuant to G.S.139-41.2 to the same extent as are counties operating watershed improvement programs authorized under Article 3 of this Chapter. (1959, c. 781, s. 8; 1967, c. 1070, ss. 2, 3; 1973, c. 1262, s. 38; 1981, c. 326, s. 3.)

Effect of Amendments. — The 1981 amendment rewrote the section thereby making watershed improvement districts subject to the supervision of the Soil and Water Conservation Commission instead of the Environmental Management Commission.

§ 139-38. The power of eminent domain conferred on watershed improvement districts.

A watershed improvement district shall have the same powers as conferred on counties operating watershed improvement programs by G.S. 139-44 (as the same may be amended from time to time), subject to the limitations and procedures prescribed therein. For this purpose, a watershed improvement district shall be considered as a county and the trustees of the applicant district shall be considered as the board of county commissioners. (1967, c. 987, s. 6; 1981, c. 326, s. 7.)

Effect of Amendments. — This section was formerly § 139-44. It was rewritten and transferred to its present position by Session Laws 1981, c. 326, s. 7. Former § 139-38 was renumbered § 139-44 by the same 1981 act.

Article 3.

Watershed Improvement Programs; Expenditure by Counties.

§ 139-41. Powers of county commissioners.

(a) If the majority of the qualified voters voting in such election favor the levying of such tax, then and in that event, the board of county commissioners shall have all powers of soil and water conservation districts as set forth in subdivisions (1), (2), (3), (4), (5), (6), (7), (8) and (10) of G.S. 139-8 (subject to the limitations set forth in subdivision (12) of such section) concerning flood prevention, development of water resources, floodwater and sediment damages, and conservation, utilization and disposal of water. It is the intention of the General Assembly that such powers shall normally be exercised within all or parts of one or more single watersheds, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases; provided, however, it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(b) The board of county commissioners may itself exercise such powers or, for that purpose, may create a watershed improvement commission to be composed of three members appointed by the board. The terms of office of the members of the commission shall be six years, with the exception of the first two years of existence of the commission, in which one member shall be appointed to serve for a period of two years, one for a period of four years, and one for a period of six years; thereafter all members shall be appointed for six years, and shall serve until their successors have been appointed and qualified. Vacancies in the membership of the commission occurring otherwise than by expiration of term shall be filled by appointmet to the unexpired term by the board of county commissioners. The commission shall hold its first meeting within 30 days after its appointment as provided for in this Article, and the beginning date of all terms of office of commissioners shall be the date on which the commission holds its first meeting. The provisions of G.S. 139-22 and 139-23 concerning the organization and compensation of the elected board of trustees of a watershed improvement district, and concerning the powers and duties of such trustees respecting personnel, surety bonds an audits, shall apply to the commission. The commission shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30.

(c) The board of county commissioners may create a single watershed improvement commission for the entire county or may create separate commissions for individual projects or watersheds.

(d) The board of county commissioners, as an alternative to itself exercising the powers set forth in subsection (a) of this section or to creating a watershed improvement commission for that purpose, may by resolution designate the soil and water conservation district having jurisdiction in the county to exercise authority for the board of county commissioners in carrying out the county watershed improvement program. The provisions of G.S. 139-22 and 139-23 concerning the organization and compensation of the elected board of trustees of a watershed improvement district, and concerning the power and duties of such trustees respecting personnel, surety bonds and audits, shall apply to any soil and water conservation district so designated. The soil and water conservation district shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30.

(e) Repealed by Session Laws 1981, c. 326, s. 5.

(f) Any industry or private water user, the State of North Carolina, the United States or any of its agencies, any municipality, any other county, or any other political subdivision may participate in county watershed improvement programs hereunder in the same manner and to the same extent as provided by G.S. 139-37 with respect to participation in watershed improvement district programs.

(g) The board of county commissioners may provide for county watershed improvement programs and any or all other related activities (such as water supply systems, sewerage systems, water resources programs, beach erosion control programs, and conservation programs) to be coordinated, to be jointly undertaken by two or more local agencies, or to be assigned to a single county agency designated by such name and organized in such manner as the board deems appropriate. (1959, c. 781, s. 10; 1967, c. 987, s. 10; 1969, c. 711, s. 3; 1971, c. 1138, s. 2; 1973, c. 1262, s. 38; 1981, c. 326, s. 5.)

Effect of Amendments. — The 1981 amendment deleted subsection (e), which provided that counties which operated watershed improvement programs would be subject to supervision by the Environmental Management Commission pursuant to G.S. 139-35, and that the words "districts" and "watershed improvements districts," wherever they occurred in such section, should be read as referring to counties.

§ 139-41.1. Powers of counties that are not authorized to levy watershed improvement taxes.

A county may exercise any of the powers set out in this Article without having been authorized to levy a watershed improvement tax pursuant to the procedures of G.S. 139-39 and 139-40 or otherwise. (1981, c. 251, s. 1.)

§ 139-41.2. Review of watershed work plans.

(a) Watershed work plans developed under Public Law 566 (83rd Congress) as amended, and all other work plans developed pursuant to this Chapter, shall be submitted to the Soil and Water Conservation Commission for review and approval or disapproval. No work of improvement may be constructed or established without the approval of work plans by the Soil and Water Conservation Commission pursuant to this section.

(b) The Soil and Water Conservation Commission shall approve a watershed work plan if, in its judgment, it:

(1) Provides for proper and safe construction of proposed works of improvement;

(2) Shows 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) Determines whether a program of flood plain management in connection with such proposed works is in the public interest, and the Soil and Water Conservation Commission may withhold approval until satisfactory flood plain management measures are incorporated; and

(4) is otherwise in compliance with law.

(c) Amendments to the work plan involving major changes shall be approved by the Soil and Water Conservation Commission. Determinations by the Soil and Water Conservation Commission that an amendment involve major changes shall be conclusive for purposes of this section. No work of improvement may be constructed or established without the approval of work plans by the Soil and Water Conservation Commission pursuant to this subsection. The construction or establishment of any such work of improvement without such approval, or without conforming to a work plan approved by the Soil and Water Conservation Commission, may be enjoined. The Soil and Water Conservation Commission may institute an action for such injunctive relief in the superior court of any county wherein such construction or establishment takes place.

(d) In conjunction with any work plans submitted to the Soil and Water Conservation Commission under subsection (c) of this section, a county shall submit in such form as the Soil and Water Conservation 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 Soil and Water Conservation Commission, the county may amend its initial plan of operations from time to time. Soil and Water Conservation Commission approval of the initial plan of operations shall not be required.

(e) If the Soil and Water Conservation Commission has reason to believe that a county is not operating any work of improvement or properly related structure in accordance with its plan of operations as amended, the Soil and Water Conservation 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 county 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 Soil and Water Conservation 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 Soil and Water Conservation Commission determines from evidence of record that the county is not operating any work of improvement or related structure in accordance with its plan of operations, as amended, the Soil and Water Conservation Commission may issue an order directing the county to comply therewith or to take other appropriate corrective action. Upon failure by a county to comply with any such order, the Soil and Water Conservation Commission may institute an action for injunctive relief in the superior court of any county wherein such noncompliance occurs. (1981, c. 326, s. 6.)

§ 139-44. Power of eminent domain conferred on counties.

(a) A county 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 county 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 county 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 [county], the Environmental Management Commission and the clerk of the superior court of the county or counties wherein any part of the district [county] 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 county, 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.

(d) The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in Chapter 40A and all acts amendatory thereof.

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

(f) All provisions of local acts inconsistent herewith limiting condemnation powers of watershed improvement districts or of counties for county watershed improvement programs are hereby repealed. (1967, c. 987, s. 5; 1973, c. 1262, s. 38; 1981, c. 326, s. 4; c. 919, s. 19.)

Effect of Amendments. — This section was formerly § 139-38. It was amended and transferred to its present position by Session Laws 1981, c. 326, s. 4. Former § 139-44 was renumbered as § 139-38 by Session Laws 1981, c. 326, s. 7.

In amending this section, Session Laws 1981, c. 326, s. 4, provides, in part, that the section be amended "by changing all references to a 'watershed improvement district' or 'district' in G.S. 139-38(a) and 139-38(c) and (d) to read 'county.'" There is no reference to "watershed improvement district" or "district" in subsection (c); however there are two references to "district" in subsection (b). The word "county" has been inserted in brackets following "district" in two places in subsection (b).

Session Laws 1981, c. 919, s. 19, effective January 1, 1982, substituted "Chapter 40A" for "Chapter 40, Article 2" in subsection (d).

§ 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 Soil and Water Conservation 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.

(b) A notice of public hearing for every preliminary project investigation of the Soil Conservation Service or recommended report of the Army Corps of Engineers or any project planning report of the Tennessee Valley Authority concerning a watershed improvement project or drainage project that involves channelization shall be published in a newspaper of general circulation in the county or counties wherein any part of the project lies at least one time, not less than two weeks nor more than four weeks prior to the date of the public hearing. The notice shall include a map of the project, not less than one-fourth page in size, delineating the boundaries of the project and indicating the proposed works of improvement, including any channelization features.

(c) Following publication of the notice, the Soil and Water Conservation Commission or its designee 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 following provisions together with others the Soil and Water Conservation Commission may prescribe shall be applicable to hearings pursuant to this section:

(1) All hearings shall be before the Soil and Water Conservation Commission or its authorized agent, and the hearing shall be open to the public.
(2) A full and complete record of all proceedings shall be taken by a reporter appointed by the Soil and Water Conservation Commission. Any party to a proceeding shall be entitled to a copy of such record upon payment of the reasonable cost as determined by the Soil and Water Conservation Commission.
(3) Any hearing will provide to all parties an opportunity to make written or oral submissions concerning the proposed project.
(4) Following any hearing, the Soil and Water Conservation Commission shall afford the parties a reasonable opportunity to submit within such time as prescribed by the Commission, proposed findings of fact and any brief in connection therewith.

(d) Every preliminary project investigation or recommended report concerning a watershed improvement project or drainage project that involves channelization shall be submitted to the Soil and Water Conservation 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 Soil and Water Conservation Commission shall approve such investigation or report, following the public hearing held pursuant to subsec-

tion (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 Soil and Water Conservation 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 Soil and Water Conservation 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 Soil and Water Conservation 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; 1981, c. 326, s. 8.)

Effect of Amendments. — The 1981 amendment substituted "Soil and Water Conservation Commission" for "Environmental Management Commission" throughout the section, and rewrote subsection (c).

§§ 139-48 to 139-52: Reserved for future codification purposes.

Article 4.

Grants for Small Watershed Projects.

§ 139-53. State Soil and Water Conservation Commission authorized to accept applications.

The State Soil and Water Conservation Commission is authorized to accept applications for grants for nonfederal costs relating to small watershed projects authorized under Public Law 566 (83rd Congress as amended) from local sponsors of such projects properly organized under the provisions of either Chapter 156 of the General Statutes of North Carolina or Chapter 139 of the General Statutes of North Carolina, or from county service districts authorized by G.S. 153A-301, or from municipal service districts authorized by G.S. 160A-536. Applications shall be made on forms prescribed by the Commission. (1977, 2nd Sess., c. 1206; 1981, c. 326, s. 9.)

Effect of Amendments. — The 1981 amendment added "or from county service districts authorized by G.S. 153A-301, or from municipal service districts authorized by G.S. 160A-536" at the end of the first sentence.

§ 139-54. Purposes for which grants may be requested.

Applications for grants may be made for the nonfederal share of small watershed projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

(1) Land rights acquisition for impounding or retarding water — fifty percent (50%);

(2) Engineering fees — fifty percent (50%);
(3) Anticipated future and present water supply needs in conjunction with watershed improvement works or projects as described in G.S. 139-37.1 — fifty percent (50%);
(4) Installation of recreational facilities and services (to include land acquisition) as described in G.S. 139-46 — fifty percent (50%);
(5) Construction costs for water management (drainage or irrigation) purposes, including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent (66 2/3%);
(6) Conservation and replacement of fish and wildlife habitat as described in G.S. 139-46 — seventy-five percent (75%). (1977, 2nd Sess., c. 1206; 1979, c. 1046, s. 2.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent (66 2/3%)" for "— fifty percent (50%)" at the end of subdivision (5).

§ 139-55. Review of applications.

(a) The State Soil and Water Conservation Commission shall receive and review applications for grants for small watershed projects authorized under Public Law 566 (83rd Congress, as amended) and approve, approve in part, or disapprove all such applications.

(b) In reviewing each application, the State Soil and Water Conservation Commission shall consider:

(1) The financial resources of the local sponsoring organization;
(2) Nonstructural measures such as sediment control ordinances and flood plain zoning ordinances enacted and enforced by local governments to alleviate flooding;
(3) Regional benefits of projects to an area greater than the area under jurisdiction of the local sponsoring organization;
(4) Any direct benefit to State-owned lands and properties. (1977, 2nd Sess., c. 1206.)

§ 139-56. Recommendation of priorities and disbursal of grant funds.

Whenever two or more applications for grants are approved in whole or in part, the State Soil and Water Conservation Committee shall establish priorities among the several applications for disbursal of grant funds. To the extent that funds are available, the State Soil and Water Conservation Commission may authorize the disbursal of grant funds to the applicants consistent with the established priorities. The State Soil and Water Conservation Commission shall promulgate regulations to provide for an audit of grant funds to assure that they are spent for the purposes delineated in the application. Established priorities may be reviewed from time to time and revised if circumstances warrant such revision. (1977, 2nd Sess., c. 1206.)

§ 139-57. Availability of funds.

All grants shall be contingent upon the availability of funds for disbursement to applicants. At the end of each fiscal year the State Soil and Water Conservation Commission shall notify all applicants whose applications have been approved and to whom grant funds have not been disbursed of the

status of their application. At the time of notification the State Soil and Water Conservation Commission shall notify the applicants of the availability of funds for grants in the upcoming fiscal year and at the same time shall notify the applicants of their position on any priority list that may have been established for the disbursal of grant funds for small watershed projects. (1977, 2nd Sess., c. 1206.)

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1.

North Carolina Museum of Art.

§§ 140-1 to 140-5.1: Recodified as §§ 140-5.12 to 140-5.17.

Editor's Note. — This Article was rewritten by Session Laws 1979, 2nd Sess., c. 1306, s. 1, effective July 1, 1980, and has been recodified as Article 1B, §§ 140-5.12 to 140-5.17.

Article 1A.

Art Museum Building Commission.

§§ 140-5.7 to 140-5.11: Reserved for future codification purposes.

Article 1B.

North Carolina Museum of Art.

§ 140-5.12. Agency of State; functions.

The North Carolina Museum of Art is an agency of the State of North Carolina within the Department of Cultural Resources. The functions of the North Carolina Museum of Art shall be to acquire, preserve, and exhibit works of art for the education and enjoyment of the people of the State, and to conduct programs of education, research, and publication designed to encourage an interest in and an appreciation of art on the part of the people of the State. (1961, c. 731; 1979, 2nd Sess., c. 1306, s. 1.)

Editor's Note. — This Article is Article 1 of this Chapter as rewritten by Session Laws 1979, 2nd Sess., c. 1306, s. 1, effective July 1, 1980, and recodified. Where appropriate, the historical citations to the former Article have been added to corresponding sections in the Article as rewritten.

§ 140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

(a) It is the duty of the Department of Cultural Resources to develop policy and to establish and enforce standards for resources, services, and programs involving the arts and the cultural aspects of the lives of the citizens of North Carolina. To attain these objectives, there is hereby established within the Department of Cultural Resources the Board of Trustees of the North Carolina Museum of Art.

(b) The Board of Trustees of the North Carolina Museum of Art shall consist of 22 members, chosen as follows:

(1) The Governor shall appoint eight members;
(2) The North Carolina Art Society, Incorporated, shall elect four members;
(3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;
(4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;
(5) The President of the Senate shall appoint one member; and
(6) The Speaker of the House of Representatives shall appoint one member of the House of Representatives.

All regular appointments or elections except those by the President of the Senate or the Speaker of the House shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the President of the Senate and the Speaker of the House of Representatives shall be for the then current legislative term, and no appointee of the President of the Senate or of the Speaker of the House may be appointed to more than two consecutive terms of two years.

(c) Every vacancy occurring in the regular membership of the Board of Trustees prior to the expiration of a term shall be filled by the same authority and in the same manner as the vacating member was chosen, and the successor member so chosen shall serve for the remainder of the unexpired term of the vacating member.

(d) All initial appointments and elections to the Board of Trustees shall be made on July 1, 1980, or as soon as feasible thereafter except as provided in this subsection, and the terms of all except the legislative members shall expire on June 30, 1983, or June 30, 1986, as the case may be. In order to establish regularly overlapping terms, initial appointments and elections to the Board of Trustees shall be made as follows:

(1) Four members at large shall be appointed by the Governor for initial terms of three years and four members at large shall be appointed by the Governor for initial terms of six years.
(2) One member shall be elected by the North Carolina Art Society, Incorporated, for an initial term of three years and two members shall be elected by that Society for initial terms of six years.
(3) One member shall be elected by the North Carolina Museum of Art Foundation, Incorporated, for an initial term of three years and two members shall be elected by that Foundation for initial terms of six years.
(4) One member shall be elected by the Art Commission prior to July 1, 1980, for an initial term of three years and two members shall be elected by that Commission for initial terms of six years. Upon the expiration of the terms of those three members, their successors shall be elected by the Board of Trustees of the North Carolina Museum of Art.

(5) Three members shall be elected by the State Art Museum Building Commission to serve until the termination of that Commission or until June 30, 1983, whichever shall first occur. Upon the termination of the terms of those three members, should such termination occur prior to June 30, 1983, their successors shall be elected as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art; the terms of the successor members so elected shall expire on June 30, 1983. On July 1, 1983, or as soon as feasible thereafter, the successors of these three members shall be elected for terms of six years, as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art.

(6) One member shall be appointed by the President of the Senate to serve for the remainder of the then current legislative term.

(7) One member of the House of Representatives shall be appointed by the Speaker of the House of Representatives to serve for the remainder of his legislative term.

Every vacancy occurring in the initial membership of the Board of Trustees prior to the expiration of a term of office shall be filled by the same authority and in the same manner as the vacating member was chosen and the successor member so appointed shall serve for the remainder of the unexpired term of the vacating member.

(e) Any member of the Board of Trustees may be removed from office by the authority that appointed or elected that member for misfeasance, malfeasance, or nonfeasance in office. In the case of an appointment made by the Governor, removal shall be made in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) A public officer who is appointed or elected to serve on the Board of Trustees shall be deemed to serve thereon as a trustee ex officio and his duties as a trustee shall be deemed additional duties of his primary public office.

(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other officers as the Board deems necessary. The chairman shall be designated by the Governor from among the members of the Board. The vice-chairman shall be elected by and from among the members of the Board. The chairman and vice-chairman shall be chosen for terms of two years or for so long as they are members of the Board, whichever is the shorter period. The Director of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall attend all meetings, except when the Board is considering issues related to the Director's performance of duties.

(h) The Board of Trustees shall meet at least once in each quarter. The Board may hold special meetings at any time and place within the State at the call of the chairman. The chairman may call a special meeting at his discretion, and he shall call a special meeting upon the written request of a majority of the authorized membership of the Board of Trustees.

(i) A majority of the authorized membership of the Board of Trustees shall constitute a quorum for the transaction of business.

(j) Members of the Board of Trustees who are officers or employees of State agencies or institutions shall receive from funds available to the Department of Cultural Resources subsistence and travel allowances at the rates authorized by G.S. 138-6. Legislative members of the Board of Trustees shall receive from funds available to the Department of Cultural Resources subsistence and travel allowances at the rates authorized by G.S. 120-3.1. All other members of the Board of Trustees shall receive from funds available to the Department of Cultural Resources per diem and travel and subsistence allowances at the rates authorized by G.S. 138-5.

(k) All clerical and administrative services required by the Board of Trustees shall be supplied by the office of the Director of the North Carolina Museum of Art. (1979, 2nd Sess., c. 1306, s. 1.)

§ 140-5.14. Board of Trustees — powers and duties.

The Board of Trustees shall be the governing body of the North Carolina Museum of Art and shall have the following powers and duties:

(1) To adopt bylaws for its own government;

(2) To adopt policies, rules, and regulations for the conduct of the North Carolina Museum of Art;

(3) To prescribe the powers and duties of the Director of the North Carolina Museum of Art, consistent with the provisions of this Article;

(4) To establish such advisory boards and committees as it may deem advisable;

(5) To advise the Secretary of Cultural Resources with respect to inspecting, appraising, obtaining attributions and evaluations of, transporting, exhibiting, lending, storing, and receiving upon consignment or upon loan of statuary, paintings, and other works of art of any and every kind and description that are worthy of acquisition, preservation, and exhibition by the North Carolina Museum of Art;

(6) To advise the Secretary of Cultural Resources on the care, custody, storage, and preservation of all works of art acquired or received upon consignment or loan by the North Carolina Museum of Art;

(7) After consultation with the Secretary of Cultural Resources, on behalf of and in the name of the North Carolina Museum of Art, to acquire by purchase, gift, or will, absolutely or in trust, from individuals, corporations, the federal government, or from any other source, money, works of art, or other property which may be retained, sold, or otherwise used to promote the purposes of the North Carolina Museum of Art as provided in G.S. 140-5.12. The net proceeds of the sale of all property acquired under the provisions of this paragraph shall be deposited in the State Treasury to the credit of the "The North Carolina Museum of Art Special Fund";

(8) After consultation with the Secretary of Cultural Resources, to exchange works of art owned by the North Carolina Museum of Art for other works of art which, in the opinion of the Board, would improve the quality, value, or representative character of the art collection of the Museum;

(9) After consultation with the Secretary of Cultural Resources, to sell any work of art owned by the North Carolina Museum of Art if the Board finds that it is in the best interest of the Museum to do so, unless such sale would be contrary to the terms of acquisition. The net proceeds of each such sale, after deduction of the expenses attributable to that sale, shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund," and shall be used only for the purchase of other works of art. No work of art owned by the North Carolina Museum of Art may be pledged or mortgaged;

(10) To make a biennial report to the Governor and the General Assembly on the activities of the Board of Trustees and of the North Carolina Museum of Art;

(11) To adopt, amend, and rescind rules and regulations consistent with the provisions of this Article. All rules and regulations heretofore adopted by the Art Commission shall remain in full force and effect unless and until repealed or superseded by action of the Board. All rules and regulations adopted by the Board shall be enforced by the Department of Cultural Resources;

(12) To determine the sites for expansion of the North Carolina Museum of Art with the approval of the Governor and Council of State and the North Carolina State Capital Planning Commission;

(13) To provide auxiliary services at the North Carolina Museum of Art. Such services may include the sale of books, periodicals, art works, art supplies and providing facilities for the operation of food and beverage services. The operation of food and beverage services shall be by contract with private enterprises, and subject to the provisions of Article 3 of Chapter 111. (1979, 2nd Sess., c. 1306, s. 1; 1981, c. 301.)

Effect of Amendments. — The 1981 amendment added subdivision (13).

§ 140-5.15. Director of Museum of Art; appointment; dismissal; powers and duties; staff.

(a) The Secretary of Cultural Resources shall appoint the Director of the North Carolina Museum of Art from a list of not fewer than two nominees recommended by the Board of Trustees of the North Carolina Museum of Art.

(b) The Secretary of Cultural Resources may dismiss the Director unless two thirds of the authorized membership of the Board of Trustees shall vote to reverse that action in accordance with the following procedure: Upon dismissal of the Director, the Secretary shall give to the chairman of the Board of Trustees written notice of that action. This notice shall be sent to the chairman of the Board within 10 days after the Secretary makes a final decision on dismissal. The chairman shall promptly communicate the notice of dismissal to all other Board members. Board action to consider reversal of the Secretary's decision shall be taken at a regular or special meeting called pursuant to G.S. 140-5.13(h). Reversal of the Secretary's order of dismissal may be effected only by resolution adopted by an affirmative vote of two thirds of the authorized membership of the Board of Trustees at a meeting held within 30 days after the chairman of the Board receives from the Secretary written notice of dismissal of the Director. All ex officio members of the Board shall be entitled to vote on this question. The failure of two thirds of the authorized membership of the Board of Trustees to vote to reverse the Secretary's order of dismissal within 30 days after the chairman of the Board receives from the Secretary written notice of dismissal of the Director shall be deemed an affirmance of that order by the Board. A decision by the Board of Trustees to affirm or reverse the Secretary's order of dismissal shall be deemed a final decision of the Department of Cultural Resources. An appeal from the final agency decision shall be taken pursuant to Chapter 150A of the General Statutes.

(c) The salary of the Director shall be fixed by the Governor with the approval of the Advisory Budget Commission after receiving the recommendation of the Board of Trustees.

(d) The Director shall have the following powers and duties:

(1) Under the supervision of the Board of Trustees, to direct and administer the North Carolina Museum of Art in accordance with the policies, rules, and regulations adopted by the Board of Trustees;

(2) To employ such persons as are necessary to perform the functions of the North Carolina Museum of Art and are provided for in the budget of the Museum and to promote, demote, and dismiss such persons in accordance with State personnel policies, rules, and regulations. This paragraph shall not apply to associate directors and curators;

(3) To serve as director of collections of the North Carolina Museum of Art;

(4) To serve as Secretary to the Board of Trustees.

(e) The Director, associate directors, and curators shall be exempt from the provisions of the State Personnel Act. The Board of Trustees shall adopt, subject to the approval of the Secretary of Cultural Resources, rules and regulations governing the employment, promotion, demotion, and dismissal of associate directors and curators. (1961, c. 731; 1973, c. 476, s. 38; 1979, 2nd Sess., c. 1306, s. 1.)

§ 140-5.16. Gifts; special fund; exemption from taxation.

(a) All gifts of money to the North Carolina Museum of Art and all interest earned thereon shall be paid into the State treasury and maintained as a fund to be designated "The North Carolina Museum of Art Special Fund."

(b) All gifts made to the North Carolina Museum of Art shall be exempt from every form of taxation including, but not by way of limitation, ad valorem, intangible, gift, inheritance, and income taxation. (1961, c. 731; 1979, 2nd Sess., c. 1306, s. 1.)

§ 140-5.17. State Art Museum Building Commission.

No provision of this Article shall to any extent abrogate or diminish the powers and duties of the State Art Museum Building Commission, provided for in Article 1A of Chapter 140 and in Part 3, Article 2, of Chapter 143B of the General Statutes. (1979, 2nd Sess., c. 1306, s. 1.)

Chapter 141.

State Boundaries.

Sec.

§ 141-7.1. Southern lateral seaward boundary.

The lateral seaward boundary between North Carolina and South Carolina from the low-water mark of the Atlantic Ocean shall be and is hereby designated as a continuation of the North Carolina-South Carolina boundary line as described by monuments located at Latitude 33° 51′ 50.7214″ North, Longitude 78° 33′ 22.9448″ West, at Latitude 33° 51′ 36.4626″ North, Longitude 78° 33′ 06.1937″ West, and at Latitude 33° 51′ 07.8792″ North, Longitude 78° 32′ 32.6210″ West, in a straight line projection of said line to the seaward limits of the States' territorial jurisdiction, such line to be extended on the same bearing insofar as a need for further delimitation may arise. (1979, c. 894; 1981, c. 744.)

Editor's Note. — Session Laws 1979, c. 894, s. 2, provides: "This act shall become effective upon ratification and with approval thereof, and concurrence therein, by the State of South Carolina and upon the approval and consent to this act by the Congress of the United States; provided, that this act shall stand repealed if the State of South Carolina and the Congress of the United States do not ratify, confirm, adopt, or otherwise consent to the effect of the act establishing the lateral seaward boundary between North Carolina and South Carolina by January 1, 1985."

Effect of Amendments. — The 1981 amendment deleted "existing" following "described by" near the middle of the section, substituted "33° 51′ 50.7214"" for "33° 51′ 50.721"" near the middle of the section, substituted "at" for "and" following "West" and preceding "Latitude" near the middle of the section, and inserted "and at Latitude 33° 51′ 07.8792"" North, Longitude 78° 32′ 32.6210″ West."

Chapter 143.

State Departments, Institutions, and Commissions.

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ARTICLE 1.

Executive Budget Act.

§ 143-1. Scope and definitions.

This Article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be construed to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Office of State Budget and Management and to be performed by it, but it shall mean when used otherwise any State agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any State funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the State, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37.)

Cross References. — As to the Local Government Fiscal Information Act, see §§ 120-30.41 through 120-30.48.

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" in the third sentence.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 143-2. Purposes.

It is the purpose of this Article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, insti-

tutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this Article is to include within the powers of the Office of State Budget and Management all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Office of State Budget and Management in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise.

Notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor, State Treasurer, and Administrative Officer of the Courts for their respective departments shall not, except as provided in G.S. 143-25, be subject to the powers of the Director of the Budget or the Office of State Budget and Management, it being intended that the State Auditor, State Treasurer, and Administrative Office of the Courts shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" in three places.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The 1981 amendment, effective July 1, 1981, substituted "State Auditor, State Treasurer, and Administrative Officer of the Courts" for "State Auditor and the State Treasurer" near the beginning of the last paragraph and substituted "State Auditor, State Treasurer, and Administrative Office of the Courts" for "State Auditor and the State Treasurer" near the middle of the last paragraph.

Session Laws 1981, c. 859, s. 97 contains a severability clause.

§ 143-3. Examination of officers and agencies; disbursements.

The Director shall have power to examine under oath any officer or any head, any clerk or employee, of any department, institution, bureau, division, board, commission, corporation, association, or any agency; to cause the attendance of all such persons, requiring such persons to furnish any and all information desired relating to the affairs of such agency; to compel the production of books, papers, accounts, or other documents in the possession or under the control of such person so required to attend. The Director or his authorized representative shall have the right and the power to examine any State institution or agency, board, bureau, division, commission, corporation, person, and to inspect its property, and inquire into the method of operation and management.

The Director shall have power to have the books and accounts of any of such agencies or persons audited, and supervise generally the budget accounts of

such departments, institutions and agencies within the terms of this Article. The Director may require that the cost of making all audits shall be paid from the regular maintenance appropriation made by the General Assembly for such department, institution or agency which may be thus audited.

It shall be the duty of the Director to recommend to the General Assembly at each session such changes in the organization, management and general conduct of the various departments, institutions and other agencies of the State, and included within the terms of this Article, as in his judgment will promote the more efficient and economical operation and management thereof.

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts shall bear two signatures of such officers as will be designated by the Director of the Budget. (1925, c. 89, s. 3; 1929, c. 100, s. 3; c. 337, s. 4; 1969, c. 458, s. 3; 1981, c. 859, s. 47.1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "State Auditor, State Treasurer and Administrative Officer of the Courts" for "State Auditor and the State Treasurer" near the end of the last paragraph.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-3.1. Transfer of functions.

Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of preaudit of State agency expenditures, issuance of warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Director of the Budget. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Office of State Budget and Management, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Office of State Budget and Management. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Office of State Budget and Management the unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Director of the Budget under the provisions of this section. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" in three places.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 143-3.2. Issuance of warrants upon State Treasurer.

Upon the transfer of functions from the Auditor's Office to the Director of the Budget, as provided in G.S. 143-3.1, the Director of the Budget shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer; and to carry out this responsibility the

Director shall designate a State Disbursing Officer whose duties shall be performed as a function of the Office of State Budget and Management. All warrants upon the State Treasurer shall be signed by the State Disbursing Officer, who before issuing same shall determine the legality of payment and the correctness of the accounts; provided that the State Auditor, State Treasurer, and Administrative Officer of the Courts shall have the exclusive authority to issue all warrants for the operation of their respective department and such warrants shall be paid by the State Treasurer from the appropriations provided therefor; and provided further, that when considered expedient, due to its size or location, a State agency may upon approval of the Director of the Budget make expenditures through a disbursing account with the State Treasurer. All deposits in such disbursing accounts shall be by the State Disbursing Officer's warrant, and a copy of each voucher making withdrawals from such disbursing accounts, together with such supporting data as may be required by the Director of the Budget, shall be forwarded to the Office of State Budget and Management monthly or otherwise as may be required by the Director of the Budget; provided, however, that a central payroll unit operating under the Office of State Budget and Management may make deposits and withdrawals directly to and from a disbursing account which shall constitute a revolving fund for servicing payrolls passed through such central payroll unit. The State Disbursing Officer is authorized to use a facsimile signature machine in affixing his signature to warrants. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1961, c. 1194; 1969, c. 844, s. 12; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1; c. 884, s. 10.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" in four places.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The first 1981 amendment, effective July 1, 1981, substituted "State Auditor, State Treasurer, and Administrative Officer of the Courts" for "State Auditor and the State Treasurer" near the beginning of the second sentence.

The second 1981 amendment deleted the former last four sentences of the section, relating to bonds of the Director of Budget and of the State Disbursing Officer.

Session Laws 1981, c. 859, s. 97 contains a severability clause.

§§ 143-3.3, 143-3.4: Reserved for future codification purposes.

§ 143-3.5. Coordination of statistics.

It shall be the duty of the Director through the Office of State Budget and Management to coordinate the efforts of governmental agencies in the collection, development, dissemination and analysis of official economic, demographic and social statistics pertinent to State budgeting. The Division shall

(1) Prepare and/or release the official demographic and economic estimates and/or projections for the State;
(2) Conduct special economic and demographic analyses and studies to support statewide budgeting;
(3) Develop and coordinate cooperative arrangements with federal, State and local governmental agencies to facilitate the exchange of data to support State budgeting;
(4) Compile, maintain, and disseminate information about State programs which involve the distribution of State aid funds to local governments including those variables used in their allocation; and,
(5) Develop and maintain in cooperation with other State and local governmental agencies, an information system providing comparative data on resources and expenditures of local governments.

To minimize duplication of effort in collecting or developing new statistical series pertinent to State planning and budgeting, including contractual arrangements, State agencies must submit to the Director of the Budget proposed procedures and funding requirements.

This section shall not apply to the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative Services Commission, or any other committee or commission in the legislative branch. (1979, 2nd Sess., c. 1137, s. 41.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1137, s. 79, makes this section effective July 1, 1980.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 143-4. Advisory Budget Commission.

The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, two other Senators appointed by the President of the Senate, two other Representatives appointed by the Speaker of the House, and four other persons appointed by the Governor shall constitute the Advisory Budget Commission.

The Chairman of the Advisory Budget Commission shall also receive an additional two thousand five hundred dollars ($2,500) payable in quarterly installments, for expenses.

The members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowance as are provided for members of the General Assembly for services on interim legislative committees. The Advisory Budget Commission shall be called in conference in January and July of each year, upon 10 days' notice by the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

A vacancy in a seat on the Commission filled by the chairman of a finance or an appropriations committee shall be filled by appointment by the officer who appointed the chairman causing the vacancy. A vacancy in one of the other seats on the Commission shall be filled by appointment by the officer who appointed the person causing the vacancy.

The Advisory Budget Commission alone shall be responsible for recommending to the General Assembly proposed biennial budgets for the requirements of the State Auditor, State Treasurer, and Administrative Officer of the Courts and for such purposes the Advisory Budget Commission shall require the State Auditor, State Treasurer, and Administrative Officer of the Courts to maintain records and to submit budget requests and periodic reports on their respective departments in the same manner and form as do other State agencies, and may further direct that such requests and reports be filed for safekeeping in the office of the Office of State Budget and Management.

Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a competent certified public accountant who is in no way otherwise affiliated with the State or with any agency thereof to conduct a thorough and complete audit of the receipts and expenditures of the State Auditor's office during the immediate fiscal year just ended, and to report to the Advisory Budget Commission on such audit not later than the following October first. A sufficient number of copies of such audit shall be provided so that at least one copy is filed with the Governor's Office, one copy with the Office of State Budget and Management and at least two copies filed with the Secretary of State.

In all matters where action on the part of the Advisory Budget Commission is required by this Article, eight members of the Commission shall constitute

a quorum for performing the duties or acts required by the Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768; 1955, c. 578, s. 3; 1957, c. 269, s. 2; 1973, c. 820, ss. 1-3; 1979, 2nd Sess., c. 1137, ss. 25, 29.1, 37; 1981, c. 859, s. 47.1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, added the second paragraph, rewrote the first sentence of the present third paragraph, which formerly provided that the members of the Commission should receive as full compensation $10.00 per day for each day which they served and their expenses, and substituted "Office of State Budget and Management" for "Department of Administration" in the present fifth and sixth paragraphs.

In rewriting the provisions as to compensation of members of the Commission, the 1979, 2nd Sess., amendatory act referred only to the first sentence of the section, rather than to the first sentence of the second paragraph. However, the context made it plain that the second paragraph was intended, and the amendment has therefore been given effect in the first sentence of the second paragraph of the section as set out above.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The 1981 amendment, effective July 1, 1981, substituted "State Auditor, State Treasurer, and Administrative Officer of the Courts" for "State Auditor, and the State Treasurer" and substituted "State Auditor, State Treasurer, and Administrative Officer of the Courts" for "State Auditor and State Treasurer" near the beginning of the fifth paragraph.

Although Session Laws 1981, c. 859, s. 47.1, referred to the fourth paragraph of the section, the words to be substituted appear only in the fifth paragraph of the section, and the amendment has therefore been given effect in the fifth paragraph.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-9. Information to be furnished upon request.

Cross References. — As to the Local Government Fiscal Information Act, see §§ 120-30.41 through 120-30.48.

§ 143-11.1. Photographs to aid in determining needs of institutions requesting permanent improvements.

When the Advisory Budget Commission makes its biennial inspection of the facilities of the State and receives requests from the State institutions in the preparation of the report of the Advisory Budget Commission, the Director of the Budget may secure the services of a qualified photographer to accompany the Advisory Budget Commission on such tour of inspection and to take such photographs as the members of the Advisory Budget Commission may deem advisable in order to assist the Advisory Budget Commission and the members of the General Assembly in obtaining a clear conception of the needs of the various institutions requesting permanent improvements. The Director of the Budget may furnish sufficient copies of such photographs to the General Assembly at the time it is considering requests for appropriations from such institutions to enable each member of the General Assembly to have ready access to such photographs.

For the purpose of securing the service provided in this section, the Director of the Budget is authorized to obtain the services of any regular photographer in the employment of the State and if no such photographer is available the Director of the Budget may secure the services of a professional photographer and the expense of such service shall be borne from the regular funds of the Office of State Budget and Management, and if necessary, additional funds

may be secured from the Contingency and Emergency Fund. (1953, c. 982; 1957, c. 269, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 37.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" near the end of the second paragraph.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 143-16.1. Federal funds.

All federal funds shall be expended and reported in accordance with provisions of the Executive Budget Act. Proposed budgets recommended to the General Assembly by the Governor and Advisory Budget Commission shall include all appropriate information concerning the federal expenditures in State agencies, departments and institutions. (1977, 2nd Sess., c. 1219, s. 45.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1219, s. 59, makes the act effective July 1, 1978.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

§ 143-17. Requisition for allotment.

Before an appropriation of any spending agency shall become available, such agency shall submit to the Director, not less than 20 days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Auditor who in the course of his audits shall check for compliance with such allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director of the Budget in writing: Provided, that quarterly allotments made to the State Auditor's office, State Treasurer's office, and Administrative Office of the Courts shall be in such amounts as may be designated by the Advisory Budget Commission, and shall be made available in accordance with procedures determined by the Advisory Budget Commission. (1925, c. 89, s. 18; 1929, c. 100, s. 19; 1955, c. 578, s. 4; 1981, c. 859, s. 47.1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "State Auditor's office, State Treasurer's office and Administrative Office of the Courts" for "Auditor's office and the Treasurer's office" near the beginning of the last sentence.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-19. Help for Director.

The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this Article; and shall fix the compensation of all persons employed under this Article; which shall be paid by the State Treasurer upon the warrant of the State Disbursing Officer. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this Article, shall be reported to the General Assembly by the Director, and all payments made under this

Article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Office of State Budget and Management. (1925, c. 89, s. 20; 1929, c. 100, s. 21; 1957, c. 269, s. 2; 1961, c. 1181, s. 2; 1979, 2nd Sess., c. 1137, s. 37.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" at the end of the section.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 143-20. Accounting records and audits.

The Director shall be responsible for keeping a record of the appropriations, allotments, expenditures, and revenues of each State department, institution, board, commission, officer, or other agency in any manner handling State funds. These records shall be kept in summary form, or in as much detail as the Director may deem advisable. Audits of the records of the State Auditor and the State Treasurer for the periods preceding the transfer of preaudit and related functions from the Auditor's office to the Director of the Budget may be accomplished by the Office of State Budget and Management at the direction of the Director of the Budget. (1925, c. 89, s. 22; 1929, c. 100, s. 22; 1955, c. 578, s. 5; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" near the end of the last sentence.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items.

(a) All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the purposes and/or objects enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budget of any department, institution or other spending agency, may be made at the request in writing of the head of such department, institution or other spending agency by the Director of the Budget.

(b) Notwithstanding subsection (a), no requested transfer or change from a program line item may be made if the total amount transferred from that line item during the fiscal year would be more than ten percent (10%) of the amount appropriated for that program line item for that fiscal year, unless the Joint Legislative Commission on Governmental Operations has given its prior approval for that transfer. This restriction applies to all State departments with a total General Fund appropriation of at least fifty million dollars ($50,000,000). All other departments shall apply the ten percent (10%) limitation to the summary by object line items. No transfers or changes, regardless of amount, from salary funds may be made without the prior approval of the Joint Legislative Commission on Governmental Operations. The Commission must take action within 40 days of receiving a request for approval from the Office of State Budget and Management. Transfers or changes within the

Medicaid program are exempt from this subsection. (1929, c. 100, s. 24; 1981, c. 1127, s. 82.)

Effect of Amendments. — The 1981 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 143-23.1. Maintenance funds for the State Auditor, State Treasurer, and Administrative Office of the Courts.

All appropriations now or hereafter made for the support of the functions and responsibilities of the State Auditor, State Treasurer, and Administrative Office of the Courts are for the purposes and objects enumerated in the itemized requirements of such activities recommended to the General Assembly by the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budgets of the State Auditor, State Treasurer, and Administrative Office of the Courts may be authorized by the Advisory Budget Commission in accordance with procedures established by the Commission. (1955, c. 578, s. 6; 1981, c. 859, s. 47.1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "State Auditor, State Treasurer, and Administrative Office of the Courts" for "State Auditor and the State Treasurer" in the first and second sentences.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.

All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and by and with the advice and consent of a majority of the Advisory Budget Commission to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata, including appropriations for the State Auditor, the State Treasurer, and Administrative Office of the Courts when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so

administer this Article as to prevent any such overdraft or deficit. (1929, c. 100, s. 26; 1955, c. 578, s. 7; 1973, c. 476, s. 193; 1981, c. 859, s. 47.1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "State Auditor, State Treasurer, and Administrative Office of the Courts" for "State Auditor and the State Treasurer" in the next-to-last sentence.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-27.1: Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 43, effective July 1, 1980.

§ 143-27.2. Severance wages for certain State employees.

The Director of the Budget, upon written request of a State department and recommendations of the State Personnel Officer, is authorized to pay severance wages to a State employee when employment is terminated as the result of the closing of a State institution. (1979, c. 838, s. 22.)

Editor's Note. — Session Laws 1979, c. 838, s. 123, makes this section effective July 1, 1979.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 143-28. All state agencies under provisions of this Article.

It is the intent and purpose of this Article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this Article. Any power expressed in this Article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this Article shall be liberally construed. Provided, that notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor, State Treasurer, and Administrative Officer of the Courts for their respective departments shall not, except as provided in G.S. 143-25, be subject to the powers of the Director of the Budget or the Office of State Budget and Management, it being intended that the State Auditor, State Treasurer, and Administrative Officer of the Courts shall be independent of any fiscal control exercised by the Director of the Budget, and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 28; 1929, c. 100, s. 29; 1955, c. 578, s. 8; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" near the middle of the last sentence.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The 1981 amendment, effective July 1, 1981, substituted "State Auditor, State Treasurer, and Administrative Officer of the Courts" for "State Auditor and the State Treasurer" in two places in the last sentence.

Session Laws 1981, c. 859, s. 97 contains a severability clause.

§ 143-28.1. Highway Fund appropriation.

Notwithstanding any other provisions of this Article, the appropriations made from the Highway Fund for highway construction and maintenance are subject to the following provisions.

(1) Cash Flow Funding for Highway Construction and Maintenance. — Highway maintenance and construction funds shall be budgeted, expended and accounted for on a "cash flow" basis. Pursuant to this end, highway maintenance and construction contracts shall be planned and limited so payments due at any time will not exceed the cash available to pay them.

(2) Appropriations are for Payments and Contract Commitments to be Made in the Appropriation Fiscal Year. — The appropriations provided for by the Appropriations Act for highway maintenance and construction are for maximum payments estimated to be made during the appropriation fiscal year and for maximum contracting authority for future years. Highway maintenance and construction contracts shall be scheduled so that the total contract payments and other expenditures charged to projects in the fiscal year for each highway maintenance and construction appropriation item will not exceed the current appropriations provided by the General Assembly and unspent prior appropriations made by the General Assembly for the particular appropriation item.

(3) Payments Subject to Availability of Funds — Retainage Fully Funded — 5% Cash Balance Required. — The annual appropriations for highway maintenance and construction provided for by the Appropriations Act shall be expended only to the extent that sufficient funds are available in the Highway Fund. The Department of Transportation shall fully fund retainage from maintenance and construction contracts in the year in which the work is performed, and in addition shall maintain an available cash balance at the end of each month equal to at least five percent (5%) of the unpaid balance of the total maintenance and construction contract obligations. In the event this cash position is not maintained, no further construction and maintenance contract commitments shall be entered into until the cash balance has been regained. For the purposes of awarding contracts involving federal-aid, any amount due from the federal government and the Highway Bond Fund as a result of unreimbursed expenditures may be considered as cash for the purposes of this provision.

(4) Anticipation of Revenues. — In awarding State highway construction and maintenance contracts requiring payments beyond a biennium, the Director of the Budget may anticipate revenues as authorized and certified by the General Assembly, to continue contract payments for up to seventy-five percent (75%) of the revenues which are estimated for the first fiscal year of the succeeding biennium and which are not required for other budget items. Up to fifty percent (50%) of the revenues not required for other budget items may be anticipated for the second and subsequent fiscal years' contract payments.

(5) Amounts Obligated — Payments Subject to the Availability of Funds — Termination of Contracts. — Highway maintenance and construction appropriations may be obligated in the amount of allotments made to the Department of Transportation by the Office of State Budget and Management for the estimated payments for maintenance and construction contract work to be performed in the appropriation fiscal year. The allotments shall be multi-year allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subdivision (2) above. Payment for

highway maintenance and construction work performed pursuant to contract in any fiscal year other than the current fiscal year will be subject to appropriations by the General Assembly. Highway maintenance and construction contracts shall contain a schedule of estimated completion progress and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any highway maintenance or construction contract and any highway maintenance or construction contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

(6) Provision Incorporated in Contracts. — The provisions of subdivsion (5) of this section shall be incorporated verbatim in all highway construction and maintenance contracts.

(7) Existing Contracts Are Not Affected. — The provisions of this section shall not apply to highway construction and maintenance contracts awarded by the Department of Transportation prior to July 15, 1980. (1979, 2nd Sess., c. 1137, s. 62; 1981, c. 859, s. 9.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1137, s. 79, makes this section effective July 1, 1980.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added the last sentence in subdivision (3), and deleted the former last sentence of subdivision (4), which provided for utilization of revenues remaining for State Highway construction after making provisions for federal-aid matching funds.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.

It shall be the duty and responsibility of the Director of the Budget to determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Office of State Budget and Management to be favorable to the letting of construction contracts. The Director of the Budget may, when he considers it in the best interest of the State to do so, terminate design contracts when it is documented that the designer has failed to perform the conditions enumerated in the contract. (1953, c. 1090; 1963, c. 423; 1975, c. 879, s. 46; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 860, s. 12.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration"

near the end of the last sentence.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The 1981 amendment, effective July 1, 1981, added the last sentence in the section.

§ 143-31.3. Grants to nonstate health and welfare agencies.

Nonstate health and welfare agencies shall submit their appropriation requests for grants-in-aid through the Secretary of the Department of Human Resources for recommendations to the Director of the Budget and the Advisory Budget Commission and the General Assembly, and agencies receiving these grants, at the request of the Secretary of the Department of Human Resources, shall provide a postaudit of their operations that has been done by a certified public accountant. (1979, c. 838, s. 35.)

Editor's Note. — Session Laws 1979, c. 838, s. 123, makes this section effective July 1, 1979.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers; payment of required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security; support of hospital and medical insurance programs for retired members of certain associations, organizations, boards, etc.

All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Disbursing Officer, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Director of the Budget.

Required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for employees whose salaries are paid from General Fund or Highway Fund revenues, or from department, office, institutional or agency receipts, or from nonstate funds, shall be paid from the same source as the source of the employees' salaries. In those instances in which an employee's salary is paid in part from the General Fund, or the Highway Fund, and in part from the department, office, institutional or agency receipts, or from nonstate funds, the required salary-related contributions shall be paid from the General Fund, or the Highway Fund, only to the extent of the proportionate part paid from the General Fund, or Highway Fund, in support of the salary of such employee, and the remainder of the employer's contribution requirements shall be paid from the same source which supplies the remainder of such employee's salary. The requirements of this section as to the source of payment are also applicable to payments on behalf of the employee for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases. The Director of the Budget shall approve the method of payment by State departments, offices, institutions and agencies for employer salary-related requirements of this section, and determine the applicability of the section to an employer's salary-related contribution or payment in behalf of an employee.

For the support of the hospital and medical insurance programs made available by G.S. 135-33 to those retired members of the associations and organizations listed in G.S. 135-27(a), the licensing and examining boards under G.S. 135-1.1, the North Carolina Art Society, Inc., and the North Carolina Symphony Society, Inc., each association or organization shall pay to the Retirement System the full cost of providing these benefits as determined by the Board of Trustees of the Retirement System. (1949, c. 718, s. 5; 1957, c. 269, s. 2; 1961, c. 1181, s. 4; 1979, 2nd Sess., c. 1137, s. 44.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, added the second and third paragraphs.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

§ 143-34.2. Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds; limiting clause required in certain contracts or grants.

All State agencies, funds, or State-supported institutions shall submit to the Office of State Budget and Management, as of the original date thereof, copies of all applications and requests for nonstate funds, (including federal funds), to be used for any purpose to which this section is applicable. This section shall be applicable to all projects and programs which do or may impose upon the State of North Carolina any substantial financial obligation at the time of or subsequent to the acceptance of any funds received upon any such application or request. Every State agency, fund or State-supported institution seeking nonstate funds for any such project or program shall furnish to the Office of State Budget and Management and the Advisory Budget Commission with each such copy of application or request, a statement of the purposes for which any such project or program is desired or advocated, the source and amount of funds to be granted or provided therefor, and a statement of the conditions, if any, upon which such funds are to be provided.

It shall be required of all State agencies, funds, or State-supported institutions, commissions or regional planning and development bodies to submit to the Office of State Budget and Management a statement of participation in any contract, agreement, plan or request for nonstate funds (including federal funds).

Any contract or grant entered into by a State board, commission, agency, department or institution for the operation of a new program by such State board, commission, agency, department or institution or for the enrichment of an ongoing program of such State board, commission, agency, department or institution shall include a limiting clause which specifically states that continuation of the contract or grant program with State appropriations beyond the current State fiscal year is subject to State funds being appropriated by the General Assembly specifically for that program. (1965, c. 1181; 1969, c. 1210; 1977, c. 802, s. 15.25; 1979, 2nd Sess., c. 1137, ss. 37, 45.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Office of State Budget and Management" for "Department of Administration" in three places, and rewrote the third paragraph, which formerly provided: "Any contract entered into by a State agency, department, or institution for a federal grant shall include a limiting clause which specifically states that continuation of the grant program by the State of North Carolina is subject to State funds being appropriated by the General Assembly for that program."

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

ARTICLE 1.1.

Periodic Review of Certain State Agencies.

§ 143-34.10: Repealed by Session Laws 1981, c. 932, s. 1, effective July 30, 1981.

Cross References. — As to the Legislative Committee on Agency Review, see § 143-34.25 et seq.

§ 143-34.11. Certain General Statutes provisions repealed effective July 1, 1979.

The following statutes are repealed effective July 1, 1979, (except for purposes of the winding-up period, as provided by section 5 of this act):

Chapter 87, Article 3, entitled "Tile Contractors."

Chapter 87, Article 6, entitled "Water Well Contractors."

Chapter 66, Article 9A, entitled "Private Detectives."

Chapter 93C, entitled "Watchmakers."

Chapter 74, Article 6, entitled "Mining Registration." (1977, c. 712, s. 2; 1979, c. 616, s. 9; c. 629; c. 712, s. 6; c. 713, s. 9; c. 736, s. 1; c. 740, s. 1; c. 744, ss. 1-3; c. 750, s. 1; c. 780, s. 3; c. 819, s. 7; c. 834, s. 13; c. 871, s. 2; c. 872, s. 6; c. 904, s. 15.)

Cross References.

For statute placing a "sunset date" of July 1, 1980, on the Board of Directors of the North Carolina Specialty Hospitals, see § 143B-173, subdivision (a)(1).

Editor's Note. — Session Laws 1979, c. 616, deleted Chapter 93A, "Real Estate Brokers and Salesmen," from the list of repealed statutes.

Session Laws 1979, c. 629, deleted Chapter 143B, Article 2, Part 6, "Public Librarian Certification Commission," § 125-9, "Librarian certification," and § 125-10, "Temporary certificates for public librarians," from the list of repealed statutes.

Session Laws 1979, c. 712, deleted Chapter 87, Article 5, "Refrigeration Contractors," from the list of repealed statutes.

Session Laws 1979, c. 713, deleted Chapter 87, Article 1, "General Contractors," from the list of repealed statutes.

Session Laws 1979, c. 736, deleted Chapter 143, Article 21, Part 3, "Dam Safety," from the list of repealed statutes.

Session Laws 1979, c. 740, deleted Chapter 143B, Article 7, Part 6, "North Carolina Mining Commission," from the list of repealed statutes.

Session Laws 1979, c. 744, transferred the following statutes from this section to § 143-34.12:

Chapter 78A, Article 5, "Registration of Dealers and Salesmen" (of securities).

Chapter 81A, Article 5, "Public Weightmasters."

Chapter 95, Article 15, "Passenger Tramways."

Chapter 74, Article 7, "The Mining Act of 1971."

Chapter 113A, Article 4, "Sedimentation Pollution Control Act of 1973."

Chapter 84, Article 4, "North Carolina State Bar."

Chapter 85C, "Bail Bondsmen and Runners."

Chapter 90A, Article 2, "Water Treatment Facility Operators."

Chapter 90A, Article 3, "Wastewater Treatment Plant Operators."

Chapter 93, entitled "Public Accountants."

Chapter 143B, Article 7, Part 8, "Sedimentation Control Commission."

Chapter 143B, Article 7, Part 9, "Wastewater Treatment Plant Operators Certification Commission."

§§ 76-1 through 76-12, relating to a board of commissioners of navigation and pilotage for the Cape Fear River and Bar.

Chapter 76, Article 6, "Morehead City Navigation and Pilotage Commission."

Session Laws 1979, c. 744, also deleted Chapter 90A, Article 1, "Sanitarians," in this section and added in § 143-34.12, "The Article in G.S. Chapter 90A concerning Sanitarians" and deleted in this section Chapter 71, Article 2, "North Carolina Commission on Indian Affairs," and added in § 143-34.12, Chapter 143B, Article 9, Part 15, "North Carolina State Commission on Indian Affairs."

Session Laws 1979, c. 750, transferred Chapter 93, "Public Accountants," from this section.

Session Laws 1979, c. 780, deleted Chapter 95, Article 5, "Regulation of Employment Agencies," from the list of repealed statutes. Session Laws 1979, c. 780, which also rewrote Article 5 of Chapter 95, provides, in s. 4: "This Article shall become effective on July 1, 1979, ..."

Session Laws 1979, c. 819, deleted Chapter 89C, "Engineering and Land Surveying," from the list of repealed statutes.

Session Laws 1979, c. 834, deleted Chapter 87, Article 2, entitled "Plumbing and Heating Contractors" from the list of repealed statutes.

Session Laws 1979, c. 871, deleted Chapter 83, "Architects," from the list of repealed statutes.

Session Laws 1979, c. 872, deleted Chapter 89A entitled "Landscape Architects," from the list of repealed statutes. Session Laws 1979, c. 872, which also amended §§ 89A-3 through 89A-6, provides, in s. 7: "This Chapter is repealed effective July 1, 1981, subject to continuation for one year after that date for a 'winding-up' period pursuant to the provisions of G.S. 143-34.14."

Session Laws 1979, c. 904, deleted Chapter 87, Article 4, entitled "Electrical Contractors" from the list of repealed statutes.

§§ 143-34.12 to 143-34.21: Repealed by Session Laws 1981, c. 932, s. 1, effective July 30, 1981.

Cross References. — As to the Legislative Committee on Agency Review, see § 143-34.25 et seq.

Editor's Note. — Section 143-34.12 was amended by Session Laws 1981, c. 715, so as to postpone the repeal date of the statutes listed therein to July 31, 1981. Section 143-34.12 was also amended by Session Laws 1981, c. 247, s. 1; c. 248, s. 3; c. 360, s. 4; c. 457, s. 15; c. 496, s. 15; c. 573, s. 17; c. 600, s. 21; c. 615, s. 20; c. 616, s. 12; c. 659, s. 11; c. 717, s. 10; c. 722, s. 1; c. 751, s. 8; c. 765, s. 2; c. 766, s. 9; c. 767, s. 15; c. 787, s. 9; c. 788, s. 6; c. 824, s. 4. Section 143-34.13 was amended by Session Laws 1981, c. 572, s. 8; c. 601, s. 21; c. 722, s. 2.

ARTICLE 1.2.

Legislative Committee on Agency Review.

§ 143-34.25. Creation of Legislative Committee on Agency Review; staffing; compensation; termination.

(a) There is created a temporary legislative committee to be known as the Committee on Agency Review (hereinafter referred to as "The Committee"). The Committee is composed of 10 members, five Representatives appointed by the Speaker of the House and five Senators appointed by the President Pro Tempore of the Senate. The members serve for two-year terms, beginning July 1, 1981, or until they cease to be members of the General Assembly, whichever occurs first. The appointing officers shall designate two of the members to serve as cochairmen. Any vacancy that occurs in the membership of the Committee shall be filled for the remainder of the unexpired term by the officer making the original appointment. A quorum consists of a cochairman and any four other members of the Committee.

(b) Members of the Committee shall be compensated pursuant to G.S. 120-3.1.

(c) The Committee shall be staffed by the Legislative Services Commission, but the Committee may also enjoy such additional professional services as it deems necessary.

(d) The Committee shall terminate and the authority granted by this Article shall expire on June 30, 1983. (1981, c. 932, s. 2.)

§ 143-34.26. Functions of Committee.

(a) The Committee shall review and evaluate the programs and functions authorized under the following laws:

DEPARTMENTS WITH ELECTED HEADS

(1) DEPARTMENT OF AGRICULTURE

Public Weighmasters (Chapter 81A, Article 5).

Landscape Contractors (Chapter 89D).

North Carolina Commercial Fertilizer Law (Chapter 106, Article 56).

Structural Pest Control Act (Chapter 106, Article 4C).

Marketing of Farmers Stock Peanuts (Chapter 106, Article 5A).

Food, Drugs and Cosmetics (Chapter 106, Article 12).

State Inspection of Slaughterhouses (Chapter 106, Article 14).

Licensing and Regulation of Rendering Plants and Rendering Operations (Chapter 106, Article 14A).

Meat Grading Law (Chapter 106, Article 15A).

Marketing and Branding Farm Products (Chapter 106, Article 17).

Regulation of Production, Distribution, etc., of Milk and Cream (Chapter 106, Article 28B).

Inspection, Grading, and Testing Milk and Dairy Products (Chapter 106, Article 29).

North Carolina Seed Law (Chapter 106, Article 31).

Feeding Garbage to Swine (Chapter 106, Article 34, Part 10).

Public Livestock Markets (Chapter 106, Article 35).

Livestock Dealer Licensing Act (Chapter 106, Article 35B).

Unfair Practices by Handlers of Fruits and Vegetables (Chapter 106, Article 44).

Poultry; Hatcheries; Chick Dealers (Chapter 106, Article 49).

North Carolina Antifreeze Law of 1975 (Chapter 106, Article 51A).

Grain Dealers (Chapter 106, Article 53) and Adulteration of Grains (Article 54).

Pesticide Applicators and Consultants (Chapter 143, Article 52, Part 4).

Pesticide Dealers and Manufacturers (Chapter 143, Article 52, Part 3).

(2) DEPARTMENT OF INSURANCE

Bail Bondsmen and Runners (Chapter 85C).

Collection Agencies (Chapter 66, Article 9A [Article 9C])

Motor Clubs andAssociations (Chapter 66, Article 9B).

Authority over all insurance companies, no exemptions from license (G.S. 58-15).

Agents and others must procure license (G.S. 58-40).

Insurance Premium Financing (Chapter 58, Article 4).

(3) DEPARTMENT OF LABOR

Passenger Tramways (Chapter 95, Article 15).

(4) DEPARTMENT OF JUSTICE

Private Protective Services Act (Chapter 74C).

OTHER STATE DEPARTMENTS

(5) DEPARTMENT OF ADMINISTRATION
Day-Care Facilities (Chapter 110, Article 7).
Child Day-Care Licensing Commission (Chapter 143B, Article 9, Part 4).

(6) DEPARTMENT OF HUMAN RESOURCES
Nursing Home Administration (Chapter 90, Article 20).
Licensing of Private Institutions (maternity homes, homes for the aged and infirm, private child-care institutions) (Chapter 108, Article 3, Part 2 [Chapter 131D, Article 1]).
Control over Child-Caring Facilities (Chapter 110, Article 3).
Licensing of Local Mental Health Facilities (Chapter 122, Article 2F).
Licensing and Control of Area Mental Health, Mental Retardation and Substance Abuse Institutions and Homes (G.S. 122-72).
Regulation of Ambulance Services (Chapter 130, Article 26).
Hospital Licensing Act (Chapter 131, Article 13A).
Licensing of Ambulatory Surgical Facilities (Chapter 131B).
Sanitarians (Chapter 90A, Article 1).
Midwives (Chapter 90, Article 10), and Midwives (Chapter 130, Article 18).
North Carolina Radiation Protection Act (Chapter 104E).

(7) DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT
Wastewater Treatment Plant Operators (Chapter 90A, Article 3).
Wastewater Treatment Plant Operators Certification Commission (Chapter 143B, Article 7, Part 9).
Coastal Area Management (Chapter 113A, Article 7).
Water and Air Resources (Chapter 143, Article 21 (except Part 3).)
Oil Pollution Control (Chapter 143, Article 21A).
Air Pollution Control (Chapter 143, Article 21B).
Water Resources (Chapter 143, Article 38).
Environmental Management Commission (Chapter 143B, Article 7, Part 4).
Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department (Chapter 113, Article 17).
North Carolina Game Law of 1935 (Chapter 113, Article 7).
(8) DEPARTMENT OF COMMERCE
Board of commissiners of navigation and pilotage for the Cape Fear River and Bar (Chapter 76, Article 1).
Morehead City Navigation and Pilotage Commission (Chapter 76, Article 6).

(9) DEPARTMENT OF TRANSPORTATION
Professional Housing (Chapter 20, Article 16).

(10) OTHERS
Practice of Funeral Service (Chapter 90, Article 13A).
Practicing Psychologists (Chapter 90, Article 18A).
Auctions and Auctioneers (Chapter 85B).
North Carolina State Commission on Indian Affairs (Chapter 143B, [Article 9] Part 15).
Foresters (Chapter 89B).
Osteopathy (Chapter 90, Article 7).

(b) The Committee may develop legislative recommendations concerning the programs and functions that it is charged to review. In developing such recommendations (if any) the Committee shall proceed with a view to continuing productive, efficient and active programs which are in the public interest, to eliminating inactive programs, and to eliminating or consolidating overlapping or duplicating programs; and may consider the extent to which changes are needed in enabling laws.

(c) The citations and titles in subsection (a) of this section are listed for convenience only. It is the intention of the General Assembly that all of the agencies and programs covered in subsection (a) are to be reviewed by the Committee whether or not the provisions and codification of the enabling laws for those agencies and programs are changed. (1981, c. 932, s. 2.)

Editor's Note. — Chapter 122, Article 2F (Licensing of Local Mental Health Facilities), referred to in this section, was repealed by Session Laws 1977, c. 568. See now Chapter 12, Art. 2F, Area Mental Health, Mental Retardation and Substance Abuse (Alcohol And Drug Abuse) Programs.

§ 143-34.27. Procedure in developing Committee recommendations.

(a) By January 1, 1982, each department listed in G.S. 143-34.26(a), whose programs are to be reviewed by the Committee, shall submit to the Committee its recommendations for retention or termination of those programs, and for changes (if any) in the enabling laws for those programs, together with supporting reasons for its recommendations. By January 1, 1982, the Legislative Services Office shall submit to the Committee its recommendations for retention or termination of the programs listed in G.S. 143-34.26(a)(10), and for changes (if any) in the enabling laws for those programs, together with supporting reasons for its recommendations. The recommendations of the departments and of the Legislative Services Office shall identify:

(1) Any functions which in their opinion are being duplicated by another State agency, together with their recommendations (if any) for eliminating the duplication; and

(2) Any functions which in their opinion are inconsistent with current and projected public demands and should be terminated or altered.

(b) On the basis of the recommendations submitted under subsection (a) of this section, and other available information, the Committee shall prepare tentative recommendations concerning the programs and agencies listed in G.S. 143-34.26(a) and shall make its tentative recommendations available to the responsible departments and offices by July 1, 1982. The Committee shall hold at least one public hearing concerning any program, function or agency as to which it tentatively recommends termination or statutory amendment, at which the affected agency and any other interested persons may present data, views and arguments. Hearings for more than one agency or program or function may be held on the same day. The Committee shall give at least 10 days' notice, by publication at least once in one newspaper of general circulation in Wake County, of the public hearing, including the following:

(1) A reference to the statutory authority for the evaluation;

(2) The time and place of the hearing and a statement of the manner in which data, views, and arguments may be submitted either at the hearing or at other times by any person; and

(3) A brief summary of the Committee's recommendations.

(c) Upon completion of the hearing and consideration of written statements or other evidence submitted, the Committee shall make its final decisions with respect to the program or function and shall prepare a report thereon for the General Assembly together with any recommended legislation. Copies of the report and the recommended legislation shall be filed with the Attorney General and shall be mailed or delivered to the agency responsible for the program or function.

(d) The Committee is authorized to meet in the State Legislative Building when the General Assembly is not in session, subject to the determination by the Legislative Services Commission that space is available. The Committee

shall hold its initial meeting at the Legislative Building on October 9, 1981, at 10:00 a.m., unless another date and time are set by the cochairmen. (1981, c. 932, s. 2.)

ARTICLE 2B.

Notice of Appointments to Public Offices.

§ 143-47.6. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other person or group authorized by law to appoint to a public office.

(2) "Public office" means appointive membership on any State commission, council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges and technical institutes created pursuant to G.S. 115A-7, and any other State agency created by law, where the appointee is entitled to draw subsistence, per diem compensation, or travel allowances, in whole or in part from funds deposited with the State Treasurer or any other funds subject to being audited by the State Auditor, by reason of his service in the public office; provided that "public office" does not include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions. (1979, c. 477, s. 1.)

Editor's Note. — Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979. Section 115A-7, referred to in subdivision (2), has been repealed. For present provision concerning the creation of boards of trustees at community colleges, see § 115D-12.

§ 143-47.7. Notice and record of appointment required.

(a) Within 60 days after acceptance of appointment by a person appointed to public office, the appointing authority shall file written notice of such appointment with the Governor, Secretary of State, the State Legislative Library, the State Library and the State Disbursing Officer. For the purposes of this section, a copy of the letter from the appointing authority or a copy of the properly executed Commission of Appointment shall be sufficient to be filed if such copy contains the information required in subsection (b) of this section.

(b) The notice required by this Article shall state the name and office of the appointing authority, the public office to which the appointment is made, the name and address of the appointee, a citation of the law pursuant to which the appointment is made, the date of the appointment, and the term of the appointment. (1979, c. 477, s. 1.)

Editor's Note. — Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979.

§ 143-47.8. Notice of existing appointments.

Within 60 days after the effective date of this Article, every appointing authority shall file notices of all existing appointments to public offices in accordance with G.S. 143-47.7. (1979, c. 477, s. 1.)

Editor's Note. — Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979.

§ 143-47.9. Subsistence, per diem compensation, and travel allowances conditioned on filing of notice.

No person who has been appointed to any public office and has accepted that appointment shall be entitled to receive subsistence, per diem compensation, or travel allowances unless and until compliance is made with the provisions of G.S. 143-47.7. (1979, c. 477, s. 1.)

Editor's Note. — Session Laws 1979, c. 477, s. 3, makes this section effective July 1, 1979.

§§ 143-47.10 to 143-47.14: Reserved for future codification purposes.

Article 2C.

Limit on Number of State Employees.

§ 143-47.15. Limit on number of State employees.

The total number of State employees shall not be increased in any fiscal year by a greater percentage than the percentage rate of population growth for the State of North Carolina. The percentage rate of population growth shall be computed by the Department of Administration by averaging the rate of population growth in each of the preceding 10 fiscal years as stated in the annual estimates of population in North Carolina made by the United States Census Bureau. For purposes of this section, the term "State employee" shall include each person paid wholly or partially from funds appropriated by the General Assembly and each person employed by a department, institution or other agency of the State, regardless of the source of funding for the position.

"State employees" as used in this section shall not include any person employed by any group, association, society or other organization which receives less than fifty percent (50%) of the funds from the State of North Carolina. (1981, c. 870.)

Article 3.

Purchases and Contracts.

§ 143-49. Powers and duties of Secretary.

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Reha-

bilitation of the Department of Human Resources, and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Advisory Budget Commission may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, inserted "to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Human Resources" near the beginning of the first sentence of subdivision (6).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment only the introductory language and subdivision (6) are set out.

§ 143-51. Reports to Secretary required of all agencies as to needs.

It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, estimates of all supplies, materials, contractual services and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Secretary of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 1.)

Effect of Amendments. — The 1981 amendment inserted "contractual services" near the middle of the section.

§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of five thousand dollars ($5,000) and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration, with the approval of the Advisory Budget Commission, when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids

direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration with the approval of the Advisory Budget Commission, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, ss. 2, 3.)

Effect of Amendments. — The 1981 amendment deleted "and" preceding "equipment" in the first sentence, inserted "and contractual services" in the first sentence, substituted "of" for "for" near the end of the first sentence, and substituted "five thousand dollars ($5,000)" for "two thousand five hundred dollars ($2,500)" in the second sentence.

§ 143-53. Rules and regulations.

The Advisory Budget Commission shall have the necessary authority to adopt rules and regulations governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing routine for securing bids on items that do not exceed five thousand dollars ($5,000) in value.

(3) Defining contractual services for the purposes of G.S. 143-49 (3).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.
(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.
(8) Providing conditions under which bids may be rejected in whole or in part.
(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.
(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than state-appropriated.
(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.
(12) Adopting any other rules and regulations to carry out the duties and purpose of this Article.

The purpose of rules and regulations promulgated hereunder shall be to promote sound purchasing management; and prior to adoption, they shall be submitted to the Attorney General for opinion as to the legal effect thereof. Such rules and regulations shall become effective upon filing with the Secretary of State. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4.)

Effect of Amendments. — The 1981 amendment substituted "five thousand dollars ($5,000)" for "two thousand five hundred dollars ($2,500)" in subdivision (2).

§ 143-56. Certain purchases excepted from provisions of Article.

Except as may otherwise be ordered by the Secretary of Administration, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Secretary of Administration shall not be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.
(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration with the approval of the Advisory Budget Commission.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditure is less than five thousand dollars ($5,000).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review. (1931, c. 261, s. 7; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 953.)

Effect of Amendments. — The 1981 amendment added the last sentence in the first paragraph.

§ 143-60. Rules and regulations covering certain purposes.

The Secretary of Administration, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.
(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.
(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications.
(4) Prescribing the manner in which purchases shall be made in emergencies.
(5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.
(6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration, with the approval of the Advisory Budget Commission, may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 268, s. 2.)

Effect of Amendments. — The 1981 amendment added subdivision (6).

§ 143-63.1. Sale, disposal and destruction of firearms.

(a) Except as hereinafter provided, it shall be unlawful for any employee, officer or official of the State in the exercise of his official duty to sell or otherwise dispose of any pistol, revolver, shotgun or rifle to any person, firm, corporation, county or local governmental unit, law-enforcement agency, or other legal entity.

(b) It shall be lawful for the Department of Administration, in the exercise of its official duty, to sell any weapon described in subsection (a) hereof, to any county or local governmental unit, law-enforcement agency in the State; provided, however, that such law-enforcement agency files a written statement, duly notarized, with the seller of said weapon certifying that such weapon is needed in law enforcement by such law-enforcement agency.

(c) All weapons described in subsection (a) hereof which are not sold as herein provided within one year of being declared surplus property shall be destroyed by the Department of Administration.

(d) Notwithstanding the provisions of this section, but subject to the provisions of G.S. 20-187.2, the North Carolina State Highway Patrol and the North Carolina Department of Correction are authorized to sell, trade, or otherwise dispose of any or all surplus weapons it possesses to any federally licensed firearm dealers. The sale, trade, or disposal of these weapons shall be in a manner prescribed by the Department of Administration. Any moneys or property obtained from the sale, trade, or disposal shall go to the general fund. (1973, c. 666, ss. 1-3; 1975, c. 879, s. 46; 1981, c. 604.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subsection (d).

ARTICLE 6.

Officers of State Institutions.

§§ 143-116.1 to 143-116.5: Reserved for future codification purposes.

ARTICLE 6A.

Ordinances and Traffic Regulations for Institutions.

§ 143-116.6. Department may make ordinances; penalties for violation.

(a) The Secretary of Human Resources, or his designee, may promulgate regulations for State-owned institutions under the jurisdiction of the Department of Human Resources for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder. Any ordinances promulgated shall be consistent with G.S. 14-132 and shall be filed in accordance with G.S. 150A, known as the Administrative Procedure Act. Copies of the ordinances shall be posted at the entrance to the grounds and at different places on the grounds.

(b) Any person violating such regulations or ordinances shall, upon conviction, be guilty of a misdemeanor and shall be punishable by a fine, not to exceed five hundred dollars ($500.00), or imprisonment for not more than six months, or both. (1981, c. 614, s. 5.)

Editor's Note. — Session Laws 1981, c. 614, s. 23, makes this section effective on July 1, 1981.

§ 143-116.7. Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Human Resources institutions, traffic regulations; registration and regulation of motor vehicles.

(a) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, roads and driveways on the grounds of all State institutions under the jurisdiction of the Department of Human Resources. Any person violating any of the provisions of the Chapter in or on such streets, alleys, roads or driveways shall, upon conviction be punished as prescribed in this section. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the streets, alleys, roads and driveways on the grounds of the State institutions operated by the Department of Human Resources.

(b) The Secretary of Human Resources may promulgate additional rules and regulations consistent with the provisions of Chapter 20, General Statutes of North Carolina, with respect to the use of the streets, alleys, roads and

driveways of institutions of the Department of Human Resources, and to establish parking areas on the grounds of the institutions. Based upon a traffic and engineering investigation, the Secretary of Human Resources may also determine and fix speed limits on streets, roads and highways lower than those provided in G.S. 20-141. The Secretary of Human Resources may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of these rules, regulations and ordinances. All regulations and ordinances promulgated under this subsection shall be filed in accordance with Chapter 150A, known as the Administrative Procedure Act.

(c) Any person violating these regulations or ordinances shall, upon conviction, be guilty of a misdemeanor, and shall be punishable by a fine, not to exceed fifty dollars ($50.00), or imprisonment, not to exceed 30 days.

(d) The Secretary of Human Resources may promulgate reasonable rules and regulations governing the registration and parking of motor vehicles maintained and operated by employees or their families on the grounds of the institutions, and may in connection with the registration, charge an annual fee. (1981, c. 614, s. 5.)

Editor's Note. — Session Laws 1981, c. 614, s. 23, makes this section effective July 1, 1981.

Article 7.

Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included.

All persons admitted to institutions administered by the Department of Human Resources which are now or hereafter may be authorized, are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29; 1959, c. 1028, ss. 1-7; 1967, c. 188, s. 1; c. 834, s. 1; 1969, c. 20; c. 837, s. 4; 1971, c. 469; 1981, c. 562, s. 6.)

Effect of Amendments. — The 1981 amendment rewrote this section so as to make it applicable to any institution administered by the Department of Human Resources instead of specific, listed institutions.

Session Laws 1981, c. 562, § 10, contains a severability clause.

Legal Periodicals. — For a survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

§ 143-118. Secretary of Human Resources to fix cost and charges.

(a) The Secretary of Human Resources shall determine and fix the actual cost of such training, treatment, care and maintenance, to be paid for by or for each patient, and the Secretary shall fix such cost so as to include all the cost of such training, treatment, care and maintenance at such institutions, for each respective patient, and the sum, when so fixed, shall be the actual cost. The Secretary, in determining and fixing the actual cost of such training, treatment, care and maintenance is given full and final authority to fix a general rate of charge, to be paid by patients able to pay the rate of charge, or in cases where indigent patients are later found to be nonindigent, then such cost for past training, treatment, care and maintenance of such patients shall be paid in one or more payments based on the rates of cost in effect for the period or periods of time during which such patients have been confined in the institutions.

(b) The past acts of the boards of directors in fixing a monthly rate to be paid by nonindigent inmates for their care and maintenance in such institutions are hereby in every respect ratified and validated, and on all claims and causes of actions for such purpose now pending and are unsettled, or which hereafter may be made or begun for the payment of said past indebtedness for training, treatment, care and maintenance, the rates so fixed by the board of directors or Secretary shall prevail and said collections shall be made in accordance therewith.

(c) In any action by any of said State's charitable institutions for the recovery of the cost of the training, treatment, care and maintenance of any inmate, pupil or patient now pending or which may hereafter be instituted, a verified and itemized statement of the account showing the period of time during which the nonindigent inmate, pupil or patient was confined to the institution, the monthly rate of charge as fixed by the board of directors of such institution for the period of time that the inmate, pupil or patient [was] confined therein, the total amount claimed to be due thereon as predicated upon the rate of charge, and the proper credits for any payments which may have been made on the account, shall be filed with the complaint and shall constitute a prima facie case. The State institution shall be entitled to a judgment thereon in the absence of allegation and proof on the part of the guardian, trustee, administrator, executor, or other fiduciary of the inmate, pupil or patient that the verified and itemized statement of the superintendent or bookkeeper of the institution is not correct because of:

(1) An error in the calculation of the amount due as predicated upon said monthly rate of charge fixed by the board of directors or Secretary;

(2) An error as to the period of time during which the inmate, pupil or patient was confined in the State institution; or

(3) An error in not properly crediting the account with any cash payment, or payments, which may have been made thereon. (1925, c. 120, s. 2; 1935, c. 186, s. 1; 1981, c. 562, s. 6.)

Editor's Note. — In the first sentence of subsection (c) in the section as set out above, "as" has been substituted for "is" preceding "fixed by the board," and "was" has been inserted in brackets preceding "confined therein."

Effect of Amendments. — The 1981 amendment rewrote this section.

Session Laws 1981, c. 562, s. 10, contains a severability clause.

§ 143-126.1. Lien on patient's property for unpaid balance due institution.

(g) Notwithstanding the foregoing provisions, no such lien shall be enforceable against any funds paid by the State to a patient after judgment or settlement of a claim for damages arising out of the negligent injury of such patient at any of the State institutions listed in G.S. 143-117 during the life of such patient. Upon the death of the patient, any remaining proceeds of a judgment or settlement under this subsection in the hands of the deceased patient shall become a general asset of the estate and subject to any lien of the State. (1967, c. 959; 1973, c. 476, s. 133; 1979, c. 978, s. 1.)

Effect of Amendments. — The 1979 amendment added subsection (g).

Session Laws 1979, c. 978, s. 2, provides: "This act shall become effective upon ratification [June 8, 1979] and shall apply to claims which have not been paid by the State on the effective date."

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (g) is set out.

§ 143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.

(a) Notwithstanding the foregoing provisions of G.S. 143-117 through 143-127 inclusive, the natural or adoptive parents of persons who are non-Medicaid, long-term patients at facilities owned or operated by the Department of Human Resources shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the Department of Human Resources.

(b) Parents or adoptive parents of a patient in a facility owned or operated by the Department of Human Resources shall not be liable for any charges made by such facility for treatment, care and maintenance of such a patient incurred or accrued subsequent to such patient attaining age 18.

(c) For purposes of this section, the term "long-term patient" is defined as a person who has been a patient in a facility owned or operated by the Department of Human Resources for a continuous period in excess of 120 days. No absence of a patient from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the 120 days herein required to attain the status of a long-term patient.

(d) Notwithstanding any other provisions of the law, the income and financial resources of the natural or adoptive parents of persons under the age of 21 who since July 1, 1978, had spent a total of at least 180 days as long-term patients in public or private certified intermediate care or skilled nursing facilities, shall not be taken into account in the determination of whether that child is eligible for medical assistance under Article 2, Part 5 of Chapter 108 of the General Statutes and Title XIX of the Social Security Act. (1971, c. 218, s. 1; 1973, c. 476, s. 133; c. 775; 1975, c. 19, s. 48; 1979, c. 838, ss. 25-27.)

Effect of Amendments. — The 1979 amendment inserted "non-Medicaid" near the beginning of subsection (a), deleted "long-term" after "parents of a" near the beginning of subsection (b), and added subsection (d). Subsection (d) is made effective upon "receipt by the Department of Human Resources of official notification from the Secretary of Health, Education and Welfare that institutionalized, minor, disabled children may be considered as financially independent for purposes of Medicaid eligibility." Such notification has been received.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

ARTICLE 8.

Public Building Contracts.

§ 143-128. Separate specifications for building contracts; responsible contractors.

Cross References. —

As to application of this Article to lease of personal property with an option to purchase by a county, see § 160A-19.

Contractor Not Liable When Specifications by Owner or Owner's Architect Followed. — In an action to recover for damages allegedly resulting from defendant contractor's failure to properly install a roof on a school, the trial court properly instructed the jury that where a contractor is required to, and does, comply with the plans and specifications prepared by the owner or the owner's architect, the contractor will not be liable for the consequences of defects in the plans and specifications. Burke County Pub. Schools Bd. of Educ. v. Juno Constr. Corp., 50 N.C. App. 238, 273 S.E.2d 504 (1981).

§ 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 thirty thousand dollars ($30,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ten thousand dollars ($10,000), 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 or other subdivision of the State, unless the provisions of this section are complied with. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

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 at 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. 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 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 Secretary 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; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1.)

Local Modification. — Pasquotank: 1979, 2nd Sess., c. 1164; city of Charlotte: 1981, c. 89; city of Statesville: 1981, c. 34; Charlotte-Mecklenburg Board of Education: 1981, c. 477.

By virtue of Session Laws 1981, c. 116, Mecklenburg should be stricken from the replacement volume.

By virtue of Session Laws 1981, c. 754, the counties of Forsyth and Guilford, the cities of Gastonia, Wilmington and Winston-Salem, the town of Wrightsville Beach, and the Bessemer Sanitary District should be stricken from the replacement volume.

Cross References. — As to exception for school food services, see § 115C-264.

Effect of Amendments. — The 1979 amendment substituted "thirty thousand dollars ($30,000)" for "ten thousand dollars ($10,000)" in the first sentence of the first paragraph.

The 1979, 2nd Sess., amendment, effective retroactively to July 1, 1979, substituted "five thousand dollars ($5,000)" for "two thousand five hundred dollars ($2,500)" near the middle of the first sentence of the first paragraph.

The first 1981 amendment added the last sentence in the first paragraph.

The second 1981 amendment, effective July 1, 1981, substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" near the middle of the first sentence of the first paragraph.

Session Laws 1981, c. 346, s. 2, provides: "All laws, public and local, in conflict with this act are repealed to the extent of the conflict.

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

All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of two thousand five hundred dollars ($2,500) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593; 1981, c. 719, s. 1.)

Local Modification. — By virtue of Session Laws 1981, c. 719, s. 2, Guilford County and Bessemer Sanitary District should be stricken from the replacement volume.

Effect of Amendments. — The 1981 amendment substituted "two thousand five hundred dollars ($2,500)" for "one thousand dollars ($1,000)" near the middle of the first sentence.

§ 143-132. Minimum number of bids for public contracts.

No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644; 1979, c. 182, s. 2.)

Effect of Amendments. — The 1979 amendment deleted the former second paragraph, which authorized awarding contracts requiring expenditure of between $10,000 and $30,000 upon receipt of two competitive bids in certain circumstances.

§ 143-134.1. Interest on final payments due to prime contractors.

On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said prime contractor shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of

a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. (1959, c. 1328; 1967, c. 860; 1979, c. 778.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "except contracts let by the Department of Transportation pursuant to G.S. 136-28.1" for "except the construction of roads, highways, bridges and their approaches" near the middle of the first sentence, substituted "one percent (1%) per month or fraction thereof unless a lower rate is agreed upon" for "six percent (6%) per annum" near the end of the fourth sentence, and added the fifth and sixth sentences.

Session Laws 1979, c. 778, s. 2, provides: "This act shall become effective July 1, 1979, and shall apply to all public construction contracts described herein which are awarded after July 1, 1979."

§ 143-135. Limitation of application of Article.

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed seventy-five thousand dollars ($75,000). Such force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46; 1979, 2nd Sess., c. 1248; 1981, c. 860, s. 13.)

Local Modification. — City of Monroe: 1981, c. 511.

Effect of Amendments. — The 1979, 2nd Sess., amendment rewrote this section.

The 1981 amendment, effective July 1, 1981, deleted "and the Advisory Budget Commission" following "Director of the Budget" in the second sentence.

§ 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.

When a claim arises prior to the completion of any contract for construction or repair work awarded by any State board to any contractor under the provisions of this Article, the contractor may submit his claim in writing to the Division of State Construction for decision. 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 Secretary 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 Secretary 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 Secretary 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 a claim which may be denied by the Secretary 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 Secretary 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; 1975, c. 879, s. 46; 1981, c. 577.)

Effect of Amendments. — The 1981 amendment added the first sentence in the first paragraph.

CASE NOTES

Motion to Dismiss Action Properly Denied. — In an action by a heating and air conditioning contractor to recover extra expenses and costs incurred in performing its contract with defendants, the trial court properly denied defendants' motion to dismiss for lack of subject matter and personal jurisdiction, since the provisions of this section clearly granted plaintiff the right to bring its action against the State. Stahl-Rider, Inc. v. State, 48 N.C. App. 380, 269 S.E.2d 217 (1980).

ARTICLE 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership.

(a) Creation; Membership; Terms. — There is hereby created a Building Code Council, which shall be composed of 12 members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered architect or licensed general contractor specializing in residential design or construction, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, a representative of the public who is not a member of the building construction industry, a licensed electrical contractor, a registered engineer on the engineering staff of a State agency charged with approval of plans of state-owned buildings, and an active member of the North Carolina fire service with expertise in fire safety. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above.

(b) Compensation. — Members of the Building Code Council other than any who are employees of the State shall receive seven dollars ($7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting, or when on official business of the Council. (1957, c. 1138; 1965, c. 1145; 1969, c. 1229, s. 1; 1971, c. 323; 1979, c. 863.)

Effect of Amendments. — The 1979 amendment substituted "12" for "11" near the beginning of the first sentence in subsection (a), deleted "and" after "electrical contractor" near the end of that sentence, and added "and an active member of the North Carolina fire service with expertise in fire safety" at the end of the sentence.

CASE NOTES

Cited in Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910 (1979).

§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. — The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing in the City of Raleigh. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

(b) Contents of the Code. — The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; regulations governing construction and precautions to be taken during construction; regulations as to permissible materials, loads, and stresses; regulations of chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; regulations governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules and regulations pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building regulations applicable to farm buildings located outside the building-regulation jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing twenty-five hundred dollars ($2500) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any boiler regulations adopted by the Board of Boiler Rules,

(2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and

(3) Any regulations relating to sanitation adopted by the Department of Human Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Depart-

ment of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(c) Standards to Be Followed in Adopting the Code. — All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code, formerly Building Exits Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code. — The Building Code Council may from time to time revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Building Codes. — The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations governing construction within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality; county jurisdiction shall include all other areas of the county. No such building code or regulations shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building Code in its particular political subdivision. Whenever the Building Code Council adopts an amendment to the State Building Code, it shall consider any previously approved local regulations dealing with the same general matters, and it shall have authority to withdraw its approval of any such local code or regulations unless the local governing body makes such appropriate amendments to that local code or regulations as it may direct. In the absence of approval by the Building Code Council, or in the event that

approval is withdrawn, local codes and regulations shall have no force and effect.

(f) Effect upon Existing Laws. — Until such time as the North Carolina State Building Code has been legally adopted by the Building Code Council pursuant to this Article, the North Carolina Building Code adopted by the Council and the Commissioner of Insurance in 1953 shall remain in full force and effect. Such Code is hereby ratified and adopted.

(g) Publication and Distribution of Code. — The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	3
State Board of Education	2
Attorney General	5
Commissioner of Agriculture	1
Commissioner of Labor	3
Commissioner of Insurance	5
Department of Human Resources [Commission for Health Services]	10
Department of Human Resources [Commission for Medical Facility Services and Licensure]	3
Board of Transportation	3
Adjutant General	1
Utilities Commission	1
Department of Administration	3
Department of Conservation and Development	3
Department of Human Resources [Social Services Commission]	7
Justices of the Supreme Court	1 each
Clerk of the Supreme Court	1
Judges of the Court of Appeals	1 each
Clerk of the Court of Appeals	1
Judges of the Superior Court	* 1 each
Emergency Judges of the Superior Court	* 1 each
Special Judges of the Superior Court	* 1 each
Solicitors of the Superior Court	* 1 each
Department of Cultural Resources [State Library]	2
Supreme Court Library	2
State Senators	* 1 each
Representatives of General Assembly	* 1 each
Other state-supported institutions, at the discretion of the Council	* 1 each
Schools	
University of North Carolina at Chapel Hill	*25
North Carolina State University at Raleigh	*15

OFFICIAL OR AGENCY	NUMBER OF COPIES
North Carolina Agricultural and Technical State University	* 5
All other state-supported colleges and universities in the State of North Carolina	* 1 each
Local Officials	
Clerks of the Superior Courts	1 each
Registers of Deeds of the Counties	* 1 each
Chairman of the Boards of County Commissioners	* 1 each
City Clerks of each incorporated municipality	1 each
Chief Building Inspector of each incorporated municipality or county	* 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code shall be guilty of a misdemeanor and shall upon conviction be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. In case any building or structure is erected, constructed or reconstructed, or its purpose altered, so that it becomes in violation of the North Carolina State Building Code, either the local enforcement officer or the State Commissioner of Insurance or other State official with responsibility under G.S. 143-139 may, in addition to other remedies, institute any appropriate action or proceedings (i) to prevent such unlawful erection, construction or reconstruction, or alteration of purpose, (ii) to restrain, correct, or abate such violation, or (iii) to prevent the occupancy or use of said building, structure, or land until such violation is corrected.

(i) Section 1008 of Chapter X of Volume 1 of the North Carolina State Building Code, Title "Special Safety to Life Requirements Applicable to Existing High-Rise Buildings" as adopted by the North Carolina State Building Code Council on March 9, 1976, as ratified and adopted as follows:

SECTION 1008-SPECIAL SAFETY TO LIFE REQUIREMENTS APPLICABLE TO EXISTING HIGH-RISE BUILDINGS

1008 — GENERAL.

(a) Applicability. — Within a reasonable time, as fixed by "written order" of the building official, and except as otherwise provided in subsection (j) of this section every building the [then] existing, that qualifies for classification under Table 1008.1 shall be considered to be a high-rise building and shall be provided with safety to life facilities as hereinafter specified. All other buildings shall be considered as low-rise. NOTE: The requirements of Section 1008 shall be considered as minimum requirements to provide for reasonable safety to life requirements for existing buildings and where possible, the owner and designer should consider the provisions of Section 506 applicable to new high-rise buildings.

(b) Notification of Building Owner. — The Department of Insurance will send copies of amendments adopted to all local building officials with the suggestion that all local building officials transmit to applicable building owners in their jurisdiction copies of adopted amendments, within six months from the date the amendments are adopted, with the request that each building owner respond to the local building official how he plans to comply with these requirements within a reasonable time.

NOTE: Suggested reasonable time and procedures for owners to respond to the building official's request is as follows:

(1) The building owner shall, upon receipt of written request from the building official on compliance procedures within a reasonable time, submit an overall plan required by 1008(c) below within one year and within the time period specified in the approved overall plan, but not to exceed five years after the overall plan is approved, accomplish compliance with this section, as evidenced by completion of the work in accordance with approved working drawings and specifications and by issuance of a new Certificate of Compliance by the building official covering the work. Upon approval of building owner's overall plan, the building official shall issue a "written order", as per 1008(a) above, to comply with Section 1008 in accordance with the approved overall plan.

(2) The building official may permit time extensions beyond five years to accomplish compliance in accordance with the overall plan when the owner can show just cause for such extension of time at the time the overall plan is approved.

(3) The local building official shall send second request notices as per 1008(b) to building owners who have made no response to the request at the end of six months and a third request notice to no response building owners at the end of nine months.

(4) If the building owner makes no response to any of the three requests for information on how the owner plans to comply with Section 1008 within 12 months from the first request, the building official shall issue a "written order" to the building owner to provide his building with the safety to life facilities as required by this section and to submit an overall plan specified by (1) above within six months with the five-year time period starting on the date of the "written order".

(5) For purposes of this section, the Construction Section of the Division of Facility Services, Department of Human Resources, will notify all non-State owned I-Institutional buildings requiring licensure by the Division of Facility Services and coordinate compliance requirements with the Department of Insurance and the local building official.

(c) Submission of Plans and Time Schedule for Completing Work. — Plans and specifications, but not necessarily working drawings covering the work necessary to bring the building into compliance with this section shall be submitted to the building official within a reasonable time. (See suggested time in NOTE of Section 1008(b) above). A time schedule for accomplishing the work, including the preparation of working drawings and specifications shall be included. Some of the work may require longer periods of time to accomplish than others, and this shall be reflected in the plan and schedule.

NOTE: Suggested Time Period For Compliance:

SUGGESTED TIME PERIOD FOR COMPLIANCE

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Signs in Elevator Lobbies and Elevator Cabs	1008.2(h)	1008.3(h)	1008.4(h)	180 days
Emergency Evacuation Plan	1008(b)	NOTE:		180 days
Corridor Smoke Detectors (Includes alternative door closers)	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Manual Fire Alarm	1008.2(a)	1008.3(a)	1008.4(a)	1 year

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Voice Communication System Required	1008.2(b)	1008.3(b)	1008.4(b)	2 years
Smoke Detectors Required	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Protection and Fire Stopping for Vertical Shafts	1008.2(f)	1008.3(f)	1008.4(f)	3 years
Special Exit Requirements-Number, Location and Illumination to be in accordance with Section 1007	1008.2(e)	1008.3(e)	1008.4(e)	3 years
Emergency Electrical Power Supply	1008.2(d)	1008.3(d)	1008.4(d)	4 years
Special Exit Facilities Required	1008.2(e)	1008.3(e)	1008.4(e)	5 years
Compartmentation for Institutional Buildings	1008.2(f)	1008.3(f)	1008.4(f)	5 years
Emergency Elevator Requirements	1008.2(h)	1008.3(h)	1008.4(h)	5 years
Central Alarm Facility Required		1008.3(i)	1008.4(i)	5 years
Areas of Refuge Required on Every Eighth Floor			1008.4(j)	5 years
Smoke Venting			1008.4(k)	5 years
Fire Protection of Electrical Conductors			1008.4(l)	5 years
Sprinkler System Required			1008.4(m)	5 years

(d) Building Official Notification of Department of Insurance. — The building official shall send copies of written notices he sends to building owners to the Engineering and Building Codes Division for their files and also shall file an annual report by August 15th of each year covering the past fiscal year setting forth the work accomplished under the provisions of this section.

(e) Construction Changes and Design of Life Safety Equipment. — Plans and specifications which contain construction changes and design of life safety equipment requirements to comply with provisions of this section shall be prepared by a registered architect in accordance with provisions of Chapter 83 of the General Statutes or by a registered engineer in accordance with provisions of Chapter 89 of the General Statutes or by both an architect and engineer particularly qualified by training and experience for the type of work involved. Such plans and specifications shall be submitted to the Engineering and Building Codes Division of the Department of Insurance for approval. Plans and specifications for I-Institutional buildings licensed by the Division of Facility Services as noted in (b) above shall be submitted to the Construction Section of that Division for review and approval.

(f) Filing of Test Reports and Maintenance on Life Safety Equipment. — The engineer performing the design for the electrical and mechanical equipment, including sprinkler systems, must file the test results with the Engineering and Building Codes Division of the Department of Insurance, or to the agency designated by the Department of Insurance, that such systems have been tested to indicate that they function in accordance with the standards specified in this section and according to design criteria. These test results shall be a prerequisite for the Certificate of Compliance required by (b) above. Test results for I-Institutional shall be filed with the Construction Section, Division

of Facility Services. It shall be the duty and responsibility of the owners of Class I, II and III buildings to maintain smoke detection, fire detection, fire control, smoke removal and venting as required by this section and similar emergency systems in proper operating condition at all times. Certification of full tests and inspections of all emergency systems shall be provided by the owner annually to the fire department.

(g) Applicability of Chapter X and Conflicts with Other Sections. — The requirements of this section shall be in addition to those of Sections 1001 through 1007; and in case of conflict, the requirements affording the higher degree of safety to life shall apply, as determined by the building official.

(h) Classes of Buildings and Occupancy Classification. — Buildings shall be classified as Class I, II or III according to Table 1008.1. In the case of mixed occupancies, for this purpose, the classification shall be the most restrictive one resulting from the application of the most prevalent occupancies to Table 1008.1.

FOOTNOTE: Emergency Plan. — Owners, operators, tenants, administrators or managers of high-rise buildings should consult with the fire authority having jurisdiction and establish procedures which shall include but not necessarily be limited to the following:

(1) Assignment of a responsible person to work with the fire authority in the establishment, implementation and maintenance of the emergency pre-fire plan.
(2) Emergency plan procedures shall be supplied to all tenants and shall be posted conspicuously in each hotel guest room, each office area, and each schoolroom.
(3) Submission to the local fire authority of an annual renewal or amended emergency plan.
(4) Plan should be completed as soon as possible.

1008.1 — ALL EXISTING BUILDINGS SHALL BE CLASSIFIED AS CLASS I, II AND III ACCORDING TO TABLE 1008.1.

TABLE 1008.1

Scope

CLASS (1)	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS I	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	60′ but less than 120′ above average grade or 6 but less than 12 stories above average grade.
	Group I-Institutional-Unrestrained	36′ but less than 60′ above average grade or 3 but less than 6 stories above average grade.
CLASS II	Group R-Residential Group B-Business Group E-Educational Group A-Assembly	120′ but less than 250′ above average grade or 12 but less than 25 stories

CLASS (1)	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
	Group H-Hazardous Group I-Institutional-Restrained	above average grade.
	Group I-Institutional-Unrestrained	60′ but less than 250′ above average grade or 6 but less than 25 stories above average grade.
CLASS III	Group R-Residential Group B-Business Group E-Educational Group I-Institutional Group A-Assembly	250′ or 25 stories above average grade.

Group H-Hazardous

NOTE 1: The entire building shall comply with this section when the building has an occupied floor above the height specified, except that portions of the buildings which do not exceed the height specified are exempt from this section, subject to the following provisions:

(a) Low-rise portions of Class I buildings must be separated from high-rise portions by one-hour construction.

(b) Low-rise portions of Class II and III buildings must be separated from high-rise portions by two-hour construction.

(c) Any required exit from the high-rise portion which passes through the low-rise portions must be separated from the low-rise portion by the two-hour construction.

NOTE 2: The height described in Table 1008.1 shall be measured between the average grade outside the building and the finished floor of the top occupied story.

NOTE 3: Public parking decks meeting the requirements of Section 412.7 and less than 75 feet in height are exempt from the requirements of this section when there is no other occupancy above or below such deck.

NOTE 4: Special purpose equipment buildings, such as telephone equipment buildings housing the equipment only, with personnel occupant load limited to persons required to maintain the equipment may be exempt from any or all of these requirements at the discretion of the Engineering and Building Codes Division provided such special purpose equipment building is separated from other portions of the building by two-hour fire rated construction.

1008.2—REQUIREMENTS FOR EXISTING CLASS I BUILDINGS.

All Class I buildings shall be provided with the following:

(a) An approved manual fire alarm system, meeting the requirements of Section 1125 and applicable portions of NFPA 71, 72A, 72B, 72C or 72D, shall be provided unless the building is fully sprinklered or equipped with an approved automatic fire detection system connected to the fire department.

(b) All Class I buildings shall meet the requirements of Sections 1001-1007.

(c) Smoke Detectors Required. — At least one approved listed smoke detector tested in accordance with UL-167, capable of detecting visible and invisible particles of combustion shall be installed as follows:

(1) All buildings classified as institutional, residential and assembly occupancies shall be provided with listed smoke detectors in all required exit corridors spaced no further than 60′ on center or more than 15′ from any wall. Exterior corridors open to the outside are not

required to comply with this requirement. If the corridor walls have one-hour fire resistance rating with all openings protected with 1-¾ inch solid wood core or hollow metal door or equivalent and all corridor doors are equipped with approved self-closing devices, the smoke detectors in the corridor may be omitted. Detectors in corridors may be omitted when each dwelling unit is equipped with smoke detectors which activate the alarm system.

(2) In every mechanical equipment, boiler, electrical equipment, elevator equipment or similar room unless the room is sprinklered or the room is separated from other areas by two-hour fire resistance construction with all openings therein protected with approved fire dampers and Class B fire doors. (Approved listed fire (heat) detectors may be submitted for these rooms.)

(3) In the return air portion of every air conditioning and mechanical ventilation system that serves more than one floor.

(4) The activation of any detector shall activate the alarm system, and shall cause such other operations as required by this Code.

(5) The annuciator shall be located near the main entrance or in a central alarm and control facility.

NOTE 1: Limited area sprinklers may be supplied from the domestic water system provided the domestic water system is designed to support the design flow of the largest number of sprinklers in any one of the enclosed areas. When supplied by the domestic water system, the maximum number of sprinklers in any one enclosed room or area shall not exceed 20 sprinklers which must totally protect the room or area.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above.

(1) Emergency, exit and elevator cab lighting.

(2) Emergency illumination for corridors, stairs, etc.

(3) Emergency Alarms and Detection Systems. — Power supply for fire alarm and fire detection. Emergency power does not need to be connected to fire alarm or detection systems when they are equipped with their own emergency power supply from float or trickle charge battery in accordance with NFPA standards.

(e) Special Exit Requirements. — Exits and exitways shall meet the following requirements:

(1) Protection of Stairways Required. — All required exit stairways shall be enclosed with noncombustible one-hour fire rated construction with a minimum of 1-¾ inch solid core wood door or hollow metal door or 20 minute UL listed doors as entrance thereto. (See Section 1007.5).

(2) Number and Location of Exits. — All required exit stairways shall meet the requirements of Section 1007 to provide for proper number and location and proper fire rated enclosures and illumination of and designation for means of egress.

(3) Exit Outlets. — Each required exit stair shall exit directly outside or through a separate one-hour fire rated corridor with no openings except the necessary openings to exit into the fire rated corridor and from the fire rated corridor and such openings shall be protected with 1-$^3/_4$ inch solid wood core or hollow metal door or equivalent unless the exit floor level and all floors below are equipped with an approved automatic sprinkler system meeting the requirements of NFPA No. 13.

(f) Smoke Compartments Required for I-Institutional Buildings. — Each occupied floor shall be divided into at least two compartments with each

compartment containing not more than 30 institutional occupants. Such compartments shall be subdivided with one-half hour fire rated partitions which shall extend from outside wall to outside wall and from floor to and through any concealed space to the floor slab or roof above and meet the following requirements:

(1) Maximum area of any smoke compartment shall be not more than 22,500 square feet in area with both length and width limited to 150 feet.

(2) At least one smoke partition per floor regardless of building size forming two smoke zones of approximately equal size.

(3) All doors located in smoke partitions shall be properly gasketed to insure a substantial barrier to the passage of smoke and gases.

(4) All doors located in smoke partitions shall be no less than 1-¾ inch thick solid core wood doors with UL, ¼ inch wire glass panel in metal frames. This glass panel shall be a minimum of 100 square inches and a maximum of 720 square inches.

(5) Every door located in a smoke partition shall be equipped with an automatic closer. Doors that are normally held in the open position shall be equipped with an electrical device that shall, upon actuation of the fire alarm or smoke detection system in an adjacent zone, close the doors in that smoke partition.

(6) Glass in all corridor walls shall be ¼", UL approved, wire glass in metal frames in pieces not to exceed 1296 square inches.

(7) Doors to all patient rooms and treatment areas shall be a minimum of 1-¾ inch solid core wood doors except in fully sprinklered buildings.

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible one-hour fire rated construction with shaft wall openings protected with 1-¾ inch solid core wood door or hollow metal door. Vertical shafts (such as electrical wiring shafts) which have openings such as ventilated doors on each floor must be fire stopped at the floor slab level with noncombustible materials having a fire resistance rating not less than one hour to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shafts.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall openings do not need any additional protection.

(h) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. The required emergency sign shall be readable at all times and shall be a minimum of ½" high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

1008.3 — REQUIREMENTS FOR EXISTING CLASS II BUILDINGS.

All Class II buildings must meet the following requirements:

(a) Manual Fire Alarm. — Provide manual fire alarm system in accordance with Section 1008.2(a). In addition, buildings so equipped with sprinkler alarm system or automatic fire detection system must have at least one manual fire alarm station near an exist on each floor as a part of such sprinkler or automatic fire detection and alarm system. Such manual fire alarm systems shall report a fire by floor.

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective basis which can be heard clearly by all occupants in all exit stairways, elevators, elevator lobbies, corridors, assembly rooms and tenant spaces.

NOTE 1: This system shall function so that in the event of one circuit or speaker being damaged or out of service, the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(c) Smoke Detectors Required. — Smoke detectors are required as per Section 1008.2(c). The following are additional requirements:

(1) Storage rooms larger than 24 square feet or having a maximum dimension of over eight feet shall be provided with approved fire detectors or smoke detectors installed in an approved manner unless the room is sprinklered.

(2) The actuation of any detectors shall activate the fire alarm system.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above. Power supply shall furnish power for items listed in Section 1008.2(d) and the following:

(1) Pressurization Fans. — Fans to provide required pressurization, smoke venting or smoke control for stairways.

(2) Elevators. — The designated emergency elevator.

(e) Special Exit Facilities Required. — The following exit facilities are required:

(1) The special exit facilities required in 1008.2(e) are required. All required exit stairways shall be enclosed with noncombustible two-hour fire rated construction with a minimum of 1-½ hour Class B-labeled doors as entrance thereto: (See Section 1007.5)

(2) Smoke-Free Stairways Required. — At least one stairway shall be a smoke free stairway in accordance with Section 1104.2 or at least one stairway shall be pressurized to between 0.15 inch and 0.35 inch water column pressure with all doors closed. Smoke-free stairs and pressurized stairs shall be identified with signs containing letters a minimum of ½ inch high containing the words "PRIMARY EXIT STAIRS" unless all stairs are smoke free or pressurized. Approved exterior stairways meeting the requirements of Chapter XI or approved existing fire escapes meeting the requirements of Chapter X with all openings within 10 feet protected with wire glass or other properly designed stairs protected to assure similar smoke-free vertical egress may be permitted. All required exit stairways shall also meet the requirements of Section 1008.2(e).

(3) If stairway doors are locked from the stairway side, keys shall be provided to unlock all stairway doors on every eighth floor leading into the remainder of the building and the key shall be located in a glass enclosure adjacent to the door at each floor level (which may sound an alarm when the glass is broken). When the key unlocks the door, the hardware shall be of the type that remains unlocked after the key is removed. Other means, approved by the building official may be approved to enable occupants and fire fighters to readily unlock stairway doors on every eighth floor that may be locked from the stairwell side. The requirements of this section may be eliminated in

smoke-free stairs and pressurized stairs provided fire department access keys are provided in locations acceptable to the local fire authority.

(f) Compartmentation for I-Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible two-hour fire rated construction with Class B-labeled door except for elevator doors which shall be hollow metal or equivalent. All vertical shafts which are not so enclosed must be fire stopped at each floor slab with noncombustible materials having a fire resistance rating of not less than two hours to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shaft.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall opening do not need any additional protection.

(h) Emergency Elevator Requirements.

(1) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby, or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(2) Identification of Emergency Elevator. — At least one elevator shall be identified as the emergency elevator and shall serve all floor levels. NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and shall be a minimum of ½ inch high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(i) Central Alarm Facility Required. — A central alarm facility accessible at all times to fire department personnel or attended 24 hours a day, shall be provided and shall contain the following:

(1) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(2) Public service telephone.

(3) Fire detection and alarm systems annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received. These signals shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(4) Master keys for access from all stairways to all floors.

(5) One-way voice emergency communications system controls.

1008.4 — REQUIREMENTS FOR EXISTING CLASS III BUILDINGS.

All Class III Buildings shall be provided with the following:

(a) Manual Fire Alarm System. — A manual fire alarm system meeting the requirements of Section 1008.3(a).

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective or general basis which can be heard clearly by all occupants in all elevators, elevator lobbies, corridors, and rooms or tenant spaces exceeding 1,000 sq. ft. in area.

NOTE 1: This system shall be designed so that in the event of one circuit or speaker being damaged or out of service the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(2) Two-way system for use by both fire fighters and occupants at every fifth level in stairways and in all elevators.

(3) Within the stairs at levels not equipped with two-way voice communications, signs indicating the location of the nearest two-way device shall be provided.

NOTE: The one-way and two-way voice communication systems may be combined.

(c) Smoke Detectors Required. — Approved listed smoke detectors shall be installed in accordance with Section 1008.3(c) and in addition, such detectors shall terminate at the central alarm and control facility and be so designed that it will indicate the fire floor or the zone on the fire floor.

(d) Emergency Electrical Power Supply. — Emergency electrical power supply meeting the requirements of Section 1008.3(d) to supply all emergency equipment required by Section 1008.3(d) shall be provided and in addition, provisions shall be made for automatic transfer to emergency power in not more than ten seconds for emergency illumination, emergency lighting and emergency communication systems. Provisions shall be provided to transfer power to a second designated elevator located in a separate shaft from the primary emergency elevator. Any standpipe or sprinkler system serving occupied floor areas 400 feet or more above grade shall be provided with on-site generated power or diesel driven pump.

(e) Special Exit Requirements. — All exits and exitways shall meet the requirements of Section 1008.3(e).

(f) Compartmentation of Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — Same as Class II buildings. See Section 1008.3(g).

(h) Emergency Elevator Requirements.

(1) Primary Emergency Elevator. — At least one elevator serving all floors shall be identified as the emergency elevator with identification signs both outside and inside the elevator and shall be provided with emergency power to meet the requirements of Section 1008.3(c).

NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(2) Elevator Recall. — Each elevator shall be provided with an approval manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby or to a

smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and have a minimum of ½" high block letters with the words: "IN CASE OF FIRE, UNLESS OTHERWISE INSTRUCTED, DO NOT USE THE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(4) Machine Room Protection. — When elevator equipment located above the hoistway is subject to damage from smoke particulate matter, cable slots entering the machine room shall be sleeved beneath the machine room floor to inhibit the passage of smoke into the machine room.

(5) Secondary Emergency Elevator. — At least one elevator located in separate shaft from the Primary Emergency Elevator shall be identified as the "Secondary Emergency Elevator" with identification signs both outside and inside the elevator. It will serve all occupied floors above 250 feet and shall have all the same facilities as the primary elevator and will be capable of being transferred to the emergency power system.

NOTE: Emergency power supply can be sized for nonsimultaneous use of the primary and secondary emergency elevators.

(i) Central Alarm and Control Facilities Required.

(1) A central alarm facility accessible at all times to Fire Department personnel or attended 24 hours a day, shall be provided. The facility shall be located on a completely sprinklered floor or shall be enclosed in two-hour fire resistive construction. Openings are permitted if protected by listed 1-½ hour Class B-labeled closures or water curtain devices capable of a minimum discharge of three gpm per lineal foot of opening. The facility shall contain the following:

(i) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(ii) Public service telephone.

(iii) Direct communication to the control facility.

(iv) Controls for the voice communication systems.

(v) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received, those signals, shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(2) A control facility (fire department command station) shall be provided at or near the fire department response point and shall contain the following:

(i) Elevator status indicator.

NOTE: Not required in buildings where there is a status indicator at the main elevator lobby.

(ii) Master keys for access from all stairways to all floors.

(iii) Controls for the two-way communication system.

(iv) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received.

(v) Direct communication to the central alarm facility.

(3) The central alarm and control facilities may be combined in a single approved location. If combined, the duplication of facilities and the direct communication system between the two may be deleted.

(j) Areas of Refuge Required. — Class III buildings shall be provided with a designated "area of refuge" at the 250 ft. level and on at least every eighth floor or fraction thereof above that level to be designed so that occupants above the 250 ft. level can enter at all times and be safely accommodated in floor areas meeting the following requirements unless the building is completely sprinklered:

(1) Identification and Size. — These areas of refuge shall be identified on the plans and in the building as necessary. The area of refuge shall provide not less than 3 sq. ft. per occupant for the total number of occupants served by the area based on the occupancy content calculated by Section 1105. A minimum of two percent (2%) of the number of occupants on each floor shall be assumed to be handicapped and no less than 16 sq. ft. per handicapped occupant shall be provided. Smoke proof stairways meeting the requirements of Section 1104.2 and pressurized stairways meeting the requirements of Section 1108.3(e)(2) may be used for ambulatory occupants at the rate of 3 sq. ft. of area of treads and landings per person, but in no case shall the stairs count for more than one-third of the total occupants. Doors leading to designated areas of refuge from stairways or other areas of the building shall not have locking hardware or shall be automatically unlocked upon receipt of any manual or automatic fire alarm signal.

(2) Pressurized. — The area of refuge shall be pressurized with 100% fresh air utilizing the maximum capacity of existing mechanical building air conditioning system without recirculation from other areas or other acceptable means of providing fresh air into the area.

(3) Fire Resistive Separation. — Walls, partitions, floor assemblies and roof assemblies separating the area of refuge from the remainder of the building shall be noncombustible and have a fire resistance rating of not less than one hour. Duct penetrations shall be protected as required for penetrations of shafts. Metallic piping and metallic conduit may penetrate or pass through the separation only if the openings around the piping or conduit are sealed on each side of the penetrations with impervious noncombustible materials to prevent the transfer of smoke or combustion gases from one side of the separation to the other. The fire door serving as a horizontal exit between compartments shall be so installed, fitted and gasketed to provide a barrier to the passage of smoke.

(4) Access Corridors. — Any corridor leading to each designated area of refuge shall be protected as required by Sections 1104 and 702. The capacity of an access corridor leading to an area of refuge shall be based on 150 persons per unit width as defined in Section 1105.2. An access corridor may not be less than 44 inches in width. The width shall be determined by the occupant content of the most densely populated floor served. Corridors with one-hour fire resistive separation may be utilized for area of refuge at the rate of three sq. ft. per ambulatory occupant provided a minimum of one cubic ft. per minute of outside air per square foot of floor area is introduced by the air conditioning system.

(5) Penetrations. — The continuity of the fire resistance at the juncture of exterior walls and floors must be maintained.

(k) Smoke Venting. — Smoke venting shall be accomplished by one of the following methods in nonsprinklered buildings:

(1) In a nonsprinklered building, the heating, ventilating and air conditioning system shall be arranged to exhaust the floor of alarm origin at its maximum exhausting capacity without recirculating air from the floor of alarm origin to any other floor. The system may be arranged to accomplish this either automatically or manually. If the air conditioning system is also used to pressurize the areas of refuge, this function shall not be compromised by using the system for smoke removal.

(2) Venting facilities shall be provided at the rate of 20 square feet per 100 lineal feet or 10 square feet per 50 lineal feet of exterior wall in each story and distributed around the perimeter at not more than 50 or 100 foot intervals openable from within the fire floor. Such panels and their controls shall be clearly identified.

(3) Any combination of the above two methods or other approved designs which will produce equivalent results and which is acceptable to the building official.

(l) Fire Protection of Electrical Conductors. — New electrical conductors furnishing power for pressurization fans for stairways, power for emergency elevators and fire pumps required by Section 1008.4(d) shall be protected by a two-hour fire rated horizontal or vertical enclosure or structural element which does not contain any combustible materials. Such protection shall begin at the source of the electrical power and extend to the floor level on which the emergency equipment is located. It shall also extend to the emergency equipment to the extent that the construction of the building components on that floor permits. New electrical conductors in metal raceways located within a two-hour fire rated assembly without any combustible therein are exempt from this requirement.

(m) Automatic Sprinkler Systems Required.

(1) All areas which are classified as Group M-mercantile and Group H-hazardous shall be completely protected with an automatic sprinkler system.

(2) All areas used for commercial or institutional food preparation and storage facilities adjacent thereto shall be provided with an automatic sprinkler system.

(3) An area used for storage or handling of hazardous substances shall be provided with an automatic sprinkler system.

(4) All laboratories and vocational shops in Group E, Educational shall be provided with an automatic sprinkler system.

(5) Sprinkler systems shall be in strict accordance with NFPA No. 13 and the following requirements:
The sprinkler system must be equipped with a water flow and supervisory signal system that will transmit automatically a water flow signal directly to the fire department or to an independent signal monitoring service satisfactory to the fire department.

(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required in Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and (d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy buildings. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2.)

Local Modification. — Towns of Carrboro and Chapel Hill: 1981, c. 911.

Editor's Note. — The references in brackets in subsection (j) have been inserted to guide the reader to what appears to be the general location of the provisions referred to by the page and line references. The page and line references are printed just as they are set out in the ratified bill, Session Laws 1981, c. 713, but the line references in particular do not correspond to lines in the ratified bill, and their intention is not always clear.

Effect of Amendments. — The first 1981 amendment, effective thirty days after ratification, added the fourth paragraph of subsection (b). The act was ratified on June 25, 1981.

The second 1981 amendment added subsections (i) and (j).

Session Laws 1981, c. 713, s. 3 contains a severability clause.

CASE NOTES

History. —

In accord with original. See Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910, cert. denied, 297 N.C. 299, 254 S.E.2d 925 (1979).

Subsection (b) Does Not Authorize Amendment of Building Code so as to Impose More Stringent Requirements on Buildings Meeting Prior Requirements Where Use Is Not Altered. — There is in subsection (b) of this section no clearly expressed grant of power from the legislature to the Building Code Council to amend the State Building Code so as to impose new and more stringent requirements upon existing buildings which, prior to such amendment, fully complied with the Code and which are neither being altered or changed in use. Further, there is nothing in the wording of the statute evidencing a legislative intent that the grant of such a drastic power should be implied. Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910, cert. denied, 297 N.C. 299, 254 S.E.2d 925 (1979).

§ 143-139. Enforcement of Building Code.

CASE NOTES

Stated in Carolinas-Virginias Ass'n of Bldg. Owners & Managers v. Ingram, 39 N.C. App. 688, 251 S.E.2d 910 (1979).

ARTICLE 9A.

Uniform Standards Code for Mobile Homes.

Editor's Note. — Session Laws 1981, c. 952, s. 1, effective July 1, 1982, redesignates the former Article 9A, §§ 143-144 to 143-151.5, as Part 2 of Article 9A.

Part 1. Uniform Standards Code for Mobile Home.

(This Part is effective July 1, 1982)

§ 143-143.8. Purpose.

The General Assembly finds that mobile homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the mobile home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in mobile homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of mobile home residents in North Carolina, the General Assembly finds that the most efficient and economical way to assure safety, quality and responsibility is to require the licensing and bonding of all

segments of the mobile home industry. The General Assembly also finds that it is reasonable and proper for the mobile home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations. (1981, c. 952, s. 2.)

Editor's Note. — Session Laws 1981, c. 952, s. 6, provides: "This act shall become effective July 1, 1982; provided, however, that the provisions of G.S. 143-143.10 contained in Section 2 of this act shall become effective upon ratification, to the end that the North Carolina Manufactured Housing Board may be appointed, conduct its organizational activities, and be prepared to implement the provisions of this act upon its effective date." The act was ratified July 10, 1981.

Session Laws 1981, c. 952, s. 4, contains a severability clause.

§ 143-143.9. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Board" means the North Carolina Manufactured Housing Board.

(2) "Buyer" means a person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

(3) "Code" means the appropriate standards adopted by the Commissioner and established by the Department of Housing and Urban Development pursuant to the Federal Mobile Home Construction and Safety Standards Act of 1974 for single family manufactured homes.

(4) "Commissioner" means the Commissioner of Insurance of the State of North Carolina.

(5) "Department" means the Department of Insurance of the State of North Carolina.

(6) "Manufactured home" or "mobile home" means a structure, transportable in one or more sections, which, in the travelling mode, is eight feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) "Manufactured home dealer" or "dealer" means any person engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys, sells or deals in three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) "Manufactured home manufacturer" or "manufacturer" means any person, resident or nonresident, who manufactures or assembles manufactured homes for sale in North Carolina.

(9) "Manufactured home salesman" or "salesman" means any person employed as a salesman by a manufactured home dealer to sell manufactured homes to buyers.

(10) "Person" means any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) "Responsible party" means a manufacturer, dealer, supplier, or set-up contractor.

(12) "Setup" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation by a bona fide private or exempt carrier operating under the provisions of the Public Utilities Act, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the North Carolina Utilities Commission.

(13) "Set-up contractor" means a person who engages in the business of performing set-up operations for compensation in North Carolina.

(14) "Substantial defect" means any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) "Supplier" means the original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer. (1981, c. 952, s. 2.)

§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

(a) There is hereby created the North Carolina Manufactured Housing Board within the Department of Insurance. The Board shall be composed of nine members as follows:

(1) The Commissioner of Insurance or his designee
(2) A manufactured home manufacturer
(3) A manufactured home dealer
(4) A representative of the banking and finance business
(5) A representative of the insurance industry
(6) A manufactured home supplier
(7) A set-up contractor
(8) Two representatives of the general public.

The Commissioner of Insurance or his designee shall serve as chairman of the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The Speaker of the House of Representatives shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The President Pro Tempore of the Senate shall appoint the manufactured home supplier and set-up contractor. The Commissioner of Insurance shall appoint two representatives of the general public. Except for the representatives from the general public, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years, to begin on October 1, 1981, except that those first appointed as the representative of the banking and finance business, the representative of the insurance business, the manufactured home supplier, and the set-up contractor shall serve for terms of one year. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The member of the Board representing the general public shall have no financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner of Insurance and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the Treasury of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article.

(b) In accordance with the provisions of this Article, the North Carolina Manufactured Housing Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, salesmen and set-up contractors;

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salesmen;

(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry; and

(4) To promulgate rules in accordance with Chapter 150A of the General Statutes as are necessary to carry out the provisions of this Article. (1981, c. 952, s. 2.)

§ 143-143.11. License required; application for license.

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesman or set-up contractor to engage in business as such in this State without first obtaining a license from the North Carolina Manufactured Housing Board, as provided in this Article.

(b) Application for such license shall be made to the Board at such time, in such form, and contain such information as the Board shall require, and shall be accompanied by the required fee established by the Board. Such fee shall not exceed twenty-five dollars ($25.00) for any license.

(c) In such application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All such information shall be considered by the Board in determining the fitness of the applicant to engage in the business for which a license is sought.

(d) All licenses that are granted shall expire, unless sooner revoked or suspended, on June 30 of each year following the date of issue.

(e) Every registrant under this Chapter shall, on or before the first day of July of each year, obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee; and upon failure to renew, his license shall automatically expire; but such license may be renewed at any time within one year upon payment of the prescribed renewal fee and upon

evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, salesman or set-up contractor after receipt of notice of expiration and is otherwise eligible for registration under the provisions of this Chapter.

(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed fifty dollars ($50.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesman will be allowed to engage in business during the time period after making application for a license but before such license is granted. (1981, c. 952, s. 2.)

§ 143-143.12. Bond required.

(a) A person licensed as a manufactured home salesman shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent thereof in the following amounts:

(1) For a manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of fifty thousand dollars ($50,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current year;

(2) For a dealer who buys, sells, or deals in manufactured homes and who has four or less places of business, the amount shall be twenty-five thousand dollars ($25,000);

(3) For a dealer who buys, sells, or deals in manufactured homes and who has more than four places of business, the amount shall be fifty thousand dollars ($50,000);

(4) For a set-up contractor, the amount shall be five thousand dollars ($5,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent thereof shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article shall have the right to institute an action to recover against such licensee and the surety.

(d) The Board is authorized to promulgate rules in accordance with Chapter 150A of the General Statutes consistent with this Article to assure satisfaction of claims. (1981, c. 952, s. 2.)

§ 143-143.13. Grounds denying, suspending or revoking license; civil penalty.

(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) Material misstatement in application for license;

(2) Failure to post an adequate corporate surety bond, cash bond or fixed value equivalent thereof;

(3) Engaging in the business of manufactured home manufacturer, dealer, salesman or set-up contractor without first obtaining a license from the Board;
(4) Failure to comply with the warranty service obligations and claims procedure established by this Article;
(5) Failure to comply with the set-up and tie-down requirements established by this Article;
(6) Misappropriation of funds belonging to the buyer of a manufactured home;
(7) Use of unfair methods of competition or unfair or deceptive commercial acts or practices;
(8) Failure to comply with any provision of this Article.

(b) In addition to the authority to deny, suspend or revoke a license under this Article, the Board shall also have the authority to impose a civil penalty upon any person, firm, or corporation violating the provisions of this Article. A civil penalty shall not exceed two hundred fifty dollars ($250.00) for each violation. (1981, c. 952, s. 2.)

§ 143-143.14. Notice and hearing.

The Board shall not suspend, revoke or deny a license, or refuse the renewal of a license, or impose a civil penalty, until a written notice of the complaint has been furnished to the licensee or applicant against whom the same is directed, and a hearing thereon has been held before the Board. At least 30 days' written notice of the time and place of the hearing shall be given to the licensee or applicant by certified mail to his last known address, as shown on the license or other record of information in possession of the Board. At any such hearing, the licensee or applicant shall have the right to be heard in person or through counsel. After the hearing, the Board shall have the power to deny, suspend, revoke or refuse to renew the license in question, or to impose a civil penalty for violation of the provisions of this Article. Immediate notice of any such action by the Board shall be given to the licensee or applicant in the same manner as provided herein for furnishing notice of the hearing. (1981, c. 952, s. 2.)

§ 143-143.15. Set-up and tie-down requirements.

(a) Manufactured homes shall be set up and anchored in accordance with the standards established by the Federal Mobile Home Construction and Safety Standards Act of 1974 for single family manufactured homes or the State of North Carolina "Standards for Installation of Mobile Homes" adopted by the Commissioner of Insurance, whichever is applicable.

(b) In the event that a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage of a nature that indicates the manufactured home was not anchored or tied down in the manner required by this section, the insurer issuing the homeowner's insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the mobile home was not properly anchored or tied down. (1981, c. 952, s. 2.)

§ 143-143.16. Warranties.

Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State and the setup of each such manufactured home in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty require-

ments for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

(1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from substantial defect.

(2) The dealer warrants:

(a) That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any damage resulting therefrom.

(b) That set-up operations performed by the dealer on the manufactured home are performed in compliance with applicable federal or State standards for the installation of manufactured homes.

(c) That, during the course of setup and transportation of the manufactured home performed by the dealer, substantial defects do not occur to the manufactured home.

(3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

(4) The set-up contractor warrants that set-up operations are performed in compliance with applicable federal or State standards for the installation of manufactured homes, and that during the course of set-up operations performed on the manufactured home, substantial defects do not occur to the manufactured home. (1981, c. 952, s. 2.)

§ 143-143.17. Presenting claims for warranties and substantial defects.

(a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided by this Article. A record shall be made of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant of that fact, and shall also in writing immediately notify the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may also be responsible. Nothing herein shall prevent such a party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Article, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for service is not justified in whole or in part he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. Within five working days of its receipt of a complaint, the Board shall send a complete copy thereof to the Attorney General and to the Commissioner of Insurance. (1981, c. 952, s. 2.)

§ 143-143.18. Warranty service.

(a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every such service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided by this Article, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by the provisions of this Article is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days of receipt of the written notification of the warranty claim, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock, leaking gas; or (iv) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Article, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct which coerces or requires a nonresponsible party to perform warranty service is a violation of this Article.

(e) Warranty service shall be performed at the site at which the mobile home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier shall have the right to complain to the Board when warranty service obligations under this Article are not being enforced. (1981, c. 952, s. 2.)

§ 143-143.19. Dealer alterations.

(a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Article or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a manufactured home dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications

which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to promulgate rules in accordance with Chapter 150A of the General Statutes which define the alterations or modifications which must be made by qualified personnel. The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes. (1981, c. 952, s. 2.)

§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.

In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home. (1981, c. 952, s. 2.)

§ 143-143.21. Limitation on damages.

If the buyer fails to accept delivery of a manufactured home, the seller may retain actual damages according to the following terms:

(1) If the manufactured home is in the seller's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be one hundred dollars ($100.00).

(2) If the manufactured home is a single-wide unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be five hundred dollars ($500.00).

(3) If the manufactured home is larger than a single-wide unit and is specially ordered for the buyer from the manufacturer, the maximum retention shall be one thousand dollars ($1,000).

Nothing in this Article shall prevent the parties to a manufactured home sales contract from contracting for liquidated damages otherwise permitted by law. (1981, c. 952, s. 2.)

§ 143-143.22. Inspection of service records.

The Board is authorized to inspect the pertinent service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against such manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a true copy of every document or record pertinent to any complaint or claim for service. (1981, c. 952, s. 2.)

§ 143-143.23. Other remedies not excluded.

Nothing in this Article nor any decision by the Board shall limit any right or remedy available to the buyer at common law or under any other statute, nor limit any power or duty of the Attorney General. (1981, c. 952, s. 2.)

Part 2. North Carolina Manufactured Housing Board.

§ 143-144. Short title.

Legal Periodicals. — For an article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

For comment on the status of mobile homes as residences or vehicles and their regulation in North Carolina municipalities, see 50 N.C.L. Rev. 612 (1972).

§ 143-146. Statement of policy; rule-making power.

(b) The Commissioner shall make and promulgate rules embodying the standards for construction or manufacture of mobile homes set by the Department of Housing and Urban Development under the provisions of the National Mobile Home Construction and Safety Standards Act of 1974, as these standards may be amended.

(e) The Commissioner is authorized to promulgate such rules as are necessary to carry out the provisions of this Article and such rules as are necessary to enable the State of North Carolina to assume responsibility for the enforcement of the Mobile Home Construction and Safety Standards Act of 1974. (1969, c. 961, s. 3; 1971, c. 1172, s. 2; 1979, c. 558, ss. 5, 6.)

Effect of Amendments. — The 1979 amendment, effective Oct. 1, 1979, rewrote subsection (b), and added subsection (e).

Session Laws 1979, c. 558, s. 7, contains a severability clause.

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsections (b) and (e) are set out.

§ 143-148. Certain structures excluded from coverage.

The Commissioner shall exclude from coverage of this Article any structure which the manufacturer certifies to be excluded under G.S. 143-145(7). (1969, c. 961, s. 5; 1971, c. 1172, s. 4; 1979, c. 558, s. 3.)

Effect of Amendments. — The 1979 amendment, effective Oct. 1, 1979, rewrote the section.

Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151. Penalties.

(a) Whoever violates (i) the provisions of this Article; or (ii) any rules promulgated under this Article, shall be liable for civil penalty not to exceed one thousand dollars ($1,000) for each violation. Each such violation shall constitute a separate violation with respect to each mobile home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year from the date of the first violation.

(b) Any individual, corporation, or a director, officer or agent of a corporation who knowingly and willfully violates this Article or any rules promulgated under this Article in a manner which threatens the health or safety of any purchaser is guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both. (1971, c. 1172, s. 7; 1979, c. 558, s. 1.)

Effect of Amendments. — The 1979 amendment, effective Oct. 1, 1979, rewrote the section.

Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151.1. Enforcement.

The Commissioner of Insurance or any inspection department may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of this Article. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties pursuant to this Article, or the National Mobile Home Construction and Safety Standards Act of 1974, is authorized at reasonable hours and without advance notice to enter and inspect all factories, warehouses, or establishments in the State of North Carolina in which mobile homes are manufactured. (1971, c. 1172, s. 8; 1979, c. 558, s. 2.)

Effect of Amendments. — The 1979 amendment, effective Oct. 1, 1979, added the second sentence.

Session Laws 1979, c. 558, s. 7, contains a severability clause.

Legal Periodicals. — For an article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

§ 143-151.2. Fees.

(a) The Commissioner may establish a monitoring inspection fee in an amount established by the Secretary of Housing and Urban Development. This monitoring inspection fee shall be an amount paid by each mobile home manufacturer in the State for each mobile home produced by the manufacturer in that state.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of Housing and Urban Development or such Secretary's agent, who shall distribute the fees collected from all mobile home manufacturers among the approved and conditionally-approved states based on the number of mobile homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state, and the extent of participation of the State in the joint monitoring team program established under the National Mobile Home Construction and Safety Standards Act of 1974. (1979, c. 558, s. 4.)

Editor's Note. — Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151.3. Reports.

Each manufacturer, distributor, and dealer of mobile homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of Housing and Urban Development may reasonably require to be able to determine whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this Article, or the National Mobile Home Construction and Safety Standards Act of 1974 and shall, upon request of a person duly designated by the Commissioner or the Secretary of Housing and Urban Development, permit such person to inspect appropriate books, papers, records and documents relevant to determining whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this Article or the National Mobile Home Construction and Safety Standards Act of 1974. (1979, c. 558, s. 4.)

Editor's Note. — Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151.4. Notification of defects.

Every manufacturer of mobile homes shall furnish notification of any defect in any mobile home produced by such manufacturer in accordance with procedures specified by the Commissioner. (1979, c. 558, s. 4.)

Editor's Note. — Session Laws 1979, c. 558, s. 7, contains a severability clause.

§ 143-151.5. Prohibited acts.

(a) No person shall:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any mobile home which is manufactured on or after the effective date of any applicable mobile home construction and safety standard under this Article and which does not comply with such standard, except as provided in subsection (b);

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this Article;

(3) Fail to furnish notification of any defect as required by G.S. 143-151.4;

(4) Fail to issue a certificate of compliance, or issue a certification to the effect that a mobile home conforms to all applicable mobile home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(5) Fail to comply with a rule issued by the Commissioner under this Article; or

(6) Issue a certification pursuant to G.S. 143-148(c) if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect.

(b) (1) Paragraph (1) of subsection (a) shall not apply to the sale, the offer for sale, or the introduction or delivery of any mobile home after the first purchase of it in good faith for purposes other than resale.

(2) Paragraph (1) of subsection (a) shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such mobile home was not in conformity with applicable mobile home construction and safety standards, or to any person who, prior to such first purchase, holds a certificate of compliance issued by the manufacturer or importer of such mobile home to the effect that such mobile home conforms to all applicable mobile home construction and safety standards, unless such person knows that such mobile home does not so conform. (1979, c. 558, s. 4.)

Editor's Note. — Session Laws 1979, c. 558, s. 7, contains a severability clause.

Section 143-148(c), referred to in this section, does not exist.

ARTICLE 9B.

North Carolina Code Officials Qualification Board.

§ 143-151.13. Required standards and certificates for Code-enforcement officials.

(a) The Board shall provide by regulation that on and after July 1, 1979, no person may engage in Code enforcement pursuant to this Article unless he possesses one of the following types of certificates, currently valid, issued by the Board attesting to his qualifications to hold such position: (i) a standard certificate; (ii) a limited certificate provided for in subsection (c); or (iii) a probationary certificate provided for in subsection (d). To obtain a standard certificate, a person must pass an examination, as prescribed by the Board, which is based on the North Carolina State Building Code and administrative procedures required to enforce the Code. The Board shall issue a standard certificate of qualification to each person who successfully completes the examination authorizing the person named therein to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board.

(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the performance level and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population — July 1, 1979
Counties and Municipalities between 50,001 and 75,000 — July 1, 1981
Counties and Municipalities between 25,001 and 50,000 — July 1, 1983
Counties and Municipalities 25,000 and under — July 1, 1985.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for such period (not less than one year nor more than three years) as specified by the Board's regulations to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have his probationary or temporary certificate extended beyond the specified period by renewal or otherwise. The Board may by regulation provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.

(1979, cc. 521, 829.)

Effect of Amendments. — The first 1979 amendment substituted the language beginning "he held on the applicable date" at the end of the third sentence of the first paragraph of subsection (c) for "held on June 13, 1977."

The second 1979 amendment deleted "valid for one year only" after "probationary certificate" near the end of the first sentence of subsection (a), substituted "such period (not less than one year nor more than three years) as specified by the Board's regulations" for "one year" near the beginning of the first sentence of subsection (d), and substituted "the specified period" for "one year" near the end of the second sentence of subsection (d).

Only Part of Section Set Out. — As only subsections (a), (c), and (d) were changed by the amendments, the rest of the section is not set out.

Article 9C.

Enforcement of Building Code Insulation and Energy Utilization Standards.

§ 143-151.26. Purpose and intent.

Editor's Note. —

Session Laws 1979, c. 522, s. 1, repeals Session Laws 1977, c. 703, s. 12, which provided that this Article should remain in effect until July 1, 1979, and Session Laws 1979, c. 522, s. 2, reenacts this Article.

§ 143-151.27. Designation of local inspectors.

The superintendent of each county, city, or joint inspection department (created under the provisions of Chapter 153A, Article 18, Part 4, or Chapter 160A, Article 19, Part 5, or Chapter 160A, Article 20, Part 1, or by local or special act of the General Assembly) may designate the person or persons in that department responsible for enforcement of the insulation and energy utilization standards of the State Building Code and send their names and addresses to the Engineering and Building Codes Division of the North Carolina Department of Insurance; provided, nothing herein shall be construed to require the hiring of additional inspection personnel in any county, city, or joint inspection department. In every county or city which does not have an inspection department, the governing board may designate one or more "energy and insulation inspectors" and make such notification to the Department of Insurance; the territorial jurisdiction of such inspectors shall be the jurisdiction of the appointing unit, as specified in G.S. 160A-360, and they shall possess all applicable enforcement powers of a county or city inspection department. (1977, c. 703, s. 2; 1979, c. 522, s. 3.)

Effect of Amendments. — The 1979 amendment deleted "Prior to September 1, 1977" at the beginning of the first sentence, substituted "may" for "shall" near the middle of the first sentence, deleted "which is in existence on June 23, 1977" at the end of the first sentence, and substituted "may" for "shall" near the beginning of the second sentence.

§ 143-151.28. Training course for inspectors.

The Engineering and Building Codes Division of the Department of Insurance shall make available to the personnel designated pursuant to G.S. 143-151.27 a course or courses of instruction covering the insulation and energy utilization requirements of the State Building Code for dwellings or

other structures which are not required by law to be designed by a registered architect or professional engineer. (1977, c. 703, s. 3; 1979, c. 522, s. 4.)

Effect of Amendments. — The 1979 amendment deleted "Prior to January 1, 1978, and periodically thereafter" at the beginning of the section.

§ 143-151.29. Permits.

The governing body of a city or county may provide that no person, firm, or corporation may for a consideration install, alter, or restore any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards without first securing a permit either from the inspection department with jurisdiction over the work site, or in the absence of such a department, from an energy and insulation inspector with appropriate jurisdiction. Such permit may be either (i) a general building permit evidencing full compliance with all applicable requirements of the State Building Code and other State and local laws, issued by an inspection department, or (ii) a special permit issued by an energy and insulation inspector evidencing compliance with the insulation and energy utilization standards of the State Building Code. (1977, c. 703, s. 4; 1979, c. 522, s. 5.)

Effect of Amendments. — The 1979 amendment deleted "On and after January 1, 1978" at the beginning of the first sentence.

Article 12.

Law-Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. (Effective until July 1, 1982) Law-Enforcement Officers' Benefit and Retirement Fund.

(a) In every criminal case finally disposed of in the criminal courts of this State, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, three dollars ($3.00) additional cost to be collected and paid over to the Treasurer of North Carolina and held in a special fund for the purposes of this Article. Two dollars ($2.00) of such costs shall be administered under subsections (b) through (q) of this section, and one dollar ($1.00) shall be administered under subsections (r) through (w) of this section. The local custodian of such costs shall monthly transmit such moneys to the State Treasurer, with a statement of the case in which the same has been collected, except that the requirement to submit a statement of the case does not apply in district court counties. The costs assessed under this Article shall not apply to violations of municipal ordinances, unless a warrant is actually issued and served. A county or municipality shall pay no part of the costs or assessments.

Two thirds of the moneys so received shall annually be set up in a special fund to be known as "The Law-Enforcement Officers' Benefit and Retirement Fund."

(b) For the purpose of determining the recipients of benefits under this article and the amounts thereof to be disbursed and for formulating and

making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund." The membership of the Board of Commissioners shall consist of 10 members, as follows:

(1) The State Treasurer, who shall be chairman ex officio;

(2) The State Auditor, who shall be a member ex officio;

(3) The State Insurance Commissioner, who shall be a member ex officio;

(4) Five members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one a law enforcement officer employed by the State, one a retired law enforcement officer in receipt of an allowance from the Retirement Fund, and one representing the public at large;

(5) Two members, one a member of the House of Representatives to be appointed by the Speaker of the House and one a member of the Senate to be appointed by the President of the Senate, neither of whom shall be an active or retired law enforcement officer, to serve terms beginning July 1, 1979, for the duration of their current terms of office with their successors thereafter appointed for two-year terms to run concurrently with the organization of the General Assembly.

(c) Repealed by Session Laws 1979, c. 976, s. 2, effective July 1, 1979.

(d) The said Board of Commissioners shall have control of all payments to be made from such fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this Article, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining any benefits under this Article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law. The Board of Commissioners shall have authority to determine the membership eligibility or status of any member or applicant of any and all of those who come within the categories of law-enforcement officers named in subsection (m) of this section in accordance with general rules and regulations adopted by the Board and the decision of the Board of Commissioners as to such membership eligibility or status shall be final.

(e) There shall be kept in the office of the said Board of Commissioners by the secretary, records which shall give a complete history and record of all actions of the Board of Commissioners in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or Board members.

(f) On or before the first day of January of each year the said Board of Commissioners shall make to the Governor of the State of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such fund. There shall be annually made by the State Auditor's Department a complete audit and examination of the receipts and the disbursements of the Board of Commissioners herein created.

(g) The Board of Commissioners of the said fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold the same for the uses of said fund in accordance with the purposes of this Article. The State Treasurer shall be the custodian of the fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(h) In case the amount derived from the different sources mentioned and included in this Article shall not be sufficient at any time to enable the said Board of Commissioners to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said fund shall be replenished sufficiently to warrant the resumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(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 contribute into the fund herein created six percent (6%) of his compensation received for each pay period beginning on or after July 1, 1977. Such rate shall apply uniformly to all members of the Law-Enforcement Officers' Benefit and Retirement Fund, without regard to their coverage under the Social Security Act. The mode of payment to the fund shall be determined by the Board of Commissioners. Provided, that any officer so 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 pay into the fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income. Compensation on which the member contributes shall not include any payments for unused sick leave.

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;

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 deter-

mine 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 five percent (5%) contribution in addition to employer contribution provided in paragraph (i) of this Article [section]. 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.

(j) Any member who is no longer a law enforcement officer, who has 15 or more years of creditable service, who leaves his total accumulated contributions in the Retirement Fund, and who is 50 years of age or older, may apply for and receive a deferred retirement allowance. Any member who is no longer a law-enforcement officer, who has five or more years of creditable service, who leaves his total accumulated contributions in the Retirement Fund, and who is 55 years of age or older, may apply for and receive a deferred retirement allowance. The deferred retirement allowance shall be computed in the same manner as is the basic service retirement allowance set forth in G.S. 143-166(y).

(k) Should a member cease to be an officer except by death or retirement under the provisions of this Article, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions and, if he has attained five years of creditable service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service; provided further that the 60-day period may be waived upon request if the termination of service is involuntary as certified by the employer. Upon payment of such contributions and appropriate interest his membership shall cease and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article.

(l) No officers as herein defined shall be eligible to the retirement benefits herein provided for until the expiration of five years from the date of the ratification of this Article.

(m) "Law-enforcement officers" in the meaning of this Article shall mean all officers employed by the State of North Carolina or any political subdivision thereof, who are clothed with the full power of arrest and whose primary duty is that of enforcing on public property the criminal laws of the State and/or serving civil processes. The term "law-enforcement officers," for purposes of participating in this fund and for receiving benefits under this section, includes otherwise qualified persons who are members of the fund and who are participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall be entitled to any death benefits to which he would otherwise be entitled regardless of whether he and his employers are making contributions to the member's account during the exchange period except that no duplicate benefits shall be paid.

(n) Each justice of the peace required to assess and collect the additional cost provided for in this law shall, on or before the first day of each month, transmit such cost so collected, giving the name of the case in which such cost was taxed, to the clerk of the superior court of the county in which such case was tried, who will forthwith remit such funds to the Treasurer of the State of North Carolina as in all other cases. Failure of any justice of the peace to comply with the terms of this subsection shall make such justice of the peace liable for removal from office by the resident judge of the judicial district in which such action was tried.

(o) No State employees participating in the retirement benefits of this Article shall be eligible to participate in the retirement benefits provided by Public Laws, 1941, Chapter 25, known as "The Teachers' and State Employees' Retirement System Act."

(p) No State employee participating in the retirement benefits of this Article shall be eligible to participate in the retirement benefits provided by "The Teachers' and State Employees' Retirement System Act," G.S. 135-1 et seq.

(q) The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this section, and the moneys in the various funds created by this section, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this section specifically otherwise provided.

(r) One third of the sum derived from the court costs provided for in subsection (a) of this section shall be set aside and held in a separate fund, designated as "Separate Benefit Fund," to be used for the payment of benefits as hereinafter provided.

(s) The Board of Commissioners shall have control of all payments to be made from the "Separate Benefit Fund." It shall hear and decide all applications for benefits created and allowed under this subsection, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties, and it shall have the power to make decisions on applications for benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself. The Board of Commissioners shall have authority to determine the eligibility or status of any applicant of any and all of those who come within the categories of law-enforcement officers named in

subsection (m) of this section, in accordance with general rules and regulations adopted by the Board, and the decision of the Board of Commissioners as to such membership, eligibility or status shall be final.

(t) The Board of Commissioners shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine eligibility for benefits under this subsection, of a law-enforcement officer, (as defined in this section) and to determine the amounts to be paid after it is determined by the Board that such officer is eligible. Notwithstanding the foregoing, no person shall be eligible for benefits hereunder unless he is in active service as a law-enforcement officer at the occurrence of a contingency for which benefits may be payable, or unless he has retired from such service on or after July 1, 1965. Eligibility shall be determined without regard to whether or not an officer is a member of the retirement fund established by this section. Benefits may be provided by the Board, within the availability of funds, as follows:

(1) A lump sum payable to the designated beneficiary upon the death of an eligible officer;

(2) Hospital, surgical, and medical benefits covering eligible officers, their legal spouses, and their dependent children under 18 years of age.

(u) The benefits provided for in subsection (t) of this section shall be in addition to all benefits provided for in subsections (b) through (q) of this section.

(v) If the amount derived from the increase in court costs provided by this section shall not be sufficient at any time to enable the Board of Commissioners to pay each person entitled to benefits in full, then an equitably graded percentage of such payment or payments shall be made to each beneficiary until the "Separate Benefit Fund" is replenished sufficiently to warrant resumption thereafter of full benefits to each of said beneficiaries.

(w) "Local fund" shall mean any local pension fund, or local benefit fund, or local association established before July 1, 1965, under authorization of law and operated to provide benefits for law-enforcement officers of any political subdivision within the year beginning July 1, 1965.

At such date as the Board of Commissioners may determine, but not later than September 30, 1966, the Board may, but need not, cause to be paid from the "Separate Benefit Fund" to a local fund a portion of the income previously received by the "Separate Benefit Fund" within the year beginning July 1, 1965, from court costs collected in the political subdivision and to whose officers such local fund has provided benefits. Such portion, if any, shall be determined in the sole discretion of the Board of Commissioners, after its review of any pertinent information which shall be furnished by such political subdivision at the request of such Board, and after its review of the operation and experience of the "Separate Benefit Fund" to June 30, 1966, or, if earlier, to the date of such determination. Any decision or action hereunder by the Board of Commissioners shall be final and conclusive.

(x) Notwithstanding any of the foregoing provisions, the benefits to each beneficiary on the retirement rolls as of June 30, 1977, shall be increased by five percent (5%) of the benefits being received by each such beneficiary as of June 30, 1977.

(x1) As of December 31 of each year, the Board of Commissioners shall determine the ratio of the Consumer Price Index to that index of the previous year. Each beneficiary receiving a basic service retirement allowance, a basic disability retirement allowance, or an alternative to those allowances as of July 1 of the year of determination shall be entitled to have his total allowance increased effective July 1 of the year following the year of determination by the same percentage increase by the ratio calculated to the nearest tenth of one percent (1/10 of 1%); provided, however, that increase:

(1) Shall not exceed four percent (4%) in any year; and

(2) Shall be limited to the annual actuarial gain of the Retirement Fund.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average) as published by the United States Department of Labor, Bureau of Labor Statistics.

(x2) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x3) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, shall be three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (x4) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x4) From and after July 1, 1980, the total monthly benefits to or on account of persons who commenced receiving benefits from the Retirement Fund prior to July 1, 1977, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period Benefits Commenced	*Percentage*
July 1, 1976, to June 30, 1977	1½%
July 1, 1975, to June 30, 1976	8%
July 1, 1974, to June 30, 1975	15%
Prior to July 1, 1974	23%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(x5) From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced between July 1, 1976, and July 1, 1979, shall be increased by a percentage in accordance with the following schedule:

Period in Which Retirement Commenced	*Percentage*
July 1, 1976 to June 30, 1977	5½%
July 1, 1977 to July 1, 1979	7%

These increases shall be calculated on the basis of the retirement allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under subsections (x3), (x4) and (x6) of this Article.

(x6) From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under subsections (x3), (x4) and (x5) of this Article.

(y) Any member may retire on a basic service retirement allowance who: has attained 50 years of age and has completed 15 or more years of creditable service; or has completed 30 or more years of creditable service; or has attained 55 years of age and has completed five or more years of creditable service.

Under such rules and regulations as are otherwise adopted by the Board of Commissioners, a member eligible to retire under this subsection shall receive

a basic service retirement allowance equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation (calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average), multiplied by the number of years of his creditable service, and reduced by one-third of one percent (1/3 of 1%) for each month by which his date of retirement precedes his 55th birthday, except that no reduction in the basic service retirement allowance shall apply to any member who has 30 or more years of creditable service at the time of his retirement. When the last 12 months of compensation prior to retirement are used in computing average final compensation, the compensation for such 12-month period shall not include any payments for unused sick leave.

On and after July 1, 1980, creditable service on which the retirement allowance is based shall include one month of credit for each 20 days or fraction thereof of sick leave standing to the member's credit upon retirement, as certified by the member's employer, but not to exceed one month's credit for each two years of membership service or fraction thereof earned by the member. Unused sick leave for purposes of this section shall not be deemed to be standing to the credit of the member to the extent the member is compensated for such leave. Creditable service for purposes of determining eligibility for service retirement, disability retirement, early retirement, a vested deferred allowance, or any other benefit allowed under this Article shall not include unused sick leave standing to the credit of the member.

Any member who is less than 55 years of age with five or more years of creditable service and who has been totally and permanently incapacitated for duty, or any member who is less than 55 years of age with one or more years of membership service and who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place may, upon application of the member or his employer, be retired by the Board of Commissioners on a basic disability retirement allowance as is set forth below. The Board of Commissioners shall not grant a basic disability retirement allowance to any member for whom application for disability retirement is received more than a year after the onset of incapacity for duty or, if the member is in receipt of compensation from his employer on account of such incapacity for duty for more than one year, more than 30 days after the cessation of that compensation.

Provided, that the Medical Board shall not certify any member as disabled who:

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

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

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

Under such rules and regulations as are otherwise adopted by the Board of Commissioners, a member eligible for a basic disability retirement allowance shall receive a disability retirement equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average, multiplied by the number of years of creditable service which he would have had if he had continued in service until his 55th birthday.

On and after July 1, 1981, the Board of Commissioners shall determine whether a disability beneficiary who retired after July 1, 1981, is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his basic retirement allowance and the gross compensation earned as a law enforcement officer during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation, excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his basic disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the basic disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10 of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his basic disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a basic service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The Board of Commissioners shall implement the provisions of this subsection by the adoption of necessary and reasonable rules and regulations.

As a condition to the receipt of the basic disability retirement allowance provided for in this subsection, each disability beneficiary shall, on or before April 15 of each calendar year, provide the Board of Commissioners with a statement of his or her income received as compensation for services, including fees, commissions or similar items and income derived from business for the previous calendar year. Such statement shall be filed on a form as required by the Board of Commissioners.

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

(z) Death Benefit Plan. — There is created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement Fund and under which the members of the Retirement Fund shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Commissioners in their capacity as trustees under the Group Life Insurance Plan, of the death in service of a member who had completed at least one full calendar year of membership in the Retirement Fund, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Commissioners, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

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

(2) The compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his death occurs; or

(3) If the member had applied for and was entitled to receive a disability retirement allowance under the fund and such disability retirement allowance had not been discontinued or revoked within 366 days of his last date of actual service, the compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his last day of actual service occurred,

subject to a maximum of twenty thousand dollars ($20,000), less any death benefit paid from the Separate Benefit Fund. Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the fund on his death. For the purposes of this plan, a member shall be deemed to be in service at the date of his death if his last day of actual service occurred not more than 90 days before the date of his death or if his last day of actual service occurred not more than 366 days before the date of his death if such member during said one-year period had applied for and was entitled to receive a disability retirement allowance under the fund, provided said disability retirement allowance had not been discontinued or revoked during said one-year period.

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

(4) In administration of the death benefit contained in this subsection, the following shall apply:

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

b. Last day of actual service shall be:

1. When employment has been terminated, the last day the member actually worked;
2. When employment has not been terminated, the date on which an absent member's sick and annual leave expired.

c. A member on leave of absence from his position as a law enforcement officer for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a law enforcement officer during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars ($20,000), less any death benefit paid from the Separate Benefit Fund.

(5) The provisions of the Retirement Fund pertaining to administration, G.S. 143-166(a) through (f), and management of funds, G.S. 143-166(g), are hereby made applicable to the Plan. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963,

cc. 144, 939, 953; 1965, c. 351, ss. 1, 2; 1967, c. 691, s. 52; c. 943; 1971, c. 80, ss. 1, 2; c. 837, s. 6; c. 1235; 1973, c. 931; 1977, c. 783, s. 4; c. 1090; 1977, 2nd Sess., c. 1204, s. 3; 1979, c. 467, s. 19; c. 838, ss. 97, 100-102, 105; c. 976, ss. 1, 2; 1979, 2nd Sess., c. 1137, ss. 65, 68, 72; c. 1214; c. 1215, ss. 1, 2; c. 1225, ss. 1-5; 1981, c. 672, s. 3; c. 859, ss. 43, 45; c. 940, s. 3; c. 975, s. 1; c. 978, s. 5.)

Cross References. — For this section as amended effective July 1, 1982, see the following section, also numbered 143-166.

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted, in the first sentence of subsection (b), "shall consist of the State Treasurer, who shall be chairman ex officio of said Board, the State Auditor" for "shall consist of the State Auditor, who shall be chairman ex officio of said Board, the State Treasurer."

The first 1979 amendment substituted the present provisions of subsection (g) for former subsection (g) which gave the Board of Commissioners the power to invest and reinvest funds in certain listed obligations and securities.

The second 1979 amendment, effective July 1, 1979, added the last paragraph to subsection (i), rewrote subsections (j) and (y), and added subsections (x1), (x2), and (z).

The third 1979 amendment, effective July 1, 1979, rewrote the former first sentence of subsection (b) as the present first and second sentences, substituted "article" for "section" near the beginning of the present first sentence of subsection (b), and deleted the former second, third and fourth sentences of subsection (b), which dealt with compensation for the members of the Board and specified the number required for a quorum. The third amendment also repealed subsection (c), which provided for the organization of the Board and the selection of employees and prohibited political activity by employees.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

Session Laws 1979, 2nd Sess., c. 1137, effective July 1, 1980, deleted the former last paragraph of subsection (i), relating to establishment of a uniform annual employer's contribution rate to support the benefit allowances and payment of employer's contributions, added subsections (x3) and (x4) and substituted "one and fifty-seven one hundredths percent (1.57%)" for "one and fifty-five one hundredths percent (1.55%)" near the beginning of the second paragraph and near the middle of the fifth paragraph in subsection (y).

Session Laws 1979, 2nd Sess., c. 1214, effective July 1, 1980, added the last two paragraphs of subsection (y).

Session Laws 1979, 2nd Sess., c. 1215, added the sixth paragraph of subsection (y). Session Laws 1979, 2nd Sess., c. 1215, s. 2, provides: "This act shall become effective on July 1, 1980, for employees retiring on or after July 1, 1980. For employees retiring prior to July 1, 1980, this act shall become effective on July 1, 1981."

Session Laws 1979, 2nd Sess., c. 1225, effective July 1, 1980, in subsection (i), added the last sentence of the second paragraph, deleted subdivision (3) of the third paragraph, which provided for payment of a sum relating to accumulated sick leave, and substituted "in addition to employer contribution provided in paragraph (i) of this Article" for "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" at the end of the first sentence of the fourth paragraph. The amendment also added the second sentence of the second paragraph of subsection (y), and added the third paragraph of subsection (y).

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

Session Laws 1981, c. 672, s. 3, effective July 1, 1981, rewrote subsection (k). Session Laws 1981, c. 672, s. 5, makes the amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 859, ss. 43 and 45, effective July 1, 1981, added subsections (x5) and (x6).

Session Laws 1981, c. 940, s. 3, in subsection (y), added the proviso at the end of the fourth paragraph and the fifth paragraph, relating to preexisting conditions.

Session Laws 1981, c. 975, s. 1 rewrote the seventh paragraph of subsection (y).

Session Laws 1981, c. 978, s. 5 added "and has completed five or more years of creditable service" at the end of the first paragraph of subsection (y).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-166. (Effective July 1, 1982) Law-Enforcement Officers' Benefit and Retirement Fund.

(a) In every criminal case finally disposed of in the criminal courts of this State, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, three dollars ($3.00) additional cost to be collected and paid over to the Treasurer of North Carolina and held in a special fund for the purposes of this Article. Two dollars ($2.00) of such costs shall be administered under subsections (b) through (q) of this section, and one dollar ($1.00) shall be administered under subsections (r) through (w) of this section. The local custodian of such costs shall monthly transmit such moneys to the State Treasurer, with a statement of the case in which the same has been collected, except that the requirement to submit a statement of the case does not apply in district court counties. The costs assessed under this Article shall not apply to violations of municipal ordinances, unless a warrant is actually issued and served. A county or municipality shall pay no part of the costs or assessments.

Two thirds of the moneys so received shall annually be set up in a special fund to be known as "The Law-Enforcement Officers' Benefit and Retirement Fund."

(b) For the purpose of determining the recipients of benefits under this article and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund." The membership of the Board of Commissioners shall consist of 10 members, as follows:

(1) The State Treasurer, who shall be chairman ex officio;

(2) The State Auditor, who shall be a member ex officio;

(3) The State Insurance Commissioner, who shall be a member ex officio;

(4) Five members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one a law enforcement officer employed by the State, one a retired law enforcement officer in receipt of an allowance from the Retirement Fund, and one representing the public at large;

(5) Two members, one a member of the House of Representatives to be appointed by the Speaker of the House and one a member of the Senate to be appointed by the President of the Senate, neither of whom shall be an active or retired law enforcement officer, to serve terms beginning July 1, 1979, for the duration of their current terms of office with their successors thereafter appointed for two-year terms to run concurrently with the organization of the General Assembly.

(c) Repealed by Session Laws 1979, c. 976, s. 2, effective July 1, 1979.

(d) The said Board of Commissioners shall have control of all payments to be made from such fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this Article and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining

any benefits under this Article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law. The Board of Commissioners shall have authority to determine the membership eligibility or status of any member or applicant of any and all of those who come within the categories of law-enforcement officers named in subsection (m) of this section in accordance with general rules and regulations adopted by the Board and the decision of the Board of Commissioners as to such membership eligibility or status shall be final.

(e) There shall be kept in the office of the said Board of Commissioners by the secretary, records which shall give a complete history and record of all actions of the Board of Commissioners in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or Board members.

(f) On or before the first day of January of each year the said Board of Commissioners shall make to the Governor of the State of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such fund. There shall be annually made by the State Auditor's Department a complete audit and examination of the receipts and the disbursements of the Board of Commissioners herein created.

(g) The Board of Commissioners of the said fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold the same for the uses of said fund in accordance with the purposes of this Article. The State Treasurer shall be the custodian of the fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(h) In case the amount derived from the different sources mentioned and included in this Article shall not be sufficient at any time to enable the said Board of Commissioners to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said fund shall be replenished sufficiently to warrant the resumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(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 contribute into the fund herein created six percent (6%) of his compensation received for each pay period beginning on or after July 1, 1977. Such rate shall apply uniformly to all members of the Law-Enforcement Officers' Benefit and Retirement Fund, without regard to their coverage under the Social Security Act. The mode of payment to the fund shall be determined by the Board of Commissioners. Provided, that any officer so 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 pay into the fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income. Compensation on which the member contributes shall not include any payments for unused sick leave.

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;

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 five percent (5%) contribution in addition to employer contribution provided in paragraph (i) of this Article [section]. 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.

(j) Any member who is no longer a law enforcement officer, who has 15 or more years of creditable service, who leaves his total accumulated contributions in the Retirement Fund, and who is 50 years of age or older, may apply for and receive a deferred retirement allowance. Any member who is no longer a law-enforcement officer, who has five or more years of creditable service, who leaves his total accumulated contributions in the Retirement Fund, and who is 55 years of age or older, may apply for and receive a deferred retirement allowance. The deferred retirement allowance shall be computed in the same manner as as is the basic service retirement allowance set forth in G.S. 143-166(y).

(k) Should a member cease to be an officer except by death or retirement under the provisions of this Article, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions and, if he has attained five years of creditable service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service; provided further that the 60-day period may be waived upon request if the termination of service is involuntary as certified by the employer. Upon payment of such contributions and appropriate interest his membership shall cease and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article.

(l) No officers as herein defined shall be eligible to the retirement benefits herein provided for until the expiration of five years from the date of the ratification of this Article.

(m) "Law-enforcement officers" in the meaning of this Article shall mean all officers employed by the State of North Carolina or any political subdivision thereof, who are clothed with the full power of arrest and whose primary duty is that of enforcing on public property the criminal laws of the State and/or serving civil processes. The term "law-enforcement officers," for purposes of participating in this fund and for receiving benefits under this section, includes otherwise qualified persons who are members of the fund and who are participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall be entitled to any death benefits to which he would otherwise be entitled regardless of whether he and his employers are making contributions to the member's account during the exchange period except that no duplicate benefits shall be paid.

(n) Each justice of the peace required to assess and collect the additional cost provided for in this law shall, on or before the first day of each month, transmit such cost so collected, giving the name of the case in which such cost was taxed, to the clerk of the superior court of the county in which such case was tried, who will forthwith remit such funds to the Treasurer of the State of North Carolina as in all other cases. Failure of any justice of the peace to comply with the terms of this subsection shall make such justice of the peace liable for removal from office by the resident judge of the judicial district in which such action was tried.

(o) No State employees participating in the retirement benefits of this Article shall be eligible to participate in the retirement benefits provided by Public Laws, 1941, Chapter 25, known as "The Teachers' and State Employees' Retirement System Act."

(p) No State employee participating in the retirement benefits of this Article shall be eligible to participate in the retirement benefits provided by "The Teachers' and State Employees' Retirement System Act," G.S. 135-1 et seq.

(q) The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person

under the provisions of this section, and the moneys in the various funds created by this section, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this section specifically otherwise provided.

(r) One third of the sum derived from the court costs provided for in subsection (a) of this section shall be set aside and held in a separate fund, designated as "Separate Benefit Fund," to be used for the payment of benefits as hereinafter provided.

(s) The Board of Commissioners shall have control of all payments to be made from the "Separate Benefit Fund." It shall hear and decide all applications for benefits created and allowed under this subsection, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties, and it shall have the power to make decisions on applications for benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself. The Board of Commissioners shall have authority to determine the eligibility or status of any applicant of any and all of those who come within the categories of law-enforcement officers named in subsection (m) of this section, in accordance with general rules and regulations adopted by the Board, and the decision of the Board of Commissioners as to such membership, eligibility of status shall be final.

(t) The Board of Commissioners shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine eligibility for benefits under this subsection, of a law-enforcement officer, (as defined in this section) and to determine the amounts to be paid after it is determined by the Board that such officer is eligible. Notwithstanding the foregoing, no person shall be eligible for benefits hereunder unless he is in active service as a law-enforcement officer at the occurrence of a contingency for which benefits may be payable, or unless he has retired from such service on or after July 1, 1965. Eligibility shall be determined without regard to whether or not an officer is a member of the retirement fund established by this section. Benefits may be provided by the Board, within the availability of funds, as follows:

(1) A lump sum payable to the designated beneficiary upon the death of an eligible officer;

(2) Hospital, surgical, and medical benefits covering eligible officers, their legal spouses, and their dependent children under 18 years of age.

(u) The benefits provided for in subsection (t) of this section shall be in addition to all benefits provided for in subsections (b) through (q) of this section.

(v) If the amount derived from the increase in court costs provided by this section shall not be sufficient at any time to enable the Board of Commissioners to pay each person entitled to benefits in full, then an equitably graded percentage of such payment or payments shall be made to each beneficiary until the "Separate Benefit Fund" is replenished sufficiently to warrant resumption thereafter of full benefits of each of said beneficiaries.

(w) "Local fund" shall mean any local pension fund, or local benefit fund, or local association established before July 1, 1965, under authorization of law and operated to provide benefits for law-enforcement officers of any political subdivision within the year beginning July 1, 1965.

At such date as the Board of Commissioners may determine, but not later than September 30, 1966, the Board may, but need not, cause to be paid from the "Separate Benefit Fund" to a local fund a portion of the income previously received by the "Separate Benefit Fund" within the year beginning July 1, 1965, from court costs collected in the political subdivision and to whose officers such local fund has provided benefits. Such portion, if any, shall be deter-

mined in the sole discretion of the Board of Commissioners, after its review of any pertinent information which shall be furnished by such political subdivision at the request of such Board, and after its review of the operation and experience of the "Separate Benefit Fund" to June 30, 1966, or, if earlier, to the date of such determination. Any decision or action hereunder by the Board of Commissioners shall be final and conclusive.

(x) Notwithstanding any of the foregoing provisions, the benefits to each beneficiary on the retirement rolls as of June 30, 1977, shall be increased by five percent (5%) of the benefits being received by each such beneficiary as of June 30, 1977.

(x1) As of December 31 of each year, the Board of Commissioners shall determine the ratio of the Consumer Price Index to that index of the previous year. Each beneficiary receiving a basic service retirement allowance, a basic disability retirement allowance, or an alternative to those allowances as of July 1 of the year of determination shall be entitled to have his total allowance increased effective July 1 of the year following the year of determination by the same percentage increase by the ratio calculated to the nearest tenth of one percent (1/10 of 1%); provided, however, that increase:

(1) Shall not exceed four percent (4%) in any year; and

(2) Shall be limited to the annual actuarial gain of the Retirement Fund.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average) as published by the United States Department of Labor, Bureau of Labor Statistics.

(x2) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x3) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, shall be three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (x4) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x4) From and after July 1, 1980, the total monthly benefits to or on account of persons who commenced receiving benefits from the Retirement Fund prior to July 1, 1977, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period Benefits Commenced	*Percentage*
July 1, 1976, to June 30, 1977	1½%
July 1, 1975, to June 30, 1976	8%
July 1, 1974, to June 30, 1975	15%
Prior to July 1, 1974	23%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(x5) From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced between July 1, 1976, and July 1, 1979, shall be increased by a percentage in accordance with the following schedule:

Period in Which Retirement Commenced	*Percentage*
July 1, 1976 to June 30, 1977	5½%
July 1, 1977 to July 1, 1979	7%

These increases shall be calculated on the basis of the retirement allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under subsections (x3), (x4) and (x6) of this Article.

(x6) From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under subsections (x3), (x4) and (x5) of this Article.

(y) Any member may retire on a basic service retirement allowance who: has attained 50 years of age and has completed 15 or more years of creditable service; or has completed 30 or more years of creditable service; or has attained 55 years of age and has completed five or more years of creditable service.

Under such rules and regulations as are otherwise adopted by the Board of Commissioners, a member eligible to retire under this subsection shall receive a basic service retirement allowance equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation (calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average), multiplied by the number of years of his creditable service, and reduced by one-third of one percent (⅓ of 1%) for each month by which his date of retirement precedes his 55th birthday, except that no reduction in the basic service retirement allowance shall apply to any member who has 30 or more years of creditable service at the time of his retirement. When the last 12 months of compensation prior to retirement are used in computing average final compensation, the compensation for such 12-month period shall not include any payments for unused sick leave.

On and after July 1, 1980, creditable service on which the retirement allowance is based shall include one month of credit for each 20 days or fraction thereof of sick leave standing to the member's credit upon retirement, as certified by the member's employer, but not to exceed one month's credit for each two years of membership service or fraction thereof earned by the member. Unused sick leave for purposes of this section shall not be deemed to be standing to the credit of the member to the extent the member is compensated for such leave. Creditable service for purposes of determining eligibility for service retirement, disability retirement, early retirement, a vested deferred allowance, or any other benefit allowed under this Article shall not include unused sick leave standing to the credit of the member.

Any member who is less than 55 years of age with five or more years of creditable service and who has been totally and permanently incapacitated for duty, or any member who is less than 55 years of age with one or more years of membership service and who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place may, upon application of the member or his employer, be retired by the Board of Commissioners on a basic disability retirement allowance as is set forth below. The Board of Commissioners shall not grant a basic disability retirement allowance to any member for whom application for disability retirement is received more than a year after the onset of incapacity for duty or, if the member is in receipt of compensation from his employer on account of such incapacity for duty for more than one year, more than 30 days after the cessation of that compensation. Provided, that the Medical Board shall not certify any member as disabled who:

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

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

The Board of Commissioners shall require each employee upon enrolling in the retirement fund to provide information on the membership application

concerning any mental or physical incapacities existing at the time the member enrolls.

Under such rules and regulations are as otherwise adopted by the Board of Commissioners, a member eligible for a basic disability retirement allowance shall receive a disability retirement equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average, multiplied by the number of years of creditable service which he would have had if he had continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

On and after July 1, 1981, the Board of Commissioners shall determine whether a disability beneficiary who retired after July 1, 1981, is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his basic retirement allowance and the gross compensation earned as a law enforcement officer during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation, excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his basic disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the basic disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his basic disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a basic service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The Board of Commissioners shall implement the provisions of this subsection by the adoption of necessary and reasonable rules and regulations.

As a condition to the receipt of the basic disability retirement allowance provided for in this subsection, each disability beneficiary shall, on or before April 15 of each calendar year, provide the Board of Commissioners with a statement of his or her income received as a compensation for services, including fees, commissions or similar items and income derived from business for the previous calendar year. Such statement shall be filed on a form as required by the Board of Commissioners.

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

(z) Death Benefit Plan. — There is created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement Fund and under which the members of the Retirement Fund shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Commissioners in their capacity as trustees under the Group Life Insurance Plan, of the death in service of a member who had completed at least one full calendar year of membership in the Retirement Fund, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Commissioners, if such person is living at the

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

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

(2) The compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his death occurs; or

(3) If the member had applied for and was entitled to receive a disability retirement allowance under the fund and such disability retirement allowance had not been discontinued or revoked within 366 days of his last date of actual service, the compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his last day of actual service occurred,

subject to a maximum of twenty thousand dollars ($20,000), less any death benefit paid from the Separate Benefit Fund. Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the fund on his death. For the purposes of this plan, a member shall be deemed to be in service at the date of his death if his last day of actual service occurred not more than 90 days before the date of his death or if his last day of actual service occurred not more than 366 days before the date of his death if such member during said one-year period had applied for and was entitled to receive a disability retirement allowance under the fund, provided said disability retirement allowance had not been discontinued or revoked during said one-year period.

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

(4) In administration of the death benefit contained in this subsection, the following shall apply:

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

b. Last day of actual service shall be:

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

2. When employment has not been terminated, the date on which an absent member's sick and annual leave expired.

c. A member on leave of absence from his position as a law-enforcement officer for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a law enforcement officer during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars

($20,000), less any death benefit paid from the Separate Benefit Fund.

(5) The provisions of the Retirement Fund pertaining to administration, G.S. 143-166(a) through (f), and management of funds, G.S. 143-166(g), are hereby made applicable to the Plan. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963, cc. 144, 939, 953; 1965, c. 351; ss. 1, 2; 1967, c. 691, s. 52; c. 943; 1971, c. 80, ss. 1, 2; c. 837, s. 6; c. 1235; 1973, c. 931; 1977, c. 783, s. 4; c. 1090; 1977, 2nd Sess., c. 1204, s. 3; 1979, c. 467, s. 19; c. 838, ss. 97, 100-102, 105; c. 976, ss. 1, 2; 1979, 2nd Sess., c. 1137, ss. 65, 68, 72; c. 1214; c. 1215, ss. 1, 2; c. 1225, ss. 1-5; 1981, c. 672, s. 3; c. 859, ss. 43, 45; c. 940, s. 3; c. 975, s. 1; c. 978, s. 5; c. 980, s. 6.)

Cross References. — For this section as in effect until July 1, 1982, see the preceding section, also numbered 143-166.

Session Laws 1981, c. 672, s. 3, effective July 1, 1981, rewrote subsection (k). Session Laws 1981, c. 672, s. 5, makes the amendment effective July 1, 1981, but further provides that "nothing contained in this act shall affect any interest that has accrued to the account of any member prior to the effective date of this act."

Session Laws 1981, c. 859, ss. 43 and 45, effective July 1, 1981, added subsections (x5) and (x6).

Session Laws 1981, c. 940 s. 3, in subsection (y), added the proviso at the end of the fourth paragraph and the fifth paragraph relating to preexisting conditions.

Session Laws 1981, c. 975, s. 1 rewrote the seventh paragraph of subsection (y).

Session Laws 1981, c. 978, s. 5 added "and has completed five or more years of creditable service" at the end of the first paragraph of subsection (y).

Session Laws 1981, c. 980, s. 6, effective July 1, 1982, substituted "the earliest date on which he would have qualified for an unreduced service retirement allowance." for "his fifty-fifth birthday" at the end of the fifth paragraph. The amendatory act purported to amend "G.S. 43-66(y)," but subsection (y) of this section was plainly intended.

§ 143-166.01. Transfer of membership from local governmental employees' retirement system to law enforcement officers' benefit and retirement fund.

(a) Any employer, as the term is defined in G.S. 128-21(11), participating in the North Carolina Local Governmental Employees' Retirement System may, until June 30, 1981, allow law enforcement officers, as the term is defined in G.S. 143-166(m), employed by such employer who are members of the North Carolina Local Governmental Employees' Retirement System to transfer membership from said Retirement System and become members of the Law Enforcement Officers' Benefit and Retirement Fund; Provided, that any employer allowing law enforcement officers to transfer shall pay a lump sum amount to the Law Enforcement Officers' Benefit and Retirement Fund equal to the difference between the full cost, as defined in Section 5 of this section, and the officers' and employer contributions transferred by virtue of subsection (b) of this act.

(b) Upon written request of a law enforcement officer who meets the requirements of subsection (a), filed with the Board of Trustees of the Local Governmental Employees' Retirement System stating that he desires to transfer his membership in the Local Governmental Employees' Retirement System and become a member of the Law Enforcement Officers' Benefit and Retirement, and upon the lump sum payment by the employer of the full cost, as defined in subsection (e), the Local Governmental Employees' Retirement System is

hereby authorized, empowered, and directed to transfer to the Law Enforcement Officers' Benefit and Retirement Fund:

(1) All of the officer's accumulated contributions that were made on compensation received as a law enforcement officer, together with the accumulated regular interest thereon, standing to the credit of such employee in the Local Governmental Employees' Retirement System; and

(2) An amount equal to the normal and accrued liability payments that were made because of service rendered as a law enforcement officer which have been made to the Local Governmental Employees' Retirement System by reason of such service to the employer calculated as the result of multiplying the normal and accrued liability percentage in effect at the time of the transfer times the compensation paid for service rendered as a law enforcement officer.

Upon such transfer being made, the officer shall immediately become a member of the Law Enforcement Officers' Benefit and Retirement Fund and the service transferred shall no longer be creditable in the Local Governmental Employees' Retirement System.

(c) The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund is hereby authorized, empowered, and directed to receive any funds transferred as provided in this act as follows:

(1) Upon receipt of a transferring officer's contributions, such contributions shall be deposited in the officer's regular contributions account; and

(2) Upon receipt of the amount equal to the normal and accrued liability payments that were made by the employer because of service rendered as a law enforcement officer from the Local Governmental Employees' Retirement System and the additional amount required to fund the full cost of benefits as determined in subsection (e) of this act, such funds shall be deposited in the Accumulation Account.

(d) The creditable service of an officer who transfers to the Law Enforcement Officers' Benefit and Retirement Fund shall be the service that was creditable as a law enforcement officer in the Local Governmental Employees' Retirement System.

(e) The term "full cost" as used in this act shall be calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account such transferred service credits providing for a retirement allowance at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Commissioners upon advice of the consulting actuary.

(f) The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund is authorized and empowered to make and promulgate suitable rules and regulations to carry out the provisions of this act. (1979, c. 1058, ss. 1-6.)

Editor's Note. — Session Laws 1979, c. 1058, s. 7, makes this section effective July 1, 1979.

ARTICLE 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.2. Definitions.

(a) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol whether natural, adopted, posthumously born or whether an illegitimate child as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker or senior member of the Civil Air Patrol at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's or senior Civil Air Patrol member's death as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(b) The term "dependent parent" shall mean the parent of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer, fireman, rescue squad worker or senior member of the Civil Air Patrol at the time of the injury which resulted in his death.

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, 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. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol 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 engaged in a State requested and approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

(d) 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 and all full-time institutional and detention employees of the Division of Youth Services of the Department of Human Resources. The term "firemen" shall mean both "eligible fireman"; or "fireman" as defined in G.S. 118-23 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Natural Resources and Community Development, during the time they are actively engaged in fire-fighting activities. 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 or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina

Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Auditor on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Human Resources pursuant to Article 26 of Chapter 130 of the General Statutes. The Department of Human Resources shall furnish a list of ambulance service members to the State Auditor on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a).

(e) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member who survives him and who was residing with such officer, fireman, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, fireman, rescue squad worker or senior Civil Air Patrol member which resulted in his death and who also resided with such officer, fireman, rescue squad worker or senior Civil Air Patrol member from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, rescue squad worker or senior Civil Air Patrol member was absent during this six-month period due to service in the armed forces of this country. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048; 1979, c. 516, ss. 2, 3; c. 869; 1981, c. 944, s. 1.)

Effect of Amendments. — The first 1979 amendment deleted "or senior member of the Civil Air Patrol" following "rescue squad worker" near the beginning of the first sentence of subsection (c), and added the second sentence of subsection (c). The amendment rewrote the last sentence of subsection (d), which formerly read "The term 'Civil Air Patrol members' shall mean those senior members, 18 years of age and older, who are in good standing, currently trained and so certified by the Secretary of Crime Control and Public Safety or his delegate."

The second 1979 amendment, effective retroactively from and after July 1, 1975, added "and all full-time institutional and detention employees of the Division of Youth Services of the Department of Human Resources" at the end of the first sentence of subsection (d).

The 1981 amendment substituted "firemen" for "fireman" near the beginning of the second sentence of subsection (d), inserted "both" near the beginning of that sentence, and added the language beginning "and all full-time" at the end of that sentence.

§ 143-166.5. Other benefits not affected.

None of the other benefits now provided for law-enforcement officers, or other persons covered by this Article, or their dependents by the Workers' Compensation Act or other laws shall be affected by the provisions of this Article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1959, c. 1323, s. 1; 1965, c. 937; 1979, c. 245; c. 714, s. 2.)

Effect of Amendments. — The first 1979 amendment inserted "or other persons covered by this Article" near the beginning of the section.

The second 1979 amendment, effective July 1, 1979, substituted "Workers'" for "Workmen's."

§ 143-166.7. Applicability of Article.

The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. The provisions of this Article shall apply with respect to full-time, permanent part-time and temporary employees of North Carolina Division of Forest Resources, Department of Natural Resources and Community Development, killed in line of duty on or after July 1, 1975. (1965, c. 937; 1973, c. 634, s. 3; 1975, c. 284, s. 9; 1981, c. 944, s. 2.)

Effect of Amendments. — The 1981 amendment added the second sentence.

§§ 143-166.8 to 143-166.12: Reserved for future codification purposes.

Article 12B.

Salary Continuation Plan for Certain State Law-Enforcement Officers.

§ 143-166.13. Persons entitled to benefits under Article.

(a) The following persons who are subject to the Criminal Justice Training and Standards Act are entitled to benefits under this Article:

(1) State Government Security Officers, Department of Administration;
(2) State Correctional Officers, Department of Corrections;
(3) State Probation and Parole Officers, Department of Corrections;
(4) Sworn State Law-Enforcement Officers with the power of arrest, Department of Corrections;
(5) Alcohol Law-Enforcement Agents, Department of Crime Control and Public Safety;
(6) State Highway Patrol Officers, Department of Crime Control and Public Safety;
(7) State Legislative Building Special Police, General Assembly;
(8) Sworn State Law-Enforcement Officers with the power of arrest, Department of Human Resources;
(9) Youth Correctional Officers, Department of Human Resources;
(10) Insurance Investigators, Department of Insurance;
(11) State Bureau of Investigation Officers and Agents, Department of Justice;
(12) Director and Assistant Director, License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation;
(13) Members of License and Theft Enforcement Section, Division of Motor Vehicles, Department of Transportation, designated by the Commissioner of Motor Vehicles as either "inspectors" or uniformed weigh station personnel;
(14) Utilities Commission Transportation Inspectors and Special Investigators;

(15) North Carolina Ports Authority Police, Department of Commerce;
(16) Sworn State Law-Enforcement Officers with the power of arrest, Department of Natural Resources and Community Development;
(17) Sworn State Law-Enforcement Officers with the power of arrest, Department of Crime Control and Public Safety.

(b) The following persons are entitled to benefits under this Article regardless of whether they are subject to the Criminal Justice Training and Standards Act:

(1) Driver License Examiners injured by accident arising out of and in the course of giving a road test, Division of Motor Vehicles, Department of Transportation. (1979, 2nd Sess., c. 1272, s. 1; 1981, c. 348, s. 1; c. 964, s. 19.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1272, s. 5, provides: "This act is effective upon ratification and shall apply to persons injured or contracting an occupational disease on or after January 1, 1981."

Effect of Amendments. — The first 1981 amendment substituted "or" for "and" near the end of subdivision (a)(13).

The second 1981 amendment added subdivision (17) of subsection (a).

§ 143-166.14. Payment of salary notwithstanding incapacity; Workers' Compensation Act applicable after two years; duration of payment.

The salary of any of the above listed persons shall be paid as long as his employment in that position continues, notwithstanding his total or partial incapacity to perform any duties to which he may be lawfully assigned, if that incapacity is the result of an injury by accident or an occupational disease arising out of and in the course of the performance by him of his official duties, except if that incapacity continues for more than two years from its inception, the person shall, during the further continuance of that incapacity, be subject to the provisions of Chapter 97 of the General Statutes pertaining to workers' compensation. Salary paid to a person pursuant to this Article shall cease upon the resumption of his regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty shall not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. (1979, 2nd Sess., c. 1272, s. 1.)

§ 143-166.15. Application of § 97-27; how payments made.

Notwithstanding the provisions of G.S. 143-166.14 of this Article, the persons entitled to benefits shall be subject to the provisions of G.S. 97-27 during the two-year period of payment of full salary. All payments of salary shall be made at the same time and in the same manner as other salaries are paid to other persons in the same department. (1979, 2nd Sess., c. 1272, s. 1.)

§ 143-166.16. Effect on workers' compensation and other benefits; application of § 97-24.

The provisions of G.S. 143-166.14 shall be in lieu of all compensation provided for the first two years of incapacity by G.S. 97-29 and 97-30, but shall be in addition to any other benefits or compensation to which such person shall be entitled under the provisions of the Workers' Compensation Act. The provisions of G.S. 97-24 will commence at the end of the two-year period for which salary is paid pursuant to G.S. 143-166.14. (1979, 2nd Sess., c. 1272, s. 1.)

§ 143-166.17. Period of incapacity not charged against sick leave or other leave.

The period for which the salary of any person is paid pursuant to G.S. 143-166.14 while he is incapacitated as a result of an injury by accident or an occupational disease arising out of and in the course of the performance by him of his official duties, shall not be charged against any sick or other leave to which he shall be entitled under any other provision of law. (1979, 2nd Sess., c. 1272, s. 1.)

§ 143-166.18. Report of incapacity.

Any person designated in G.S. 143-166.13, who, as a result of an injury by accident arising out of and in the course of the performance by him of his official duties, is totally or partially incapacitated to perform any duties to which he may be lawfully assigned, shall report the incapacity as soon as practicable in the manner required by the secretary or other head of the department to which the agency is assigned by statute. (1979, 2nd Sess., c. 1272, s. 1; 1981, c. 348, s. 2.)

Effect of Amendments. — The 1981 amendment deleted "or the commanding officer of the State Highway Patrol in the case of the Highway Patrol" at the end of the section.

§ 143-166.19. Determination of cause and extent of incapacity; hearing before Industrial Commission; appeal; effect of refusal to perform duties.

Upon the filing of the report, the secretary or other head of the department or, in the case of the General Assembly, the Legislative Services Officer, shall determine the cause of the incapacity and to what extent the claimant may be assigned to other than his normal duties. The finding of the secretary or other head of the department shall determine the right of the claimant to benefits under this Article. Notice of the finding shall be filed with the North Carolina Industrial Commission. Unless the claimant, within 30 days after he receives notice, files with the North Carolina Industrial Commission, upon the form it shall require, a request for a hearing, the finding of the secretary or other department head shall be final. Upon the filing of a request, the North Carolina Industrial Commission shall proceed to hear the matter in accordance with its regularly established procedure for hearing claims filed under the Worker's Compensation Act, and shall report its findings to the secretary or other head of the department. From the decision of the North Carolina Industrial Commission, an appeal shall lie as in other matters heard and determined by the Commission. Any person who refuses to perform any duties to which he may be properly assigned as a result of the finding of the secretary, other head of the department or of the North Carolina Industrial Commission shall be entitled to no benefits pursuant to this Article as long as the refusal continues. (1979, 2nd Sess., c. 1272, s. 1; 1981, c. 348, s. 3.)

Effect of Amendments. — The 1981 amendment deleted "or the commanding officer of the State Highway Patrol in the case of the Highway Patrol" following "Services Officer" in the first sentence, following "the department" in the second, fifth, and last sentences, and following "department head" in the fourth sentence. The amendment inserted "or" near the beginning of the second sentence, inserted "or" near the end of the fourth sentence, substituted "Worker's" for "Workers' " in the fifth sentence, substituted "the" for "such" preceding "Commission" at the end of the sixth sentence, and substituted "refuses" for "shall refuse," "be properly" for "properly be," "a" for "the," and "continues" for "shall continue" in the last sentence.

§ 143-166.20. Subrogation.

The same rights and remedies set forth in G.S. 97-10.2 shall apply in all third party liability cases occurring under this Article, including cases involving the right of the affected State agency to recover the salary paid to an injured officer during his period of disability. (1981, c. 348, s. 4.)

Article 14.

North Carolina Zoological Authority.

§ 143-177.3. Sources of funds.

(a) 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 Resources and Community Development 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.

(b) The Council with the approval of the Secretary of Natural Resources and Community Development is authorized to establish and set admission fees which are reasonable and consistent with the purpose and function of the North Carolina Zoological Park. (1969, c. 1104, s. 11; 1973, c. 1262, s. 85; 1977, c. 771, s. 4; 1981, c. 278, s. 1.)

Effect of Amendments. — The 1981 amendment designated the former section as subsection (a), and added subsection (b).

Article 21.

Water and Air Resources.

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

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 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 Resources and Community Development 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. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Natural Resources and Community Development be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment added the last sentence.

§ 143-213. Definitions.

Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(27) The term "Federal Clean Air Act" refers to the Clean Air Act, 42 U.S.C. 7401 et seq.

(28) The term "nonattainment area" refers to an area which is shown to exceed any national ambient air quality standard for such pollutant.

(29) The term "prevention of significant deterioration" refers to the statutory and regulatory requirements arising from the Federal Clean Air Act designed to prevent the significant deterioration of air quality in areas with air quality better than required by the national ambient air quality standards.

(30) The term "waste treatment management practice" means any method, measure or practice to control plant site runoff, spillage or leaks, sludge or waste disposal and drainage from raw material storage which are associated with, or ancillary to the industrial manufacturing or treatment process of the class or category of point sources to which the management practice is applied. Waste treatment management practices may only be imposed, supplemental to effluent limitations, for a class or category of point sources, for any specific pollutant which has been designated as toxic or hazardous pursuant to sections 307(a)(1) or 311 of the Federal Water Pollution Control Act. (1951, c. 606; 1957, c. 1275, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 4; 1973, c. 821, ss. 1-3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 545, ss. 8-10; c. 633, s. 1.)

Effect of Amendments. — The first 1979 amendment, effective July 1, 1979, added subdivision (27), (28) and (29).

The second 1979 amendment, effective July 1, 1979, added subdivision (30).

Only Part of Section Set Out. — Only the introductory language and the subdivisions changed by the amendments are set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-214.1. Water; water quality standards and classifications; duties of Environmental Management Commission.

(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;

(4) In revising existing or adopting new water quality classifications or standards, the Commission shall consider the use and value of State waters for public water supply, propagation of fish and wildlife, recreation, agriculture, industrial and other purposes, use and value for navigation, and shall take into consideration, among other things, an estimate as prepared under section 305(b)(1) of the Federal Water Pollution Control Act amendments of 1972 of the environmental impact, the economic and social costs necessary to achieve the proposed standards, the economic and social benefits of such achievement and an estimate of the date of such achievement;

(5) With regard to the groundwaters, the factors to be considered shall include the natural quality of the water below land surface and the condition of occurrences, recharge, movement and discharge, the vulnerability to pollution from wastewaters and other substances, and the potential for improvement of the quality and quantity of the water.

(1979, c. 633, s. 6; 1979, 2nd Sess., c. 1199.)

Effect of Amendments. — The 1979 amendment deleted "amendments of 1972" after "Control Act" near the middle of subdivision (4) of subsection (d).

The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "shall" for "should" preceding "take into consideration" near the middle, and inserted "amendments of 1972" following "Federal Water Pollution Control Act" near the end, of subdivision (4) of subsection (d).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 143-214.3. Revision to water quality standard.

(a) Any person subject to the provisions of G.S. 143-215.1 may petition the Environmental Management Commission for a hearing pursuant to G.S. 143-215.4 for a revision to water quality standards adopted pursuant to G.S. 143-214.1 as such water quality standards may apply to a specific stream segment into which the petitioner discharges or proposes to discharge.

(b) Upon a finding by the Environmental Management Commission that:

(1) Natural background conditions in the stream segment preclude the attainment of the applicable water quality standards; or

(2) Irretrievable and uncontrollable man-induced conditions preclude the attainment of the applicable water quality standards; or

(3) Application of effluent limitations for existing sources established or proposed pursuant to G.S. 143-215.1 more restrictive than those effluent standards and limitations determined or promulgated by the United States Environmental Protection Agency pursuant to section 301 of the Federal Water Pollution Control Act in order to achieve and maintain applicable water quality standards would result in adverse social and economic impact, disproportionate to the benefits to the public health, safety or welfare as a result of maintaining the standards; and

(4) There exists no reasonable relationship between the cost to the petitioner of achieving the effluent limitations necessary to comply with applicable water quality standards to the benefits, including the incremental benefits to the receiving waters, to be obtained from the application of the said effluent limitations;

Then the Environmental Management Commission shall revise the standard or standards, as such standard may apply to the petitioner, provided that such revised standards shall be no less stringent than that which can be achieved by the application of the highest level of treatment which will result in benefits, including the incremental benefits to the receiving waters, having a reasonable relationship to the cost to the petitioner to apply such treatment, as determined by the evidence; provided, however, in no event shall these standards be less stringent than the level attainable with the application by the petitioner of those effluent standards and limitations determined or promulgated by the United States Environmental Protection Agency pursuant to section 301 of the Federal Water Pollution Agency pursuant to section 301 of the Federal Water Pollution Control Act; provided, further, that no revision shall be granted which would endanger human health or safety. (1979, c. 929.)

Editor's Note. — Session Laws 1979, c. 929, s. 3, makes this section effective July 1, 1979.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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 and waste treatment management practices as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations or management practices may provide, without limitation, standards or limitations or management practices for any point source or sources; standards, limitations, management practices, 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 or management practices.

(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. The management practices 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 prescribe practices necessary to be employed in order to prevent or reduce contribution of pollutants to the State's waters.

(c) In adopting effluent standards and limitations and management practices 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 and management practices adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards and limitations and management practices. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4; c. 929; c. 1262, s. 23; 1975, c. 583, s. 1; 1979, c. 633, ss. 2-4.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, in subsection (a), inserted "and waste treatment management practices" near the middle of the first sentence, inserted "or management practices" in two places near the beginning of the second sentence, inserted "management practices" near the middle of the second sentence, and added "or management practices" at the end of that sentence. In subsection (b) the amendment added the second sentence; and in subsection (c) it inserted "and management practices" near the beginning of the first sentence and near the middle of the second sentence, and added those words at the end of the second sentence.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

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

(a) 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;

(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;

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

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.

(1979, c. 633, s. 5.)

Editor's Note. — Section 130-161, referred to at the end of the third paragraph of subsection (a), has been repealed.

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added subdivisions (9) and (10) of subsection (a).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 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. Provided, however, that the provisions of this section shall not apply to any agricultural operation, such as the use or preparation of any land for the purposes of planting, growing, or harvesting plants, crops, trees or other agricultural products, or raising livestock or poultry.
(1979, c. 889.)

Effect of Amendments. — The 1979 amendment added the last sentence of subsection (a).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143-215.3. General powers of Environmental Management Commission and Department of Natural Resources and Community Development; 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 Articles 21, 21A and 21B and rules of procedure establishing and amplifying the procedures to be followed in the administration of these Articles, including rules and regulations providing for the charge of a reasonable fee for processing or publicizing applications for permits issued under these Articles and for reviewing, processing and publicizing applications for construction grant awards under the Federal Water Pollution Control Act; provided, however, that there shall be no fee charged to any farmer who submits an application which pertains to his farming operations. Any fees related to construction grants charged by the Commission shall be consistent with federal regulations. Fees for processing permits under these Articles shall not exceed one hundred dollars ($100.00) for any single permit application. No regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4. Rules or regulations relating to permit or grant application fees shall be subject to a public hearing, prior to adoption, held under procedures established by the Environmental Management Commission.

(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 any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Environmental Management Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data), to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. 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 Resources and Community Development; 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 Resources and Community Development 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 Envi-

ronmental 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 Resources and Community Development 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 Resources and Community Development 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 Environmental Management Commission 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 Resources and Community Development 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 Environmental Management Commission 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 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 issuance 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 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or 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 neces-

sary 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 it 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 areawide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such areawide 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 Resources and Community Development 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 Chapter 150A of the General Statutes, 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 areawide 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.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a

pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(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. In order for the State of North Carolina to effectively participate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department of Natural Resources and Community Development is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds.

(e) Variances. — Any person subject to the provisions of G.S. 143-215.1 or 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, 143-215, or 143-215.107. The Environmental Management Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find 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 found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Federal Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Federal Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively. (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; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4; 1979, c. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, deleted "amendments of 1972" after "Control Act" near the end of the first sentence of subdivision (1) of subsection (a), added subdivision (14) of subsection (a), deleted "but only after public hearing on due notice, if it finds that" at the end of the second sentence of the introductory paragraph of subsection (e); and in subdivision (2) of subsection (e), substituted "found to be economically reasonable" for "economically achievable" near the beginning, and deleted "amendments of 1972" after "Control Act," in two places, near the middle and near the end.

The 1979, 2nd Sess., amendment substituted "Environmental Management Commission" for "Department of Natural Resources and Community Development" 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 added the second sentence of subdivision (c). The amendment inserted "as amended" following "Federal Water Pollution Control Act" and following "Federal Clean Air Act" in two places in subdivision (e)(2).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsections (a), (c) and (e) are set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

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

CASE NOTES

Cited in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.5. Judicial review.

CASE NOTES

Cited in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.6. Enforcement procedures.

(a) Civil Penalties. —

(1) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Environmental Management Commission against any person who:

a. Violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1 or 143-215.

b. 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.

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. 143-215.2.

d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or G.S. 143-355(k) relating to water use information.

e. Refuses access to the Environmental Management Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.

f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article or G.S. 143-355(k) relating to water use information.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is continuous, the Environmental Management Com-

mission may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) 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 Resources and Community Development 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 Chapter 150A of the General Statutes.

(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 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 fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues, 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 Resources and Community Development has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article, any of the terms of any permit issued pursuant to this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural Resources and Community Development 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 Resources and Community Development 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. For purposes of this subsection references to "this Article" include G.S. 143-355(k) relating to water use information. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" in the introductory paragraph of subdivision (1) of subsection (a), substituted "limitation or management practice" for "or limitation" in paragraph a of subdivision (1) of subsection (a), substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" near the end of subdivision (2) of subsection (a), and inserted "any of the terms of any permit issued pursuant to this Article" near the beginning of the first sentence of subsection (c).

The first 1981 amendment added "or G.S. 143-355(k) relating to water use information" at the end of paragraphs d and f of subdivision (a)(1), and added the last sentence in subsection (c).

The second 1981 amendment, effective Oct. 1, 1981, substituted "a lawful inspection" for "any investigations" in paragraph e of subdivision (a)(1).

Part 2. Regulation of Use of Water Resources.

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 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 Part 1 of this Article and the criteria for such classifications. Following its investigation the Department shall render a written report to the Environmental Management Commission. This report shall indicate whether the water use problems of the area involve surface waters, groundwaters or both and shall identify the Department's suggested boundaries for any capacity use area that may be proposed. It shall present such alternatives as the Department deems appropriate, including actions by any agency or person which might preclude the need for additional regulation at that time, and measures which might be employed limited to surface water or groundwater.

(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 a rule declaring said capacity use area. Prior to adopting such a rule 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 in accordance with G.S. 150A-12.

(4) to (6) Repealed by Session Laws 1981, c. 585, s. 3.

(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 rule shall include a delineation of the boundary of said area, and the Department of Natural Resources and Community Development 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 this subsection 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 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 a rule:

(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 rule.

(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 rule; 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 rule.

(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 rule.

(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 rule.

The determination of the Environmental Management Commission shall be based upon the record of the public hearing and other information considered by the commission in the rule-making proceeding. The rule 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 of the hearing, including a description by geographical or political boundaries of the area affected, shall be given as provided by G.S. 150A-12.

Upon issuance of any rule by the Environmental Management Commission pursuant to this subsection, a certified copy of such rule 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 interest State and federal agency. A certified copy of the rule 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 rule 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 rule 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 a rule of the Environmental Management Commission issued pursuant to this subsection shall be entitled to an administrative hearing before the Environmental Management Commission to contest the rule or the application of the rule to such person. Any such hearing shall be held in accordance with the provisions of Article 3 of Chapter 150A of the General Statutes. Any person who is aggrieved by a final decision of the Environmental Management Commission in a contested case shall be entitled to judicial review of such decision in accordance with Article 4 of Chapter 150A of the General Statutes. The Environmental Management Commission in its sole discretion may stay the effectiveness of the rule, in whole or in part, pending an administrative hearing and pending judicial review thereof. In the absence of a stay from the Environmental Management Commission the rule shall be effective pending any administrative hearing and any judicial review thereof. (1967, c. 933, s. 3; 1973, c. 698, s. 14; c. 1262, s. 23; 1977, c. 771, s. 4; 1981, c. 585, ss. 1-4.)

Effect of Amendments. — The 1981 amendment, effective Oct. 1, 1981, in subsection (c), substituted "Part 1 of this Article" for "the Stream Sanitation Law" in the first sentence and rewrote the third and fourth sentences of subdivision (2), substituted "a rule" for "an order" in the first and second sentences and added "in accordance with G.S. 150A-12" at the end of the second sentence of subdivision (3), deleted subdivisions (4), (5) and (6), concerning the granting of notice and an opportunity to be heard prior to the declaration of a capacity use area by the Environmental Management Commission, and substituted "rule" for "order" in the third sentence of subdivision (7). In subsection (d), the amendment substituted "this subsection" for "G.S. 143-215.4" in the first sentence, deleted "pursuant to hearing" following "determines" in the second sentence of the first paragraph, substituted "rule" for "order" throughout the subsection, and rewrote the first sentence of the second paragraph and the third and last paragraphs of the subsection.

CASE NOTES

Informal Rule-Making Procedure Is Not Subject to Review under § 150A-43 et seq. — An informal hearing conducted by the Commission to consider whether to initiate a proceeding to declare the Yadkin River Basin a capacity use area was no more than the rule-making type procedure under subsection (c) of this section, and thus the plaintiffs were not entitled to judicial review under § 150A-43 et seq. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Subsection (d) of this section operates as a statutory limitation on the standing of parties interested in or affected by the action to seek judicial review. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Where No Order Was Issued Which Could Adversely Affect Plaintiff No Judicial Review Was Possible. — A hearing held by the Commission to serve the function of a general information gathering tool to inject public participation at a stage of decision-making generally reserved to staff participation, was an informal stage of the decision-making process with respect to this section's considerations, and the use of evidence presented at that hearing to consider whether to initiate a proceeding under this section was purely within the discretion of the Commission. Since no order was issued by the Commission which in turn could have adversely affected the plaintiffs, they were not entitled to judicial review under this section. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 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 provisions of G.S. 150A-12. 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; 1981, c. 585, s. 5.)

Effect of Amendments. — The 1981 amendment, effective Oct. 1, 1981, substituted "provisions of G.S. 150A-12" for "requirements of subdivisions (4)-(6) of G.S. 143-215.13(c)" at the end of the first sentence of subsection (b).

CASE NOTES

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 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 Resources and Community Development

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 aggrieved by the proposed action shall be entitled to a hearing in accordance with Chapter 150A, Article 3.

(d) The Environmental Management Commission shall give notice of receipt of an application for a permit under this Part to all other holders of permits and applicants for permits under this Part within the same capacity use area, and to all other persons who have requested to be notified of permit applications. Notice of receipt of an application shall be given within 10 days of the receipt of the application by the Environmental Management Commission. The Environmental Management Commission shall also give notice of its proposed action on any permit application under this Part to all permit holders or permit applicants within the same capacity use area at least 18 days prior to the effective date of the proposed action. Notices of receipt of applications for permits and notice of proposed action on permits shall be by first-class mail and shall be effective upon depositing the notice, postage prepaid, in the United States mail. All notices arising out of contested cases and the service and filing of documents in conjunction with contested case hearings shall follow the procedures of Article 4 of Chapter 150A except as otherwise provided in this Part.

(e) Repealed by Session Laws 1981, c. 585, s. 8.

(f) (1) The Department of Natural Resources and Community Development shall have the authority to adopt a seal 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 Resources and Community Development 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.

(2) 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.

(3) The provisions of General Statutes Chapter 150A, Article 3 shall be applicable in connection with hearings pursuant to G.S. 143-215.15 and G.S. 143-215.16.

(g) Any person against whom any final order or decisions have been made, after a hearing under this section or G.S. 143-215.16, may seek judicial review of the order or decision pursuant to the provisions of General Statutes Chapter 150A, Article 3. The provisions of G.S. 150A-49 and G.S. 150A-50 to the contrary notwithstanding, the matter on appeal shall be determined de novo on the transcript and on any new or additional evidence introduced in superior court. The superior court judge hearing the matter shall allow any new or additional evidence on any question of fact as shall be competent under the rules of evidence then applicable to trials in the superior court without a jury.

(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; 1977, c. 771, s. 4; 1981, c. 585, ss. 6-10.)

Effect of Amendments. — The 1981 amendment, effective Oct. 1, 1981, substituted "aggrieved by" for "wishing to contest" and "in accordance with Chapter 150A, Article 3" for "upon request therefor" in the last sentence of subsection (c), rewrote subsection (d), deleted subsection (e), concerning the giving of notice by registered or certified mail, and rewrote subsections (f) and (g).

CASE NOTES

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.16. Permits for water use within capacity use areas — duration, transfer, reporting, measurement, present use, fees and penalties.

CASE NOTES

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

§ 143-215.17. Enforcement procedures.

(a) Criminal Penalties. — Any person who shall be adjudged to have violated any provision of this Part 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. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Penalties. —

(1) The Environmental Management Commission may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates any duly adopted regulations of the Commission implementing the provisions of this Part.

(2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Commission may assess a penalty not to exceed two hundred fifty dollars ($250.00) per day for each day of violation.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by violation, the duration of the violation, the effect on ground or surface water quantity or quality, and whether the violation was intentional or inadvertent.

(4) 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 Resources and Community Development within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action in the superior court of the county or counties 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 Commission's action (which shall include a review of the amount of the assessment) shall be as provided in G.S. 150A-51.

(c) Injunctive Relief. — Upon violation of any of the provisions of, or any order issued pursuant to this Part, or duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, 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 same. (1967, c. 933, s. 7; 1973, c. 698, s. 16; c. 1262, s. 23; 1975, c. 842, s. 2; 1977, c. 771, s. 4; 1981, c. 585, s. 11.)

Effect of Amendments. — The 1981 amendment, effective Oct. 1, 1981, deleted "the" following "caused by" in subdivision (3) of subsection (b) and substituted "the duration of the violation, the effect on ground or surface water quantity or quality, and whether the violation was intentional or inadvertent" for "and the cost of rectifying the damage" at the end of that subdivision.

§ 143-215.19. Administrative inspection; reports.

(a) When necessary for enforcement of this Part, and when authorized by regulations of the Environmental Management Commission, employees of the Commission may inspect any property, public or private, to investigate:

(1) The condition, withdrawal or use of any waters;

(2) Water sources; or

(3) The installation or operation of any well or surface water withdrawal or use facility.

(b) The Commission's regulations must state appropriate standards for determining when property may be inspected under subsection (a).

(c) Entry to inspect property may be made without the possessor's consent only if the employee seeking to inspect has a valid administrative inspection warrant issued pursuant to G.S. 15-27.2.

(d) The Commission may also require the owner or possessor of any property to file written statements or submit reports under oath concerning the installation or operation of any well or surface water withdrawal or use facility.

(e) The Commission shall accompany any request or demand for information under this section with a notice that any trade secrets or confidential information concerning business activities is entitled to confidentiality as provided in this subsection. Upon a contention by any person that records, reports or information or any particular part thereof to which the Commission has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets or would divulge confidential information concerning business activities, the Commission shall consider the material referred to as confidential, except that it may be made available in a separate file marked "Confidential Business Information" to employees of the department concerned with carrying out the provisions of this Part for that purpose only. The disclosure or use of such information in any administrative or judicial proceeding shall be governed by the rules of evidence, but the affected business shall be notified by the Commission at least seven days prior to any such proposed disclosure or use of information, and the Commission will not oppose a motion by any affected business to intervene as a party to the judicial or administrative proceeding. (1967, c. 933, s. 9; 1973, c. 1262, s. 23; 1981, c. 585, s. 12.)

Effect of Amendments. — The 1981 amendment, effective Oct. 1, 1981, rewrote the section.

Part 3. Dam Safety Law.

Repeal of Part. — Session Laws 1979, c. 736, amended § 143-34.11 (codified from Session Laws 1977, c. 712, s. 2, as amended) so as to eliminate the provision repealing this Part.

§ 143-215.24. Declaration of purpose.

CASE NOTES

Applied in Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

§ 143-215.27. Repair, alteration, or removal of dam.

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(1979, c. 55, s. 1.)

Effect of Amendments. — The 1979 amendment substituted "may" for "shall" in the last sentence of subsection (a).

Only Part of Section Set Out. — As subsection (b) was not changed by the amendment, it is not set out.

CASE NOTES

Applied in Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

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

CASE NOTES

Applied in Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

§ 143-215.32. Inspection of dams.

CASE NOTES

Purpose of Dam Safety Law. — The evils which the Dam Safety Law seeks to prevent are evils which ensue from dam failure. It is only in the event that the condition of the dam is such as to present a threat of physical damage to surrounding property owners that the Commission is empowered to require owners to repair the dam. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

When Commission May Not Require Repair of Dam. — The Dam Safety Law does not authorize the Environmental Management

Commission to require the owners of a private washed-out dam to repair rather than remove the dam when the condition of the dam is not such as to present a threat of physical damage to surrounding property owners. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

§ 143-215.33. Administrative hearing; judicial review.

(a) Any person to whom an order or decision has been issued pursuant to this Part shall be entitled to an administrative hearing before the Commission, or its designated hearing officer or officers, to be conducted in the county in which the dam is located, in accordance with Article 3 of Chapter 150A of the General Statutes upon written request by such person within 10 days after notice of the order or decision has been given to the person, personally or by registered or certified mail.

(b) Any person entitled to a hearing under subsection (a) of this section may appeal the final decision of the Commission to the superior court in accordance with Article 4 of Chapter 150A of the General Statutes, except that a petition seeking review under G.S. 150A-45 may be filed either in the county where the dam is located or in Wake County. (1967, c. 1068, s. 11; 1973, c. 1262, s. 23; 1975, c. 842, s. 4; 1977, c. 878, s. 6; 1979, c. 55, s. 2.)

Effect of Amendments. — The 1979 amendment rewrote this section.

CASE NOTES

Purpose of Dam Safety Law. — The evils which the Dam Safety Law seeks to prevent are evils which ensue from dam failure. It is only in the event that the condition of the dam is such as to present a threat of physical damage to surrounding property owners that the Commission is empowered to require owners to repair the dam. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

When Dam Need Not Be Repaired. — The Dam Safety Law does not authorize the Environmental Management Commission to require the owners of a private washed-out dam to repair rather than remove the dam when the condition of the dam is not such as to present a threat of physical damage to surrounding property owners. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

Notice of Actions and Orders. — Petitioners who were not landowners whose property would be endangered by a failure of a private dam were not entitled to notice of actions and orders of the Environmental Management Commission with respect to the dam. Wells v. Benson, 40 N.C. App. 704, 253 S.E.2d 602 (1979).

Part 4. Federal Water Resources Development Projects.

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

Part 5. Right of Withdrawal of Impounded Water.

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

Part 6. Floodway Regulation.

Repeal of Part. —
The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 143-215.54. Floodway uses.

(a) Local governments are empowered to grant permits for the use of the floodways consistent with the purposes of this Part and for purposes which the State does not regulate either by a permit or a formal approval system.

(b) The following uses may be made of floodways as a matter of right without a permit issued under this Part:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses;

(2) Ground level loading areas, parking areas, rotary aircraft ports and other similar ground level area uses;

(3) Lawns, gardens, play areas and other similar uses;

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses. (1971, c. 1167, s. 3; 1973, c. 621, s. 8; 1979, c. 413, ss. 1, 2.)

Effect of Amendments. — The 1979 amendment added "and for purposes which the State does not regulate either by a permit or a formal approval system" at the end of subsection (a), added "Ground level" at the beginning of subdivision (b)(2), substituted "ground level area" for "industrial-commercial" in subdivision (b)(2), deleted "parking," following "gardens," in subdivision (b)(3), deleted "swimming pools," preceding "hiking" in subdivision (b)(4), and deleted subdivisions (b)(5) through (b)(8), which read: "(5) Streets, bridges, overhead utility lines, railway lines and rights-of-way, creek and storm drainage facilities, sewage or waste treatment plant outlooks, water supply intake structures, and other similar public, community or utility uses. (6) Temporary facilities (for a specified number of days), such as displays, circuses, carnivals, or similar transit amusement enterprises. (7) Boat docks, ramps, piers, or similar structures. (8) Dams."

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

Repeal of Part. —
The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

Part 7. Water and Air Quality Reporting.

Repeal of Part. —
The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 143-215.67. Acceptance of wastes to disposal systems and air-cleaning devices.

(a) No person subject to the provisions of G.S. 143-215.1 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste-disposal system or air-cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat.

(b) The Environmental Management Commission may authorize a unit of government subject to the provisions of G.S. 143-215.67(a) to accept additional wastes to its waste-disposal system upon a finding by the Environmental Management Commission (i) that the unit of government has secured a grant or has otherwise secured financing for planning, design, or construction of a new or improved waste disposal system which will adequately treat the additional waste, and (ii) the additional waste will not result in any significant degradation in the quality of the waters ultimately receiving such discharge. The Environmental Management Commission may impose such conditions on permits issued under G.S. 143-215.1 as it deems necessary to implement the provisions of this subsection, including conditions on the size, character, and number of additional dischargers. Nothing in this subsection shall be deemed to authorize a unit of government to violate water quality standards, effluent limitations or the terms of any order or permit issued under Part 1 of this Article nor does anything herein preclude the Commission from enforcing by appropriate means the provisions of Part 1 of this Article. (1971, c. 1167, s. 9; 1979, c. 566.)

Effect of Amendments. — The 1979 amendment designated the former section as subsection (a), and added subsection (b).

Part 8. Grants for Water Resources Development Projects.

§ 143-215.70. Secretary of Natural Resources and Community Development authorized to accept applications.

The Secretary of the Department of Natural Resources and Community Development is authorized to accept applications for grants for nonfederal costs relating to water resources development projects from units of local government sponsoring such projects, except that this shall not include small watershed projects reviewed by the State Soil and Water Conservation Commission pursuant to G.S. 139-55. (1979, c. 1046, s. 1.)

Editor's Note. — Session Laws 1979, c. 1046, s. 3, makes this Part effective July 1, 1979.

§ 143-215.71. Purposes for which grants may be requested.

Applications for grants may be made for the nonfederal share of water resources development projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

(1) General navigation projects that are sponsored by local governments — eighty percent (80%);

(2) Recreational navigation projects — twenty-five percent (25%);
(3) Construction costs for water management (drainage) purposes, including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent (66⅔%);
(4) Stream restoration — sixty-six and two-thirds percent (66⅔%);
(5) Protection of privately owned beaches where public access is allowed and provided for — seventy-five percent (75%);
(6) Land acquisition and facility development for recreation sites operated by local governments at impoundments owned by the United States — fifty percent (50%). (1979, c. 1046, s. 1.)

§ 143-215.72. Review of applications.

(a) The Secretary shall receive and review applications for the grants specified in this Part and approve, approve in part, or disapprove such applications.
(b) In reviewing each application, the Secretary shall consider:
(1) The economic, social, and environmental benefits to be provided by the projects;
(2) Regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;
(3) The financial resources of the local sponsoring entity;
(4) The environmental impact of the project;
(5) Any direct benefit to State-owned lands and properties. (1979, c. 1046, s. 1.)

§ 143-215.73. Recommendation and disbursal of grants.

After review of grant applications, the Secretary shall forward those approved or approved in part to the Advisory Budget Commission, which shall review the recommendations and approve or disapprove the transfer of funds from the Department's reserve fund into accounts for specific projects. After approval by the Advisory Budget Commission, project funds shall be disbursed and monitored by the Department of Natural Resources and Community Development. (1979, c. 1046, s. 1.)

§ 143-215.74: Reserved for future codification purposes.

ARTICLE 21A.

Oil Pollution and Hazardous Substances Control.

Repeal of Article. —
The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

Part 1. General Provisions.

§ 143-215.75. Title.

This Article shall be known and may be cited as the "Oil Pollution and Hazardous Substances Control Act of 1978." (1973, c. 534, s. 1; 1979, c. 535, s. 1.)

Effect of Amendments. — The 1979 amendment substituted "Oil Pollution and Hazardous Substances Control Act of 1978" for "Oil Pollution Control Act of 1973" at the end of the section.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.76. Purpose.

It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products, oil by-products, and other hazardous substances. It is not the intention of this Article to exercise jurisdiction over any matter as to which the United States government has exclusive jurisdiction, nor in any wise contrary to any governing provision of federal law, and no provision of this Article shall be so construed. The General Assembly further declares that it is the intent of this Article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq., as amended, and the National Contingency Plan for removal of oil adopted pursuant thereto. (1973, c. 534, s. 1; 1979, c. 535, s. 2.)

Effect of Amendments. — The 1979 amendment substituted "oil by-products, and other hazardous substances" for "and oil by-products" at the end of the first sentence.

§ 143-215.77. Definitions.

As used in this Article, unless the context otherwise requires:

(4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; 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 or other hazardous substances, 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 in accepted agricultural, horticultural, or forestry practices, 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; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a "discharge" for purposes of this Article. The word "discharge" shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.

(5) "Having control over oil or other hazardous substances" shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances.

(5a) "Hazardous substance" shall mean any substance, other than oil, which when discharged in any quantity may present an imminent and substantial danger to the public health or welfare, as designated pursuant to G.S. 143-215.77A.

(6) Repealed by Session Laws 1979, c. 981, s. 5.

(9) "Bailee" shall mean any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.

(10) "Carrier" shall mean any person who engages in the transportation of oil or other hazardous substances for compensation.

(15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.

(16) "Transfer" shall mean the transportation, on-loading or off-loading of oil or other hazardous substances between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.

(1979, c. 535, ss. 3-10; c. 981, ss. 3-5; 1979, 2nd Sess., c. 1209, ss. 1, 2.)

Effect of Amendments. — The first 1979 amendment inserted "or other hazardous substances" throughout subdivisions (4), (5), (6), (9), (10), (15), and (16). The amendment also substituted "in accepted" for "on" and "practices" for "crops" near the end of the first sentence of subdivision (4), added the second proviso at the end of that sentence, added subdivision (5a), substituted " 'Bailee' " for " 'Oil bailee' " at the beginning of subdivision (9), and substituted " 'Carrier' " for " 'Oil carrier' " at the beginning of subdivision (10).

The second 1979 amendment added the second sentence of subdivision (4), inserted "or upon lands in the State" near the middle of the first sentence of subdivision (5a), and repealed subdivision (6), which read: " 'Land' shall mean only land from which it is reasonably likely that oil will flow into the waters of this State."

The 1979, 2nd Sess., amendment, in subdivision (4), substituted "but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A" for language which excluded certain discharges in amounts determined by the Environmental Management Commission to be not harmful to the public health or welfare, and rewrote subdivision (5a).

Only Part of Section Set Out. — As the other subdivisions were not changed by the amendments, they are not set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.77A. Designation of hazardous substances and determination of quantities which may be harmful.

(a) Those substances designated as hazardous as of June 1, 1980, by the Administrator of the United States Environmental Protection Agency under 33 U.S.C. 1321(b)(2)(A) are designated as hazardous substances for purposes of this Article.

(b) Such quantities of hazardous substances as may be harmful as determined as of June 1, 1980, by the Administrator of the United States Environmental Protection Agency under 33 U.S.C. 1321(b)(4) are quantities which may be harmful for purposes of this Article.

(c) Changes by Administrator of the United States Environmental Protection Agency in the designation of hazardous substances and the determination of quantities which may be harmful shall be deemed to be made to the designation of hazardous substances and the determination of quantities for

purposes of this Article, unless the Commission objects within 120 days of publication of the action in the Federal Register. The Commission may object to a change by the Administrator on the basis that the change is not consistent with the standards for determining hazardous substances or harmful quantities. Upon objection by the Commission to a change, a public hearing must be held pursuant to Article 2 of Chapter 150A of the General Statutes. The change will not be made pending the hearing and a final determination by the Commission. After the hearing, the Commission may reject the change upon a finding that the change is not consistent with the standards for determining hazardous substances or harmful quantities. (1979, 2nd Sess., c. 1209, s. 3.)

§ 143-215.78. Oil pollution control program.

The Department shall establish 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; 1979, c. 535, s. 11.)

Effect of Amendments. — The 1979 amendment deleted "within the office" after "establish" near the middle of the first sentence.

§ 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 or other hazardous substances discharged 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 or other hazardous substances discharges or to perform any restoration necessitated by an oil or other hazardous substances 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 or other hazardous substances 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; 1979, c. 535, s. 12.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" throughout the section.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.82. Local ordinances.

Nothing in the Article shall be construed to deny any county, municipality, sanitary district, metropolitan sewerage district or other authorized local governmental entity, by ordinance, regulation or law, from exercising police powers with reference to the prevention and control of oil or other hazardous

substances discharges to sewers or disposal systems. (1973, c. 534, s. 1; 1979, c. 535, s. 13.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" near the end of the section.

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges.

(a) Unlawful Discharges. — It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil or other hazardous substances into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) Excepted Discharges. — This section shall not apply to discharges of oil or other hazardous substances 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 or other hazardous substances 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; 1979, c. 535, s. 14.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" throughout the section.

§ 143-215.84. Removal of prohibited discharges.

(a) Person Discharging. — Any person having control over oil or other hazardous substances 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 or other hazardous substances 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.

(c) The Secretary of the Department of Transportation is authorized and empowered, after consultation with the Secretary of Natural Resources and Community Development, to purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b). These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary of the Department of Natural Resources and Community Development or his designee will, after consultation, decide where the trucks are to be located.

(1979, c. 535, s. 15.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" near the beginning of the first sentence of subsection (a), near the end of the first sentence of subsection (b), and near the end of the second sentence of subsection (c).

Only Part of Section Set Out. — As subsection (d) was not changed by the amendment, it is not set out.

§ 143-215.85. Required notice.

Every person owning or having control over oil or other substances discharged in any circumstances other than pursuant to existing regulation of the Environmental Management Commission or the U. S. Environmental Protection Agency or pursuant to a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, 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 Department receiving the notification shall immediately notify the Secretary of Natural Resources and Community Development or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Secretary of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board;

provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; c. 858, s. 1; 1979, c. 535, ss. 16, 17.)

Effect of Amemdments. — The 1979 amendment substituted "or other substances discharged in any circumstances other than pursuant to existing regulation of the Environmental Management Commission or the U. S. Environmental Protection Agency or pursuant to a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act" for "discharged in violation of the provisions of this Article" near the beginning of the first sentence, and added the third and fourth sentences.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.86. Other State agencies and State designated local agencies.

(a) Cooperative Effort. — The Board of Transportation, the North Carolina Wildlife Resources Commission, and any other agency of this State and any local agency designated by the 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 or other hazardous substances discharged upon the land or into the waters of this State.

(c) Accounts. — Every State agency or other State-designated local agency participating in the containment, collection, dispersal or removal of an oil or other hazardous substances 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; 1979, c. 535, ss. 18, 19.)

Effect of Amendments. — The 1979 amendment inserted "and any local agency designated by the State" near the middle of subsection (a), inserted "or other State-designated local agency" near the beginning of the first sentence of subsection (c), and inserted "or other hazardous substance" near the end of subsection (a) and near the beginning of the first sentence of subsection (c).

Only Part of Section Set Out. — As subsection (b) was not changed by the amendment, it is not set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.

There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances 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 or other hazardous substances 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 or Other Hazardous Substances 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; 1979, c. 535, s. 20.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" throughout the section.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.88. Payment to State agencies or State-designated local agencies.

Upon completion of any oil or other hazardous substances removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State or any State-designated local agency 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 or Other Hazardous Substances Pollution Protection Fund. Upon completion of any oil or other hazardous substances 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 or other hazardous substances 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. 143-215.83(b). Any person having control of oil or other hazardous substances 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 or other hazardous substances shall be directly liable to the State for the necessary expenses of oil or other hazardous substances 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 or other hazardous substances 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; 1977, c. 858, s. 2; 1979, c. 535, ss. 21, 22.)

Effect of Amendments. — The 1979 amendment inserted "or any State-designated local agency" near the middle of the first sentence, and inserted "or other hazardous substances" throughout the section.

§ 143-215.89. Multiple liability for necessary expenses.

Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances into the waters of the State, including any amount recoverable by the State as necessary expenses. The total recovery by the State

for damage to the public resources pursuant to G.S. 143-215.91 and for the cost of oil or other hazardous substances cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of such discharge. (1973, c. 534, s. 1; 1979, c. 535, s. 23.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" near the beginning and near the middle of the first sentence, and near the middle of the second sentence.

§ 143-215.90. Liability for damage to public resources.

(a) Any person who discharges oil or other hazardous substances in violation of this Article or violates 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. Such damages shall be an amount equal to the cost of all reasonable and necessary investigations made or caused to be made by the Environmental Management Commission in connection with such violation and 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 such boards, commissions, and agencies).

(b) Upon receipt of the estimate of damages caused, the Department shall give written notice by registered or certified mail to the person responsible for the death, killing, or injury to fish, animals, vegetation, or other resources of the State, or any reduction in quality of the waters of the State, describing the damages and their causes with reasonable specificity, and shall request payment from such person. Damages shall become due and payable upon receipt of such notice. Upon written application to the Department within 30 days of receipt of notice, the person assessed damages may request an administrative hearing pursuant to G.S. 143-215.4. On such hearing, the estimate of the replacement cost of fish or animals or vegetation destroyed, and the estimate of costs of replacing or restoring other resources of the State, and the estimate of the cost of restoring the quality of waters of the State shall be *prima facie* evidence of the actual replacement cost of fish, animals, vegetation or other resources of the State, and of the actual cost of restoring the quality of the waters of the State; provided, that such evidence is rebuttable. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Department or Wildlife Resources Commission to collect, handle, or weigh numerous specimens of dead or injured fish, animals, vegetation or other resources of the State, or to calculate the costs of restoring the quality of the waters using any technology other than that which is existing and practicable, as found to be such by the Secretary. Provided, that the Department may effect such mitigation of the amount of damages as the commission may deem proper and reasonable. Appeal from final determination of the commission or its agents pursuant to such a hearing shall be pursuant

to G.S. 143-215.5. If the damages are not paid to the Department within 30 days of receipt of notice, or if the amount of damages provided in an order issued subsequent to an application to the Department is not paid within 30 days of the issuance thereof, the Attorney General, upon request of the Department, shall bring an action to recover such damages in the name of the State, in the Superior Court of Wake County, or in his discretion, in the superior court of any other county in which the damages occurred. Upon such action being brought, the scope of the court's review shall be as provided in G.S. 150A-51. Any money recovered by the Attorney General or by payment of damages by the person charged therewith by the Department 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.

(c) For the purpose of carrying out its duties under this Article, the Environmental Management Commission shall have the power to direct the investigation of any death, killing, or injury to fish, animals, vegetation or other resources of the State, or any reduction in quality of the waters of the State, which in the opinion of the Environmental Management Commission is of sufficient magnitude to justify investigation. (1973, c. 534, s. 1; c. 1262, s. 23; 1979, c. 535, s. 24.)

Effect of Amendments. — The 1979 amendment rewrote this section.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.91. Penalties.

(a) Civil Penalties. — Any person who intentionally or negligently discharges oil or other hazardous substances, 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, the amount expended by the violator in complying with the provisions of G.S. 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90, 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, receive 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.

(b) Criminal Penalties. — Any person who intentionally or knowingly or willfully discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part shall be guilty of a misdemeanor punishable by imprisonment not to exceed six months or by fine to be not more than ten thousand dollars ($10,000), or by both, in the discretion of the court. No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts.

(c) The civil and criminal penalties provided by this section (except the civil penalty for failure to report) shall not apply to the discharge of a pesticide regulated by the North Carolina Pesticide Board, if such discharge would constitute a violation of the North Carolina Pesticide Law and if such discharge has not entered the surface waters of the State. (1973, c. 534, s. 1; 1973, c. 1262, s. 23; 1979, c. 535, ss. 25, 26.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" near the beginning of the first sentences of subsections (a) and (b), inserted "the amount expended by the violator in complying with the provisions of G.S. 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90" near the end of the first sentence of subsection (a), and added subsection (c). The amendment inserted "or other hazardous substances" following "oil" the first time that word appears in the first sentence of subsection (a), but failed, apparently through oversight to make the insertion following the second "oil" in that sentence.

§ 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 or other hazardous substances is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil or other hazardous substances 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; 1979, c. 535, s. 27.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" near the beginning and near the middle of the first sentence.

§ 143-215.93. Liability for damage caused.

Any person having control over oil or other hazardous substances which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G.S. 143-215.83(b). (1973, c. 534, s. 1; 1979, c. 535, s. 28.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" near the beginning of the section.

§ 143-215.94. Joint and several liability.

In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. 143-215.88 through 143-215.91(a), 143-215.93 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any one or more of the persons having control over the oil or other hazardous substances or causing or contributing to the discharge of oil or other hazardous substances. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles. (1973, c. 534, s. 1; 1977, c. 858, s. 3; 1979, c. 535, s. 29.)

Effect of Amendments. — The 1979 amendment inserted "or other hazardous substances" near the end of the first sentence, and added that phrase at the end of that sentence.

ARTICLE 21B.

Air Pollution Control.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

§ 143-215.105. Declaration of policy; definitions.

CASE NOTES

Cited in Steele Creek Community Ass'n v. United States Dep't of Transp., 435 F. Supp. 196 (W.D.N.C. 1977).

§ 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.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas; provided, that the Commission shall adopt no standard which is not made mandatory upon approved State programs by rules, regulations or published guidelines of the United States Environmental Protection Agency or the Federal Clean Air Act.

(f) In adopting air quality policies, rules, regulations and procedures, the Environmental Management Commission or any other State or local regulatory body shall be guided by the same standards, definitions, considerations and criteria set forth, from time to time, in federal law, rules or regulations for the guidance of federal, state or local agencies administering the Federal Clean Air Program.

It is the intent of the General Assembly (i) that the air quality rules, regulations, procedures, plans, practices, air quality standards, and emission control standards adopted by the Environmental Management Commission pursuant to this Article or Article 21, or by any other State or local regulatory body under the General Statutes of North Carolina, shall be no more restrictive and no more stringent than required to comply with federal ambient air quality standards or other applicable federal requirements, if any, adopted in final or proposed regulations by the United States Environmental Protection Agency under or pursuant to the Federal Clean Air Act, and amendments thereto; except (ii) that no air quality rules, regulations, procedures, plans, practices, air quality standards or emission control standards shall be adopted by the Environmental Management Commission with respect to matters on which the United States Environmental Protection Agency has not proposed or adopted final regulations unless the Environmental Management Commission first considers, among other things, an assessment of the economic impact of the proposed standards. The Department shall prepare and submit into the record of the rule-making hearing an economic impact study of such proposed standards. Such study shall include an estimate of the economic and social costs to commerce and industry, units of local government, and agriculture necessary to comply with the proposed standards and an examination of the economic and social benefits of such compliance. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931.)

Cross References. — As to motor vehicle emission standards, see § 20-128.2.

Effect of Amendments. — The first 1979 amendment, effective July 1, 1979, added subdivision (7) of subsection (a).

The 1979 second amendment, effective July 1, 1979, rewrote the first sentence of the second paragraph of subsection (f), and added the second and third sentences of that paragraph.

Only Part of Section Set Out. — As only subsections (a) and (f) were changed by the amendment, the rest of the section is not set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.108. Control of sources of air pollution; permits required.

(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 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.

(7) To prohibit any stationary source within the State from emitting any air pollutant in amounts which will prevent attainment or maintenance by any other state of any national ambient air quality standard, or interference with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility.

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; 1979, c. 545, ss. 2, 3.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, deleted "of the State" after "of the air" near the end of the first paragraph of subsection (b), and added subdivision (7) of subsection (b).

Only Part of Section Set Out. — As subsection (a) was not changed by the amendment, it is not set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-215.112. Local air pollution control programs.

(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 pub-

lic 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.

Any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Federal Clean Air Act and any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers shall be adequately disclosed.

(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 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.

(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.

(1979, c. 545, s. 7.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added the second sentence of paragraph d of subdivision (2) of subsection (c).

Only Part of Section Set Out. — As only subsection (c) was changed by the amendment, the rest of the section is not set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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. Repealed by Session Laws 1979, c. 545, s. 4.

f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.

(2) Each day of continuing violation after written notification from the Commission shall be considered a separate offense.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.

(4) The Environmental Management Commission, or, if authorized by the Environmental Management Commission, the Department of Natural Resources and Community Development, 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 Resources and Community Development 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 Chapter 150A of the General Statutes.

(1979, c. 545, ss. 4-6.)

Effect of Amendments. — 1979 amendment, effective July 1, 1979, in subsection (a), deleted paragraph e of subdivision (1), which read: "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; or". The amendment rewrote subdivision (2), which formerly provided for a $5,000 per day penalty for willful violations of subsection (a), and substituted "violation and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements" for "violation and" near the end of subdivision (3).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

ARTICLE 24.

Wildlife Resources Commission.

§ 143-239. Statement of purpose.

Cross References. — As to Wildlife Endowment Fund, see § 143-250.1.

§ 143-246. Executive Director; appointment, qualification and duties.

The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission, and said Director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1947, c. 263, s. 10; 1957, c. 541, s. 17; 1969, c. 844, s. 5; 1979, c. 830, s. 7; 1981, c. 884, s. 11.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1980, deleted the former last sentence, which read: "The said Executive Director shall be clothed and vested with all powers, duties, and responsibilities heretofore exercised by the Commission of Game and Inland Fisheries relating to wildlife resources."

The 1981 amendment deleted the former seventh sentence, relating to the oath and bond on the Executive Director.

§ 143-254.1: Repealed by Session Laws 1979, c. 830, s. 8, effective July 1, 1980.

Cross References. — For statute covering the subject matter of the repealed section, see § 113-307.1, subsection (c), effective July 1, 1980.

§ 143-250. Wildlife Resources Fund.

All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose

pertaining to wild life and wildlife resources shall also be transferred to the Wildlife Resources Fund.

Except as otherwise specifically provided by law, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. The Wildlife Resources Fund herein created shall be subject to the provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14; 1965, c. 957, s. 16; 1981, c. 482, s. 2.)

Effect of Amendments. — The 1981 amendment substituted "Except as otherwise specifically provided by law" for "on and after July 1, 1947" at the beginning of the third paragraph.

§ 143-250.1. Wildlife Endowment Fund.

(a) Recognizing the inestimable importance to the State and its people of conserving the wildlife resources of North Carolina, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its wildlife resources, there is created the North Carolina Wildlife Endowment Fund, the income and principal of which shall be used only for the purpose of supporting wildlife conservation programs of the State in accordance with this section. This fund shall also be known as the Eddie Bridges Fund.

(b) There is created the Board of Trustees of the Wildlife Endowment Fund of the Wildlife Resources Commission, with full authority over the administration of the Wildlife Endowment Fund, whose ex officio chairman, vice-chairman, and members shall be the chairman, vice-chairman, and members of the Wildlife Resources Commission. The State Treasurer shall be the custodian of the Wildlife Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(c) The assets of the Wildlife Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants and contributions to the State which are specifically designated for inclusion in the fund;

(2) The proceeds from the sale of lifetime sportsman combination licenses issued in accordance with G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2);

(3) The proceeds from the sale of lifetime hunting and lifetime fishing licenses in accordance with G.S. 113-270.2(c)(3a) and 113-271(d)(2b);

(4) The proceeds of lifetime subscriptions to the magazine Wildlife in North Carolina at such rates as may be established from time to time by the Wildlife Resources Commission;

(5) Any amount in excess of the statutory fee for a particular lifetime license or lifetime subscription shall become an asset of the fund and shall qualify as a tax exempt donation to the State;

(6) Such other sources as may be specified by law.

(d) The Wildlife Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the funds:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from gifts, grants and voluntary contributions shall be respected but shall not be binding.

(2) No expenditures or disbursements from the income from the proceeds derived from the sale of types I and Y lifetime sportsman combination licenses specified in G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2) shall be made for any purpose until the respective holders of such licenses attain the age of 16 years. The State Treasurer, as custodian of the fund, shall determine actuarially from time to time the amount of income within the fund which remains encumbered by and which is free of this restriction. For such purpose, the executive director shall cause deposits of proceeds from type I licenses to be distinguished and deposits of proceeds from type Y licenses to be accompanied by information as to the ages of the license recipients.

(3) No expenditure or disbursement shall be made from the principal of the Wildlife Endowment Fund except as otherwise provided by law.

(4) The income received and accruing from the investments of the Wildlife Endowment Fund must be spent only in furthering the conservation of wildlife resources and the efficient operation of the North Carolina Wildlife Resources Commission in accomplishing the purposes of the agency as set forth in G.S. 143-239.

(e) The Board of Trustees of the Wildlife Endowment Fund may accumulate the investment income of the fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget of the Wildlife Resources Commission. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the fund for the purposes set out in division (4) of subsection (d).

(f) Expenditure of the income derived from the Wildlife Endowment Fund shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Wildlife Endowment Fund is subject to the oversight of the State Auditor pursuant to G.S. 147-58.

(g) The Wildlife Endowment Fund and the income therefrom shall not take the place of State appropriations or agency receipts placed in the Wildlife Resources Fund, or any part thereof, but any portion of the income of the Wildlife Endowment Fund available for the purpose set out in division (4) of subsection (d) shall be used to supplement other income of and appropriations to the Wildlife Resources Commission to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

(h) In the event of a future dissolution of the Wildlife Resources Commission, such State agency as shall succeed to its budgetary authority shall, ex officio, assume the trusteeship of the Wildlife Endowment Fund and shall be bound by all the limitations and restrictions placed by this section on expenditures from the fund. No repeal or modification of this section or of G.S. 143-239 shall alter the fundamental purposes to which the Wildlife Endowment Fund may be applied. No future dissolution of the Wildlife Resources Commission or substitution of any agency in its stead shall invalidate any lifetime license

issued in accordance with G.S. 113-270.2(c)(1a) or (3a), 113-271(d)(1c) or (2b), or 113-272(d)(1a2). (1981, c. 482, s. 1.)

ARTICLE 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.10. Components of State Nature and Historic Preserve.

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(a) All lands and waters within the boundaries of the following units of the State Parks System as of March 6, 1979: Bay Tree Lake, Bushy Lake Natural Area, Cliffs of the Neuse State Park, Crowders Mountain State Park, Duke Power Recreation Area, Fort Macon State Park, Goose Creek State Park, Hammocks Beach State Park, Hanging Rock State Park, Hemlock Bluffs Natural Area, Jockeys Ridge State Park, Jones Lake State Park, Lake Waccamaw, Lake Waccamaw State Park, Merchants Millpond State Park, Morrow Mountain State Park, Mount Jefferson State Park, Mount Mitchell State Park, Pilot Mountain State Park, Raven Rock State Park, Theodore Roosevelt Natural Area, Singletary Lake State Park, South Mountains State Park, Stone Mountain State Park, Weymouth Woods-Sandhills Nature Preserve, and White Lake; Carolina Beach State Park in New Hanover County west of Dow Road, S.R. 1573; Mitchells Millpond Natural Area in Wake County north of S.R. 2224.

(b) All lands and waters within the boundaries of Eno River State Park and William B. Umstead State Park as of March 6, 1979, with the exception of those tracts recommended for exclusion in the petition of the Council of State dated March 6, 1979, on file with the Secretary of Administration.

(c) All lands within the boundaries of Pettigrew State Park as of March 6, 1979, with the exception of the tract recommended for exclusion in the petition of the Council of State dated March 6, 1979, on file with the Secretary of Administration.

(d) All lands and waters located within the boundaries of the following State Historic Sites as of March 6, 1979: Alamance Battleground Historic Site, Historic Bath Historic Site, Bentonville Battleground Historic Site, Brunswick Town Historic Site, Governor Richard Caswell Memorial/C.S.S. Neuse Historic Site, Duke Homestead Historic Site, House in the Horseshoe Historic Site, James Iredell House Historic Site, President James K. Polk Memorial Historic Site, Stagville Preservation Center Historic Site, State Capitol Historic Site, Town Creek Indian Mound Historic Site, Tryon Palace Historic Site, Governor Zebulon B. Vance Birthplace Historic Site, and Thomas Wolfe Memorial Historic Site. (1979, c. 498.)

§ 143-260.10A. Utility easements; Jockeys Ridge State Park.

Notwithstanding the provisions of G.S. 143-260.10, the State of North Carolina is hereby authorized to grant utility easements to public utility companies across Jockeys Ridge State Park lying within the State Nature and Historic Preserve. (1981, c. 994.)

ARTICLE 26.

State Education Commission.

§ 143-261. Appointment and membership; duties.

CASE NOTES

Stated in Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

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 the negligence 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, employment, 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 one hundred thousand dollars ($100,000) cumulatively to all claimants on account of injury and damage to any one person. (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; 1977, c. 464, s. 34; 1977, c. 529, ss. 1, 2; 1979, c. 1053, s. 1.)

Effect of Amendments. — The second 1977 amendment, effective July 1, 1979, substituted "one hundred thousand dollars ($100,000) on account of injury and damage to any one person" for "thirty thousand dollars ($30,000)" at the end of the section.

The 1979 amendment, effective July 1, 1979, inserted "cumulatively to all claimants" following "($100,000)" near the end of the section.

Legal Periodicals. — For note on tort liability of municipal corporations operating public hospitals in this State, see 54 N.C.L. Rev. 1114 (1976).

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For a survey of 1977 law on torts, see 56 N.C.L. Rev. 1136 (1978).

CASE NOTES

Strict Construction. —

The Tort Claims Act must be strictly construed. Northwestern Distribs., Inc. v. North Carolina Dep't of Transp., 41 N.C. App. 548, 255 S.E.2d 203, cert. denied, 298 N.C. 567, 261 S.E.2d 123 (1979).

In accord with 3rd paragraph in original. See Watson v. North Carolina Dep't of Cor., 47 N.C. App. 718, 268 S.E.2d 546 (1980).

Jurisdiction of Commission. — The Industrial Commission had jurisdiction to hear and determine a claim alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

Director of County Department of Social Services Is State Agent. — The director of a county department of social services was acting as an agent of the State Social Services Commission of the Department of Human Resources in administering a foster home program funded by the State Foster Home Fund, although he was an employee of the county, since: (1) the county director was required by § 108-19(3) to "administer" the Foster Home Fund in the county; (2) § 108-19(5) required the county director to act as an "agent" of the State Commission in work required by the Commission in the county; (3) the State controlled half of the members of the county board of social services which selected the county director; and (4) the State Commission, pursuant to § 108-66, controlled and regulated the county director's actions in administering the foster home program. Therefore, the State would be liable under the Tort Claims Act for the negligence of the director or his subagents in the placement of a child in a foster home under a program funded by the State Foster Home Fund, and the Industrial Commission had jurisdiction of a claim based on such alleged negligence. Vaughn v. North Carolina Dep't of Human Resources, 37 N.C. App. 86, 245 S.E.2d 892 (1978), aff'd, 296 N.C. 683, 252 S.E.2d 792 (1979).

State Liable for Negligence of County Director of Social Services. — In an action alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services, the Department of Human Resources would be liable for the negligent acts of its agents, the Durham County Director of Social Services and his subordinates, since the Department of Human Resources, through the Social Services Commission, has the right to control the manner in which the county director is to execute his obligation to place children in foster homes. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

And Not for Negligent Omissions. —

In accord with 5th paragraph in original. See Watson v. North Carolina Dep't of Cor., 47 N.C. App. 718, 268 S.E.2d 546 (1980).

In accord with 6th paragraph in original. See Watson v. North Carolina Dep't of Cor., 47 N.C. App. 718, 268 S.E.2d 546 (1980).

Neither intentional misrepresentation, etc. —

A claim against the State and its agents for damages for the intentional torts of false representation and fraudulent inducement were barred by the doctrine of sovereign immunity since suits against the State, its agencies and its officers for alleged tortious acts can be maintained only to the extent authorized by the Tort Claims Act, and intentional torts are not compensable under the Tort Claims Act. Wojsko v. State, 47 N.C. App. 605, 267 S.E.2d 708 (1980).

The Industrial Commission must make findings of fact and conclusions of law to determine the issues raised by the evidence in a case before it. Martinez v. Western Carolina Univ., 49 N.C. App. 234, 271 S.E.2d 91 (1980).

Specific findings covering the crucial questions of fact upon which a plaintiff's right to compensation depends are required to be made by the Industrial Commission. Martinez v. Western Carolina Univ., 49 N.C. App. 234, 271 S.E.2d 91 (1980).

The determination of negligence, etc. —

In accord with 1st paragraph in original. See Martinez v. Western Carolina Univ., 49 N.C. App. 234, 271 S.E.2d 91 (1980).

Cited in Potter v. North Carolina School of Arts, 37 N.C. App. 1, 245 S.E.2d 188 (1978).

§ 143-292. Notice of determination of claim; appeal to full Commission.

Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have 15 days after receipt of such notice within which to file notice of appeal with the Industrial Commission. Such appeal, when so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on the basis of the record in the

matter and upon oral argument of the parties, and said full Commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of fact and conclusions of law. Upon determination of said claim by the Industrial Commission, sitting as a full Commission, the Commission shall notify all parties concerned in writing of its decision. Such determination by the Industrial Commission, sitting as a full Commission, upon claims in an amount of five hundred dollars ($500.00) or less, shall be final as to the State or any of its departments, institutions or agencies, and no appeal shall lie therefrom by the State or any of its departments, institutions or agencies. (1951, c. 1059, s. 2; 1955, c. 770; 1979, c. 581.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "15" for "seven" near the middle of the first sentence.

§ 143-295. Settlement of claims.

(a) Any claims except claims of minors pending or hereafter filed against the various departments, institutions and agencies of the State may be settled upon agreement between the claimant and the Attorney General for an amount not in excess of five thousand dollars ($5,000), without the approval of the Industrial Commission. The Attorney General may also make settlements by agreement for claims in excess of five thousand dollars ($5,000) and claims of infants or persons non sui juris, provided such claims have been subject to review and approval by the Industrial Commission.

(b) In settlements under five thousand dollars ($5,000), agreed upon between the Attorney General and the claimant, the filing of an affidavit as set forth in G.S. 143-297 shall not be required.

(c) Transfer of title of a motor vehicle acquired in behalf of the State in settlement of claim pursuant to the provisions of this Article may be transferred by the Attorney General in the same manner as provided for such transfer by an insurance company under the provisions of G.S. 20-75. (1951, c. 1059, s. 5; 1971, c. 1103, s. 1; 1973, c. 699; 1975, c. 756; 1979, c. 877; 1981, c. 166.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "three thousand dollars ($3,000)" for "one thousand dollars ($1,000)" near the end of the first sentence and near the middle of the second sentence of subsection (a), and near the beginning of subsection (b).

The 1981 amendment substituted "five thousand dollars ($5,000)" for "three thousand dollars ($3,000)" in the first and second sentences of subsection (a), and near the beginning of subsection (b).

§ 143-296. Powers of Industrial Commission; deputies.

The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. (1951, c. 1059, s. 6; 1979, c. 714, s. 2.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "Workers' " for "Workmen's" near the end of the last sentence.

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.

CASE NOTES

The purpose of this section, etc. — In accord with 1st paragraph in original. See Northwestern Distribs., Inc. v. North Carolina Dep't of Transp., 41 N.C. App. 548, 255 S.E.2d 203, cert. denied, 298 N.C. 567, 261 S.E.2d 123 (1979).

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

(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus or school transportation service vehicle resulting from an alleged negligent act of maintenance personnel or as a result of any alleged negligent act or omission of the driver of a public school bus or school transportation service vehicle when:

(1) The salary of that driver is paid or authorized to be paid from the State Public School Fund, and the driver is an employee of the county or city administrative unit of which that board is the governing body, or

(2) The driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of that board or a county or city administrative unit thereof,

and which driver was at the time of the alleged negligent act or omission operating a public school bus or school transportation service vehicle in the course of his employment by or training for that administrative unit or board. The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this Article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by G.S. 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made, one copy of the plaintiff's affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the office of the Attorney General of North Carolina. All notices with respect to tort claims against any such county or city board of

education shall be given to the superintendent of schools of the county or city administrative unit of which such board is a governing board, to the State Board of Education and also to the office of the Attorney General of North Carolina.

(d) The Attorney General may defend any civil action which may be brought against the driver of a public school bus or school transportation service vehicle or school bus maintenance mechanic when such driver or mechanic is paid or authorized to be paid from the State Public School Fund or when the driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of a county or city board of education or administrative unit thereof. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in such civil action not to exceed the limit provided under the Tort Claims Act. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims which would be within the jurisdiction of the Industrial Commission under the Tort Claims Act. (1955, c. 1283; 1961, c. 1102, ss. 1-3; 1967, c. 1032, s. 1; 1975, c. 589, s. 1; c. 916, ss. 1, 2; 1977, c. 935, s. 1; 1979, 2nd Sess., c. 1332, ss. 1, 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment rewrote subsection (a), and added at the end of the first sentence of subsection (d) the language beginning "or when the driver is an unpaid school bus driver trainee."

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsections (a) and (d) are set out.

Article 31A.

Defense of State Employees and Medical Contractors.

§ 143-300.6. Payments 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 by this section. No payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors shall exceed the amount payable for any one claim under the Tort Claims Act.

(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 the limit provided in the Tort Claims Act 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 the limit provided in the Tort Claims Act must be approved by the private counsel.

(c) The coverage afforded employees and former employees under this Article shall be excess coverage over any commercial liability insurance up to

the limit of the Tort Claims Act, except that this subsection shall not apply to programs of insurance written under the authority of G.S. 143B-424.1; and programs of insurance written under G.S. 143B-424.1 shall not be deemed to be commercial liability insurance within the meaning of this section. (1973, c. 1372; 1975, c. 209, ss. 1, 2; 1979, c. 886; 1981, c. 1109, s. 2.)

Effect of Amendments. — The 1979 amendment, in subsection (a), substituted the present second and third sentences for a former second sentence which read: "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 the limit provided in the Tort Claim Act."

The 1981 amendment added at the end of subsection (c) the language beginning "except that this subsection shall not apply."

Legal Periodicals. — For a note on the liability of those charged as custodians of the convicted for personal injuries inflicted by inmates, parolees, and probationers, see 13 Wake Forest L. Rev. 668 (1977).

§ 143-300.7. Defense of medical contractors.

Notwithstanding any other provisions of this Article, any person or professional association who at the request of the Department of Correction provides medical and dental services to inmates in the custody of the Department of Correction and who is sued pursuant to the Federal Civil Rights Act of 1871 may be defended by the Attorney General and shall be protected from liability for violations of civil rights in accordance with the provisions of this Article. (1979, c. 1053, s. 2.)

Editor's Note. — Session Laws 1979, c. 1053, s. 3, makes this section effective July 1, 1979.

§§ 143-300.8 to 143-300.12: Reserved for future codification purposes.

Article 31B.

Defense of Public School Employees.

§ 143-300.13. Definition of public school employee.

For the purpose of this Article, a public school employee is a person whose major responsibility is to teach or directly supervise teaching and who is employed in either a full-time or part-time capacity, including, but not limited to, the superintendent, assistant or associate superintendent, principal, assistant principal, classroom teacher, substitute teacher, supervisor, teacher aide, student teacher, or school nurse. (1979, c. 971, s. 2.)

Editor's Note. — Session Laws 1979, c. 971, s. 3, provides: "Section 2 of this act shall become effective July 1, 1979 and applies to all civil actions commenced on or after that date, and to all claims based upon conduct occurring on or after that date."

§ 143-300.14. Defense of public school employees.

Except as provided in G.S. 143-300.15, the State shall provide defense counsel for the employee against whom a claim is made or civil action is commenced for personal injury on account of an act done or omission made in the course of the employee's duties under G.S. 115-146.1; provided that, no later than 30 days after the employee is notified of a claim or 10 days after the employee is served with complaint of the injured party, the employee gives written notice of the claim or action to the Attorney General which notice shall include:

(1) The name and address of the claimant and his attorney;
(2) A concise statement of the basis of the claim;
(3) The name and address of any other employees involved; and
(4) A copy of any correspondence received by the employee and legal documents served on the employee pertaining to the claim or civil action. (1979, c. 971, s. 2.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-300.15. Refusal of defense.

The Attorney General may refuse to defend an employee for any of the reasons listed in G.S. 143-300.4(a). (1979, c. 971, s. 2.)

§ 143-300.16. Payment of judgments and settlement of claims.

(a) Any final judgment awarded against an employee in an action which meets the requirements of G.S. 143-300.14, or any amount payable under a settlement of such an action, shall be paid from the appropriation for the payment of State Tort Claims, except that no payment shall be made from that appropriation for any judgment for punitive damages. 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 authorize the payment of any judgment or settlement against a public school employee in excess of the limit provided in the Tort Claims Act.

(b) The Attorney General may settle any claim to which this Article applies which he finds valid. In any case in which the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, any settlement shall be approved by the private counsel and the Attorney General.

(c) The coverage afforded an employee under this Article is excess coverage over any commercial insurance liability that the employee may have. (1979, c. 971, s. 2.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-300.17. Employee's obligation for attorney fees.

If any employee has been defended by the Attorney General, or if the State has provided private counsel for an employee, and judgment rendered on the claim establishes that the act or omission complained of did not meet the requirements of G.S. 115-146.1, the judgment against the employee may pro-

vide for payment to the State of its costs including a reasonable attorney fee. (1979, c. 971, s. 2.)

§ 143-300.18. Protection is additional.

The protection to employees provided in this Article is in addition to any other protection provided in the General Statutes. (1979, c. 971, s. 2.)

Article 33B.

Meetings of Governmental Bodies.

§§ 143-318.1 to 143-318.8: Repealed by Session Laws 1979, c. 655, s. 1.

Article 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s. 1.)

Cross References. — As to meetings of agencies concerned with public education, see § 115C-4.

Editor's Note. — Session Laws 1979, c. 655, s. 3, provides: "All provisions of general laws, city charters, and local acts in effect as of October 1, 1979, and in conflict with the provisions of G.S. Chapter 143, Article 33C, as enacted by Section 1 of this act, are repealed insofar as they conflict with the provisions of G.S. Chapter 143, Article 33C. No general law, city charter, or local act enacted or taking effect after October 1, 1979, may be construed to modify, amend, or repeal any provision of Article 33C unless it expressly so provides by specific reference to the appropriate section number of that Article."

Session Laws 1979, c. 655, s. 4, makes this Article effective October 1, 1979.

Legal Periodicals. — For article, "Interpreting North Carolina's Law," see 54 N.C.L. Rev. 777 (1976).

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For a survey of 1977 law on open meetings, see 56 N.C.L. Rev. 861 (1978).

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the State that is composed of two or more members; and

(1) Exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function; and

(2) Is established by (i) the State Constitution, (ii) an act or resolution of the General Assembly, (iii) a resolution or order of a State agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of one or more counties, cities, school administrative units, or other political subdivisions or public corporations, or (v) an executive order of the Governor or comparable formal action of the head of a principal State office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or of a division thereof.

In addition, "public body" means (1) the governing board of a "public hospital" as defined in G.S. 159-39 and (2) each committee of a public body, except a committee of the governing board of a public hospital if the committee is not a policy-making body.

(c) "Public body" does not include and shall not be construed to include (1) meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b)(2) of this section, or (2) meetings among the medical staff of a public hospital.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article. (1979, c. 655, s. 1.)

§ 143-318.11. Executive sessions.

(a) Permitted purposes. A public body may hold an executive session and exclude the public:

(1) To consider the selection of a site or the acquisition by any means or lease as lessee of interests in real property. At the conclusion of all negotiations with regard to the acquisition or lease of real property, if final authorization to acquire or lease is to be given, it shall be given at an open meeting.

(2) To consider and authorize the acquisition by gift or bequest of personal property offered to the public body or the government of which it is a part.

(3) To consider and authorize the acquisition by any means of paintings, sculptures, objects of virtu, artifacts, manuscripts, books and papers, and similar articles and objects that are or will be part of the collections of a museum, library, or archive.

(4) To consider the validity, settlement, or other disposition of a claim against or on behalf of the public body or an officer or employee of the public body or in which the public body finds that it has a substantial interest; or the commencement, prosecution, defense, settlement, or litigation of a potential or pending judicial action or administrative proceeding in which the public body or an officer or employee of the public body is a party or in which the public body finds that it has a substantial interest. During such an executive session, the public body may give instructions to an attorney or other agent concerning the handling or settlement of a claim, judicial action, or administrative proceeding. If a public body has considered a settlement in exec-

utive session, the terms of that settlement shall be reported to the public body and entered into its minutes within a reasonable time after the settlement is concluded.

(5) To consult with an attorney, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

(6) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

(7) To consider matters dealing with specific patients (including but not limited to all aspects of admission, treatment, and discharge; all medical records, reports, and summaries; and all charges, accounts, and credit information pertaining to such a patient).

(8) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against a public officer or employee. A public body may consider the appointment or removal of a member of another body in executive session but may not consider or fill a vacancy among its own membership except in an open meeting.

Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting. If a public body considers an appointment to another body, except a committee composed of members of the public body, in executive session, it shall, before making that appointment, present at an open meeting a written list of the persons then being considered for the appointment, and that list shall on the same day be made available for public inspection in the office of the clerk or secretary to the public body. The public body may not make the appointment before the seventh day after the day on which the list was presented.

(9) To consider the employment, performance, or discharge of an independent contractor. Any action employing or authorizing the employment or discharging or directing the discharge of an independent contractor shall be taken at an open meeting.

(10) To hear, consider, and decide (i) disciplinary cases involving students or pupils and (ii) questions of reassignment of pupils under G.S. 115-178.

(11) To identify candidates for, assess the candidates' worthiness for, and choose the recipients of honors, awards, honorary degrees, or citations bestowed by the public body.

(12) To consider information, when State or federal law (i) directs that the information be kept confidential or (ii) makes the confidentiality of the information a condition of State or federal aid.

(13) To consider and adopt contingency plans for dealing with, and consider and take action relating to, strikes, slowdowns, and other collective employment interruptions.

(14) To consider and take action necessary to deal with a riot or civil disorder or with conditions that indicate that a riot or civil disorder is imminent.

(15) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(16) To consider and decide matters concerning specific inmates of the correction system or security problems of the correction system.

(17) To hear, consider, and decide matters involving admission, discipline, or termination of members of the medical staff of a public hospital. Final action on an admission or termination shall be reported at an open meeting.

(18) To consider and give instructions relating to the setting or negotiation of airport landing fees or the negotiation of contracts, including leases, concerning the use of airport facilities. Final action approving landing fees or such a contract shall be taken in an open meeting.

(19) To plan investigations and receive investigative reports requested by a board of elections concerning election frauds, irregularities, election contests, or violations of the election laws. Following a public hearing during which it is alleged or apparent that any election official may have committed an act of misconduct, a board of elections may meet in executive session to deliberate, adjudicate, and reach its decision on whether further action shall be ordered or whether no further action shall be ordered against any election official. Each member's vote on the decision shall be a matter of public record.

(b) General Assembly committees and subcommittees. Except as provided in G.S. 143-318.17, a committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State. A committee or subcommittee may take final action only in an open meeting.

(c) Calling an executive session. A public body may hold an executive session only upon a motion made and adopted at an open meeting. The motion shall state the general purpose of the executive session and must be approved by the vote of a majority of those present and voting.

(d) Minutes of executive session. Notwithstanding the provisions of G.S. 132-6, minutes and other records made of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session. (1979, c. 655, s. 1; 1981, c. 831.)

Effect of Amendments. — The 1981 amendment added subdivision (19) to subsection (a).

§ 143-318.12. Public notice of official meetings.

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

(1) For public bodies that are part of State government, with the Secretary of State;

(2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) For the governing board and each other public body that is part of a city government, with the city clerk;

(4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a meeting is an adjourned or recessed session of a regular meeting or of some other meeting, notice of which has been given pursuant to this subsection, and the time and place of the adjourned or recessed session has been set during the regular or other meeting, no further notice is necessary.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed or delivered to each newspaper, wire service, radio station, and television station, which has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed or delivered at least 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars ($10.00) per calendar year, and may require them to renew their requests quarterly.

(3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) This section does not apply to the General Assembly. Each house of the General Assembly shall provide by rule for notice of meetings of legislative committees and subcommittees. (1979, c. 655, s. 1.)

§ 143-318.13. Electronic meetings; written ballots; acting by reference.

(a) Electronic meetings. If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars ($25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

(b) Written ballots. Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body

immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

(c) Acting by reference. The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting. (1979, c. 655, s. 1.)

§ 143-318.14. Broadcasting or recording meetings.

(a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site. (1979, c. 655, s. 1.)

§ 143-318.15. Advisory Budget Commission and appropriation committees of General Assembly; application of Article.

(a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) This Article does not amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees and subcommittees of the General Assembly. (1979, c. 655, s. 1.)

§ 143-318.16. Injunctive relief against violations of Article.

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) If the plaintiff prevails in an action brought pursuant to this section, the court may allow a reasonable attorney's fee to be taxed against the defendant as a part of costs, if the court finds as a fact that the violation was willful. If the defendant prevails and the court finds that the action was frivolous, the court may allow a reasonable attorney's fee to be taxed against the plaintiff as a part of costs. (1979, c. 655, s. 1.)

§ 143-318.17. Disruptions of official meetings.

A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment for not more than six months, by fine of not more than two hundred fifty dollars ($250.00), or both. (1979, c. 655, s. 1.)

§ 143-318.18. Exceptions.

This Article does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission.

(4) The Legislative Services Commission.

(5) Law enforcement agencies.

(6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supercede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(8) The boards of trustees of endowment funds authorized by G.S. 116-36.

(9) The Council of State.

(10) The Board of Awards.

(11) The General Court of Justice. (1979, c. 655, s. 1.)

Legal Periodicals. — For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

ARTICLE 36.

Department of Administration.

§ 143-340. Powers and duties of Secretary.

The Secretary of Administration has the following powers and duties:

(1) To establish a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed twenty-five percent (25%) of the savings resulting during the first year following adoption or a maximum of five thousand dollars ($5,000).

(2) to (9) Repealed by Session Laws 1975, c. 879, s. 46.

(10) To require reports from any State agency at any time upon any matters within the scope of the responsibilities of the Secretary or the Department.

(11) Repealed by Session Laws 1975, c. 879, s. 46.

(12) To enter the premises of any State agency; to inspect its property; and to examine its books, papers, documents, and all other agency records and copy any of them; and any State agency shall permit such entry, examination, and copying, and upon demand shall produce without unnecessary delay all books, papers, documents, and other records in its office and furnish information respecting its records and other matters pertaining to that agency and related to the responsibilities of the Department.

(13) Repealed by Session Laws 1975, c. 879, s. 46.

(14) With respect to the principal State offices and Departments as defined in G.S. 143A-11 and 143B-6, or a division thereof, to exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of State government. In discharging that responsibility the Secretary may in cooperation with affected State Agency Heads, do such of the following things as he deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing of the following systems and services as they affect the internal management and operation of State government:
   1. Central telephone systems and telephone networks;
   2. Teleprocessing systems;
   3. Teletype and facsimile services;
   4. Satellite services;
   5. Closed-circuit TV systems;
   6. Two-way radio systems;
   7. Microwave systems;
   8. Related systems based on telecommunications technologies.

b. Coordinate the development of cost sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item a of this subdivision, in accordance with the rules and regulations adopted by the Governor and approved by the Council of State, pursuant to G.S. 143-341(8)k.

c. Assist in the development of coordinated telecommunications services or systems within and among all agencies and departments, and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item a of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State government.

f. Pursuant to G.S. 143-49 and 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State government.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies and institutions on telecommunications management planning and related matters and provide through the State Personnel Training Center training to users with State government in telecommunications technology and systems.

l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Police Information Network (P.I.N.) of the Department of Justice or to the Judicial Information System in the Judicial Department.

(15), (16) Repealed by Session Laws 1975, c. 879, s. 46.

(17) To supervise the work of janitors appointed by the General Assembly to perform services in connection with the sessions of the General Assembly.

(18) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. Upon the allocation of parking spaces to any agency pursuant to such rules and regulations, the agency shall adopt written guidelines governing the indi-

vidual assignment of such parking spaces by the agency. Such guidelines shall give first priority treatment to the physically handicapped and to car poolers and van poolers, however, first priority shall be given to those on call for duty at a time other than normal working hours. A copy of said guidelines shall be made available for inspection by any person upon request.

(19) Any motor vehicle parked in a state-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in violation of the "Rules and Regulations Governing State-Owned Parking Lots" dated September, 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of such vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such lots pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage. Any motor vehicle parked without authorization on state-owned public grounds within the City of Raleigh under the control of the Department of Administration other than a designated parking area may be removed from that property to a storage area and the registered owner of the vehicle shall be liable for removal and storage fees.

(20) To use at all times such means as, in his opinion, may be effective in protecting all public buildings and grounds from fire.

(21) To serve as a special police officer and in that capacity to have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased or maintained by the State located in the County of Wake.

(22) To appoint as special police officers such reliable persons as he may deem necessary, and such officers shall have the same power of arrest as herein conferred upon the Secretary. Before the Secretary or the special police officers may exercise the power of arrest, they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(23) Repealed by Session Laws 1975, c. 879, s. 46.

(24) To perform such additional duties as the Governor may direct. (1957, c. 215, s. 2; c. 269, s. 1; 1969, c. 627; c. 1267, s. 4; 1971, c. 280; c. 1097, s. 2; 1975, c. 204; c. 879, s. 46; 1977, c. 119; c. 288, s. 2; 1979, c. 901, ss. 1, 2; c. 930; 1981, c. 696.)

Effect of Amendments. — The first 1979 amendment, effective July 1, 1979, substituted the present subdivision (14) for a former subdivision (14) which authorized the Secretary to establish and operate an information transmission system between the various agencies of the State, local, and federal government.

The second 1979 amendment, in subdivision (1), substituted "twenty-five percent (25%)" for "ten percent (10%)" near the end, and "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" at the end, of the subdivision.

The 1981 amendment added the second sentence in subdivision (19).

§ 143-341. Powers and duties of Department.

The Department of Administration has the following powers and duties:

(1) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 38.

(2) Purchase and Contract:

a. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Division of Purchase and Contract.

(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of all State buildings, prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with

the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State. Provided, that the authority granted in this paragraph shall not apply to the State Legislative Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Depart-

ment may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina as grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.

m. To contract for or approve all contracts for all appraisals and surveys of real property for all State agencies; provided, however, this provision shall not apply to appraisals and surveys obtained in connection with the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation.

n. To petition for the annexation of state-owned lands into any municipality.

(5) Administrative Analysis:

a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.

b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.

c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.

(6) State and Regional Planning:

a. To assist the Director of the Budget in reviewing the capital improvements needs and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.

b. In cooperation with State agencies and other public and private agencies, to collect, analyze, and keep up-to-date a comprehensive collection of economic and social data pertinent to State planning, which shall be available to State and local governmental agencies and private agencies.

c. To coordinate and review all planning activity relative to federal government requirements for general statewide or regional comprehensive program planning.

d. To make economic analyses, studies, and projections and to advise the Governor on courses of action desirable for the maintenance of a sound economy.

e. To encourage and assist in the development of the planning process within State and local governmental agencies.

f. To assist State agencies by providing them with basic information and technical assistance needed in preparing their short-range and long-range programs.

g. To develop and maintain liaison and cooperative arrangements with federal, interstate, State, and private agencies and organizations in the interest of obtaining information and assistance with respect to State and regional planning.

h. To develop and maintain a comprehensive plan for the development of the State, representing the coordinated efforts and contributions of all participating planning groups.

i. In cooperation with the counties, the cities and towns, the federal government, multi-state commissions and private agencies and organizations, to develop a system of multi-county, regional planning districts to cover the entire State, and to assist in preparing for those districts comprehensive development plans coordinated with the comprehensive development plan for the State.

(7) Development Programs:

a. To participate in development programs, to enter into contracts, formulate plans and to do all things necessary to implement development programs in any area of the State.

b. To accept, receive and disburse, in furtherance of its functions, any funds, grants and services made available by the federal government and its agencies, any county, municipality, private or civic sources.

(8) General Services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Secretary, to make application for and procure a post-office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Secretary may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.

h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by the any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
3. To require on a schedule determined by the Department and the Advisory Budget Commission all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department.
5. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.
7. To adopt, with the approval of the Governor and Advisory Budget Commission, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all state-owned motor vehicles under the control of the Department, and to enforce those rules and regulations; and to adopt, with the approval of the Governor and Advisory Budget Commission, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Department, with the approval of the Governor and Advisory Budget Commission, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules and regulations adopted by the Department pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Department and approved by the Governor and Advisory Budget Commission is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.

7a. To adopt, with the approval of the Governor and the Advisory Budget Commission, rules and regulations to assure that by January 1, 1982, no State-owned passenger motor vehicle, whether or not owned by the Department, shall be permanently assigned to an individual unless the vehicle is likely to be driven by him at a rate of more than 12,600 miles per year on official business, and to enforce these rules and regu-

lations; and to adopt, with the approval of the Governor and the Advisory Budget Commission, rules and regulations regulating the use of and reimbursement for permanently assigned State-owned passenger motor vehicles to commute. Exceptions to the rules regarding the permanent assignment of State-owned passenger motor vehicles may be made for individuals whose duties are routinely related to public safety or whose duties are likely to expose them routinely to life threatening situations. An individual who drives a permanently assigned State-owned passenger motor vehicle between his official work station and his home shall reimburse the State for the trips at the current motor pool mileage rate established by the Department. If the round trip is 13 miles or less, reimbursement shall be for 13 miles times 20 work days per month; if the round trip is more than 13 miles, reimbursement shall be for the actual round trip mileage times 20 work days per month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursements on vehicles owned by the Central Motor Pool shall be deposited to the credit of the Central Motor Pool; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Central Motor Pool shall be deposited to a Special Depository Account in the Department of Transportation which shall revert to the Highway Fund; funds derived from reimbursements on all other vehicles shall be deposited to a Special Depositor Account in the Department of Administration which shall revert to the General Fund. No reimbursement shall be required for the use of vehicles by law-enforcement officers whose primary duties are not administrative.

The Department, with the approval of the Governor and the Advisory Budget Commission, may delegate to the respective heads of agencies which own passenger motor vehicles or to which motor vehicles are permanently assigned by the Department, the duty of enforcing the rules and regulations adopted by the Department pursuant to the paragraph above.

8. To adopt and administer rules and regulations for the control of all State-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
9. To acquire motor vehicle liability insurance on all state-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.

j. To establish and operate a central telephone system, central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of mainte-

nance and operation of the central services which are established, in accordance with the rules and regulations adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules, regulations, and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(9) Systems Management: To establish and operate automated data processing centers to serve two or more State agencies on a cost-sharing basis, if the Council of State after appropriate investigation deems it advisable from the standpoint of efficiency and economy to establish such centers, and:

a. To allocate and charge against each State agency for which services are performed, on a time basis, its proportionate part of the cost of maintenance and operation of said center.

b. With approval of the Council of State, to require any State agency to be served to transfer to the automated data processing center ownership, custody, and/or control of automated data processing equipment, supplies, and positions no longer required by the served agency as a result of the use of said centers.

c. To adopt, with approval of the Council of State, reasonable rules and regulations for the efficient and economical operation of said automated data processing centers.

d. To adopt, with approval of the Council of State, policies, procedures, criteria, standards, plans, and rules and regulations for cooperative use of existing automated data processing equipment and personnel on a cost-reimbursable basis to facilitate more efficient and economic use of automated data processing resources whether located in the Department of Administration, in other State agencies, or in state-supported institutions.

Nothing in this section shall be construed to prescribe what agency programs to satisfy agency objectives, either existing or in the future, are to be undertaken; nor to remove from the control and administration of the agencies the responsibility for such program efforts whether such efforts are required specifically by statute or administered under the general program authority and responsibilities of the agencies.

e. To develop and promote training programs to upgrade the capability of technical and managerial personnel in automated data processing functions.

f. No data of a confidential nature, as defined in the General Statutes, shall be entered into or processed through any cost sharing data processing center, which may be established under this subdivision, until safeguards for their security satisfactory to the agency head and the Council of State have been designed and

installed and are fully operational. No part of G.S. 143-341(9) in any way alters or affects the provisions of G.S. 147-58. (1957, c. 215, s. 2; c. 269, s. 1; 1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3; 1975, c. 399, ss. 1, 2; c. 879, s. 46; 1979, c. 136, s. 1; c. 544; 1979, 2nd Sess., c. 1137, s. 38; 1981, c. 300; c. 859, ss. 48-51.)

Effect of Amendments. — The first 1979 amendment inserted "design" in subdivision (3)c.

The second 1979 amendment added paragraph m of subdivision (4).

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, repealed subdivision (1), providing for powers and duties of the Department relating to the budget.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The first 1981 amendment added paragraph n of subdivision (4).

The second 1981 amendment, effective July 1, 1981, rewrote subparagraph 3 of paragraph i of subdivision (8), substituted "Advisory Budget Commission" for "Council of State" throughout subparagraph 7 of paragraph i of subdivision (8), rewrote subparagraph 8 of paragraph i of subdivision (8), and added subparagraph 7a of paragraph i of subdivision (8).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 143-342.1. State-owned office space; fees for use by self-supporting agencies.

The Department shall determine equitable fees for the use of State owned and operated office space, and it shall assess all self-supporting agencies using any of this office space for payment of these fees. For the purposes of this section, self-supporting agencies are those agencies designated by the Advisory Budget Commission as being primarily funded from sources other than State appropriations. Fees assessed under this section shall be paid to the Department. (1977, 2nd Sess., c. 1219, s. 48.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1219, s. 59, makes the act effective July 1, 1978.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

§ 143-344. Transfer of functions, property, records, etc.

(a) Repealed by Session Laws 1979, 2nd Session, c. 1137, s. 39. (1979, 2nd Sess., c. 1137, s. 39.)

Effect of Amendments. — The 1979, 2nd Sess., amendment repealed subsection (a), which transferred to the Department of Administration the powers, duties, functions, etc., of the Budget Bureau.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

Only Part of Section Set Out. — As the other subsections were not changed by the amendment, they are not set out.

§ 143-345.6: Expires.

Editor's Note. — This section was added by 1977, c. 932, s. 1, and expired by the terms of 1977, c. 932, s. 3, on July 1, 1981.

ARTICLE 38.

Water Resources.

Repeal of Article. —
The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

§ 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Conservation and Development and of the Director of said Department.

(a) Transfer Generally. — There are hereby transferred to the Department of Water Resources those powers, duties, functions and responsibilities relating to water resources now vested in the Department of Conservation and Development of the State of North Carolina, and the Director thereof.

(b) Functions to Be Performed. — It shall be the duty of the Department of Natural Resources and Community Development 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.

(c) Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State. — The Department of Natural Resources and Community Development 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 Resources and Community Development to represent the State in connection with such duties.

(e) Registration with Department of Natural Resources and Community Development 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 Resources and Community Development 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 Resources and Community Development When Requested. — Every person, firm or corporation engaged in the business of drilling, boring, coring or con-

structing wells in any manner by the use of power machinery shall furnish the Department of Natural Resources and Community Development 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 Resources and Community Development 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 Resources and Community Development 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.

(h) Drilling for Petroleum and Minerals Excepted. — The provisions of this Article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation. — Any person violating the provisions of subsections (e), (f) and (g) of G.S. 143-355 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of fifty dollars ($50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties. — There are also transferred to the Department of Water Resources the duties of the Board of Conservation and Development, as set forth in G.S. 113-8, to make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well-drilling law the Department of Conservation and Development shall, if requested by the Department of Water Resources, prepare analyses of well cuttings for mineral and petroleum content.

(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 Resources and Community Development 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 subsection does not apply to withdrawals or uses by individuals or families for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department of Natural Resources and Community Development. Within the meaning of this subsection the term "person" means any and all persons, including individuals, firms, partnerships, associations, public or private insti-

tutions, municipalities or political subdivisions, governmental agencies, and private or public corporations organized or existing under the laws of this State or any other state or country. (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; 1977, c. 771, s. 4; 1981, c. 514, ss. 2, 3.)

Effect of Amendments. — The 1981 amendment substituted "subsection" for "provision" and "apply to withdrawals or uses by individuals or families" for "include use" in the fourth sentence of subsection (k), and added the last sentence in subsection (k).

ARTICLE 44.

North Carolina Traffic Safety Authority.

§§ 143-392 to 143-395: Repealed by Session Laws 1981, c. 90, s. 1.

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

Legal Periodicals. — For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

CASE NOTES

This Article does not prohibit discrimination within the meaning of 29 U.S.C. § 633(b). It merely declares that such discrimination is against the "public policy" of North Carolina. Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

Plaintiff in Federal Age Discrimination Suit Need Not Seek Relief from Human Relations Council as Jurisdictional Prerequisite. — Recourse by a plaintiff to the North Carolina Human Relations Council is not a jurisdictional prerequisite to filing a suit in a federal court under the Age Discrimination in Employment Act, 29 U.S.C. §§ 201-219, since § 143-422.1 et seq. is not "a law prohibiting discrimination in employment because of age," and the North Carolina Human Relations Council is not a "state authority established or authorized to grant or seek relief from such discriminatory practice," within the meaning of 29 U.S.C. § 633 (b). Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

§ 143-422.2. Legislative declaration.

Legal Periodicals. — For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

CASE NOTES

Quoted in Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

§ 143-422.3. Investigations; conciliations.

CASE NOTES

Plaintiff in Federal Age Discrimination Suit Need Not Seek Relief from Human Relations Council as Jurisdictional Prerequisite. — Recourse by a plaintiff to the North Carolina Human Relations Council is not a jurisdictional prerequisite to filing a suit in a federal court under the Age Discrimination in Employment Act, 29 U.S.C. §§ 201-219, since § 143-422.1 et seq. is not "a law prohibiting discrimination in employment because of age," and the North Carolina Human Relations Council is not a "state authority established or authorized to grant or seek relief from such discriminatory practice," within the meaning of 29 U.S.C. § 633(b). Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

Article 51A.

Tax Study Commission.

§§ 143-433 to 143-433.5: Repealed by Session Laws 1979, c. 14, s. 1.

Article 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-437. Pesticide Board; functions.

The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

(2) To carry out a program of planning, environmental and biological monitoring, and of investigation into long-range needs and problems concerning pesticides.

(1979, c. 448, s. 14.)

Effect of Amendments. — The 1979 amendment inserted "environmental and biological monitoring" in subdivision (2).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

Part 2. Regulation of the Use of Pesticides.

§ 143-440. Restricted-use pesticides regulated.

(a) The Board may, by regulation after a public hearing, adopt and from time to time revise a list of restricted-use pesticides for the State or for designated areas within the State. The Board may designate any pesticide or device as a "restricted-use pesticide" upon the grounds that, in the judgment of the Board (either because of its persistence, its toxicity, or otherwise) it is so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, other than the pests it is intended to prevent, destroy, control, or mitigate that additional restriction on its sale, purpose, use or possession are required.

(b) The Board may include in any such restricted-use regulation the time and conditions of sale, distribution, or use of such restricted-use pesticides, may prohibit the use of any restricted-use pesticide for designated purposes or at designated times; may require the purchaser or user to certify that restricted-use pesticides will be used only as labeled or as further restricted by regulation, may require the certification of private applicators and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted-use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The Board may require all persons issued such permits to maintain records as to the use of the restricted-use pesticides. The Board may authorize the use of restricted-use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. (1971, c. 832, s. 1; 1979, c. 448, s. 1; 1981, c. 592, s. 1.)

Effect of Amendments. — The 1979 amendment inserted "may require the certification of private applicators" in the first sentence of subsection (b).

The 1981 amendment, effective July 1, 1981, deleted "places or" preceding "times" near the middle of the first sentence of subsection (b), substituted "regulation" for "regulations" following "restricted by" near the middle of the first sentence of subsection (b), and inserted "and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder" near the middle of that sentence.

§ 143-442. Registration.

(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. The applicant for registration shall file with the Board a statement including:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use; and

(4) If requested by the Board a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(b) The applicant shall pay an annual registration fee of twenty-five dollars ($25.00) for each brand or grade of pesticide registered. An additional twenty-five dollars ($25.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article.

(c) The Board, when it deems necessary in the administration of this Article, may require the submission of the complete formula of any pesticide.

(d) If it appears to the Board that the composition of an article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of G.S. 143-443 the Board shall register the article. If it does not appear to the Board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Part, it shall not register the article and in turn shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fail to comply. The Board, in accordance with the procedures specified herein, may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling complies with the provisions of this Part. Whenever an application for registration is refused or the Board proposes to suspend or cancel a registration, notice of such action shall be given to the applicant or registrant who shall have the right within 10 days of receipt of such notice to request a hearing on the action or proposed action of the Board, as provided in G.S. 143-464.

(e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any of all brands and grades of pesticides as herein provided, if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant or applicant shall have been given the opportunity for a hearing by the Board, as provided in G.S. 143-464. The Board may require the manufacturer or distributor of any pesticide, for which registration has been refused, cancelled, suspended or voluntarily discontinued or which has been found adulterated or deficient in its active ingredient, to remove such pesticide from the marketplace.

(f) Notwithstanding any other provisions of this Part, registration is not required in the case of a pesticide shipped from one plant within this State to another plant within this State operated by the same person.

(g) Any pesticide declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued. Any pesticide in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Board, unless the pesticide is acceptable for registration and is continued to be registered by the manufacturer or the person offering the pesticide for wholesale or retail sale. Provided, however, this subsection shall not apply to any brand or grade of pesticide which the Board determines does not remain in channels of distribution due to method of sale by registrant directly to users thereof.

(h) A pesticide may be registered by the Board for experimental use, including use to control wild animal or bird populations, even though the Wildlife Resources Commission may not have concurred in the declaration of the animal or bird populations as pets under the terms of Article 22A of Chapter 113 of the General Statutes.

(i) The Board shall be empowered to set forth criteria for determining when a given product constitutes a different or separate brand or grade of pesticide. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7; 1975, c. 425, ss. 1, 2; 1979, c. 448, ss. 2, 3; 1979, c. 830, s. 10; 1981, c. 592, s. 2.)

Effect of Amendments. — The 1979 amendment added the last sentence of subsection (g), and added subsection (i).

The second 1979 amendment, effective July 1, 1980, substituted the language beginning "animal or bird populations" at the end of subsection (h) for "bird or animal populations where the birds or animals in question have not yet been declared unprotected by the Wildlife Resources Commission, notwithstanding the provisions of Chapter 113, Article 7."

The 1981 amendment, effective July 1, 1981, added the second sentence in subsection (e).

§ 143-443. Miscellaneous prohibited acts.

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any pesticide which has not been registered pursuant to the provisions of G.S. 143-442, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with the registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: Except that, in the discretion of the Board, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

a. The name and address of the manufacturer, registrant, or person for whom manufactured;

b. The name, brand, or trademark under which said article is sold; and

c. The net weight or measure of the content subject, however, to such reasonable variations as the Board may permit.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in G.S. 143-444, unless the label shall bear, in addition to any other matter required by this Part:

a. The skull and crossbones;

b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. A statement of an antidote for the pesticide.

(4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Part, or any other white or lightly colored pesticide which the Board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored, provided, that the Board may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the Board determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

(6) Any pesticide in containers violating regulations adopted pursuant to G.S. 143-441. Pesticides found in containers which are unsafe due to damage or defective construction may be seized and impounded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

(2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442.

(2a) Repealed by Session Laws 1981, c. 592, s. 3.

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

(4) For any person who contracts for the aerial application of a pesticide to permit the application of any pesticide that is designated on its labeling as toxic to bees without first notifying, based on available listings, the owner or operator of any apiary registered under the North Carolina Bee and Honey Act of 1977 that is within a distance designated by the Pesticide Board as necessary and appropriate to prevent damage or injury. (1971, c. 832, s. 1; 1975, c. 425, s. 3; 1979, c. 448, ss. 4, 5; 1981, c. 547; c. 592, ss. 3, 4.)

Editor's Note. — The North Carolina Bee and Honey Act of 1977, refered to in subdivision (b)(4), is codified as §§ 106-634 through 106-644.

Effect of Amendments. — The 1979 amendment rewrote subdivision (b)(2a), which formerly read: "For any person to use any registered pesticide in a manner inconsistent with its labeling."

The first 1981 amendment, effective Oct. 1, 1981, added subdivision (b)(4).

The second 1981 amendment, effective July 1, 1981, deleted former subdivision (b)(2a) which read: "For any person to use any pesticide in a manner inconsistent with its labeling, including, by way of illustration but not limitation, the use of a pesticide on a crop, animal, or site not permitted by the labeling," and added subdivision (b)(3).

§ 143-447. Emergency suspensions; seizures.

(a) Notwithstanding any other provision of this Article, the Board may, when it finds that such action is necessary to prevent an imminent hazard to the public, or any other nontarget organism or segment of the environment, by order, suspend the registration of a pesticide immediately. In such case, it shall give the registrant prompt notice of such action and afford the registrant the opportunity for an expedited hearing. Final orders of the Board under this Part shall be subject to review as provided for in G.S. 143-464. Such review shall be instituted within 30 days after receipt by the applicant for registration or registrant on the Board's order. In no event shall registration of a pesticide be construed as a defense to any charge of an offense prohibited under this Article.

(b) It shall be the duty of the Board to issue and enforce a written or printed "stop sale, stop use, or removal" order to the owner or custodian of any lot of pesticide and for the owner or custodian to hold said lot at a designated place when the Board finds said pesticide is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said pesticide is released in writing by the Board or said violation has been otherwise legally disposed of by written authority. The Board shall release the pesticide so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. The registrant of a

pesticide found deficient in active ingredients shall be subject to a penalty for the deficiency. The deficiency penalty shall be three times the percentage deficiency times the retail value of any product sold subsequent to sampling and prior to repossession, but not less than twenty-five dollars ($25.00).

(c) Any pesticide (or device) that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce between points within this State through any point outside this State shall be liable to be proceeded against in superior court in any county of the State where it may be found and seized for confiscation by process or libel for condemnation:

(1) In the case of a pesticide,
   a. If it is adulterated or misbranded,
   b. If it has not been registered under the provisions of G.S. 143-442, or has had its registration suspended or revoked or is the subject of a stop sale, stop use, or removal order,
   c. If it fails to bear on its label the information required by this Part,
   d. If it is a white or lightly colored pesticide and is not colored as required under this Part.

(2) In the case of a device, if it is misbranded.

(d) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasurer; provided that the article shall not be sold contrary to the provisions of this Part; and provided further that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing or disposal, as the case may be.

(e) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article. (1971, c. 832, s. 1; 1979, c. 448, s. 6; 1981, c. 592, s. 5.)

Effect of Amendments. — The 1979 amendment substituted "of any product sold subsequent to sampling and prior to repossession" for "as established by the consignee at the time of sampling" in the last sentence of subsection (b).

The 1981 amendment, effective July 1, 1981, added the language beginning "or has had its" at the end of subdivision (c)(1)b.

Part 3. Pesticide Dealers and Manufacturers.

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 143-448. Licensing of pesticide dealers; fees.

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted-use pesticides are distributed, sold, held for sale, or offered for sale.

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee of twenty-five dollars ($25.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of twenty-five dollars ($25.00) for each license, on or before the first day of January of the calendar year for which the license is issued.

(d) Repealed by Session Laws 1981, c. 592, s. 6.

(e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended. (1971, c. 832, s. 1; 1981, c. 592, s. 6.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted former subsection (d) which assessed a penalty against pesticide dealers who failed to renew their licenses on time.

§ 143-450. Employees of pesticide dealers; dealer's responsibility.

(a) Every licensed pesticide dealer shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all persons employed by him who sell or recommend "restricted-use pesticides."

(1979, c. 448, s. 7.)

Effect of Amendments. — The 1979 amendment deleted "with each application for an original or renewal license, and" preceding "at such," deleted "other" preceding "times as," and inserted "or the Commissioner" in subsection (a).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Part 4. Pesticide Applicators and Consultants.

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 143-452. Licensing of pesticide applicators; fees.

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee of twenty-five dollars ($25.00) for each pesticide applicator's license. In addition, an annual inspection fee of ten dollars ($10.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional ten dollar ($10.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft

in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made.

(c) Repealed by Session Laws 1981, c. 592, s. 6.

(d) The Board shall classify licenses to be issued under this Part. Separate classifications or subclassifications shall be specified for (i) ground and aerial methods of application, and (ii) State and local government units engaged in the control of rodents and insects of public health significance. The Board may include such further classifications and subclassifications as the Board considers appropriate, including provisions for licensing of apprentice pesticide applicators. For aerial applicators, a license shall be required for both the contractor and the pilot. Each classification and subclassification may be subject to separate testing procedures and requirements.

(e) Every licensed pesticide applicator who changes his address shall immediately notify the Board.

(f) If the Board finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under G.S. 143-467, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency to operate the equipment described in the application, the Board shall issue a pesticide applicator's license limited to the classifications for which he is qualified. Every such license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the Board for cause, or unless such financial security required under G.S. 143-467 is dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security. The license may restrict the applicant to the use of a certain type or types of equipment or pesticides or to certain areas if the Board finds that the applicant is qualified to use only such type or types. If a license is not issued as applied for, the Board shall inform the applicant in writing of the reasons therefor.

(g) A pesticide applicator's license shall not be transferable. When there is a transfer of ownership, management, or operation of a business of a licensee hereunder, the new owner, manager, or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, must have available a licensed pesticide applicator to supervise the pesticide application business prior to continuance of such business.

(h) Any licensee whose license is lost or destroyed may secure a duplicate license for a reasonable fee to be established by the Board. (1971, c. 832, s. 1; 1973, c. 389, ss. 2, 5; 1977, c. 100; 1981, c. 592, ss. 6, 7.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted former subsection (c) which assessed a penalty on pesticide applicators who failed to renew their licenses on time, and substituted "reasonable fee to be established by the Board" for "fee of two dollars ($2.00)" at the end of subsection (h).

§ 143-454. Solicitors, salesmen and operators; applicator's responsibility.

(a) Every licensed pesticide applicator shall submit to the Board, at such times as the Board or the Commissioner may prescribe, the names of all solicitors, salesmen, and operators employed by him.

(1979, c. 448, s. 8.)

Effect of Amendments. — The 1979 amendment deleted "with each application for an original or renewal license, and" preceding "at such," deleted "other" preceding "times as," and inserted "or the Commissioner" in subsection (a).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143-457: Repealed by Session Laws 1981, c. 592, s. 8, effective July 1, 1981.

Part 5. General Provisions.

§ 143-460. Definitions.

As used in this Article, unless the context otherwise requires:

(1) The term "active ingredient" means
   a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;
   b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
   c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;
   d. In the case of a desiccant, an ingredient which will artifically accelerate the drying of a plant tissue.

(2) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) Reserved.

(4) "Board" means the North Carolina Pesticide Board.

(5) "Commissioner" means the North Carolina Commissioner of Agriculture.

(6) "Committee" means the Pesticide Advisory Committee.

(7) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) The term "desiccant" means any substance or mixture of substances intended for artifically accelerating the drying of plant tissues.

(9) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or such other pests as may be designated by the Board, but not including equipment used for the application of pesticides when sold separately therefrom.

(10) "Engage in business" means any application of pesticide by any person for use upon lands of another, or any sale of pesticide by any person.

(11) "Equipment" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household device used to apply any

pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(12) The term "fungus" means any non-chlorophyll-bearing thallophyte (that is any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(13) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(14) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(15) The term "inert ingredient" means an ingredient which is not an active ingredient.

(16) The term "ingredient statement" means

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

b. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

(17) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, wasps, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(18) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(19) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide (or device) or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide (or device).

(20) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate, nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by law to conduct research in the field of pesticides.

(21) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(22) "Manufacturer" includes any person engaged in the business of importing, producing, preparing, formulating, mixing, or processing pesticides.

(23) The term "misbranded" shall apply:

a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. To any pesticide:

1. If it is an imitation of or is offered for sale under the name of another pesticide;
2. If its labeling bears any reference to registration under this Article;
3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase except that the Board may permit the statement to appear prominently on some other part of the container, if the size or form of the container make it impractical to comply with the requirements of this subparagraph;
6. If any word, statement, or other information required by or under the authority of this Article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
7. If in the case of an insecticide, nematicide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticides or
8. In the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides, except that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(24) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(25) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(26) A "person" is any person, including (but not limited to) an individual, firm, partnership, association, company, joint-stock association, public or private institution, municipality or county or local government unit (as defined in G.S. 143-215.40(b)), state or federal governmental agency, or private or public corporation organized under the laws of this State or the United States or any other state or country.

(26a) The term "pest" means any insect, rodent, nematode, fungus, weed or any other noxious or undesirable microorganism or macroorganism, except viruses, bacteria, or other microorganisms on or in living persons or other living animals.

(27) "Pest control consultant" means any person, who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insects, plant diseases, weeds, and other pests, but does not include any person regulated by the North Carolina Structural Pest Control Act (G.S. Chapter 106, Article 4C).

(28) The term "pesticide" means:

a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(29) "Pesticide applicator" includes any person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands or properties of another; any public operator; any private golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who acts as a pesticide applicator and is not exempt from this definition. It does not include:

a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.

b. Any person regulated by the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).

(30) The term "pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted-use pesticides for distribution directly to users. The term pesticide dealer does not include:

a. Persons whose sales of pesticides are limited to pesticides in consumer-sized packages (as defined by the Board) which are labeled and intended for home and garden use only and are not restricted-use pesticides, or

b. Practicing veterinarians and physicians who prescribe, dispense, or use pesticides in the performance of their professional services.

(31) Repealed by Session Laws 1973, c. 389, s. 3.

(32) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Public operator" means any person in charge of any equipment used by public utilities (as defined by General Statutes Chapter 62), State agencies, municipal corporations, or other governmental agencies applying pesticides.

(34) The term "registrant" means the person registering any pesticide pursuant to the provisions of this Article.

(35) The term "restricted-use pesticide" means a pesticide which the Board has designated as such pursuant to G.S. 143-440.

(36) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, attracting, or mitigating rodents or any other vertebrate animal which the Board shall declare to be a pest.

(36a) The phrase "to use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling; provided that the phrase shall not include:

a. Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling,

b. Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling,

c. Employing any method of application not prohibited by the labeling, or

d. Mixing pesticides or mixing a pesticide with a fertilizer when such mixture is not prohibited by the labeling.

(37) The term "weed" means any plant or part thereof which grows where not wanted.

(38) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this Article, pests; including but not limited to mammals, birds, and aquatic life. (1971, c. 832, s. 1; 1973, c. 389, s. 3; 1975, c. 425, s. 11; 1979, c. 448, ss. 9, 10; 1981, c. 592, ss. 9-11.)

Effect of Amendments. — The 1979 amendment substituted "Pesticide Advisory Committee" for "Advisory Committee on Pesticides" in subdivision (6), and rewrote subdivision (12), which formerly read: "The term 'fungi' means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals."

The 1981 amendment, effective July 1, 1981, added subdivision (26a), deleted "insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Board shall declare to be a" preceding "pest" in paragraph a of subdivision (28), and added subdivision (36a).

§ 143-463. Procedures for adoption of certain rules and regulations; publication of rules and regulations.

(b) The following provisions shall apply to the public hearings required by subsection (a) of this section:

(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 Board proposes to take. The notice shall either include details of such proposed action, or where such proposed action 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 office of the Board 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 in the State, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Board pursuant to the provisions of G.S. 143-464.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Board on or before the first date set for the hearing. The Board is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Board shall permit anyone who so desires to file a written argument or other statement with the Board in relation to any proposed action of the Board any time within 10 days following the conclusion of any public hearing or within any such additional time as the Board may allow by notice given as prescribed in this section.

(1979, c. 448, s. 11.)

Effect of Amendments. — The 1979 amendment substituted "10" for "30" in the last sentence of subdivision (b)(3).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 143-464. Procedures with respect to registration of pesticides and certain other matters; mailing list; seal; judicial review.

(c) The following provisions, together with any additional provisions not inconsistent herewith which the Board 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. 143-442 whether called at the instance of the Board or of any person, shall be held upon not less than 20 days' written notice given by the Board 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 Board or its authorized agent or agents, and the hearing shall be open to the public. The Board, 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 appointed by the Board or by some 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 Board.

(4) The Board 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 Board on its own behalf or on behalf of a party to the proceeding 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 Board, 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 Board, as the case may be, at whose instance the hearing is being held.

(7) Without regard to subdivision (6) of this subsection, the burden of proof to justify the safety of any pesticide shall be upon the applicant for registration or for licenses or permits to use, apply or sell pesticides.

(8) No decision or order of the Board 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 Board shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Board proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Board's ruling with respect to each such requested finding of fact and conclusion of law.

(10) All orders and decisions of the Board shall set forth separately the Board'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 Board is based.

(11) The Board shall have the authority to adopt a seal which shall be the seal of said Board 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 Board or its minutes may be certified by the chairman or secretary of the Board under his hand and the seal of the Board 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 Board 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 Board or by any other person or interested party where material, relevant and competent.

(1979, c. 448, s. 12.)

Effect of Amendments. — The 1979 amendment substituted "20" for "30" in subdivision (c)(1).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 143-469. Penalties.

(a) Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person who:

(1) Sells or offers for sale any unregistered pesticide in violation of G.S. 143-442;

(2) Uses a pesticide in a manner inconsistent with its labeling;

(3) Stores or disposes of a pesticide or pesticide container by means other than means prescribed on the labeling or regulations adopted pursuant to this Article;

(4) Makes false or fraudulent claims about the effect of any pesticide or method of application of a pesticide;
(5) Violates any stop sale, stop use, or removal order adopted under G.S. 143-447;
(6) Fails to provide names and addresses of recipients of pesticides which are the subject of stop sale, stop use, or removal orders when the person is the registrant of the pesticide or has sold or distributed the pesticide;
(7) Fails to make and keep records required by this Article, fails to make reports when required by this Article or refuses to make such records and reports available for audit or inspection by the Board or its agents;
(8) Falsifies all or part of any application for the registration of a pesticide or the issuance or renewal of any license under this Article;
(9) Makes false statements or provides false information in connection with any investigation conducted under this Article; or
(10) Operates as a pesticide applicator, consulant or dealer without a license.

In determining the amount of any penalty, the Board may consider the degree and extent of harm caused by the violation and the cost of rectifying the damage caused by the violation.

(c) Proceedings for the assessment of civil penalties under this section shall be governed by Chapter 150A of the North Carolina General Statutes. If the person assessed a civil penalty fails to pay the penalty to the North Carolina Department of Agriculture, the Board may institute an action in the superior court of the county in which the person resides or has his principal place of business to recover the unpaid amount of said penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law.

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars ($500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations. (1971, c. 832, s. 1; 1981, c. 592, s. 12.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, designated the existing section as subsection (a) and added subsections (b), (c) and (d).

§ 143-470: Repealed by Session Laws 1981, c. 592, s. 13, effective July 1, 1981.

§ 143-470.1. Report of minor violations in discretion of Board or Commissioner.

Nothing in this Article shall be construed to require the Board or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for minor violations of this Article whenever the Board or Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1979, c. 448, s. 13.)

ARTICLE 53.

Commission for Mental Health, Mental Retardation and Substance Abuse Services.

§ 143-475.1. State Drug Education Program.

(a) Pursuant to G.S. 90-113.4, 143-473 and this section, the Commission for Mental Health, Mental Retardation and Substance Abuse Services shall establish a State Drug Education Program. This program shall consist of the following:

(1) Drug prevention education and training for public school teachers, counselors and administrators;

(2) Drug prevention education and training for community organizations and county/community resource personnel;

(3) Development of a drug education curriculum for use by teachers in the public schools of the State.

(b) All funds appropriated to the Commission for Mental Health, Mental Retardation and Substance Abuse Services for the above-stated purposes shall be used to contract with existing public agencies and/or private nonprofit corporations for implementation of the program. In no case shall the Commission for Mental Health, Mental Retardation and Substance Abuse Services undertake to implement the program.

(c) Contracts with existing public agencies and/or private nonprofit corporations shall be instituted to achieve the following goals of a State Drug Education Program:

(1) To provide drug prevention education training for public school teachers, counselors and administrators. This program shall familiarize teachers, counselors and administrators with the youth drug culture by instruction in basic drug information, the legal aspects of drug abuse, alternatives to drug usage and methods of correlating health information, value development, coping skills and decision-making skills into the general curriculum. Said program shall be consonant with the North Carolina State Plan for Drug Abuse Prevention and approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services.

(2) Implementation of a community resource development program. This program shall develop systems on a county level for drug abuse prevention/education/treatment programs through training of county agency and organization personnel at the local level. This program shall also offer drug prevention education to private citizens and local community groups.

(3) To develop a curriculum for all grades which will integrate education in health, value development, coping skills and decision-making skills throughout the general school curriculum.

(d) In implementing the State Drug Education Program, the object shall be for all facets of the program to have a statewide effect, with emphasis on those geographic areas and localities where in the opinion of the Commission for Mental Health, Mental Retardation and Substance Abuse Services, the need for such programs is greatest.

(e) Prior to the expenditure of the funds for any program authorized by this section, the Commission for Mental Health, Mental Retardation and Substance Abuse Services shall approve said program and insure that said program and services funded are consonant with the North Carolina State Plan for Drug Abuse Prevention. Any deviation by a contractee of the Drug Authority [Commission for Mental Health, Mental Retardation and Substance Abuse Commis-

sion] from the program approved by the Authority, [Commission for Mental Health, Mental Retardation and Substances Abuse Services] shall be grounds for termination of the contract and renovation of funding. (1973, c. 587, ss. 1-5; 1981, c. 51, s. 12.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission for Mental Health, Mental Retardation and Substance Abuse Services" for "North Carolina Drug Authority" throughout this section.

ARTICLE 55.

The Southern Growth Policies Agreement.

§ 143-496. Article VI. Internal Management of the Board.

(b) To assist in the expeditious conduct of its business when the full Board is not meeting, the Board shall elect an Executive Committee of not to exceed 23 members, including at least one member from each party state. The Executive Committee, subject to the provisions of this Agreement and consistent with the policies of the Board, shall be constituted and function as provided in the bylaws of the Board. One half of the membership of the Executive Committee shall consist of governors, and the remainder shall consist of other members of the Board, except that at any time when there is an odd number of members on the Executive Committee, the number of governors shall be one less than half of the total membership. The members of the Executive Committee shall serve for terms of two years, except that members elected to the first Executive Committee shall be elected as follows: One less than half of the membership for two years and the remainder for one year. The Chairman, Chairman-Elect, Vice-Chairman and Treasurer of the Board shall be members of the Executive Committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the Executive Committee shall not affect its authority to act, but the Board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

(1979, c. 35, s. 1.)

Effect of Amendments. — The 1979 amendment substituted "23" for "17" in the first sentence of subsection (b).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 143-502. Article XII. Eligible Parties; Entry into and Withdrawal.

(a) This Agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the Territory of the Virgin Islands, hereinafter referred to as party states.

(1979, c. 35, s. 2.)

Effect of Amendments. — The 1979 amendment deleted "and" preceding "West Virginia" in subsection (a), and added "the Commonwealth of Puerto Rico, and the Territory of the Virgin Islands, hereinafter referred to as party states" at the end of subsection (a).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§§ 143-506.1 to 143-506.5: Reserved for future codification purposes.

ARTICLE 55A.

Balanced Growth Policy Act.

§ 143-506.6. Title.

This Article shall be known as the North Carolina Balanced Growth Policy Act. (1979, c. 412, s. 1.)

Editor's Note. — Session Laws 1979, c. 412, s. 11, contains a severability clause.

§ 143-506.7. Purposes.

The purposes of this act are to declare as a policy that the State of North Carolina shall encourage economic progress and job opportunities throughout the State; support growth trends which are favorable to maintain a dispersed population, to maintain a healthy and pleasant environment and to preserve the natural resources of the State. (1979, c. 412, s. 2.)

§ 143.506.8. Declaration of State Balanced Growth Policy.

The General Assembly of North Carolina recognizes the importance of reaching a higher standard of living throughout North Carolina by maintaining a balance of people, jobs, public services and the environment, supported by the growing network of small and large cities in the State. The General Assembly of North Carolina, in order to assure that opportunities for a higher standard of living are available all across the State, declares that it shall be the policy of the State to bring more and better jobs to where people live; to encourage the development of adequate public services on an equitable basis for all of the State's people at an efficient cost; and to maintain the State's natural environmental heritage while accommodating urban and agricultural growth. (1979, c. 412, s. 3.)

§ 143-506.9. Cooperation of agencies.

The General Assembly encourages, to the fullest extent possible, all State agencies to review their existing policies, procedures and regulations to bring them into conformity with the provisions of this Balanced Growth Policy. (1979, c. 412, s. 4.)

§ 143-506.10. Designation of growth centers; achieving Balanced Growth.

It shall be the policy of the State of North Carolina to support the expansion of the State and to designate growth areas or centers with the potential, capacity and desire for growth. The Governor, with the advice of county and municipal government officials and citizens, is charged with designating growth areas or centers, which shall include at least one center in each North Carolina county. Designation of growth areas or centers shall be reviewed annually. These designations may be used for the purpose of establishing priority consideration for State and federal assistance for growth.

Progress toward achieving balanced growth shall be measured by the strengthening of economic activity and the adequacy of public services within each of the State's multi-county regions and, as to the geographical area included, the Southeastern Economic Development Commission. The Governor, with the advice of county and municipal government officials and citizens, shall develop measures of progress toward achieving balanced growth. (1979, c. 412, s. 5.)

§ 143-506.11. Citizen participation.

The Governor shall establish a process of citizen participation that assures the expression of needs and aspirations of North Carolina's citizens in regard to the purposes of this act. (1979, c. 412, s. 6.)

§ 143-506.12. Policy areas.

The following program area guidelines shall become the policy for the State of North Carolina:

(1) To encourage diversified job growth in different areas of the State, with particular attention to those groups which have suffered from high rates of unemployment or underemployment, so that sufficient work opportunities at high wage levels can exist where people live;

(2) To encourage the development of transportation systems that link growth areas or centers together with appropriate levels of service;

(3) To encourage full support for the expansion of family-owned and operated units in agriculture, forestry and the seafood industry as the basis for increasing productive capacity;

(4) To encourage the development and use of the State's natural resources wisely in support of Balanced Growth Policy while fulfilling the State's constitutional obligation to protect and preserve its natural heritage;

(5) To promote the concept that a full range of human development services shall be available and accessible to persons in all areas of the State;

(6) To encourage the continued expansion of early childhood, elementary, secondary and higher education opportunities so that they are improving in both quality and availability;

(7) To encourage excellent technical training for North Carolina workers that prepares them to acquire and hold high-skill jobs and that encourages industries which employ high-skill workers to locate in the State;

(8) To encourage the availability of cultural opportunities to people where they live;

(9) To encourage the expansion of local government capacity for managing growth consistent with this Balanced Growth Policy; and

(10) To encourage conservation of existing energy resources and provide for the development of an adequate and reliable energy supply, while protecting the environment. (1979, c. 412, s. 7.)

§ 143-506.13. Implementation of a State-local partnership.

The Governor, with the advice of the State Goals and Policy Board, shall establish a statewide policy-setting process for Balanced Growth, in partnership with local government, that brings about full participation of both the State and local government. The purpose of this State-local partnership is to arrive at joint strategies and objectives for balanced statewide development and ensure consistent action by the State and local government for jointly agreed upon strategies and objectives. (1979, c. 412, s. 8.)

§ 143-506.14. North Carolina Office of Local Government Advocacy created; membership; terms; meetings; compensation; powers and duties; staff; cooperation by departments.

There is established in the office of the Governor, the North Carolina Office of Local Government Advocacy. The Local Government Advocacy Council, created by Executive Order Number 22, is hereby transferred to the Office of Local Government Advocacy. The Council shall consist of 19 persons and shall be composed as follows: six members representing county government, five of whom are the members of the Executive Committee of the North Carolina Association of County Commissioners and one who is the Executive Director of the Association; six members representing municipal government, five of whom are the members of the Executive Committee of the North Carolina League of Municipalities and one who is the Executive Director of the League; two Senators appointed by the President of the Senate; two members of the House of Representatives, appointed by the Speaker of the House of Representatives and three at-large members appointed by the Governor. The Association of County Commissioners and the League of Municipalities representatives shall serve terms on the Council consistent with their terms as Executive Committee members appointed by the Governor. The members appointed by the President of the Senate and the Speaker of the House of Representatives shall serve until January 15, 1981, or until their successors are appointed, whichever is later. Their successors shall serve a term of two years. The at-large members shall serve at the pleasure of the Governor for a period of two years. The Chairman and Vice-Chairman shall be the President of the Association of County Commissioners and the President of the League of Municipalities respectively, with the office rotating between the League and Association annually. Provided that no person among those appointed by the Governor, the President of the Senate and the Speaker of the House of Representatives shall serve on the Council for more than two complete consecutive terms.

The Council shall meet at least once each quarter and may hold special meetings at any time at the call of the Chairman or the Governor.

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.

Membership. The Local Government Advocacy Council shall not be considered a public office and, to that end membership may be held in addition to the number of offices authorized by G.S. 128-1.1.

The general duties and responsibilities of the Council are:

(1) To advocate on behalf of local government and to advise the Governor and his Cabinet on the development and implementation of policies and programs which directly affect local government;
(2) To function as liaison for State and local relations and communications;
(3) To identify problem areas and recommend policies with respect to State, regional and local relations; and
(4) To review, monitor and evaluate current and proposed State program policies, practices, procedures, guidelines and regulations with respect to their effect on local government.

The Office of Local Government Advocacy shall be staffed by persons knowledgeable of local government who shall seek to carry out the directives of the Local Government Advocacy Council by:

(1) Advocating the policies of the Council with various State departments;
(2) Serving as a communications liaison between the Local Government Advocacy Council and the various State departments; and

(3) Functioning as an ombudsman for the resolution of local government problems.

It shall be the responsibility of each respective Cabinet department head to: (i) insure that departmental employees make every effort to cooperate with and provide support to the Local Government Advocacy Council in keeping with the intent of this act; and (ii) advise the Local Government Advocacy Council of their proposed policies and plans for review in terms of their effect on local government. (1979, c. 412, s. 9.)

ARTICLE 56.

Emergency Medical Services Act of 1973.

§ 143-509. Powers and duties of Secretary.

The Secretary of the Department of Human Resources has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall:

(1) After consulting with the Emergency Medical Services Advisory Council and with such local governments as may be involved, seek the establishment of statewide, regional and local emergency medical services operations;

(2) Develop a system for classifying and categorizing hospitals as to kinds and levels of emergency treatment they normally and regularly provide and shall make this information available and known to ambulance service providers, health care facilities and to the general public;

(3) Encourage and assist in the development of appropriately located comprehensive emergency treatment centers;

(4) Encourage and assist in the development of a statewide emergency medical services communications system which will enable transport vehicles to communicate with treatment facilities;

(5) Establish a State emergency medical services records system;

(6) Inspect ambulances, issue permits for operation of ambulance vehicles, train and license ambulance personnel and shall be responsible for the enforcement of all other quality control provisions of the Ambulance Act of 1967, Article 26 of Chapter 130 of the General Statutes of North Carolina;

(7) Designate emergency medical services radio frequencies and coordinate emergency medical services radio communications networks within FCC rules and regulations; and

(8) Promote the development of an air ambulance support system to supplement ground vehicle operations.

(9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to insect stings. Individuals, upon successful completion of this training program, may be approved by the Board of Medical Examiners to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical technician training program. (1973, c. 208, s. 3; 1981, c. 927.)

Effect of Amendments. — The 1981 amendment added subdivision (9).

§ 143-514. Training programs; utilization of emergency services personnel.

OPINIONS OF ATTORNEY GENERAL

Board has authority to establish regulations covering emergency medical services personnel. — The ultimate authority and responsibility to establish regulations pertaining to the functioning and certification of emergency medical services personnel, including "mobile intensive care nurses" is, pursuant to this section, in the board of medical examiners. See opinion of Attorney General to I.O. Wilkerson, Jr., Director, Division of Facility Services, Dep't of Human Resources, 49 N.C.A.G. 112 (1980).

ARTICLE 57.

Crime Study Commission.

§§ 143-521 to 143-526: Repealed by Session Laws 1979, c. 504, s. 3.

ARTICLE 58.

Committee on Inaugural Ceremonies.

§ 143-533. Creation, appointment of members; members ex officio.

There is hereby created a Committee on Inaugural Ceremonies to consist of three representatives to be appointed by the Speaker of the House, (or a person designated by the Speaker) three senators to be appointed by the President of the Senate, three citizens to be appointed by the Governor, and three citizens to be appointed by the Governor-elect upon certification of his election. Of the three citizens appointed to the Committee by the Governor, only two may be of the same political party. The Speaker of the House, the President of the Senate, (or a person designated by the President of the Senate), the Governor, and, upon certification of their election, all members-elect of the Council of State, shall be ex officio members of the Committee on Inaugural Ceremonies. (1975, c. 816; 1981, c. 47, s. 2.)

Effect of Amendments. — The 1981 amendment inserted "(or a person designated by the Speaker)" in the first sentence and inserted "(or a person designated by the President of the Senate)," in the last sentence.

Session Laws 1981, c. 47, s. 7, provides: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate, or Lieutenant Governor may not receive per diem."

§§ 143-540 to 143-544: Reserved for future codification purposes.

ARTICLE 59.

Vocational Rehabilitation Services.

§ 143-545. Acceptance of federal aid.

The State of North Carolina accepts all of the provisions and benefits of the Rehabilitation Act of 1973 (Public Law 93-112) as amended, an act passed by the Congress of the United States to assist states in providing vocational rehabilitation services to physically and mentally disabled persons with the goal of preparing these persons for gainful employment. (1979, c. 420, s. 2.)

§ 143-546. Designated State agency.

(a) The Department of Human Resources is authorized:

(1) To cooperate with the Federal Rehabilitation Services Administration or its successor agency in the administration of the Rehabilitation Act of 1973 (Public Law 93-112) as amended;

(2) To administer any legislation concerning vocational rehabilitation enacted by the State of North Carolina through an approved State Plan;

(3) To formulate a program of vocational rehabilitation services through its organizational unit;

(4) To fix compensation, subject to the approval of the State Personnel Commission, as may be necessary to administer this program and to pay such compensation and other expenses as are necessary from funds appropriated under this law.

(5) To establish by regulation a schedule of rates and fees to be paid by clients and other third party purchasers for those services established under federal law and regulations for rates or fees which are authorized by federal law.

(b) The Department of Human Resources, in order to carry out the provisions of this Article, shall secure the cooperation of federal, State, and local agencies, organizations, and individuals having contact with the physically and mentally disabled population. (1979, c. 420, s. 2; 1981, c. 562, s. 8.)

Effect of Amendments. — The 1981 amendment added subdivision (5) of subsection (a).

Session Laws 1981, c. 562, § 10, contains a severability clause.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§§ 143-547 to 143-551: Reserved for future codification purposes.

ARTICLE 60.

State and Certain Local Educational Entity Employees, Nonsalaried Public Officials, and Legislators Required to Repay Money Owed to State.

Part 1. State and Local Educational Entity Employees.

§ 143-552. Definitions.

As used in this Part:

(1) "Employing entity" means and includes:

a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;

b. Any city or county board of education under Chapter 115 of the General Statutes; or

c. Any board of trustees of a community college or technical institute under Chapter 115A of the General Statutes.

(2) "Employee" means any person who is appointed to or hired and employed by an employing entity under this Part and whose salary is paid in whole or in part by State funds.

(3) "Net disposable earnings" means the salary paid to an employee by an employing entity after deduction of withholdings for taxes, social security, State retirement or any other sum obligated by law to be withheld. (1979, c. 864, s. 1.)

§ 143-553. Conditional continuing employment; notification among employing entities; repayment election.

(a) All persons employed by an employing entity as defined by this Part who owe money to the State and whose salaries are paid in whole or in part by State funds must make full restitution of the amount owed as a condition of continuing employment.

(b) Whenever a representative of any employing entity as defined by this Part has knowledge that an employee owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the employing entity. Upon receipt of notification an employing entity shall terminate the employee's employment if after written notice of his right to do so he does not repay the money within a reasonable period of time; provided, however, that where there is a genuine dispute as to whether the money is owed or how much is owed, or there is an unresolved issue concerning insurance coverage, the employee shall not be dismissed as long as he is pursuing administrative or judicial remedies to have the dispute or the issue resolved.

(c) An employee of any employing entity who has elected in writing to allow not less than ten percent (10%) of his net disposable earnings to be periodically withheld for application towards a debt to the State shall be deemed to be repaying the money within a reasonable period of time and shall not have his employment terminated so long as he is consenting to repayment according to such terms. Furthermore, the employing entity shall allow the employee who for some extraordinary reason is incapable of repaying the obligation to the State according to the preceding terms to continue employment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the employee's employment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143-554. Right of employee appeal.

(a) Any employee or former employee of an employing entity within the meaning of G.S. 143-552(1)a whose employment is terminated pursuant to the provisions of this Part shall be given the opportunity to appeal the employment termination to the State Personnel Commission according to the normal appeal and hearing procedures provided by Chapter 126 and the State Personnel

Commission rules adopted pursuant to the authority of that Chapter; however, nothing herein shall be construed to give the right to termination reviews to anyone exempt from that right under G.S. 126-5.

(b) Before the employment of an employee of a local board of education within the meaning of G.S. 143-552(1)b who is either a superintendent, supervisor, principal, teacher or other professional person is terminated pursuant to this Part, the local board of education shall comply with the provisions of G.S. 115-142. If an employee within the meaning of G.S. 143-552(1)b is other than one whose termination is made reviewable pursuant to G.S. 115-142, he shall be given the opportunity for a hearing before the local board of education prior to the termination of his employment.

(c) Before the employment of an employee of a board of trustees of a community college or technical institute within the meaning of G.S. 143-552(1)c is finally terminated pursuant to this Part, he shall be given the opportunity for a hearing before the board of trustees. (1979, c. 864, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

Part 2. Public Officials.

§ 143-555. Definitions.

As used in this Part:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other State person or group of State persons authorized by law to appoint to a public office.

(2) "Employing entity" means and includes:

a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;

b. Any city or county board of education under Chapter 115 of the General Statutes; or

c. Any board of trustees of a community college or technical institute under Chapter 115A of the General Statutes.

(3) "Public office" means appointive membership on any State Commission, council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges and technical institutes created pursuant to G.S. 115A-7, and any other State agency created by law; provided that "public office" does not include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions.

(4) "Public official" means any person who is a member of any public office as defined by this Part. (1979, c. 864, s. 1.)

Editor's Note. — Chapter 115A, including § 115A-7, referred to in this section, was repealed by Session Laws 1979, c. 462. For present statute as to boards of trustees of community colleges and technical institutes, see § 115D-12.

§ 143-556. Notification of the appointing authority; investigation.

Whenever a representative of an employing entity as defined by this Part has knowledge that a public official owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the appointing authority who appointed the public official in question. Upon receipt of notification the appointing authority shall investigate the circumstances of the claim of money owed to the State for purposes of determining if a debt is owed and its amount. (1979, c. 864, s. 1.)

§ 143-557. Conditional continuing appointment; repayment election.

If after investigation under the terms of this Part an appointing authority determines the existence of a delinquent monetary obligation owed to the State by a public official, he shall notify the public official that his appointment will be terminated 60 days from the date of notification unless repayment in full is made within that period. Upon determination that any public official has not made repayment in full after the expiration of the time prescribed by this section, the appointing authority shall terminate the appointment of the public official; provided however, the appointing authority shall allow the public official who for some extraordinary reason is incapable of repaying the obligation according to the preceding terms to continue his appointment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the public official's appointment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

Part 3. Legislators.

§ 143-558. Definition of employing entity.

For the purposes of this Part "employing entity" shall have the same meaning as provided in G.S. 143-552(1) and 143-555(2). (1979, c. 864, s. 1.)

§ 143-559. Notification to the Legislative Ethics Committee; investigation.

Whenever a representative of any employing entity as defined by this Part has knowledge that a legislator owes money to the State and is delinquent in satisfying this obligation, this information shall be reported to the Legislative Ethics Committee established pursuant to Chapter 120, Article 14 of the General Statutes for disposition. (1979, c. 864, s. 1.)

Part 4. Confidentiality Exemption, Preservation of Federal Funds, and Limitation of Actions.

§ 143-560. Confidentiality exemption.

Notwithstanding the provisions of any law of this State making confidential the contents of any records or prohibiting the release or disclosure of any information, all information exchange among the employing entities defined under this Article necessary to accomplish and effectuate the intent of this Article is lawful. (1979, c. 864, s. 1.)

§ 143-561. Preservation of federal funds.

Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds. If the exchange among employing entities of information necessary to effectuate the provisions of this Article would conflict with this intention, the exchange of information shall not be made. (1979, c. 864, s. 1.)

§ 143-562. Applicability of a statute of limitations.

Payments on obligations to the State collected under the procedures established by this Article shall not be construed to revive obligations or any part thereof already barred by an applicable statute of limitations. Furthermore, payments made as a result of collection procedures established by the terms of this Article shall not be construed to extend an applicable statute of limitations. (1979, c. 864, s. 1.)

Chapter 143A.

State Government Reorganization.

Article 1.

General Provisions.

§ 143A-6. Types of transfers.

CASE NOTES

Power to Fire within Scope of Subsection (c). — When an agency is transferred to a new department by a "type II transfer," subsection (b) of this section provides that the management functions of the agency, which includes staffing pursuant to subsection (c) of this section, shall be performed not only under the "supervision" but also the "direction" of the head of the principal department. The power to fire clearly falls within the scope of subsection (c) of this section; therefore, the Secretary of Human Resources had the power to fire the superintendent of a State hospital for the mentally disordered before his six-year term expired and it was not required that he be dismissed by the State Board of Mental Health. Smith v. State, 298 N.C. 115, 257 S.E.2d 399 (1979).

Effect of Shift of Power to Fire on Employment Contract. — The transfer of the power to dismiss from the State Board of Mental Health to the Department of Human Resources makes no change in either the obligations of the parties or the remedies available to plaintiff superintendent of a State hospital for the mentally disordered in enforcing his agreement. Plaintiff's contract of employment was not with the agency which appointed him but with the State, and the essential terms of that contract — duration, dismissal for cause, and salary — remain unaffected by any shift of the power to fire from one agency of the State to another. Smith v. State, 298 N.C. 115, 257 S.E.2d 399 (1979).

§ 143A-17. Plans and reports.

Each principal department shall submit an annual plan of work to the Governor and the Advisory Budget Commission prior to the beginning of each fiscal year. Each department which plans to include in its budget request for the ensuing fiscal period a request for (i) the establishment of a new program regardless of the source of the supporting funds, or (ii) the State funding of a program which was previously supported from nonstate sources, shall provide

in its annual plan of work measurement criteria for the determination of the success or failure of each such program requested. Each principal department shall submit an annual report covering programs and activities to the Governor and Advisory Budget Commission at the end of each fiscal year. These plans of work and annual reports shall be made available to the General Assembly. These documents will serve as the base for the development of budgets for each principal department of the State government to be submitted to the Governor, Advisory Budget Commission, and to the appropriations committees of the General Assembly for consideration and approval. (1971, c. 864, s. 21; 1977, 2nd Sess., c. 1219, s. 44.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, added the second sentence, inserted "the" preceding "State" in the last sentence and inserted "the appropriations committees of" near the end of the last sentence (formerly the second paragraph of the section).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Article 3.

Department of State Auditor.

§ 143A-27.1. North Carolina Firemen's and Rescue Squad Workers' Pension Fund; transfer.

The "North Carolina Firemen's and Rescue Squad Workers' Pension Fund", as contained in Article 3 of Chapter 118 of the General Statutes is hereby transferred by a Type II transfer to the Department of State Auditor. (1981, c. 1029, s. 3.)

Editor's Note. — Session Laws 1981, c. 1029, s. 4, makes the act effective January 1, 1982.

§ 143A-28: Repealed by Session Laws 1977, 2nd Sess., c. 1204, s. 2, effective July 1, 1978.

Article 4.

Department of State Treasurer.

§ 143A-38.1. The Law-Enforcement Officers' Benefit and Retirement Fund; transfer.

The Law-Enforcement Officers' Benefit and Retirement Fund, as contained in Article 12 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer. (1977, 2nd Sess., c. 1204, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1204, s. 4, makes the act effective Jan. 1, 1978.

ARTICLE 19.

Transfers to Department of Crime Control and Public Safety.

§ 143A-243. North Carolina Alcoholic Beverage Control Commission Enforcement Division.

The North Carolina Alcoholic Beverage Control Commission Enforcement Division as provided for in Part 2 of Article 2 of Chapter 18A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1; 1981, c. 412, s. 4.)

Effect of Amendments. — The 1981 amendment substituted "North Carolina Alcoholic Beverage Control Commission" for "State Board of Alcoholic Control."

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

General Provisions.

Article 2.

Department of Cultural Resources.

Article 3.

Department of Human Resources.

Part 2. Property Tax Commission.

Sec.

143B-223. Property Tax Commission — members; selection; quorum; compensation.

Article 6.

Department of Correction.

Part 3. Parole Commission.

143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

Article 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.

143B-279. Department of Natural Resources and Community Development — organization.

Part 2. Board of Natural Resources and Community Development.

143B-280. Board of Natural Resources and Community Development — duties; members; selection; meetings; quorum; compensation; services.

Part 4. Environmental Management Commission.

143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

Part 5. Marine Fisheries Commission.

143B-286. Marine Fisheries Commission — creation; powers and duties.

Part 8. Sedimentation Control Commission.

143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.

Part 13. Parks and Recreation Council.

143B-312. Parks and Recreation Council — members; chairman; selection; removal; compensation; quorum; services.

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.

Part 24. North Carolina Employment and Training Council.

Sec.

143B-340. North Carolina Employment and Training Council — creation; duties and responsibilities.

143B-341. North Carolina Employment and Training Council — structure; staff support; related councils.

Part 25. Triad Park Commission.

143B-342. Triad Park Commission created; membership; organization.

143B-343. Powers.

143B-344. Compensation of commissioners.

143B-344.1. Termination.

143B-344.2. Commission as public authority.

Part 26. Economic Opportunity Agencies.

143B-344.3 to 143B-344.10. [Repealed.]

Article 8.

Department of Transportation.

Part 7. North Carolina Traffic Safety Authority.

143B-359. [Repealed.]

Article 9.

Department of Administration.

Part 3. North Carolina Capital Planning Commission.

143B-374. North Carolina Capital Planning Commission — members; selection; quorum; compensation.

Part 4. Child Day-Care Licensing Commission.

143B-376. Child Day-Care Licensing Commission — members; selection; quorum; compensation.

Part 5. North Carolina Drug Commission.

143B-377, 143B-378. [Repealed.]

Part 6. North Carolina Council on Interstate Cooperation.

143B-380. North Carolina Council on Interstate Cooperation — members; selection; quorum; compensation.

Part 7. Youth Councils.

143B-386. State Youth Advisory Council — members; selection; quorum; compensation.

Part 10. Council on the Status of Women.

143B-393. Council on the Status of Women — creation; powers and duties.

Article 10.

Department of Commerce.

Part 1. General Provisions.

Sec.

143B-433. Department of Commerce — organization.

Part 2. Economic Development.

143B-434. Economic Development Board — creation, duties, membership.

Part 3. Labor Force Development.

143B-438. [Repealed.]

Part 4. Credit Union Commission.

143B-439. Credit Union Commission.

Part 5. North Carolina Board of Science and Technology.

143B-440. North Carolina Board of Science and Technology; creation; powers and duties.

143B-441. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

Part 6. North Carolina Science and Technology Research Center.

143B-443. Administration by Department of Commerce.

Part 8. Energy Division.

143B-450.1. Reports containing individually identifiable energy information to be confidential.

Part 10. North Carolina State Ports Authority.

143B-453. Purposes of Authority.

143B-454. Powers of Authority.

143B-454.1. Container shipping.

143B-456. Issuance of bonds and notes.

143B-456.1. (Effective on certification of adoption of constitutional amendment) Bonds and notes for special user projects.

143B-457. Power of eminent domain.

143B-458. Exchange of property; removal of buildings, etc.

143B-459. Dealing with federal agencies.

143B-460. [Repealed.]

143B-463. Deposit and disbursement of funds.

Part 11. North Carolina Ports Railway Commission.

Sec.

143B-469. Creation of Commission.

143B-469.1. Powers of Commission.

143B-469.2. Cooperation with Ports Authority.

143B-469.3. Commission not required to be a common carrier.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

143B-475. Department of Crime Control and Public Safety — functions.

143B-476. Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters.

Part 3. Governor's Crime Commission.

143B-478. Governor's Crime Commission — creation; composition; terms; meetings, etc.

143B-479. Governor's Crime Commission — powers and duties.

143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties.

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.

143B-480.2. Victim assistance.

143B-480.3. Reduction of benefits; restitution; actions.

Part 4. State Fire Commission.

143B-481. State Fire Commission created — membership.

143B-482. State Fire Commission — powers and duties.

143B-483. State Fire Commission — organization; rules and regulations; meetings.

Part 5. Civil Air Patrol.

143B-490. Civil Air Patrol Division — powers and duties.

143B-491. Personnel and benefits.

143B-492. State liability.

ARTICLE 1.

General Provisions.

§ 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 Crime Control and Public Safety
(5) Department of Correction
(6) Department of Natural Resources and Community Development
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Department of Community Colleges. (1973, c. 476, s. 6; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 23; c. 198, s. 22; c. 771, s. 4; 1979, 2nd Sess., c. 1130, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, added subdivision (10).

§ 143B-10. Powers and duties of heads of principal departments.

(d) The head of each principal department may create and appoint committees or councils to consult with and advise the department. Except as required by State or federal law, such committees or councils shall consist of no more than 10 members unless the approval of the Advisory Budget Commission is obtained to exceed that number. 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 in advance by the Advisory Budget Commission. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made to the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations by March 31 of each year.

(1977, 2nd Sess., c. 1219, s. 46.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, in the first paragraph of subsection (d), added the second and fourth sentences and inserted "in

advance" near the end of the third sentence. The amendment also added the second paragraph of subsection (d).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 143B-13. Appointment, qualifications, terms, and removal of members of commissions.

(a) Each member of a commission created by or under the authority of the Executive Organization Act of 1973 shall be a resident of the State of North Carolina, unless otherwise specifically authorized by law.

Unless more restrictive qualifications are provided in the Executive Organization Act of 1973, the Governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership.

The balance of unexpired terms of existing commission members shall be served in accordance with their most recent appointment.

A vacancy occurring during a term of office is filled in the same manner as the original appointment is made and for the balance of the unexpired term, unless otherwise provided by law or by the Constitution of North Carolina.

(b) A commission membership becomes vacant on the happening of any of the following events before the expiration of the term: (i) the death of the incumbent, (ii) his insanity as determined by final judgment or final order of a court of competent jurisdiction, (iii) his resignation, (iv) his removal from office, (v) his ceasing to be a resident of the State, (vi) his ceasing to discharge the duties of his office over a period of three consecutive months except when prevented by sickness, (vii) his conviction of a felony or of any offense involving a violation of his official duties, (viii) his refusal or neglect to take an oath within the time prescribed, (ix) the decision of a court of competent jurisdiction declaring void his appointment, and (x) his commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, a dipsomaniac, an inebriate, or stimulant addict; but in that event, the office shall not be considered vacant until the order of commitment has become final.

(c) No member of the State commission may use his position to influence any election or the political activity of any person, and any such member who violates this subsection may be removed from such office by the Governor, if such member was appointed by the Governor, or by the appointing authority, if such member was not appointed by the Governor. Nothing herein shall prohibit such member from publishing the fact of his membership in his own campaign for public office.

(d) In addition to the foregoing, any member of a commission may be removed from office by the Governor for misfeasance, malfeasance, and nonfeasance.

(e) Any appointment by the Governor to a commission, board, council or committee made subsequent to January 5, 1973, and prior to July 1, 1973, for a term that would extend for a period inconsistent with the staggered term provisions of the Executive Organization Act of 1973, may be reduced by the Governor to conform to those staggered term provisions. (1973, c. 476, s. 13; 1975, c. 879, s. 47; 1981, c. 520, s. 1.)

Effect of Amendments. — The 1981 amendment rewrote subsection (c).

CASE NOTES

Applicability of Administrative Procedure Act to Removals. — Subsection (d) of this section does not refer to the Administrative Procedure Act. Absent a specific legislative enactment requiring removal by the Governor to be subject to the Administrative Procedure Act, the act is not applicable to removals by the Governor. James v. Hunt, 43 N.C. App. 109, 258 S.E.2d 481 (1979), cert. denied, 299 N.C. 121, 262 S.E.2d 6 (1980).

§ 143B-14. Administrative services to commissions.

(a) The head of the principal State department to which a commission has been assigned is responsible for the provision of all administrative services to the commission.

(b) Except as otherwise provided in the Executive Organization Act of 1973, in G.S. 120-30.28, or in G.S. 150A-11(4), the powers, duties, and functions of a commission (including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications) shall not be subject to the approval, review, or control of the head of the department or of the Governor.

(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.

(d) All management functions of a commission shall be performed by the head of the principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting. (1973, c. 476, s. 14; 1973, c. 1416, s. 3; 1979, 2nd Sess., c. 1137, s. 41.2; 1981, c. 688, s. 20.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, inserted "or in G.S. 150A-11(4)" near the beginning of subsection (b).

The 1981 amendment, effective October 1, 1981, inserted "in G.S. 120-30.28," near the beginning of subsection (b).

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

Session Laws 1981, c. 688, s. 21, contains a severability clause.

§ 143B-16. Appointment and removal of members of boards, councils, and committees.

Unless more restrictive qualifications are provided in this Chapter, the Governor shall appoint each member of a board, council, or committee on the basis of his interest in public affairs, good judgment, knowledge and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership. Unless other conditions are provided in the Executive Organization Act of 1973, any member of a board, council, or committee may be removed from office by the Governor for misfeasance, malfeasance, or nonfeasance.

No member of a board, council, or committee may use his position to influence any election or the political activity of any person, and any such member who violates this paragraph may be removed from such office by the Governor, if such member was appointed by the Governor, or by the appointing authority, if such member was not appointed by the Governor. Nothing herein shall prohibit such member from publishing the fact of his membership in his own campaign for public office. (1973, c. 476, s. 16; 1981, c. 520, s. 2.)

Effect of Amendments. — The 1981 amendment added the second paragraph.

ARTICLE 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-53. Organization of the Department.

The Department of Cultural Resources shall be organized initially to include the Art Commission, the Art Museum Building Commission, the North Carolina Historical Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission, the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the American Revolution Bicentennial Committee, the North Carolina Awards Committee, the America's Four Hundreth Anniversary Committee, the North Carolina Arts Council, the Public Librarian Certification Commission, the State Library Commission, the North Carolina Symphony Society, Inc., the North Carolina Art Society, and the Division of the State Library, the Division of Archives and History, the Division of the Arts, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 476, s. 33; 1981, c. 918, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "State Library Commission" for "State Library Committee" near the middle of the section.

Part 2. Art Commission.

§§ 143B-54 to 143B-57: Repeal by Session Laws 1979, 2nd Session, c. 1306, s. 5, effective July 1, 1980.

Cross References. — For present provisions as to the administration of the North Carolina Museum of Art, see § 140-5.12 et seq.

Part 3. Art Museum Building Commission.

§ 143B-61.1. Termination of the Art Museum Building Commission.

The Art Museum Building Commission shall continue to exercise its powers and perform its duties until:

(1) The building now under construction, authorized, and to be designated as the North Carolina Museum of Art, is completed and has been dedicated and occupied;

(2) The art collection of the State of North Carolina is suitably exhibited, displayed, or stored therein; and

(3) The State Art Museum Building Commission has submitted its biennial report and any other report required by law, or until the State Art Museum Building Commission has made and submitted its final report to the General Assembly, whichever last occurs.

The Commission shall make a diligent effort to complete construction of the Museum building by the use of State funds already appropriated and gifts of private funds already pledged. Upon completion of the conditions set forth in subdivisions (1) through (3) of this section, Article 1A of Chapter 140 and Part 3 of Article 2 of Chapter 143B of the General Statutes shall no longer be pertinent. (1979, 2nd Sess., c. 1306, s. 2.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1306, s. 6, makes this section effective July 1, 1980.

Part 4. North Carolina Historical Commission.

§ 143B-62. North Carolina Historical Commission — creation, powers and duties.

There is hereby created the North Carolina Historical Commission of the Department of Cultural Resources to give advice and assistance to the Secretary of Cultural Resources and to promulgate rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value, and in the extension of State aid to other agencies, counties, municipalities, organizations, and individuals in the interest of historic preservation.

(2) The Historical Commission shall have the power and duty to establish standards and provide rules and regulations as follows:

a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina State Archives or the North Carolina Museum of History;

b. For the disposition of public records under provisions of Chapter 121 of the General Statutes of North Carolina; and

c. For the certification of records in the North Carolina State Archives as provided in Chapter 121 of the General Statutes of North Carolina;

d. For the use by the public of historic, architectural, archaeological, or cultural properties as provided in Chapter 121 of the General Statutes of North Carolina;

e. For the acquisition of historic, archaeological, architectural, or cultural properties by the State;

f. For the extention of State aid or appropriations to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration; and

f1. For the extension of State aid or appropriations to nonstate-owned nonprofit history museums.

g. For qualification for grants-in-aid or other assistance from the federal government for historic preservation or restoration as provided in Chapter 121 of the General Statutes of North Carolina. This section shall be construed liberally in order that the State and its citizens may benefit from such grants-in-aid.

(1979, c. 861, s. 6.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added paragraph f1 to subdivision (2).

Only Part of Section Set Out. — As only subdivision (2) was changed by the amendment, the rest of the section is not set out.

Part 6. Public Librarian Certification Commission.

Repeal of Part. — Session Laws 1979, c. 629, amended § 143-34.11 (codified from Session Laws 1977, c. 712, s. 2, as amended) so as to eliminate the provision repealing this Part.

Part 7. Tryon Palace Commission.

§ 143B-72. Tryon Palace Commission — members; selection; quorum; compensation.

The Tryon Palace Commission of the Department of Cultural Resources shall consist of 25 members appointed by the Governor and in addition to the members who are appointed by the Governor, the Attorney General, the Secretary of Cultural Resources or his designee, the mayor of the City of New Bern, and the chairman of the Board of Commissioners of Craven County shall serve as ex officio members of said Commission. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the Tryon Palace Commission.

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall serve without pay and without expense allowance. (1973, c. 476, s. 55; 1977, c. 771, s. 4; 1979, c. 151, s. 1.)

Effect of Amendments. — The 1979 amendment substituted "Cultural Resources" for "Natural Resources and Community Development" in the first sentence of the first paragraph.

Part 9. Sir Walter Raleigh Commission.

§§ 143B-75 to 143B-78: Repealed by Session Laws 1979, c. 504, s. 1.

Part 11. American Revolution Bicentennial Committee.

§§ 143B-81 to 143B-83: Repealed by Session Laws 1979, c. 504, s. 2.

Editor's Note. — Session Laws 1979, c. 504, s. 2, reads as follows:

"Sec. 2. Abolition of the American Revolution Bicentennial Committee. (a) G.S. 143B-81, G.S. 143B-82 and G.S. 143B-83 as the same appear in 1978 Replacement Volume 3C of the General Statutes of North Carolina are hereby repealed.

"(b) The American Revolution Bicentennial Committee of the Department of Cultural Resources is hereby abolished."

It appears that the repeal of § 143B-83 may have been inadvertent.

Part 16. State Library Commission.

§ 143B-90. State Library Commission; creation, powers and duties.

There is hereby created the State Library Commission of the Department of Cultural Resources. The State Library Commission has the following functions and duties:

(1) To advise the Secretary of Cultural Resources on matters relating to the operation and services of the State Library;
(2) To suggest programs to the Secretary to aid in the development of libraries statewide;
(3) To advise the Secretary upon any matter the Secretary might refer to it;
(4) To evaluate and approve the State Plan for Public Library Development;
(5) To evaluate and approve the State Plan for Multitype Library Cooperation;
(6) To evaluate and approve plans for federally funded library programs;
(7) To evaluate and approve State Library policies for the acquisition of library materials; and
(8) To serve as a search committee to seek out, interview, and recommend to the Secretary one of more experienced and professionally trained librarians for the position of Director of the Division of State Library when a vacancy occurs, and to assist and cooperate with the Secretary in periodic reviews of the performance of the Director and the Division. (1973, c. 476, s. 82; 1981, c. 918, s. 2.)

Effect of Amendments. — The 1981 amendment substituted "State Library Commission" for "State Library Committee" in the first and second sentences, substituted "has" for "shall have" in the second sentence, substituted "Cultural Resources" for "the Department" in subdivision (1), deleted "of the Department" following "Secretary" in subdivision (2), deleted "and" at the end of subdivision (2), deleted "of Cultural Resources" following "Secretary" in subdivision (3), and added subdivisions (4) through (8).

Session Laws 1981, c. 918, s. 5 provides: "Current forms, stationery, signs and other materials carrying the name State Library Committee shall be used until they would otherwise be replaced, and no State funds other than then current appropriations to the Department of Cultural Resources for the State Library Committee may be used in effectuating the change of the name of the State Library Committee to the State Library Commission. Replacements for current forms, stationery, signs and other materials shall carry the new name of the agency."

§ 143B-91. State Library Commission; members; selection; quorum; compensation.

The State Library Commission shall consist of 11 members. Six members shall be appointed by the Governor and the other five members shall be the following officers of the North Carolina Library Association: President; Chairman of the Public Libraries Section; Chairman of the College and University Section; Chairman of the Junior College Section; and Chairman of the North Carolina Association of School Libraries Section.

Members of the State Library Committee appointed by the Governor shall continue as members of the State Library Commission for the remainder of the terms to which appointed. Thereafter all appointments by the Governor shall be for six-year terms. Any appointment to fill a vacancy in one of the positions appointed by the Governor shall be for the remainder of the unexpired term. Officers of the North Carolina Library Association shall serve as members of the Commission for the duration of their terms as officers of the Association.

The Governor shall choose a chairman from among the members of the Commission. The chairman shall serve not more than two successive two-year terms as chairman.

Members of the Commission shall receive per diem and necessary travel and subsistance expenses as provided in 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 Cultural Resources. (1973, c. 476, s. 83; 1981, c. 918, s. 3.)

Effect of Amendments. — The 1981 amendment rewrote the section.

§ 143B-92. Roanoke Island Historical Association — creation, powers and duties.

Legal Periodicals. — For an article entitled, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

Part 19. Edenton Historical Commission.

§ 143B-95. Edenton Historical Commission — creation, purposes, and powers.

There is hereby recreated the Edenton Historical Commission. The purposes of the Commission are to effect and encourage preservation, restoration, and appropriate presentation of the Town of Edenton and Chowan County, as a historic, educational, and aesthetic place, to the benefit of the citizens of the place and the State and of visitors. To accomplish its purposes, the Commission has the following powers and responsibilities:

(1) To acquire, hold, and dispose of title to or interests in historic properties in the Town of Edenton and County of Chowan and to repair, restore, and otherwise improve the properties, and to maintain them;

(2) To acquire, hold, and dispose of title to or interests in other land there, upon which historic structures have been or shall be relocated, and to improve the land and maintain it;

(3) To acquire, hold, and dispose of suitable furnishings for the historic properties, and to provide and maintain suitable gardens for them;

(4) To develop and maintain one or more collections of historic objects and things pertinent to the history of the town and county, to acquire, hold, and dispose of the items, and to preserve and display them;

(5) To develop and conduct appropriate programs, under the name "Historic Edenton" or otherwise, for the convenient presentation and interpretation of the properties and collections to citizens and visitors, as places and things of historic, educational, and aesthetic value;

(6) To conduct programs for the fostering of research, for the encouragement of preservation, and for the increase of knowledge available to the local citizens and the visitors in matters pertaining to the history of the town and county;

(7) To cooperate with the Secretary and Department of Cultural Resources and with appropriate associations, governments, governmental agencies, persons, and other entities, and to assist and advise them, toward the furtherance of the Commission's purposes;

(8) To solicit gifts and grants toward the furtherance of these purposes and the exercise of these powers;

(9) To conduct other programs and do other things appropriate and reasonably necessary to the accomplishment of the purposes and the exercise of the powers; and

(10) To adopt and enforce any bylaws and rules that the Commission deems beneficial and proper. (1973, c. 476, s. 90; 1979, c. 733, s. 1.)

Effect of Amendments. — The 1979 amendment rewrote this section.

§ 143B-98. Edenton Historical Commission — members; selection; compensation; quorum.

The Edenton Historical Commission shall consist of 33 members, 18 appointed by the Governor to serve at his pleasure, 12 elected by the Commission from time to time according to the procedure it adopts, and, ex officio, the Mayor of the Town of Edenton, the Chairman of the Board of Commissioners of Chowan County, and the Secretary of Cultural Resources or his designee.

All the present members of the Commission may continue to serve, at the pleasure of the Governor, until the end of his present term of office. The Commission shall elect its own officers, and the members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 93; 1979, c. 733, s. 2.)

Effect of Amendments. — The 1979 amendment rewrote this section.

Part 25. Historical Military Reenactment Groups.

§ 143B-126. Voluntary registration; designation of names; registration symbol.

The Department of Cultural Resources shall establish a program for the voluntary registration of historical military reenactment groups. The Department shall require, as part of the registration procedure, the filing of a copy of the various bylaws governing the groups, The Department shall designate the names to be used by the groups to ensure a lack of duplication or confusion between the groups and shall, in the case of duplicate name requests, decide the use of a particular name based on the longest period of existence as shown by the dates of the bylaws or other evidence of creation. The Department shall create a seal or other logo which shall indicate registration with the Department and shall be authorized for use only by groups properly registered pursuant to this part. (1981, c. 523, s. 1.)

§ 143B-127. Contracts with registered groups.

The Department of Cultural Resources, Division of Archives and History shall sign contracts for the performance of military historical dramas on State-owned property only with historical military reenactment groups properly registered pursuant to this part. (1981, c. 523, s. 2.)

Part 26. Advisory Committee on Abandoned Cemeteries.

§ 143B-128. Advisory Committee on Abandoned Cemeteries; members; selections; compensation; terms; vacancy; duties.

(a) There is created the Advisory Committee on Abandoned Cemeteries to be composed of 17 members appointed as follows:

(1) two by the Governor;

(2) one by the President of the Senate;

(3) one by the Speaker of the House;

(4) one by the Secretary of the Department of Cultural Resources;

(5) one by the Executive Director of the North Carolina Commission of Indian Affairs, Department of Administration;

(6) one each by the chief executive of the following organizations, from the membership of the organization:

a. North Carolina Archaeological Council;

b. North Carolina Association of County Commissioners;

c. North Carolina Chapter of the Daughters of the American Revolution;

d. North Carolina Chapter of the Society of the Cincinnati;

e. North Carolina Chapter of the Sons of the American Revolution;

f. North Carolina Genealogical Society;

g. North Carolina Historical Commission;

h. North Carolina League of Municipalities;

i. Society of the Colonial Dames of America in the State of North Carolina;

j. Sons of Confederate Veterans;

k. United Daughters of the Confederacy.

(b) Members shall be appointed for staggered four-year terms beginning July 1 of odd-numbered years and shall serve until their successors are appointed and qualified. To create and maintain staggered terms, one member appointed by the Governor and the members appointed by the Speaker of the House, North Carolina Archaeological Council, North Carolina Chapter of the Daughters of the American Revolution, North Carolina Chapter of the Sons of the American Revolution, North Carolina Genealogical Society, North Carolina League of Municipalities, and the Sons of Confederate Veterans shall be appointed for two-year terms to expire June 30, 1983, at which time their successor shall be appointed pursuant to this section for four-year terms. The remaining committee members shall be appointed for four-year terms.

(c) Members shall serve without salary or compensation for their actual expenses resulting from the performance of their official duties.

(d) An appointment to fill a vacancy on the committee shall be made according to the procedures for appointment for regular terms, pursuant to this section. Any appointment to fill a vacancy on the committee for any reason shall be for the balance of the unexpired term.

(e) Upon its appointment the committee shall organize by electing from its membership a chairman and a vice-chairman. It shall be the duty of the committee to review existing statutes relating to cemeteries, make recommendations to the General Assembly concerning new statutes, and to assist the department in its efforts to collect information on abandoned cemeteries. (1981, c. 1016, s. 1.)

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-137. Department of Human Resources — duties.

CASE NOTES

County Administration of State Funds Appropriated for Abortion Fund. — In administering State funds appropriated by the General Assembly for the State Abortion Fund through the county department of social services, a county acts pursuant to administrative rules governing the fund which were enacted pursuant to statutory authority since the provision of funding for elective abortions fulfills the purpose stated in this section of providing services "in the fields of general and mental health," and the promulgation of administrative rules under § 143B-153 satisfies the requirements of "necessity" to carry out the purposes of the Department of Human Resources in that it provides standards without which the State Abortion Fund could not lawfully be administered. Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

§ 143B-138. Department of Human Resources — functions.

CASE NOTES

Cited in Smith v. State, 298 N.C. 115, 257 S.E.2d 399 (1979).

§ 143B-139.3. Department of Human Resources — authority to contract with other entities.

The Department of Human Resources is authorized to contract with any governmental agency, person, association, or corporation for the accomplishment of its duties and responsibilities provided that the expenditure of funds pursuant to such contracts shall be for the purposes for which the funds were appropriated and is not otherwise prohibited by law. (1979, 2nd Sess., c. 1094, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1094, s. 6, provides: "This act is effective upon ratification. All contracts which would be permissible under this act which were entered into on or after April 20, 1979, are hereby validated." The act was ratified June 17, 1980.

The preamble to Session Laws 1979, 2nd Sess., c. 1094 cites as the reason for the enactment Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979), requiring statutory authority for third party contracts.

§ 143B-140. Department of Human Resources — organization.

The Department of Human Resources shall be organized initially to include the Board of Human Resources, the Commission for Health Services, the Commission for Mental Health and Mental Retardation Services, the Eugenics Commission, the Commission for the Blind, the Professional Advisory Commit-

tee, the Blind Advisory Committee, the Social Services Commission, the Commission for Medical Facility Services and Licensure, the Council for Institutional Boards, the Council on Developmental Disabilities, the Governor's Coordinating Council on Aging, the Governor's Council on Employment of the Handicapped, the Governor's Advocacy Council on Children and Youth, the Mental Health Council, the Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis, the Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina, the Board of Directors of the North Carolina Orthopedic Hospital, the Board of Directors of the Governor Morehead School, the Board of Directors of the North Carolina Schools for the Deaf, the Board of Directors for the Confederate Women's Home, the Division of Health Services, the Division of Mental Health, Mental Retardation, and Substance Abuse Services, the Division of Social Services, the Division of Vocational Rehabilitation Services, the Division of Blind Services, the Division of Facility Services and Licensure, the Division of Institutional Services, the Division of Aging, and such other divisions as may be established under the provisions of this Chapter. (1973, c. 476, s. 121; 1975, c. 90; 1977, c. 242, s. 3; c. 679, ss. 5-8; 1979, c. 358, s. 27.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "Division of Mental Health, Mental Retardation, and Substance Abuse Services" for "Division of Mental Health and Mental Retardation Services" near the end of the section.

Part 3. Commission for Health Services.

§ 143B-142. Commission for Health Services — creation, powers and duties.

There is hereby created the State Commission for Health Services of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the public health program to protect and promote public health, 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 Commission for Health Services has the following powers and duties:
   a. To establish standards, adopt rules and regulations that may be necessary for the protection and promotion of the public health and the control of disease;
   b. To approve rules and regulations for sanitary management adopted by the State Board of Cosmetic Art Examiners as provided by G.S. 88-23; and
   c. To create metropolitan water districts as provided by G.S. 162A-33.

(2) The Commission for Health Services shall have the power and duty to establish standards and adopt rules and regulations:
   a. For the operation of home health agencies as provided by law;
   b. Regulating sanitary conditions of establishments providing food and lodging as provided by Article 5 of Chapter 72 of the General Statutes of the State of North Carolina;
   c. Preparing design standards to be used as a guide in approving sewage-treatment devices and holding tanks for marine toilets as provided by G.S. 75A-6(o);
   d. Relating to the use, storage, transporation, and disposal of radiation, radiation machines, and radioactive materials as provided by Chapter 104C of the General Statutes of the State of North Carolina;

e. Adopting minimum health and sanitation standards for day-care facilities as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina;

f. Establishing specifications for sanitary privies for schools where water-carried sewerage facilities are unavailable as provided by G.S. 115-132;

g. Governing the sanitation of local confinement facilities as provided by G.S. 153-53.4;

h. Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provision of the Clean Water Bond Bill;

i. Repealed by Session Laws 1975, c. 694, s. 6.

j. Repealed by Session Laws 1981, c. 614, s. 9.

k. Regulating vectors of public health significance or of disease carrying potential.

(3) 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 public health 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 for such grants-in-aid.

(4) 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 Board of Health shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Health Services. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. When directed by the Department of Human Resources, local health departments shall enforce Commission for Health Services' rules and regulations under the supervision of the Department of Human Resources. (1973, c. 476, s. 123; 1975, c. 19, s. 57; c. 694, s. 6; 1979, c. 41, s. 1; 1981, c. 614, s. 9.)

Editor's Note. — Chapter 104C, referred to in paragraph d of subdivision (2), has been rewritten and recodifed as Chapter 104E.

Section 153-53.4, referred to in paragraph g of subdivision (2), has been repealed. For present provision governing the sanitation of local confinement facilities, now see § 153A-221.

Effect of Amendments. — The 1979 amendment added paragraph k of subdivision (2).

The 1981 amendment, effective July 1, 1981, deleted subdivision (2)(j) which read: "For the operation of nursing homes as defined in G.S. 130-9(e)."

§ 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 registered engineer experience in sanitary engineering or a soil scientist, 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 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 subsistance expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 124; c. 1367, ss. 1, 2; 1981, c. 553.)

Effect of Amendments. — The 1981 amendment substituted "registered engineer experienced in sanitary engineering or a soil scientist" for "dairyman" in the first sentence of the second paragraph.

Part 4. Commission for Mental Health, Mental Retardation and Substance Abuse Services.

§ 143B-147. Commission for Mental Health, Mental Retardation and Substance Abuse Services — creation, powers, and duties.

(a) There is hereby created the Commission for Mental Health, Mental Retardation and Substance Abuse Services of the Department of Human Resources with the power and duty to adopt, amend and repeal rules and regulations to be followed in the conduct of State and local mental health, mental retardation, alcohol and drug abuse programs including education, prevention, intervention, treatment, rehabilitation and other related services. Such rules and regulations shall be designed to promote the amelioration or elimination of the mental health, mental retardation, or alcohol and drug abuse problems of the citizens of this State. The Commission for Mental Health, Mental Retardation and Substance Abuse Services shall have the authority:

(1) To establish standards and promulgate rules and regulations regarding the

a. Admission, treatment and professional care of persons admitted to any institution, center or hospital administered by the Department of Human Resources as provided in Chapter 122 of the General Statutes for the mentally ill, mentally retarded, alcohol or drug abusers, which is now or may hereafter be established;

b. Operation of education, prevention, intervention, treatment, rehabilitation and other related services as provided by area mental health, mental retardation and substance abuse authorities under Article 2F of Chapter 122 of the General Statutes;

c. Hearings and appeals of area mental health, mental retardation and substance abuse authorities as provided for in Article 2F of Chapter 122 of the General Statutes;

d. Requirements of the federal government for grants-in-aid for mental health, mental retardation, alcohol or drug abuse programs which may be made available to local programs or the State. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;

(2) To adopt rules and regulations for the inspection, registration or licensing of

a. Facilities wherein mental health, mental retardation, alcohol or drug abuse services are provided under Article 2F of Chapter 122 of the General Statutes;

b. Private hospitals for the mentally disordered as provided by G.S. 122-72;

(3) To advise the Secretary of the Department of Human Resources regarding the need for, provision and coordination of education, prevention, intervention, treatment, rehabilitation and other related services in the areas of:

a. Mental illness and mental health,

b. Mental retardation,

c. Alcohol abuse, and

d. Drug abuse;

(4) To review and advise the Secretary of the Department of Human Resources regarding all State plans required by federal or State law and to recommend to the Secretary any changes it thinks necessary in those plans; provided, however, for the purposes of meeting State plan requirements under federal or State law, the Department of Human Resources is designated as the single State agency responsible for administration of plans involving mental health, mental retardation, alcohol abuse, and drug abuse services;

(5) To establish standards and adopt rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100, after consultation regarding these standards with a licensed physician named by the chairman of the Commission for Mental Health, Mental Retardation and Substance Abuse Services.

(b) All rules and regulations hereby adopted shall be consistent with the laws of this State and not inconsistent with the management responsibilities of the Secretary of Human Resources provided by this Chapter and the Executive Organization Act of 1973.

(c) All rules and regulations pertaining to the delivery of services and licensing of facilities heretofore adopted by the Commission for Mental Health and Mental Retardation Services and controlled substances rules and regulations adopted by the North Carolina Drug Commission shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Mental Health, Mental Retardation and Substance Abuse Services.

(d) All rules and regulations adopted by the Commission for Mental Health, Mental Retardation and Substance Abuse Services shall be enforced by the Department of Human Resources. (1973, c. 476, s. 129; 1977, c. 568, ss. 2, 3; c. 679, s. 1; 1981, c. 51, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote this section, reorganizing the former Commission for Mental Health and Mental Retardation Services as the Mental Health, Mental Retardation and Substance Abuse Services, and making other changes.

Legal Periodicals. — For a survey of 1977 law on health care regulation, see 56 N.C.L. Rev. 857 (1978).

§ 143B-148. Commission for Mental Health, Mental Retardation and Substance Abuse Services — members; selection; quorum; compensation.

(a) The Commission for Mental Health, Mental Retardation and Substance Abuse Services of the Department of Human Resources shall consist of 25 members:

(1) Four of whom shall be members of the General Assembly, with concern for the problems of mental illness, mental retardation, alcohol and drug abuse, including
   a. Two members of the House of Representatives appointed by the Speaker of the House, and
   b. Two members of the Senate appointed by the President of the Senate.

   The terms of office of these members shall be for two years, commencing with July 1 of each odd-numbered year;

(2) Twenty-one of whom shall be citizens appointed by the Governor and shall represent all geographic regions of the State.
   a. Of these 21 members, three shall have a special interest in mental health, three shall have a special interest in mental retardation, three shall have a special interest in alcohol abuse and alcoholism and three shall have a special interest in drug abuse. Each group of three shall be made up of one member who is a consumer representative; one other who is a representative of a local or State citizen organization or association; and one other who is a professional in the field.
   b. The remaining nine members shall be appointed from the general public, other citizen groups, area mental health, mental retardation, and substance abuse authorities, or from other related agencies.
   c. Of these 21 appointments, at least one shall be a licensed physician and at least one other shall be a licensed attorney.
   d. The Governor shall appoint members to the Commission in accordance with the foregoing provisions. At the initial formation of the Commission for Mental Health, Mental Retardation and Substance Abuse Services, the Governor shall designate seven of his appointees to serve for two years, seven to serve for three years and seven to serve for four years, all to commence on July 1, 1981. Thereafter the terms of all Commission members appointed by the Governor shall be four years. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves.

(3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 through 143B-20 relating to appointment, qualifications, terms and removal of members shall apply to all members of the Commission for Mental Health, Mental Retardation and Substance Abuse Services. General Statutes 143B-13(c) shall not apply to Commission members who are also members of the General Assembly.

(c) Commission members who are members of the General Assembly shall receive subsistence and travel allowances at the rates set forth in G.S. 138-5; provided however, Commission members who are State employees shall receive travel allowances at the rates set forth in G.S. 138-6.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 130; 1977, c. 679, s. 2; 1981, c. 51, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote subsection (a), substituted "G.S. 143B-13 through 20" for "G.S. 143B-13" and "Commission for Mental Health, Mental Retardation and Substance Abuse Services" for "Commission for Mental Health and Mental Retardation Services" in the first sentence of subsection (b), substituted "G.S. 138-5" for "G.S. 120-3.1(b) and (c)" in subsection (c), inserted "provided however" and substituted "State employees" for "employees of the State" in subsection (c), and deleted a former sentence at the end of subsection (c) which provided the compensation paid to other Commission members.

§ 143B-149. Commission for Mental Health, Mental Retardation and Substance Abuse Services — officers.

The Commission for Mental Health, Mental Retardation and Substance Abuse Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members and shall 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. 131; 1977, c. 679, s. 3; 1981, c. 51, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission for Mental Health, Mental Retardation and Substance Abuse Services" for "Commission for Mental Health and Mental Retardation Services" in the first sentence, and substituted "and shall" for "of the Commission to" in the second sentence.

§ 143B-150. Commission for Mental Health, Mental Retardation and Substance Abuse Services — regular and special meetings.

The Commission for Mental Health, Mental Retardation and Substance Abuse Services 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 eight members. (1973, c. 476, s. 132; 1977, c. 679, s. 4; 1981, c. 51, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "Commission for Mental Health, Mental Retardation and Substance Abuse Services" for "Commission for Mental Health and Mental Retardation Services."

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs 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. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108 of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108 of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108-23(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108-66; and

d. For the payment of grants-in-aid and other State funds to private child-caring institutions. The payment and distribution of grants-in-aid funds to private child-caring institutions shall be regulated by the grant-in-aid (GIA) formula. This formula and any modifications of this formula shall be approved by the Advisory Budget Commission prior to its implementation.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

a. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;

b. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;

c. Contracting for and purchasing services; and

d. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:
   a. For the inspection and licensing of maternity homes as provided by G.S. 108-76;
   b. For the inspection and licensing of all boarding homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77;
   c. For the inspection and licensing of child-care institutions as provided by G.S. 108-78;
   d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153-51 and Part 2 of Article 3 of Chapter 108 of the General Statutes of the State of North Carolina;
   e. Repealed by Session Laws 1981, c. 562, s. 7.
   f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Article 3 of Chapter 108 of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) 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 of grants-in-aid for social services purposes which may be made available for 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.

(7) 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 Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(8) The Commission may establish by regulation rates or fees for:
   a. A fee schedule for the payment of the costs of necessary day care for minor children of needy families;
   b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and
   c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3.)

Editor's Note. — The provisions of Chapter 108 referred to in this section, were repealed and recodified by Session Laws 1981, c. 275, s. 1. See now Chapters 108A, 131C and 131D.

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, added the second sentence of the introductory paragraph and added "with the exception of the pro-

gram of medical assistance established by G.S. 108-23(b)" at the end of paragraph a of subdivision (2).

The first 1981 amendment, effective October 1, 1981, added subdivision (2a).

The second 1981 amendment deleted paragraph e of subdivision (3) concerning payment of day care costs for needy families and added subdivision (8).

The third 1981 amendment, deleted "and" at the end of paragraph b of subdivision (2), added "and" at the end of paragraph c of subdivision (2), and added paragraph d of subdivision (2).

Session Laws 1977, 2nd Sess., c. 1219, s. 28, provides: "All standards, rules, regulations, determinations, and decisions relating to medical assistance and the medical assistance program adopted before July 1, 1978, by the Social Services Commission and its predecessors shall remain in full force and effect unless and until repealed or superseded by action of the Department of Human Resources."

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Session Laws 1981, c. 562, § 10, contains a severability clause.

CASE NOTES

State Liable for Negligence of County Social Services Director. — In an action alleging that a foster child was negligently placed in a home by the Durham County Department of Social Services, the Department of Human Resources would be liable for the negligent acts of its agents, the Durham County Director of Social Services and his subordinates, since the Department of Human Resources through the Social Services Commission, has the right to control the manner in which the county director is to execute his obligation to place children in foster homes. Vaughn v. North Carolina Dep't of Human Resources, 296 N.C. 683, 252 S.E.2d 792 (1979).

County Administration of State Funds Appropriated for Abortion Fund. — In administering State funds appropriated by the General Assembly for the State Abortion Fund through the county department of social services, a county acts pursuant to administrative rules governing the fund which were enacted pursuant to statutory authority since the provision of funding for elective abortions fulfills the purpose stated in § 143B-137 of providing services "in the fields of general and mental health," and the promulgation of administrative rules under this section satisfies the requirements of "necessity" to carry out the purposes of the Department of Human Resources in that it provides standards without which the State Abortion Fund could not lawfully be administered. Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

Part 8. Professional Advisory Committee.

§ 143B-162. Professional Advisory Committee — members; selection; quorum; compensation.

The Professional Advisory Committee of the Department of Human Resources shall consist of nine members appointed by the Governor, three of whom shall be licensed physicians nominated by the North Carolina Medical Society whose practice is limited to ophthalmology, three optometrists nominated by the North Carolina State Optometric Society, and three opticians nominated by the North Carolina Opticians Association.

Those nine members shall serve three year terms staggered such that the terms of three members shall expire each year. A member of the Committee shall continue to serve until his successor is appointed and qualifies. 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 Human Resources.

The schedule for appointments to the Committee described in Section 1 of this act is as follows: The ophthalmologists and optometrists serving on the Committee on the date this act is ratified shall continue to serve until their respective terms expire. Initial appointments of the three opticians shall be made no later than July 2, 1979, shall become effective on that date, and shall be for one, two, and three year terms, respectively. At the end of the respective terms of office of those nine members, the appointment of their successors shall be for terms of three years. (1973, c. 476, s. 145; 1979, c. 977, ss. 1, 2.)

Effect of Amendments. — The 1979 amendment, in the first paragraph, increased the number of Committee members from six to nine, shifted the words "nominated by the North Carolina Medical Society" to their present location from their former location after "ophthalmology," deleted "and" before "three optometrists," and added the provision for three optician members. In the second paragraph, the amendment substituted the present first and second sentences for a former first sentence specifying the terms of the initial Committee members, and a former second sentence providing for the appointment of successor members.

Session Laws 1979, c. 977, s. 2, provides: "The schedule for appointments to the Committee described in Section 1 of this act is as follows: The ophthalmologists and optometrists serving on the Committee on the date this act is ratified shall continue to serve until their respective terms expire. Initial appointments of the three opticians shall be made no later than July 2, 1979, shall become effective on that date, and shall be for one, two, and three year terms, respectively. At the end of the respective terms of office of those nine members, the appointment of their successors shall be for terms of three years."

Part 9. Consumer and Advocacy Advisory Committee for the Blind.

§ 143B-163. Consumer and Advocacy Advisory Committee for the Blind — creation, powers and duties.

(a) There is hereby created the Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources. This committee shall make a continuing study of the entire range of problems and needs of the blind and visually impaired population of this State and make specific recommendations to the Secretary of Human Resources as to how these may be solved or alleviated through legislative action. The committee shall examine national trends and programs of other states, as well as programs and priorities in North Carolina. Because of the cost of treating persons who lose their vision, the committee's role shall also include studying and making recommendations to the Secretary of Human Resources concerning methods of preventing blindness and restoring vision.

(1979, c. 973, s. 1.)

Effect of Amendments. — The 1979 amendment added the second, third, and fourth sentences of subsection (a).

Only Part of Section Set Out. — As only subsection (a) was changed by the amendment, the rest of the section is not set out.

§ 143B-164. Consumer and Advocacy Advisory Committee for the Blind — members; selection; quorum; compensation.

(a) The Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources shall consist of the following members:

(1) One member of the North Carolina Senate to be appointed by the Lieutenant Governor;

(2) One member of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;

(3) President and Vice-President of the National Federation of the Blind of North Carolina;

(4) President and Vice-President of the North Carolina Council of the Blind;

(5) President and Vice-President of the North Carolina Association of Workers for the Blind;

(6) President and Vice-President of the North Carolina Chapter of the American Association of Workers for the Blind;

(7) Chairman of the State Council of the North Carolina Lions and Executive Director of the North Carolina Lions Association for the Blind, Inc.;

(8) Chairman of the Concession Stand Committee of the Division of Services for the Blind of the Department of Human Resources; and

(9) Executive Director of the North Carolina Society for the Prevention of Blindness, Inc.

With respect to members appointed from the General Assembly, these appointments shall be made in the odd-numbered years, and the appointments shall be made for two-year terms beginning on the first day of July and continuing through the 30th day of June two years thereafter; provided, such appointments shall be made within two weeks after ratification of this act, and the first members which may be so appointed prior to July 1 of the year of ratification shall serve through the 30th day of June of the second year thereafter. If any committee member appointed from the General Assembly ceases to be a member of the General Assembly, for whatever reason, his position on the committee shall be deemed vacant. In the event that either committee position which is designated herein to be filled by a member of the General Assembly becomes vacant during a term, for whatever reason, a successor to fill that position shall be appointed for the remainder of the unexpired term by the person who made the original appointment or his successor. Provided members appointed by the Lieutenant Governor and the Speaker of the House shall not serve more than two complete consecutive terms.

With respect to the remaining committee members, each officeholder shall serve on the committee only so long as he holds the named position in the specified organization. Upon completion of his term, failure to secure reelection or appointment, or resignation, the individual shall be deemed to have resigned from the committee and his successor in office shall immediately become a member of the committee. Further, if any of the above-named organizations dissolve or if any of the above-stated positions no longer exist, then the successor organization or position shall be deemed to be substituted in the place of the former one and the office holder in the new organization or of the new position shall become a member of the committee.

(1979, c. 973, s. 2.)

Effect of Amendments. — The 1979 amendment, in subsection (a), added subdivisions (1) and (2), redesignated subdivisions (1) through (7) as subdivisions (3) through (9), added the present second paragraph, combined the former second and third paragraphs into the present

third paragraph, substituted "With respect to the remaining committee members" for "Provided" at the beginning of the first sentence of the present third paragraph, and deleted "Provided" at the beginning of the third sentence of that paragraph.

Only Part of Section Set Out. — As only subsection (a) was changed by the amendment, the rest of the section is not set out.

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.

(2) The Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(3) The Commission may adopt such reasonable and necessary standards with reference thereto as may be proper to cooperate fully with the Surgeon General or other agencies or departments of the United States and the use of funds provided by the federal government as contained and referenced in Article 13 of Chapter 131 of the General Statutes of North Carolina.

(4) The Commission shall have the power and duty to approve projects in the amounts of grants-in-aid from funds supplied by the federal and State governments for the planning and construction of hospitals and other related medical facilities according to the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(5) The Commission shall have the power and duty to adopt rules and regulations with regard to the awarding of loans and scholarships to students in accordance with the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(6) The Commission has the duty to adopt rules and regulations and standards with respect to the different types of hospitals to be licensed under the provisions of Article 13A of Chapter 131 of the General Statutes of North Carolina.

(7) 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 medical facility services and licensure 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.

(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.

(10) The Commission shall have the power and duty to promulgate rules and regulations for the operation of nursing homes, as defined by G.S. 130-9(e). (1973, c. 476, s. 148; c. 1090, s. 2; c. 1224, s. 3; 1981, c. 614, s. 10.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subdivision (10).

Part 11. Council for Institutional Boards.

§§ 143B-169 to 143B-172: Repealed by Session Laws 1979, c. 504, s. 9.

Part 12. Boards of Directors of Institutions.

§ 143B-173. Boards of directors of institutions — creation, powers and duties.

(a) There are hereby created the following boards of directors of institutions:

(1) Repealed by Session Laws 1979, 2nd Session, c. 1245, s. 1.

(2) Repealed by Session Laws 1981, c. 50, s. 1.

(3) The Board of Directors of the Lenox Baker Children's Hospital;

(4) The Board of Directors of the Governor Morehead School;

(5) The Board of Directors of the North Carolina Schools for the Deaf; and

(6) Repealed by Session Laws 1981, c. 462, s. 5.

with the power and duty to adopt rules and regulations to be followed in the conduct of their respective institutions.

(b) Each board of directors hereinabove created is authorized and empowered to establish standards and adopt rules and regulations:

(1) For the professional care of persons admitted to institutions established in accordance with the General Statutes under their authority, including the authority to establish rules and regulations not contrary to law governing the admission of persons to any State institution under its jurisdiction which is now or may hereafter be established; and

(2) To make the institutions under their control as nearly self-supporting as shall be consistent with the purposes of their creation.

(c) The board of directors of each institution 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 to such an institution 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. 476, s. 157; 1977, c. 462, s. 2; 1979, c. 838, s. 43; 1979, 2nd Sess., c. 1245, s. 1; 1981, c. 50, s. 1; c. 462, s. 5.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added the sunset date provision to subdivision (1) of subsection (a).

The 1979, 2nd Sess., amendment, effective July 1, 1980, deleted subdivision (1) of subsection (a), relating to the Board of Directors of the North Carolina Specialty Hospitals.

The first 1981 amendment deleted subdivision (2) of subsection (a), relating to the Board of Directors of the North Carolina Orthopedic Hospital.

Session Laws 1981, c. 50, s. 4, provides: "The Board of Directors of the North Carolina Orthopedic Hospital of the Department of Human Resources is hereby abolished."

The second 1981 amendment, effective July 1, 1981, deleted subdivision (6) of subsection (a), relating to the Board of Directors of the Confederate Women's Home.

Session Laws 1979, c. 838, s. 122, contains a severability clause.

§ 143B-174. Boards of directors of institutions — members; selection; quorum; compensation.

The Board of Directors of the Lenox Baker Children's Hospital of the Department of Human Resources shall consist of nine members appointed by the Governor for terms of six years. The Board of Directors of the Governor Morehead School of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of six years. The Board of Directors of the North Carolina Schools for the Deaf of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of four years. The initial members of each of the aforementioned boards of directors shall be the members of the previously existing board of directors for each institution. The members of the various boards of directors shall serve for a period equal to the remainder of their current terms on their respective boards, which are as follows: the Board of Directors of the Lenox Baker Children's Hospital, three of whose appointments expire July 10, 1973, three of whose appointments expire July 10, 1975, and three of whose appointments expire July 10, 1977; the Board of Directors of the Governor Morehead School, four of whose appointments expire May 1, 1973, three of whose appointments expire May 1, 1975, and four of whose appointments expire May 1, 1977; the Board of Directors of the North Carolina Schools for the Deaf, all of whose appointments expire July 17, 1973. At the end of the respective terms of office of the initial members of each board, their successors shall be appointed for terms as hereinabove delineated and until their successors are appointed and qualify. Any appointment to fill a vacancy on the board of directors 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 a board of directors from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of each board of directors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of a board of directors shall constitute a quorum for the transaction of business.

All clerical and other services required by a board of directors shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 158; 1977, c. 462, s. 3; 1979, c. 838, s. 44; 1979, 2nd Sess., c. 1245, s. 2; 1981, c. 50, s. 2; c. 462, s. 6.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1980, deleted the former first sentence, relating to the Board of Directors of the North Carolina Specialty Hospitals, and deleted provisions as to the Board of Directors of the North Carolina Specialty Hospitals in the present seventh sentence. The amendment was made conditional upon termination of the

Board of Directors of the North Carolina Specialty Hospitals. The Board was terminated by Session Laws 1979, 2nd Sess., c. 1245.

The first 1981 amendment deleted the former second sentence, relating to the Board of Directors of the North Carolina Orthopedic Hospital, and deleted provisions as to the Board of Directors of the North Carolina Orthopedic Hospital in the present fifth sentence.

The second 1981 amendment, effective July 1, 1981, in the first paragraph, deleted the former fifth sentence which read: "The Board of Directors of the Confederate Women's Home of the Department of Human Resources shall consist of seven members appointed by the Governor for terms of two years." The second 1981 amendment in the present fifth sentence of the first paragraph, deleted "; and the Board of Directors of the Confederate Women's Home, all of whose appointments expire June 30, 1973" from the end of the sentence.

Part 13. Council on Developmental Disabilities.

§ 143B-178. Council on Developmental Disabilities — definitions.

The following definitions apply to this Chapter:

(1) The term "developmental disability" means a severe, chronic disability of a person which:

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

b. Is manifested before the person attains age 22;

c. Is likely to continue indefinitely;

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

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

(1979, c. 752, s. 1.)

Effect of Amendments. — The 1979 amendment rewrote subdivision (1).

Only Part of Section Set Out. — As subdivision (2) was not changed by the amendment, it is not set out.

§ 143B-179. Council on Developmental Disabilities — members; selection; quorum; compensation.

The Council on Developmental Disabilities of the Department of Human Resources shall consist of 32 members appointed by the Governor. The composition of the Council shall be as follows:

(1) Eleven members from the General Assembly and State government agencies as follows: One person who is a member of the Senate, one person who is a member of the House of Representatives, one representative of the Department of Public Instruction, one representative of the Department of Correction, and seven representatives of the Department of Human Resources to include the Secretary or his designee.

(2) Sixteen members designated as consumers of services for the developmentally disabled. A consumer of services for the developmentally disabled is a person who (1) has a developmental disability or is the parent or guardian of such a person, or (2) is an

immediate relative or guardian of a person with mentally impairing developmental disability, and (3) is not an employee of a State agency that receives funds or provides services under the provisions of Part A, Title 1, P.L. 90-170, as amended, "Mental Retardation Facilities and Community Health Centers Construction Act of 1963," is not a managing employee (as defined in Section 1126(b) of the Social Security Act) of any other entity that receives funds or provides services under such Part, and is not a person with an ownership or control interest (within the meaning of Section 1124(a)(3) of the Social Security Act) with respect to such an entity. Of these 16 members, at least one third shall be persons with developmental disabilities and at least another one third shall be the immediate relatives or guardians of persons with mentally impairing developmental disabilities, of whom at least one shall be an immediate relative or guardian of an institutionalized developmentally disabled person.

(3) Five members at large. The five at-large members shall be chosen from local agencies, nongovernmental agencies and groups concerned with services to persons with developmental disabilities, and higher education training facilities in North Carolina, or from the interested public at large.

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; 1977, c. 881, s. 3; 1979, c. 752, s. 2.)

Effect of Amendments. — The 1979 amendment substituted "32" for "36" near the middle of the first sentence of the first paragraph, and rewrote subdivisions (1), (2), and (3) of the first paragraph.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

§ 143B-181.1. Division of Aging — creation, powers and duties.

(a) There is hereby created within the office of the Secretary of the Department of Human Resources a Division of Aging, which shall have the following functions and duties:

(1) To maintain a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Secretary of Human Resources for transmittal to the Governor and the General Assembly as appropriate for improvements in and additions to such programs;

(2) To study, collect, maintain, publish and disseminate factual data and pertinent information relative to all aspects of aging. These include the societal, economic, educational, recreational and health needs and opportunities of the aging;

(3) To stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, including needs, resources and opportunities for the aging, and about the role they can play in improving conditions for the aging;

(4) To serve as the agency through which various public and nonpublic organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;

(5) To provide advice, information and technical assistance to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;

(6) To coordinate governmental programs with private agency programs for aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;

(7) To promote employment opportunities as well as proper and adequate recreational use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;

(8) To identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects; and

(9) To establish or help to establish demonstration programs of services to the aging.

(b) The Division shall function under the authority of the Department of Human Resources and the Secretary of Human Resources as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary.

(c) The Secretary of Human Resources shall promulgate rules and regulations in accordance with G.S. Chapter 150A, the Administrative Procedure Act, in order to carry out the purposes of this Part and to implement the Older Americans Act, as amended, and the federal regulations implementing the act. (1977, c. 242, s. 4; 1981, c. 614, s. 19.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, designated the former first and second paragraphs as subsections (a) and (b), respectively, and added subsection (c).

Part 14A. Policy Act for the Aging.

§ 143B-181.3. Statement of principles.

To utilize effectively the resources of our State, to provide a better quality of life for our senior citizens, and to assure older adults the right of choosing where and how they want to live, the following principles are hereby endorsed:

(1) Older people should be able to live as normal a life as possible.
(2) Older adults should have a choice of life styles which will allow them to remain contributing members of society for as long as possible.
(3) Preventive and primary health care are necessary to keep older adults active and contributing members of society.
(4) Appropriate training in gerontology and geriatrics should be developed for individuals serving older adults.
(5) Transportation to meet daily needs and to make accessible a broad range of services should be provided so that older persons may realize their full potential.
(6) Services for older adults should be coordinated so that all their needs can be served efficiently and effectively.
(7) Information on all services for older citizens and advocacy for these services should be available in each county.
(8) Increased employment opportunities for older adults should be made available.
(9) Options in housing should be made available.
(10) Planning for programs for older citizens should always be done in consultation with them.
(11) The State should aid older people to help themselves and should encourage families in caring for their older members. (1979, c. 983, s. 1.)

Editor's Note. — Session Laws 1979, c. 983, s. 2, contains a severability clause.

§ 143B-181.4. Responsibility for policy.

Responsibility for developing policy to carry out the purpose of this Part is vested in the Secretary of the Department of Human Resources as provided in G.S. 143B-181.1 who may assign responsibility to the Assistant Secretary for Aging. The Assistant Secretary for Aging shall, at the request of the Secretary, be the bridge between the federal and local level and shall review policies that affect the well being of older people with the goal of providing a balance in State programs to meet the social welfare and health needs of the total population. Responsibilities may include:

(1) Serving as chief advocate for older adults;
(2) Developing the State plan which will aid in the coordination of all programs for older people;
(3) Providing information and research to identify gaps in existing services;
(4) Promoting the development and expansion of services;
(5) Evaluation of programs;
(6) Bringing together the public and private sectors to provide services for older people. (1979, c. 983, s. 1.)

Part 14B. Long Term Care.

§ 143B-181.5. Department to develop systems of long term care.

The Secretary of the Department of Human Resources shall develop effective systems of long term care with interested counties to the extent that federal, State and local funds are available to support the expanded programs and services. (1981, c. 675, s. 1.)

§ 143B-181.6. Screening program for elderly.

The Secretary of Human Resources shall develop a comprehensive screening program for elderly people in need of care, to be administered at the local level, focused on providing elderly persons with the least restrictive level of care that meets the medical and social needs of the person. This program shall provide for expansion of the preadmission screening of applicants and recipients in need of long-term care, setting priorities according to immediate need. The process should be made more efficient in identifying those people in need of care who could remain at home if provided the precise program of in-home care each individual requires. Private paying patients may take advantage of the screening services and services necessary to remain in their homes by paying fees for these services, pursuant to G.S. 108A-10 or G.S. 130-17(e) as appropriate. The screening shall be carried out by a team of at least two people, a social worker and a registered nurse familiar with care of the elderly, each of whom must be experienced in evaluation and provision of in-home services. The process shall include a visit to the home by at least one member of the screening team. The team in consultation with a physician licensed to practice medicine in North Carolina shall determine if in-home care, whether health, social or both would enable the person to stay at home or in the community. The team shall plan precisely what program of care and support services are available through both public or private agencies. Provision must be made for such care in conformity with established quality assurance procedures for the care so rendered, together with periodic reassessment. Nothing contained in the act shall require counties to participate in the comprehensive screening program. (1981, c. 675, ss. 1, 2.)

Editor's Note. — Session Laws 1981, c. 675, s. 2, substituted "G.S. 108A-10" for "G.S. 108-15.1" in the third sentence of this section, effective Oct. 1, 1981.

§ 143B-181.7. Development and implementation of rules.

The Department of Human Resources shall define by rule the population to be screened, establish a uniform screening and assessment schedule, and promulgate a uniform reporting form. Prior to action by the Department, the Secretary shall convene an implementation committee composed of local providers, representatives of State agencies and organizations with experience and information about in-home services and long-term care to assist in implementation and development of these rules. (1981, c. 675, s. 1.)

§ 143B-181.8. Utilization of Medicaid funds.

The Secretary of the Department of Human Resources may utilize Medicaid funds to the extent provided for by federal law and regulation for home health and personal care and seek such waivers as may be necessary to implement this act including Medicaid eligibility criteria supporting the provision of in-home care. (1981, c. 675, s. 1.)

§ 143B-181.9. Reporting.

The Department shall report to the Legislative Research Commission on the implementation of this act, including the eligibility requirements, screening processes, and financial barriers to implementation. Such report shall be made no later than January 1, 1982, but the Legislative Research Commission may require interim progress reports from the Department. (1981, c. 675, s. 1.)

Part 15. Mental Health Advisory Council.

§§ 143B-182, 143B-183: Repealed by Session Laws 1981, c. 51, s. 13, effective July 1, 1981.

Part 16A. North Carolina Arthritis Program Committee.

§ 143B-184. North Carolina Arthritis Program Committee; creation, composition.

(a) There is created the North Carolina Arthritis Program Committee. The committee shall consist of 12 members to be appointed by the Secretary of Human Resources as follows:

(1) One person nominated by the President of the N.C. Medical Society,
(2) One person nominated by the Dean of the Bowman Gray School of Medicine,
(3) One person nominated by the Dean of the Duke University School of Medicine,
(4) One person nominated by the Dean of the East Carolina University School of Medicine,
(5) One person nominated by the Dean of The University of North Carolina School of Medicine,
(6) Two persons nominated by the North Carolina National Health Agency Committee,
(7) One person who suffers from arthritis,
(8) One person who suffers from arthritis, or the brother, sister, parent, child, or spouse of a person who suffers from arthritis,
(9) One person representing the profession of nursing,
(10) One person representing the profession of occupational therapy,
(11) One person representing the profession of physical therapy.

(b) The Secretary shall make the appointments provided in subdivisions (a)(1) through (a)(6) from a list of not to exceed five persons submitted by each nominating agency or individual.

(c) The Secretary shall designate one member as chairman. Each member shall serve a four-year term. The initial appointments of members shall be as follows: the Secretary shall appoint the appointees designated in subdivisions (a)(1) through (a)(4) for initial terms of two years; the appointees designated in subdivisions (a)(5) through (a)(7) for initial terms of three years; and the appointees designated in subdivisions (a)(8) through (a)(11) for initial terms of four years. At the end of the respective terms of office of the initial members of the committee, the appointment of their successors shall be for terms of four years and until their successors are appointed and qualified. A vacancy occurring before the expiration of a term shall be filled in the same manner as provided for in the original appointment and the appointee shall serve the unexpired term.

(d) The committee shall meet semiannually and at such other times as called by the chairman of the committee.

(e) The Secretary shall have the power to remove any member from the committee for misfeasance, malfeasance or nonfeasance in accordance with G.S. 143B-13.

(f) The members of the committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(g) All clerical and other services required by the committee shall be supplied by the Secretary of Human Resources within budget limitations. (1979, c. 996, s. 1.)

Editor's Note. — Session Laws 1979, c. 996, s. 4, makes this Part effective July 1, 1979.

§ 143B-185. Duties of Committee.

The committee shall consider the entire problem of arthritis, including research, education and services furnished arthritis victims. The committee shall have the power and the duty to recommend to the Secretary of Human Resources a long-range arthritis plan, policy guidance, and public accountability of the plan. The committee shall report annually to the Governor its findings and recommendations, and shall advise the Governor about the Arthritis Program authorized by G.S. 130-187.6. (1979, c. 996, s. 1.)

Editor's Note. — Section 130-187.6, referred to at the end of this section, does not exist. Section 130-186.9 appears to have been the intended reference.

Part 19. Commission for Human Skills and Resource Development.

§§ 143B-197 to 143B-201: Repealed by Session Laws 1979, c. 504, s. 10.

Part 21. Youth Services Advisory Committee.

§§ 143B-207, 143B-208: Repealed by Session Laws 1981, c. 50, s. 7.

Editor's Note. — Session Laws 1981, c. 50, s. 8, provides: "The Youth Services Advisory Committee of the Department of Human Resources is hereby abolished."

Part 23. North Carolina Drug Commission.

§§ 143B-210 to 143B-212: Repealed by Session Laws 1981, c. 51, s. 7, effective July 1, 1981.

Part 24. North Carolina Council for the Hearing Impaired.

§ 143B-213. North Carolina Council for the Hearing Impaired — responsibilities of Council.

Cross References. — Duty to assist in arranging for interpreters in certain judicial, legislative, and administrative proceedings. See § 8B-6.

§ 143B-214. North Carolina Council for the Hearing Impaired — members.

(a) The North Carolina Council for the Hearing Impaired shall consist of 18 members as follows: five representatives of the Department of Human Resources to be designated by the Secretary of Human Resources from the areas of health services, mental health services, social services, the North Carolina Schools for the Deaf, and vocational rehabilitation services; one representative of the Department of Public Instruction, to be designated by the superintendent of Public Instruction, from the area of exceptional children; the Director of the Employment Security Commission, or his designee; one representative of the Department of Administration to be designated by the Secretary of the Department of Administration from the area of special personnel projects; the President of the North Carolina Association of the Deaf, or his designee; the President of the North Carolina Registry of Interpreters for the Deaf, or his designee; one member who is a parent of a hearing impaired child enrolled in an educational program in North Carolina to be appointed by the Governor; five additional members who are hearing impaired to be appointed by the Governor from nominations submitted by the North Carolina Association of the Deaf; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House; one member of the North Carolina Senate to be appointed by the President of the Senate. Legislative members shall be appointed for terms of two years. The five hearing impaired members appointed by the Governor and the three representatives of consumer organizations shall serve on the Council for terms of four years, provided that [with respect to] members initially appointed, the Governor shall designate two members of the members initially appointed who shall serve terms of five years, two who shall serve terms of four years, two who shall serve terms of three years and two who shall serve terms of two years.

(b) The terms of the members first appointed shall commence July 1, 1977. At the expiration of the term of any member of the Council, his successor shall be appointed for a term of four years except for the members of the House and the Senate who shall serve terms of two years.

Vacancies occurring other than by expiration of term in the membership of the council shall be filled by the Governor, the Speaker of the House, the Lieutenant Governor or the appropriate appointing authority. No person shall be eligible to serve more than two successive terms other than the representatives of the above named State agencies. (1977, c. 991, s. 1; 1981, c. 871.)

Effect of Amendments. — The 1981 amendment substituted "one member who is a parent of a hearing impaired child enrolled in an educational program in North Carolina to be appointed by the Governor" for "the President of the North Carolina Parents Association of the Deaf, or his designee" in the first sentence.

§ 143B-216.4. North Carolina Council for the Hearing Impaired — functions of service centers.

Cross References. — Duty to assist in arranging for interpreters in certain judicial, legislative, and administrative proceedings. See § 8B-6.

§ 143B-216.5. North Carolina Council for the Hearing Impaired — receipt of moneys.

(a) The Department of Human Resources may receive moneys from any source, including federal funds, gifts, grants and bequests which shall be expended for the purposes designated in this Part. Gifts and bequests received shall be deposited in a trust fund with the State Treasurer who shall hold them in trust in a separate account in the name of the Division of Vocational Rehabilitation Services, North Carolina Council for the Hearing Impaired. The cash balance of this account may be pooled for investment purposes, but investment earnings shall be credited pro rata to this participating account. Moneys deposited with the State Treasurer in the trust fund account pursuant to this section, and investment earnings thereon, are available for expenditure without further authorization from the General Assembly. Such funds shall be administered by the North Carolina Council for the Hearing Impaired under the direction of the director and fiscal officer of the Division of Vocational Rehabilitation Services, and will be subject to audits normally conducted with the agency.

(1979, c. 540.)

Effect of Amendments. — The 1979 amendment added the last four sentences of subsection (a).

Only Part of Section Set Out. — As subsection (b) was not changed by the amendment, it is not set out.

Part 25. Nutrition Advisory Committee.

§§ 143B-216.6, 143B-216.7: Repealed by Session Laws 1979, c. 504, s. 13.

Part 26. Governor's Council on Physical Fitness and Health.

§ 143B-216.8. Governor's Council on Physical Fitness and Health — creation; powers; duties.

There is hereby created the Governor's Council on Physical Fitness and Health in the Department of Human Resources. The council shall have the following functions and duties:

(1) To promote interest in the area of physical fitness; to consider the need for new State programs in the field of physical fitness; to enlist the active support of individual citizens, professional and civic groups, amateur and professional athletes, voluntary organizations, State and local government agencies, private industry and business, and com-

munity recreation programs in efforts to improve the physical fitness and thereby the health of the citizens of North Carolina;

(2) To examine current programs of physical fitness available to the people of North Carolina, and to make recommendations to the Governor for coordination of programs to prevent duplication of such services; to support programs of physical fitness in the public school systems; to develop cooperative programs with medical, dental, and other groups; to maintain a liaison with government, private and other agencies concerning physical fitness programs; to stimulate research in the area of physical fitness; to sponsor physical fitness workshops, clinics, conferences, and other related activities pertaining to physical fitness throughout the State;

(3) To serve as an agency for recognizing outstanding developments, contributions, and achievements in physical fitness in North Carolina;

(4) The Council shall make an annual report to the Governor and to the Secretary of Human Resources, including therein suggestions and recommendations for the furtherance of the physical fitness of the people of North Carolina. (1979, c. 634.)

Editor's Note. — Session Laws 1979, c. 634, s. 2, as amended by Session Laws 1981, c. 1127, s. 32, provides: "The Department of Human Resources may implement the provisions of this act by using funds already appropriated to it for an in-kind match for federal or other non-State funds. Nothing herein contained obligates the General Assembly to make additional appropriations for this purpose."

§ 143B-216.9. The Governor's Council on Physical Fitness and Health — members; selection; quorum; compensation.

The Governor's Council on Physical Fitness in the Department of Human Resources shall consist of 10 members, including a chairman.

(1) The composition of the Council shall be as follows: one member of the Senate appointed by the President of the Senate, and one member of the House of Representatives appointed by the Speaker of the House of Representatives, and eight persons from the health care professions, the fields of business and industry, physical education, recreation, sports and the general public. The eight nonlegislative members of the Council shall be appointed by the Governor to serve at his pleasure.

(2) The eight initial nonlegislative members of the council shall be appointed thusly: two for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years. At the end of the respective terms of office of these initial members, all succeeding appointments of nonlegislative members shall be for terms of four years; nonlegislative members shall serve no more than two consecutive four-year terms; all unexpired terms due to resignation, death, disability, removal or refusal to serve shall be filled by a qualified person appointed by the Governor for the balance of the unexpired term.

(3) Legislative members of the Council shall serve two-year terms beginning and ending on July 1 of odd-numbered years, and shall serve no more than two consecutive terms.

(4) Members of the Governor's Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 or 138-6, or travel and subsistence expenses under G.S. 120-3.1, as appropriate.

(5) The Council shall meet no more than quarterly.
(6) A majority of the Governor's Council shall constitute a quorum for the transaction of business. (1979, c. 634.)

Part 27. Governor's Waste Management Board.

§ 143B-216.10. Declaration of findings.

(a) The General Assembly of North Carolina hereby finds and declares that the safe management of hazardous wastes and low-level radioactive wastes, and particularly the timely establishment of adequate facilities for the disposal and management of hazardous wastes and low-level radioactive wastes is one of the most urgent problems facing North Carolina. The safe management and disposal of these wastes are essential to continued economic growth and to protection of the public health and safety. When improperly handled, these wastes pose a threat to the water, land, and air resources of the State, as well as to the health and safety of its citizens. Consequently, cooperation and coordination among the private sector, the general public and State and local agencies to assure the prevention of unnecessary waste and the establishment of adequate treatment and disposal facilities are essential. The General Assembly further finds that cooperation and coordination among the private sector, the general public and State regulatory agencies will be advanced by the creation of a Governor's Waste Management Board.

(b) It is the intent of the General Assembly by enactment of the Waste Management Act of 1981 to prescribe a uniform system for the management of hazardous waste and low-level radioactive waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste and low-level radioactive waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations or otherwise. To this end, all provisions of special, local or private acts or resolutions are repealed which

(1) prohibit the transportation, treatment, storage, or disposal of hazardous or low-level radioactive waste within any county, city, or other political subdivision;
(2) prohibit the siting of a hazardous waste facility or a low-level radioactive waste facility within any county, city, or other political subdivision;
(3) place any restriction or condition not placed by this act or by General Statutes Chapter 130, Article 13B or Chapter 104E upon the transportation, treatment, storage or disposal of hazardous or low-level radioactive waste, or upon the siting of a hazardous waste facility or low-level radioactive waste facility within any county, city, or other political subdivision; or
(4) in any manner are in conflict or inconsistent with the provisions of this act or General Statutes Chapter 130, Article 13B or Chapter 104E.

No special, local or private acts or resolutions enacted or taking effect hereafter may be construed to modify, amend or repeal any portion of the Waste Management Act of 1981 unless it expressly provides for such by specific references to the appropriate section of this act. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities are invalidated which (i) prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility or a hazardous waste landfill facility approved by the Governor pursuant to G.S. 130-166.17B; or (ii) prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste facility or a low-level radioactive waste landfill facility approved by the Governor pursuant to G.S. 104E-6.2.

(c) The General Assembly of North Carolina hereby finds and declares that prevention, recycling, detoxification, and reduction of hazardous wastes should be encouraged and promoted. These are alternatives which ultimately remove such wastes' hazards to human health and the environment. When these alternatives are not technologically feasible, retrievable above-ground storage is sometimes preferable to other means of disposal of some types of waste until appropriate methods for recycling or detoxification of the stored wastes are found. Landfilling shall be used only when it is clearly appropriate. (1981, c. 704, s. 3.)

Editor's Note. — Session Laws 1981, c. 704, ss. 1 and 2, provide:

"Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

"Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for management of hazardous and low-level radioactive waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management."

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 143B-216.11. Definitions.

Unless the context otherwise requires, the following definitions shall apply to this Part:

(1) "Board" means the Governor's Waste Management Board.
(2) "Hazardous Waste" has the same meaning as in G.S. 130-166.16(4).
(3) "Hazardous Waste Facility" means a facility as defined in G.S. 130-166.16(5).
(4) "Hazardous Waste Landfill Facility" means a facility as defined in G.S. 130-166.16(5a).
(5) "Hazardous Waste Management" has the same meaning as defined in G.S. 130-166.16(7).
(6) "Low-Level Radioactive Waste" has the same meaning as in G.S. 104E-5(9a).
(7) "Low-Level Radioactive Waste Facility" means a facility as defined in G.S. 104E-5(9b).
(8) "Low-Level Radioactive Waste Landfill Facility" means a facility as defined in G.S. 104E-5(9c).
(9) "Low-Level Radioactive Waste Management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of low-level radioactive waste. (1981, c. 704, s. 3.)

Cross References. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 143B-216.10.

§ 143B-216.12. Creation; membership; terms; chairperson; vacancies; removal; compensation; quorum.

(a) There is hereby created the Governor's Waste Management Board to be located in the Department of Human Resources. The composition of the Board shall be as follows:

(1) Five members from State government: the Secretary or Commissioner of Human Resources, Natural Resources and Community Development, Commerce, Agriculture, and Crime Control and Public Safety. At the request of such Secretary or Commissioner, the

Governor may appoint another official from the same department to serve in his stead.

(2) Eight members appointed by the Governor from the following categories: one from county government, one from municipal government, two from private industry, two from the field of higher education, research or technology, and two from the public at large interested in environmental matters.

(3) Two members from the General Assembly, one of whom shall be appointed by the Speaker of the House from the House of Representatives and one of whom shall be appointed by the Lieutenant Governor from the Senate.

(b) The members appointed by the Governor shall serve three-year terms until they are reappointed or replaced, except that two of the original members shall serve terms of one year, three of the original members shall serve terms of two years and three of the original members shall serve terms of three years. The members appointed from the General Assembly shall serve during the terms which they are serving when appointed to the Board and until their successors are appointed or until they cease to be members of the General Assembly, whichever occurs first.

(c) The initial members appointed by the Governor shall be appointed as soon as possible after passage of this act and shall serve terms as set forth in subsection (b).

(d) The chairperson of the Board shall be appointed by and serve at the pleasure of the Governor.

(e) Any appointment to fill a vacancy on the Board created by resignation, dismissal, death, disability or any other cause shall be for the balance of the unexpired term.

(f) Any member of the Board may be removed by the Governor for misfeasance, malfeasance, or nonfeasance, except that the members from the House of Representatives and the Senate may be removed for such reasons only by the Speaker of the House and the Lieutenant Governor respectively.

(g) Members of the Board who are State employees shall receive travel expenses as set forth in G.S. 138-6. Board members who are legislators shall receive travel and subsistence allowances as set forth in G.S. 120-3.1. The other Board members shall receive per diem and travel expenses as set forth in G.S. 138-5.

(h) A majority of the board shall constitute a quorum for the transaction of business. (1981, c. 704, s. 3.)

Cross References. — As to appointment of additional members of board by local governing body of city or county in which proposed low-level radioactive waste landfill facility is to be located, see § 104E-6.2.

As to appointment of additional members of board by local governing body of city or county in which proposed site of hazardous waste facility is to be located, see § 130-166.17B.

As to short title and purpose of Session Laws 1981, c. 704, see note to § 143B-216.10.

§ 143B-216.13. Functions and powers of board.

The Board shall perform the functions and be empowered as follows:

(1) The Board shall periodically evaluate and assess the volume, distribution, location, and physical and chemical characteristics of hazardous waste and low-level radioactive waste generated or disposed of in the State.

(2) The Board shall periodically review the State's comprehensive waste management system and make recommendations to the Governor, cognizant State agencies, and the General Assembly on ways to improve waste management; reduce the amount of waste generated;

maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste and low-level radioactive waste which must be disposed of.

(3) The Board shall study and make recommendations on policy issues including but not limited to liability and financial responsibilities within the waste management area. On or before January 1, 1983, the Board shall prepare and present to the Governor and General Assembly a report concerning the desirability of establishing by statute a standard of strict liability for persons involved in storage, transportation, treatment, or disposal of hazardous or low-level radioactive waste in North Carolina.

(4) The Board shall promote research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste and low-level radioactive waste. The Board is authorized to establish a waste information exchange for the State.

(5) The Board shall promote public education and public involvement in the decision making process for the siting and permitting of proposed waste management facilities.

(6) The Board shall periodically evaluate and assess the type and number of hazardous waste facilities, hazardous waste landfill facilities, low-level radioactive waste facilities and low-level radioactive waste landfill facilities in existence, under construction or planned in the State and multi-State region and promote the development of additional facilities particularly retrievable aboveground storage facilities if existing or planned facilities are deemed inadequate or unavailable.

(7) The Board shall prepare and file jointly with the Governor and the General Assembly an annual report describing the Board's activities and setting forth its recommendations for administrative or regulatory action required to improve the State's comprehensive waste management system or remedy noted defects in the system. A special report shall be filed in January of 1983 which shall include an evaluation on the possible need to organize State agencies more efficiently to improve overall performance of waste management functions. The report should give consideration to the advantages and disadvantages of consolidating or centralizing administration of programs that are now in separate agencies.

(8) The Board shall each year recommend to the Governor a recipient for a "Governor's Award of Excellence" which the Governor shall award for outstanding achievement by an industry or company in the area of hazardous waste or low-level radioactive waste management.

(9) The Board shall promote and participate in discussion with other states concerning development of regional hazardous waste and low-level radioactive waste management agreements.

(10) The Board shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Board shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(11) The Board shall, in accordance with the procedures set forth in G.S. 130-166.17B and 104E-6.2, make requisite findings and submit its recommendation to the Governor concerning the exercise of the State's preemptive powers.

(12) The Board shall, in accordance with the procedures set forth in G.S. 160A-211.1 and 153A-152.1, review upon appeal specific privilege license tax rates which localities may apply to waste management facilities in their jurisdiction.

(13) The Board may insure its members against personal liability for any actions they might take pursuant to the exercise of the functions and powers of the Board.
(14) The Board may adopt, modify, or revoke any rules necessary to carry out the functions and powers as set forth in this Part.
(15) The Board shall have any and all powers necessary or incidental to the exercise of the functions and powers enumerated herein.
(16) The Board shall study the development of retrievable, aboveground storage facilities for hazardous wastes. (1981, c. 704, s. 3.)

Cross References. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 143B-216.10.

§ 143B-216.14. Functions and powers of Department of Human Resources.

The Department of Human Resources is authorized:
(1) To enter upon any lands and structures upon lands to make surveys, borings, soundings and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility, hazardous waste landfill facility, low-level radioactive waste facility or low-level radioactive landfill facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided however that the Department shall make reimbursement for any damage to such land or structures caused by such activities;
(2) To provide necessary clerical, technical, and administrative assistance to the Board, and to employ the necessary personnel for the accomplishment of the purposes of this Part.
(3) To enforce any rules adopted by the Board pursuant to this Part in the manner provided for by G.S. 130-166.21E and 104E-24. (1981, c. 704, s. 3.)

Cross References. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 143B-216.10.

§ 143B-216.15. Reporting procedures.

The Governor's Waste Management Board shall report directly to the Governor except as otherwise expressly provided. (1981, c. 704, s. 3.)

Cross References. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 143B-216.10.

ARTICLE 4.

Department of Revenue.

Part 1. General Provisions.

§ 143B-218. Department of Revenue — duties.

It shall be the duty of the Department to collect and account for the State's tax funds, to insure uniformity of administration of the tax laws and regu-

lations, to conduct research on revenue matters, and to exercise general and specific supervision over the valuation and taxation of property throughout the State. (1973, c. 476, s. 185; 1981, c. 859, s. 81; c. 1127, s. 53.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, added at the end of this section a sentence reading as follows: "It shall also be the duty of the Department to perform any auditing function associated with the International Registration Plan for Motor Vehicles."

The second 1981 amendment, effective November 15, 1981, repealed the first 1981 amendment.

§ 143B-219. Department of Revenue — functions.

(a) The functions of the Department of Revenue 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 revenue collection, tax research, tax settlement, and property tax supervision including those prescribed powers, duties and functions enumerated in Article 16 of Chapter 143A of the General Statutes of this State.

(b) All functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 16 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Revenue, 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 Commissioner and Department of Revenue;
(2) The Department of Tax Research, and
(3) The State Board of Assessment. (1973, c. 476, s. 186; 1981, c. 859, s. 82; c. 1127, s. 53.)

Editor's Note. — Article 16 of Chapter 143A, referred to in this section, has been repealed. For present provisions as to the Department of Revenue, see §§ 143B-217 to 143B-225.

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, added at the end of subsection (a), a sentence reading as follows: "The functions of the Department shall also include auditing the functions associated with the International Registration Plan for Motor Vehicles."

The second 1981 amendment, effective November 18, 1981, repealed the first 1981 amendment.

Part 2. Property Tax Commission.

§ 143B-223. Property Tax Commission — members; selection; quorum; compensation.

The Property Tax Commission of the Department of Revenue shall consist of five members with three appointed by the Governor and one each appointed by the Lieutenant Governor and the Speaker of the House. The initial members of the Commission shall be the appointed members of the State Board of Assessment who shall serve for a period equal to the remainder of their current term on the State Board of Assessment, one of whose term expires July 1, 1973, and three of whose terms expire July 1, 1975. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms for four years and until their successors are appointed and qualify. To achieve the staggered terms, the Governor shall make two appointments on July 1, 1973, each for four years and one appoint-

ment on July 1, 1975, for four years. The Lieutenant Governor and the Speaker of the House shall make their respective appointments on July 1, 1975, for four years. Thereafter, the appointment of their successors shall be for terms of four 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.

The Governor shall have the right to remove any member 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 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and a salary of two hundred dollars ($200.00) per day when hearing cases.

The 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 Revenue. (1973, c. 476, s. 190; 1979, 2nd Sess., c. 1241.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, deleted "per diem and" preceding "necessary travel and subsistence expenses" near the beginning of the fourth paragraph, and added "and a salary of two hundred dollars ($200.00) per day when hearing cases" at the end of the fourth paragraph.

ARTICLE 6.

Department of Correction.

Part 3. Parole Commission.

§ 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

The Parole Commission shall consist of five full-time members, and the Secretary of Correction who shall serve as an ex officio, nonvoting member. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1977. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting commission members and shall designate a third commissioner to serve

as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner. Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work release privileges except by majority vote of the full commission.

The full-time members of the Commission shall receive the salary fixed by the Governor and approved by the Advisory Budget Commission and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2.)

Effect of Amendments. — The 1979 amendment rewrote the third paragraph, which formerly read: "A majority of the full-time members of the Commission shall constitute a quorum for the transaction of business."

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Article 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.

§ 143B-276. Department of Natural Resources and Community Development — duties.

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 143B-279. Department of Natural Resources and Community Development — organization.

The Department of Natural Resources and Community Development shall be organized initially to include:

(1) The Board of Natural Resources and Community Development,
(2) The Wildlife Resources Commission,
(3) The Environmental Management Commission,
(4) The Marine Fisheries Commission,
(5) The North Carolina Mining Commission,
(6) The State Soil and Water Conservation Commission,
(7) The Sedimentation Control Commission,
(8) The Wastewater Treatment Plant Operators Certification Commission,

(9) The Earth Resources Council,
(10) The Community Development Council,
(11) The Forestry Council,
(12) The Parks and Recreation Council,
(13) The North Carolina Zoological Park Council,
(14) The Water Safety Council,
(15) The Air Quality Council,
(16) The Water Quality Council,
(17) The North Carolina Employment and Training Council,
(18) The Commercial and Sports Fisheries Committee,
(19) The John H. Kerr Reservoir Committee,
(20) The North Carolina Trails Committee, and

such divisions as may be established under the provisions of Article 1 of this Chapter. (1973, c. 1262, s. 15; 1977, c. 771, s. 3; 1981, c. 881, s. 4.)

Effect of Amendments. — The 1981 amendment added "and" at the end of subdivision (20) and deleted subdivision (21), which concerned the North Carolina Land Policy Council.

Part 2. Board of Natural Resources and Community Development.

§ 143B-280. Board of Natural Resources and Community Development — duties; members; selection; meetings; quorum; compensation; services.

The Board of Natural Resources and Community Development shall consider and advise the Secretary of Natural Resources and Community Development upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Natural Resources and Community Development in the development of major programs and recommend priorities for programs within the Department.

The Board of Natural Resources and Community Development shall perform such other duties as may be specifically given to it. The Board of Natural Resources and Community Development shall consist of the following 21 members. The chairman of each of the following commissions: the Wildlife Resources Commission, the Environmental Management Commission, the Marine Fisheries Commission, the Coastal Resources Commission and the Soil and Water Conservation Commission; the chairman of each of the following councils: the Earth Resources Council, the Community Development Council, the Forestry Council, the Parks and Recreation Council and the North Carolina Zoological Park Council; 10 members at large appointed by the Governor to serve at his pleasure; and the Secretary of Natural Resources and Community Development who shall be a member and chairman ex officio. The Board of Natural Resources and Community Development 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 Resources and Community Development. (1973, c. 1262, s. 16; 1977, c. 771, ss. 4, 8; 1979, c. 430, s. 1.)

Effect of Amendments. — The 1979 amendment rewrote the third paragraph.

Session Laws 1979, c. 430, s. 2, provides: "Notwithstanding Section 1 of this act, the members of the Board elected by the various Commissions and Councils under Chapter 1262 of the 1973 Session laws shall serve out their present terms on the Board. The first three vacancies occurring as a result of the expiration of the terms of such elected members shall be filled by the addition of the Chairman of the Coastal Resources Commission, the Soil and Water Conservation Commission, and the North Carolina Zoological Park Council in the order determined by the Governor. The membership of the Board is reduced from 25 to 21 as the remaining four vacancies occur as a result of the expiration of terms of the remaining members elected by the various Commissions and Councils."

Part 4. Environmental Management Commission.

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 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.

(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 Resources and Community Development.

(c) Nine of the members appointed by the Governor under this section shall be persons who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Chapter. The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(d) In addition to the members designated by subsection (a), the Environmental Management Commission shall also consist of four members of the General Assembly, appointed as follows:

(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House; and

(2) Two members of the North Carolina Senate to be appointed by the President of the Senate.

The appointed members of the General Assembly shall be initially appointed by July 30, 1980, and shall serve until January 31, 1981. Thereafter, such members shall serve two-year terms, or until their respective successors are appointed. (1973, c. 1262, s. 20; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, ss. 5, 6.)

Effect of Amendments. — The 1979, 2nd Sess., amendment deleted the former second sentence of subdivision (9) of subsection (a), which related to the promulgation by the Governor of eligibility criteria and rules, regulations or guidelines established by federal agencies, and added subsections (c) and (d).

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 Resources and Community Development 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.

(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. Repealed by Session Laws 1979, c. 253, s. 3;

j. Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters as provided in G.S. 113-265.

(1979, c. 253, s. 3.)

Effect of Amendments. — The 1979 amendment repealed paragraph i of subdivision (2). Paragraph i read: "Regarding permits to dredge or fill as provided in G.S. 113-229; and."

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

Part 6. North Carolina Mining Commission.

Repeal of Part. —

Session Laws 1979, c. 740, amended § 143-34.11 (codified from Session Laws 1977, c. 712, s. 2, as amended) so as to eliminate the provision repealing this Part.

Part 8. Sedimentation Control Commission.

Repeal of Part. —

Session Laws 1977, c. 712, s. 2, was amended by Session Laws 1979, c. 744, s. 1, so as to postpone the repeal of this Part to July 1, 1981.

Session Laws 1981, c. 248, s. 3, amended § 143-34.12 (codified from Session Laws 1977, c. 712, s. 3, as amended) so as to eliminate the provision repealing this Part. Section 143-34.12 was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.

(a) There is hereby created in the Department of Natural Resources and Community Development 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 Resources and Community Development, 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 three 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 three years. All Commission members serving on June 30, 1981, shall be eligible to complete their respective terms. Except for the person filling position number five, no member appointed to the Commission on or after July 1, 1981, shall serve more than two complete consecutive three-year terms. 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; 1977, c. 771, s. 4; 1981, c. 248, ss. 1, 2.)

Editor's Note. — Section 74-38(b), referred to at the end of subdivision (6) of subsection (a), has been repealed.

Effect of Amendments. — The 1981 amendment substituted "three" for "four" near the end of the second and fourth sentences of subsection (b), and added the fifth and sixth sentences in subsection (b).

Part 9. Wastewater Treatment Plant Operators Certification Commission.

Repeal of Part. —

Session Laws 1977, c. 712, s. 2, was amended by Session Laws 1979, c. 744, s. 1, so as to postpone the repeal of this Part to July 1, 1981.

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

Part 13. Parks and Recreation Council.

§ 143B-312. Parks and Recreation Council — members; chairman; selection; removal; compensation; quorum; services.

The Parks and Recreation Council shall be composed of 14 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 and a representative of the Trails Committee, as selected by that Committee, shall serve as ex officio members 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 Resources and Community Development. (1973, c. 1262, s. 56; 1977, c. 771, s. 4; 1979, c. 42, s. 1.)

Effect of Amendments. — The 1979 amendment substituted "14" for "13" in the first sentence of the first paragraph, inserted "and a representative of the Trails Committee, as selected by that Committee" in the last sentence of the first paragraph, and substituted "members" for "member" in the last sentence of the first paragraph.

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 Resources and Community Development. 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 buildings;

(2) To advise on the construction, furnishings, equipment and operations of the North Carolina Zoological Park;

(2a) To establish and set admission fees with the approval of the Secretary of Natural Resources and Community Development as provided in G.S. 143-177.3(b);

(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 Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 83; 1977, c. 771, s. 4; 1981, c. 278, s. 2.)

Effect of Amendments. — The 1981 amendment added subdivision (2a).

§ 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 Resources and Community Development shall consist of 15 members appointed by the Governor, one of whom shall be the Chairman of the Board of Directors of the North Carolina Zoological Society.

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 Resources and Community Development. (1973, c. 1262, s. 84; 1977, c. 771, s. 4; 1979, c. 30, s. 1.)

Effect of Amendments. — The 1979 amendment added "one of whom shall be the Chairman of the Board of Directors of the North Carolina Zoological Society" at the end of the first paragraph.

Session Laws 1979, c. 30, s. 2, provides: "Appointment of the Chairman of the Board of the Zoological Society to the Council shall take place upon the occurrence of the first vacancy on the Council."

Part 24. North Carolina Employment and Training Council.

§ 143B-340. North Carolina Employment and Training Council — creation; duties and responsibilities.

There is hereby created a North Carolina Employment and Training Council, within the Department of Natural Resources and Community Development hereinafter referred to as "the Council."

The Council shall have the following duties and responsibilities:

(2) To review continuously the plans and programs of agencies operating federally funded programs related to employment and training and of other agencies providing employment and training-related services in the State.

(4) To conduct studies, prepare reports including an annual report to the Governor which shall be a public document, and to provide such advisory services as may be authorized or directed by the Governor or the Secretary of Natural Resources and Community Development.

(1979, c. 153, s. 1.)

Effect of Amendments. — The 1979 amendment inserted "continuously" in subdivision (2), inserted "including an annual report to the Governor which shall be a public document" in subdivision (4), and inserted "to" before "provide such advisory" in subdivision (4).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (2) and (4) are set out.

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 143B-341. North Carolina Employment and Training Council — structure; staff support; related councils.

The North Carolina Employment and Training Council shall be appointed by the Governor in a manner consistent with federal law and regulations governing State employment and training councils. The Council shall serve at the pleasure of the Governor. The Governor shall appoint a public member as chairperson consistent with federal requirements.

The Council shall meet at least five times annually at the call of the chairman or the Secretary of Natural Resources and Community Development. A majority of the Council shall constitute a quorum for the transaction of business. Members shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, 138-6, or 120-3.1, as the case may be.

The Council may create such committees as may be necessary to the proper conduct of its business. The Governor may establish such additional advisory bodies, in accordance with existing law, related to employment and training as may be necessary and appropriate to the conduct of federally supported employment and training-related programs.

Clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development.

The Secretary of Natural Resources and Community Development or his designee shall serve as Secretary of the Council. (1977, c. 771, s. 6; 1979, c. 153, s. 2.)

Effect of Amendments. — The 1979 amendment rewrote the first paragraph, and substituted "five" for "three" in the first sentence of the second paragraph.

Part 25. Triad Park Commission.

§ 143B-342. Triad Park Commission created; membership; organization.

The Triad Park Commission is created, to consist of 15 members to be selected as follows: The Forsyth County Board of Commissioners and the Guilford County Board of Commissioners shall each appoint two members; the City Council of each of the principal cities in the Triad area — Greensboro, High Point, Kernersville, and Winston-Salem — shall each appoint two members; the Lieutenant Governor shall appoint one member-at-large, the Speaker of the House shall appoint one member-at-large; and the Governor shall appoint one member-at-large. The Governor shall designate one member to serve as chairman. All appointments shall be made in time for the Commission to begin its work not later than August 1, 1979.

The Commission may elect from its membership other officers which it deems appropriate, and may adopt rules of procedure governing its meetings. The Commission may utilize the expertise of appropriate local agencies in performing its duties, and the Department of Natural Resources and Community Development may assist the Commission in its work. (1979, c. 1054, s. 1.)

Editor's Note. — Session Laws 1979, c. 1054, s. 6, makes this Part effective July 1, 1979.

§ 143B-343. Powers.

The Commission shall:

(1) Recommend to the Department of Natural Resources and Community Development the types and locations of any State parks, recreation areas, open spaces, and greenways to be established in the Triad area so as to minimize the problems caused by urban sprawl, lack of watershed protection, inadequate recreational areas and greenways, and similar conditions resulting from increased population and development in the area; and shall make an initial report to the Department by December 15, 1979;

(2) Hold public hearings and conduct such other activities as the Commission deems necessary to carry out its duties under this Part;

(3) Subject to the availability of operating funds, employ such staff assistance as the Commission deems necessary. (1979, c. 1054, s. 2.)

§ 143B-344. Compensation of commissioners.

Subject to the availability of funds, members of the Commission who are also State employees shall be paid the allowances authorized by G.S. 138-6; members of the Commission who are also members of the General Assembly shall be paid subsistence and travel allowances authorized by G.S. 120-3.1; all other members of the Commission shall be paid the per diem and allowances authorized by G.S. 138-5. (1979, c. 1054, s. 3.)

§ 143B-344.1. Termination.

The Triad Park Commission shall terminate on September 1, 1985. (1979, c. 1054, s. 4.)

§ 143B-344.2. Commission as public authority.

For the purposes of Article 3 of Chapter 159 of the General Statutes, the Triad Park Commission is a public authority. (1979, c. 1054, s. 5.)

Part 26. Economic Opportunity Agencies.

§§ 143B-344.3 to 143B-344.10: Repealed by Session Laws 1981, ch. 1127, s. 70.

Editor's Note. — The repealed Part was Article 6 of Chapter 108 as recodified by Session Laws 1981, c. 275, s. 3, effective October 1, 1981. Session Laws 1981, c. 275, s. 10, provides: "The provisions of G.S. Chapter 108 shall remain in full force and effect from the date of ratification of this act [April 27, 1981] until October 1, 1981. This act shall not affect any litigation pending under the existing provisions of Chapter 108.

ARTICLE 8.

Department of Transportation.

Part 2. Board of Transportation — Secondary Roads Council.

§ 143B-350. Board of Transportation — organization; powers and duties, etc.

CASE NOTES

Quoted in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Part 7. North Carolina Traffic Safety Authority.

§ 143B-359: Repealed by Session Laws 1981, c. 90, s. 2.

ARTICLE 9.

Department of Administration.

Part 2. State Goals and Policy Board.

§ 143B-371. State Goals and Policy Board — creation; powers and duties.

Cross References. — For the North Carolina Balanced Growth Policy Act, see § 143-506.6 et seq.

Part 3. North Carolina Capital Planning Commission.

§ 143B-374. North Carolina Capital Planning Commission — members; selection; quorum; compensation.

The North Carolina Capital Planning Commission of the Department of Administration shall consist of the following ex officio members: the Governor of North Carolina who shall serve as chairman; all members of the Council of State including the Lieutenant Governor, (or a person designated by the Lieutenant Governor) who shall serve as vice-chairman; the Speaker, (or a person designated by the Speaker) and four members of the North Carolina House of Representatives, and four members of the North Carolina Senate; and a representative of the City of Raleigh to be designated by the City Council of Raleigh to serve a two-year term to expire at the same date city council members' terms expire. The Lieutenant Governor shall appoint the four members of the Senate on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire. The Speaker of the House of Representatives shall appoint the four members of the House on or before July

1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire.

Public officers who are made members of the Commission shall be deemed to serve ex officio.

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 Administration.

All minutes, records, plans, and all other documents of public record of the State Capital Planning Commission, the Heritage Square Commission, and the former North Carolina Capital Planning Commission shall be turned over to the Department of Administration.

The Commission shall meet quarterly, and at other times at the call of the chairman. (1975, c. 879, s. 11; 1981, c. 47, s. 3.)

Effect of Amendments. — The 1981 amendment inserted "(or a person designated by the Lieutenant Governor)" and "(or a person designated by the Speaker)" in the first sentence of the first paragraph.

Session Laws 1981, c. 47, s. 7, provides: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate, or Lieutenant Governor may not receive per diem."

Part 4. Child Day-Care Licensing Commission.

Repeal of Part. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 143B-376. Child Day-Care Licensing Commission — members; selection; quorum; compensation.

The Child Day-Care Licensing Commission of the Department of Administration shall consist of 15 members, one of whom shall be the Governor and 14 of whom shall be citizen members appointed by the Governor, Lieutenant Governor and Speaker of the House, as hereinafter provided. The Governor may designate a representative to sit in his place on the Commission. The 14 citizen members shall be appointed by the Governor, Lieutenant Governor and Speaker of the House, as hereinafter provided, with provision that none shall be employees of the State. Seven of said appointees shall be operators of day-care facilities subject to licensing, five of whom are actively engaged in operation for profit and two of whom shall be operators of nonprofit facilities and the Speaker of the House shall appoint one of the operators of a nonprofit facility. Of the five operators who are operating for profit, one shall be from a facility licensed for no more than 29 children, two shall be from a facility licensed for no more than 70 children and the Lieutenant Governor shall appoint one of these two members, and two shall be from a facility licensed for more than 70 children and the Speaker of the House shall appoint one of these two members. Seven appointees shall be citizens not employed by day-care

facilities who have no direct or indirect pecuniary interest in such, but four of whom shall be a parent of a child in day care at the time of their appointment. The Lieutenant Governor shall appoint one of the seven members not employed by day-care. The term of the Governor shall end on the day his term of office ends, whether by death, resignation, or expiration of such term. At the end of the respective terms of office of the members of the Commission, their successors shall be appointed for terms of three years. Any members shall serve only so long as that member meets the qualifications for appointment. 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.

The Governor shall designate a member of the Commission as chairman to serve in such capacity at the pleasure of the Governor.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

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 Administration. (1975, c. 879, s. 14; 1981, c. 498, s. 1.)

Effect of Amendments. — The 1981 amendment, effective December 31, 1981, rewrote the first paragraph.

Section 2 of Session Laws 1981, c. 498 provides:

"Persons serving on the commission on the effective date of this act to meet the criteria established in Section 1 shall serve until the expiration of their respective terms or until their resignation or replacement for cause. The Governor, Lieutenant Governor and Speaker of the House shall appoint the new members required by this act no later than December 31, 1981. Of the four new members who do not have a pecuniary interest in day-care facilities, one shall serve an initial term of one year, one shall serve an initial term of two years, and two shall serve initial terms of three years. Thereafter, all public members shall serve three-year terms."

Part 5. North Carolina Drug Commission.

§§ 143B-377, 143B-378: Repealed by Session Laws 1977, c. 667, s. 1.

Part 6. North Carolina Council on Interstate Cooperation.

§ 143B-380. North Carolina Council on Interstate Cooperation — members; selection; quorum; compensation.

The North Carolina Council on Interstate Cooperation of the Department of Administration shall consist of 11 members. The composition of the Council shall be as follows:

(1) President of the Senate (or a person designated by the President of the Senate);

(2) Speaker of the House of Representatives (or a person designated by the Speaker);

(3) Three Senators designated by the President of the Senate;

(4) Three Representatives designated by the Speaker of the House; and
(5) Three administrative officials designated by the Governor.

The initial members of the Council shall be the appointed members of the North Carolina Commission on Interstate Cooperation who shall serve for a period equal to the remainder of the current terms on the North Carolina Commission on Interstate Cooperation, all of whose terms expire June 30, 1977. (1975, c. 879, s. 20; 1981, c. 47, s. 4.)

Effect of Amendments. — The 1981 amendment added "(or a person designated by the President of the Senate)" in subdivision (1) and added "(or a person designated by the Speaker)" in subdivision (2).

Session Laws 1981, c. 47, s. 7 provides: "When the Speaker, President of the Senate or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 130-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate, or Lieutenant Governor may not receive per diem."

Part 7. Youth Councils.

§ 143B-386. State Youth Advisory Council — members; selection; quorum; compensation.

The State Youth Advisory Council of the Department of Administration shall consist of 20 members. The composition and appointment of the Council shall be as follows:

Ten youths to be elected by the procedure adopted by the Youth Advisory Council, which shall include a requirement that four of the members represent youth organizations; and 10 adults to be appointed by the Governor at least four of whom shall be individuals working on youth programs through youth organizations. Provided that no person shall serve on the Board for more than two complete consecutive terms.

The initial members of the Council shall be the appointed members of the Youth Advisory Board who shall serve for a period equal to the remainder of their current terms on the Youth Advisory Board. The current terms of the youth members expire July 1, 1976, the current terms of four of the adult members expire April 7, 1976, and the remaining four adult members' terms expire May 1, 1978. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be as follows:

(1) Eight youth members to serve for terms beginning on July 1, 1976, and expiring on June 30, 1977, and two additional youth members to serve for terms beginning on July 1, 1977, and expiring on June 30, 1978. At the end of the terms of office of these youth members of the Council, the appointment of their successors shall be for terms of one year and until their successors are appointed and qualify.

(2) Four adult members to serve for terms beginning on April 8, 1976, and expiring on June 30, 1979; four adult members to serve for terms beginning on May 1, 1978, and expiring on June 30, 1980; one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1978; and one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1979. At the end of the respective terms of office of these adult members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The total membership shall reasonably reflect the socioeconomic, ethnic, sexual and sectional composition of the State.

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 an adult member of the Council to serve as chairman at the pleasure of the Governor. The Council shall elect a youth member to serve as vice-chairman for a one-year term.

A majority of the Council shall constitute a quorum for the transaction of business.

Members of the Council who are not officers or employees of the State shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 27; 1977, c. 510; 1979, c. 410.)

Effect of Amendments. — The 1979 amendment added "which shall include a requirement that four of the members represent youth organizations" in the first sentence of the second paragraph, added "at least four of whom shall be individuals working on youth programs through youth organizations" at the end of the first sentence of the second paragraph, and added the second sentence of the second paragraph.

Part 9. North Carolina Human Relations Council.

§ 143B-391. North Carolina Human Relations Council — creation; powers and duties.

CASE NOTES

Federal Age Discrimination Action Plaintiff Need Not Seek Recourse from Human Relations Council as Jurisdictional Prerequisite. — Recourse by a plaintiff to the North Carolina Human Relations Council is not a jurisdictional prerequisite to filing a suit in a federal court under the Age Discrimination in Employment Act, 29 U.S.C. §§ 201-219, since § 143-422.1 et seq. is not "a law prohibiting discrimination in employment because of age," and the North Carolina Human Relations Council is not a "state authority established or authorized to grant or seek relief from such discriminatory practice," within the meaning of 29 U.S.C. § 633(b). Spagnuolo v. Whirlpool Corp., 467 F. Supp. 364 (W.D.N.C. 1979).

Part 10. Council on the Status of Women.

§ 143B-393. Council on the Status of Women — creation; powers and duties.

There is hereby created the Council on the Status of Women of the Department of Administration. The Council on the Status of Women shall have the following functions and duties:

(1) To advise the Governor, the principal State departments, and the State legislature concerning the education and employment of women in the State of North Carolina; and

(2) To advise the Secretary of Administration upon any matter the Secretary may refer to it; and

(3) To establish programs for the assistance of displaced homemakers as set forth in Part 10B of this Article. (1975, c. 879, s. 37; 1979, c. 1016, s. 1.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added subdivision (3).

Part 10A. Officer of Coordinator of Services for Victims of Sexual Assault.

§ 143B-394.2. Office of Coordinator of Services for Victims of Sexual Assault — office created.

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Part 10B. Displaced Homemakers.

§ 143B-394.4. Definitions.

As used in this Part, unless the context otherwise requires:

(1) "Center" means any multi-purpose service facility for displaced homemakers established pursuant to this Part;

(2) "Council" means the Council on the Status of Women;

(3) "Department" means the Department of Administration;

(4) "Displaced homemaker" means an individual who:

a. Has worked in his or her own household for at least five years and during which period has provided unpaid household services; and

b. Is unable to secure gainful employment due to the lack of required training or experience; or is unemployed, or underemployed; and

c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support from a spouse but is within two years of losing such support, or has been supported by public assistance as the parent of minor children but is no longer eligible, or is within two years of losing such eligibility. (1979, c. 1016, s. 2.)

Editor's Note. — Session Laws 1979, c. 1016, s. 4, makes this Part effective July 1, 1979.

§ 143B-394.5. Establishment of center; location.

The Council shall establish or contract for the establishment of a pilot center for displaced homemakers. In determining where to locate the center, the Council shall consider, with respect to each proposed location, the probable number of displaced homemakers in the area and the availability of resources for training and education. (1979, c. 1016, s. 2.)

§ 143B-394.6. Staff for center.

To the maximum extent feasible, the staff of the center, including technical, administrative, and advisory positions, shall be filled by displaced homemakers. Where necessary, potential staff members shall be provided with on-the-job training. (1979, c. 1016, s. 2.)

§ 143B-394.7. Funding.

The Council shall explore all possible sources of funding and in-kind contributions from federal, local and private sources in establishing the center. The Council is authorized to accept any funding or other contributions such as building space, equipment, or services of training personnel. (1979, c. 1016, s. 2.)

§ 143B-394.8. Services to be provided.

(a) The center shall be designed to provide displaced homemakers with such necessary counseling, training, services, skills, and education as would enable them to secure gainful employment, and as would be necessary for their health, safety, and well-being.

(b) The center shall provide:

(1) Job counseling programs specifically designed for displaced homemakers entering the job market, taking into consideration their previous absence from the job market, and their lack of recent paid work experience, and taking into account and building upon the skills and experience possessed by the displaced homemaker;

(2) Job training and job placement services to train and place displaced homemakers for and into available jobs in the public and private sectors;

(3) Health education and counseling services with respect to general principles of preventive health care, including but not limited to family health care, nutrition education, and the selection of physicians and health care services;

(4) Financial management services with information and assistance on all aspects of financial management including but not limited to insurance, taxes, estate and probate matters, mortgages, and loans; and

(5) Educational services, including information services concerning available secondary and post-secondary education programs beneficial to displaced homemakers seeking employment; and information services with respect to all employment in the public or private sectors, education, health, public assistance, and unemployment assistance programs. (1979, c. 1016, s. 2.)

§ 143B-394.9. Rules and regulations; evaluation.

(a) The Department shall, upon recommendations by the Council, promulgate rules and regulations concerning the eligibility of persons for the services of the center and governing the granting of any stipends to be provided.

(b) The Council shall require the director and staff of the center to evaluate the effectiveness of the job training, placement, and service components of the center. The evaluation shall include the number of persons trained, the number of persons placed in employment, follow-up data on such persons, the number of persons served by the various service programs, and the cost effectiveness of each component of the center. (1979, c. 1016, s. 2.)

Part 14. Advocacy for the Handicapped.

§§ 143B-402, 143B-403: Repealed by Session Laws 1979, c. 575, s. 1, effective July 1, 1979.

Part 14A. Governor's Advocacy Council for Persons with Disabilities.

§ 143B-403.1. Governor's Advocacy Council for Persons with Disabilities — creation; powers and duties.

There is hereby created the Governor's Advocacy Council for Persons with Disabilities of the Department of Administration. The Council shall have the following functions and duties:

(1) To provide for a statewide program of protection and advocacy in accordance with section 113 of Public Law 94-103, Developmental Disabilities Services and Facilities Construction Act, as amended;

(2) To pursue legal, administrative, or other appropriate remedies to insure the protection of the rights of all developmentally, mentally, physically, emotionally and otherwise disabled persons who are receiving treatment, services, or habilitation from any State, local, or area program;

(3) To review and recommend changes in all laws, rules, regulations, programs and policies of this State or any agency or subdivision thereof to insure the rights of the developmentally, mentally, physically, emotionally and otherwise disabled persons are safeguarded;

(4) To investigate complaints concerning the violation of the rights of the developmentally, mentally, physically, emotionally and otherwise disabled persons and to take appropriate action;

(5) To contract with public agencies or private nonprofit corporations to fulfill any of the functions and duties provided for in subdivisions (2) and (6) and government funded programs;

(6) To aid and assist local advocacy program and the advocacy programs in mental retardation centers, psychiatric hospitals, and training schools;

(7) To perform such other functions as are necessary to protect the rights of the developmentally, mentally, physically, emotionally and otherwise disabled or as may be assigned by the Secretary of Administration;

(8) To advise and assist the Department of Administration on the continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field;

(9) To work in close cooperation with the President's Committee on the Employment of the Handicapped to carry out more effectively the purpose of Article 29A of Chapter 143 of the General Statutes, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped;

(10) To promote and encourage the holding of appropriate ceremonies throughout the State during the "National Employ the Handicapped Week," the purpose of which ceremony shall be to enlist public support

for interest in the employment of the developmentally, mentally, physically, emotionally and otherwise disabled; and

(11) The Council shall advise the Secretary of Administration upon any matter the Secretary may refer to it. (1977, c. 822, s. 1; 1979, c. 575.)

Editor's Note. — Session Laws 1979, c. 575, s. 2, makes this Part effective July 1, 1979.

§ 143B-403.2. Governor's Advocacy Council for Persons with Disabilities — members; selection; quorum; compensation.

The Governor's Advocacy Council for Persons with Disabilities of the Department of Administration shall consist of 22 members. The composition of the Council shall be as follows: four "ex officio" members from State government agencies as follows: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of the Department of Human Resources and the Chairman of the Employment Security Commission. The Governor shall appoint the remaining 18 members as follows: two of the remaining 18 members shall be legislators (one being a representative from the House and one being a representative of the Senate); of the remaining 16 members, at least eight shall be disabled persons or parents of disabled persons.

The initial term for one half of the members appointed by the Governor shall be two years. The initial term for the remaining members appointed by the Governor shall be four years. At the end of the respective terms of office of the initial members of the Council, the appointment of all members with the exception of those from 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 may remove any member of the Council appointed by the Governor.

The Governor shall designate one member of the Council to serve as chairman and one member to serve as vice-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 Administration. (1977, c. 822, s. 1; 1979, c. 575.)

Part 15. North Carolina State Commission of Indian Affairs.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 2, as amended by Session Laws 1979, c. 744, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to the General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Part effective July 31, 1981, was itself repealed by Session Laws 1981, c. 932, s. 1.

Cross References. — As to review and evaluation of the programs and functions authorized under this Part, see § 143-34.26.

§ 143B-404. North Carolina State Commission of Indian Affairs — creation; name.

There is hereby created and established the North Carolina State Commission of Indian Affairs. The Commission shall be administered under the direction and supervision of the Department of Administration pursuant to G.S. 143A-6(b) and (c). (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Effect of Amendments. — The 1977, 2nd Sess., amendment deleted "a commission to be known as" following "established" near the beginning of the first sentence, deleted "of the Department of Administration" at the end of the first sentence and added the second sentence.

§ 143B-405. North Carolina State Commission of Indian Affairs — purposes for creation.

The purposes of the Commission shall be to deal fairly and effectively with Indian affairs; to bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina; to provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships; to assist Indian communities in social and economic development; and to promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Effect of Amendments. — The 1977, 2nd Sess., amendment reenacted this section without change.

§ 143B-406. North Carolina State Commission of Indian Affairs — duties; use of funds.

It shall be the duty of the Commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission; to study the existing status of recognition of all Indian groups, tribes and communities presently existing in the State of North Carolina; to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups; to provide for official State recognition by the Commission of such groups; and to initiate procedures for their recognition by the federal government. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Effect of Amendments. — The 1977, 2nd Sess., amendment inserted "to provide for official State recognition by the Commission of such groups" near the end of the section and made certain minor changes in punctuation and wording throughout the section.

§ 143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation.

(a) The State Commission of Indian Affairs shall consist of the Speaker of the House of Representatives (or a person designated by the Speaker), the Lieutenant Governor (or a person designated by the Lieutenant Governor), the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Natural Resources and Community Development, the Commissioner of Labor or their designees and 15 representatives of the Indian community. These 15 Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Haliwa, two; the Lumbees, three; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. If the Eastern Band of Cherokees should choose to participate, then they shall have two members on the commission thereby bringing the total Indian membership to 17.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, § 4; c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1981, c. 47, s. 5.)

Effect of Amendments. — The 1977, 2nd Sess., amendment added "or their designees and 15 representatives of the Indian community" at the end of the first sentence of subsection (a) and rewrote the remainder of subsection (a). In subsection (b), the amendment substituted "the Lumbees" for "each tribe or group" near the end of the second sentence and inserted "all" near the beginning of the third sentence.

The 1981 amendment inserted "(or a person designated by the Speaker)" and "(or a person designated by the Lieutenant Governor)" in subsection (a).

Session Laws 1981, c. 47, s. 7, provides: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate or Lieutenant Governor may not receive per diem."

§ 143B-408. North Carolina State Commission of Indian Affairs — meetings; quorum; proxy vote.

(a) The Commission shall meet quarterly, and at any other such time that it shall deem necessary. Meetings may be called by the chairman or by a petition signed by a majority of the members of the Commission. Ten days' notice shall be given in writing prior to the meeting date.

(b) Simple majority of the Indian members of the Commission must be present to constitute a quorum.

(c) Proxy vote shall not be permitted. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Effect of Amendments. — The 1977, 2nd Sess., amendment deleted "and two members by virtue of their office within State government" following "Commission" in subsection(b).

§ 143B-409. North Carolina State Commission of Indian Affairs — reports.

The Commission shall prepare a written annual report giving an account of its proceedings, transactions, findings, and recommendations. This report shall be submitted to the Governor and the legislature. The report will become a matter of public record and will be maintained in the State Historical Archives. It may also be furnished to such other persons or agencies as the Commission may deem proper. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Effect of Amendments. — The 1977, 2nd Sess., amendment reenacted this section without change.

§ 143B-410. North Carolina State Commission of Indian Affairs — fiscal records; clerical staff.

Fiscal records shall be kept by the Secretary of Administration and will be subject to annual audit by a certified public accountant. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Effect of Amendments. — The 1977, 2nd Sess., amendment reenacted this section without change.

§ 143B-411. North Carolina State Commission of Indian Affairs — executive director; employees.

The Commission may, subject to legislative or other funds that would accrue to the Commission, employ an executive director to carry out the day-to-day responsibilities and business of the Commission. The executive director, also subject to legislative or other funds that would accrue to the Commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the Commission. The executive director shall not be a member of the Commission, and shall be of Indian descent. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189.)

Effect of Amendments. — The 1977, 2nd Sess., amendment substituted "shall be of Indian descent" for "should be of Indian extraction" at the end of the last sentence.

Part 16. Governor's Council on Employment of the Handicapped.

§§ 143B-412, 143B-413: Repealed by Session Laws 1979, c. 575, s. 1, effective July 1, 1979.

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties.

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:
   a. Office of the Governor
   b. Department of Administration
   c. Department of Correction
   d. Department of Cultural Resources
   e. Department of Revenue
   f. Department of Transportation
   g. Department of Natural Resources and Community Development
   h. Department of Commerce
   i. Department of Crime Control and Public Safety
   j. Department of Human Resources
   k. Office of the Lieutenant Governor
   l. Office of the Secretary of State
   m. Office of the State Auditor
   n. Office of the State Treasurer
   o. Department of Public Education
   p. Department of Justice
   q. Department of Agriculture
   r. Department of Labor
   s. Department of Insurance
   t. Office of the Speaker of the House of Representatives;
(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1). (1977, c. 771, s. 4; c. 967; 1979, c. 783.)

Effect of Amendments. — The 1979 amendment added paragraph t to subdivision (1).

Part 19. Jobs for Veterans Committee.

§ 143B-420. Governor's Jobs for Veterans Committee — creation; appointment, organization, etc.; duties.

Legal Periodicals. — For a survey of 1977 law on employment regulation, see 56 N.C.L. Rev. 854 (1978).

Part 20. Public Officers and Employees Liability Insurance Commission.

§ 143B-422. Commission created; membership.

There is hereby created within the Department of Administration a Public Officers and Employees Liability Insurance Commission. The Commission shall consist of 10 members who shall be appointed as follows: The Governor shall appoint six members as follows: two members who are members of the insurance industry who may be chosen from a list of three nominees submitted to the Governor by the Independent Insurance Agents of North Carolina, Inc., and a list of three nominees submitted by the Carolinas Association of Professional Insurance Agents, North Carolina Division; one member who is employed by a police department who may be chosen from a list of three nominees submitted to the Governor jointly by the North Carolina Police Chiefs Association and North Carolina Police Executives Association, and one member who is employed by a sheriff's department who may be chosen from a list of three nominees submitted to the Governor by the North Carolina Sheriffs' Association; one member representing city government who may be chosen from a list of three nominees submitted to the Governor by the North Carolina League of Municipalities; and one member representing county government who may be chosen from a list of three nominees submitted to the Governor by the North Carolina Association of County Commissioners; the Lieutenant Governor shall appoint one member who shall be a member of the North Carolina Senate; the Speaker of the House of Representatives shall appoint one member who shall be a member of the North Carolina House of Representatives. The Secretary of the Department of Crime Control and Public Safety or his designate shall be an ex officio member. The Attorney General or his designate shall be an ex officio member. One insurance industry member appointed by the Governor shall be appointed to a term of two years and one insurance industry member shall be appointed to a term of four years. The police department member shall be appointed to a term of two years and the sheriff's department member shall be appointed to a term of four years. The representative of county government shall be appointed to a term of two years and the representative of city government to a term of four years. The member appointed by the Lieutenant Governor shall be appointed to a term of four years. The member appointed by the Speaker of the House shall be appointed

to a term of two years. If any vacancy occurs in the membership of the Commission, the appointing authority shall appoint another person to fill the unexpired term of the vacating member. After the initial terms established herein have expired, all appointees to the Commission shall be appointed to terms of four years.

The Commission members shall elect the chairman and vice-chairman of the Commission. The Commission may, by majority vote, remove any member of the Commission for chronic absenteeism, misfeasance, malfeasance or other good cause. (1979, c. 325, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For comment on state regulation of private religious schools, see 16 Wake Forest L. Rev. 405 (1980).

§ 143B-423. Meetings of Commission; compensation.

The Commission shall meet at least four times per year, on or about January 15, April 15, July 15, October 15 and upon call of the chairman. The members shall receive no compensation for attendance at meetings, except a per diem expense reimbursement. Legislative members of the Commission shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1 from funds made available to the Commission. Members of the Commission who are not officers or employees of the State shall receive reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from funds made available to the Commission. Members of the Commission who are officers or employees of the State shall be reimbursed for travel and subsistence at the rates set out in G.S. 138-6 from funds made available to the Commission. (1979, c. 325, s. 1.)

§ 143B-424. Powers and duties of Commission.

The Commission may acquire from an insurance company or insurance companies a group plan of professional liability insurance covering the law enforcement officers and/or public officers and employees of any county or municipality of the State. The Commission shall have full authority to negotiate with insurance companies submitting bids or proposals and shall award its group plan master contract on the basis of the company or companies found by it to offer maximum coverage at the most reasonable premium. The Commission is authorized to enter into a master policy contract of such term as it finds to be in the best interests of the law-enforcement officers and/or public officers and employees of the counties and municipalities of the State, not to exceed five years. The Commission, in negotiating for such contract, is not authorized to pledge or offer the credit of the State of North Carolina. The insurance premiums shall be paid by the counties or municipalities whose employees are covered by the professional liability insurance. Any municipality or county may elect coverage for any or all of its employees on a departmental basis; provided all employees in a department must be covered if coverage is elected for that department. Nothing contained herein shall be construed to require any county or municipality to participate in any group plan of professional liability insurance.

The Commission may, in its discretion, employ professional and clerical staff whose salaries shall be as established by the State Personnel Commission.

Should the Commission determine that reasonable coverage is not available at a reasonable cost, the Commission may undertake such studies and inquiries into the situation and alternatives, including self insurance and State administered funds, as the Commission deems appropriate. The Commission

shall then bring before the General Assembly such recommendations as it deems appropriate.

The Commission may acquire information regarding loss ratios, loss factors, loss experience and other such facts and figures from any company issuing professional liability insurance covering public officers, employees or law-enforcement officers in the State of North Carolina. Such information shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes where it names the company divulging such information, but the Commission may make public such information to show aggregate statistics in respect to the experience of the State as a whole. The information shall be provided to the Commission upon its written demand and shall be submitted to the Commission by such company or companies upon sworn affidavit. If any company shall fail or refuse to supply such information to the Commission within a reasonable time following receipt of the demand, the Commission may apply to the Superior Court sitting in Wake County for appropriate orders to enforce the demand. (1979, c. 325, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 143B-424.1. Professional liability insurance for State officials.

(a) The Commission may acquire professional liability insurance covering the officers and employees, or any group thereof, of any State department, institution or agency. Premiums for such insurance shall be paid by the requesting department, institution or agency, at rates established by the Commission, from funds made available to such department, institution or agency for the purpose.

(b) The Commission, pursuant to this section, may acquire professional liability insurance covering the officers and employees, or any group thereof, of a department, institution or agency of State government only if the coverage to be provided by such policy is in excess of the protection provided by Articles 31 and 31A of General Statutes Chapter 143.

(c) The purchase, by any State department, institution or agency of professional liability insurance covering the law enforcement officers, officers or employees of such department, institution or agency shall not be construed as a waiver of any defense of sovereign immunity by such department, institution or agency. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

(d) The payment, by any State department, institution or agency of funds as premiums for professional liability insurance through the plan provided herein, covering the law enforcement officers or officials or employees of such department, institution or agency is hereby declared to be for a public purpose. (1981, c. 1109, s. 3.)

§ 143B-425. Commission to act as liaison; meetings of Commission.

The Commission shall act as liaison between the insurance company or companies with which it contracts, their servicing agent and the insureds. The Commission shall give notice of its meetings to the company or companies and to all insureds. The Commission shall attempt to resolve such difficulties as arise in the servicing and administration of the program of insurance between the company and insureds. (1979, c. 325, s. 1.)

§ 143B-426. Contract conditions.

The Commission, in procuring and negotiating for the contract of insurance herein described shall include in any procurement document the following conditions, which are not subject to negotiation and which are deemed a part of the said contract when entered into:

(1) The master policy shall be issued in the name of the Commission and shall include all governmental entities for which coverage was requested in the procurement document.

(2) The company or companies selected must name a servicing agent resident in North Carolina who shall issue all certificates, collect all premiums, process all claims, and be responsible for all processing, service and administration of the program of insurance provided. (1979, c. 325, s. 1.)

§ 143B-426.1. Payment a public purpose.

The payment by any county or municipality of funds as premiums for professional liability insurance through the plan provided herein, covering the law enforcement officers or public officials or employees of such subdivision of government, is declared to be for a public purpose. (1979, c. 325, s. 1.)

Part 21. Child and Family Services Interagency Committees.

§ 143B-426.2. Declaration of findings and policy.

The State of North Carolina is committed to a continuing effort to afford greater opportunities to its children and to burden them with fewer disabilities. The General Assembly finds that the family is the primary custodian of children and the primary provider for the basic needs of children; that some families at times cannot meet all the essential needs of their children and may need governmental assistance, particularly in the areas of health care and education; and that the wide range of programs and agencies serving the needs of children requires that steps be taken to coordinate the efforts of those agencies and under those programs. The General Assembly declares, therefore, that it is the policy of the State to promote and encourage programs and practices to support and strengthen families in North Carolina; to give priority to health care programs, especially preventive services for small children, and ambulatory care services, which are particularly appropriate to children; to encourage every child to acquire the basic skills necessary to achieve a meaningful life; and to provide a structure through which child-centered programs may be coordinated for maximum effectiveness. (1979, c. 898, s. 1; 1981, c. 563, s. 1.)

Effect of Amendments. — The 1981 amendment rewrote the first sentence, substituted "primary custodian of children and the primary provider for" for "most effective institution through which to meet" in the second sentence, inserted "basic" near the beginning of that sentence, substituted "some families at times" for "the family alone" in that sentence, deleted "of" preceding "the essential" in that sentence, substituted "their children and may need governmental assistance" for "each new generation of children" and "the efforts of those agencies and under those programs" for "their efforts" in that sentence, inserted "services for small children" near the middle of the third sentence, and deleted "to encourage the establishment of a system of child care accessible to families that need and want the service" preceding "and to provide" near the end of the third sentence.

§ 143B-426.3. Child and Family Services Interagency Committee — creation; membership; structure.

(a) The Child and Family Services Interagency Committee is created. The Committee consists of the Governor of North Carolina, the Superintendent of Public Instruction, the Secretary of Human Resources, the Secretary of Cultural Resources, the Associate Dean and Director of the Agricultural Extension Service of North Carolina State University, the Director of the Office of Citizen Affairs, the Director of the Governor's Advocacy Council on Children and Youth, the Director of the State Goals and Policy Board, one member of the North Carolina House of Representatives appointed by the Speaker of the House, and one member of the North Carolina Senate appointed by the President of the Senate. Legislative members are appointed for two-year terms, beginning February 1 of each odd-numbered year.

(b) The Governor is chairman of the Committee. The vice-chairman is designated by the Governor from among the membership of the Committee, after consultation with the members of the Committee.

(c) The Committee meets regularly at such times and in such places as the Governor deems necessary to accomplish its functions. The Governor may call special meetings at any time and place.

(d) The Governor shall organize the work of the Committee, and shall prepare rules of procedure governing the operation of the Committee.

(e) No member of the Committee shall receive compensation for services on the Committee, except that members of the General Assembly shall receive travel and subsistence at the rates set out in G.S. 120-3.1, for services on the Committee when the General Assembly is not in session. (1979, c. 898, s. 1; 1981, c. 563, s. 1.)

Editor's Note. — Session Laws 1979, c. 898, s. 2, provides: "Schedule. The initial appointments of the legislative members of the New Generation Interagency Committee shall be made for terms to expire January 31, 1981; thereafter appointments of these members shall be for terms of two years."

Effect of Amendments. — The 1981 amendment substituted "Child and Family Services" for "New Generation" near the beginning of the first sentence of subsection (a), substituted "chairman" for "chairperson" in the first sentence of subsection (b), and substituted "vice-chairman" for "vice-chairperson" in the second sentence of subsection (b).

§ 143B-426.4. Child and Family Services Interagency Committee — powers and duties.

The Child and Family Services Interagency Committee has the following powers and duties:

(1) To improve communication and coordination among State, regional, and local programs, agencies and activities relating to family and children policy;

(2) To communicate with federal agencies dealing with family and children services and policy, and to work toward a coordinated effort with those agencies;

(3) To identify areas of duplication of services to families and children and to identify ways of eliminating the duplication;

(4) To identify gaps in existing services to families and children and to make recommendations to appropriate State and county agencies toward formulating new programs and changes in existing programs to effectuate the policies set out in this Part;

(5) To receive and review statistics, research findings and recommendations from citizens and professionals, and to develop procedures and guidelines that will improve services to families and children;

(6) To make recommendations to appropriate State and county agencies toward modifying policy, programs, procedures and regulations that serve as hindrance to families and children; and

(7) To perform other duties assigned by the governor for the purpose of effectuating the policies set out in this Part. (1979, c. 898, s. 1; 1981, c. 563, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "Child and Family Services" for "New Generation" in the introductory clause, substituted "make recommendations to appropriate State and county agencies toward formulating" for "formulate" and "Part" for "Article" in subdivision (4), substituted "make recommendations to appropriate State and county agencies toward modifying" for "modify" and "hindrance" for "barriers to the effective delivery of services" in subdivision (6), added "and" at the end of subdivision (6) and substituted "Part" for "Article" at the end of subdivision (7).

§ 143B-426.5. County Child and Family Services Interagency Committees — authorized; purpose.

Boards of county commissioners may create county Child and Family Services Interagency Committees to coordinate the work of the various existing agencies which offer services in their respective counties to children and their families. Any board of county commissioners may designate an existing interagency council as the Child and Family Services Interagency Committee for that county. County Child and Family Services Interagency Committees shall be committed to developing literate and healthy children, and shall bring together all existing child and family service resources to help the family and the community ensure good development, health care and education for each child in his early formative years. (1979, c. 898, s. 1; 1981, c. 563, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "Child and Family Services Interagency Committee" for "New Generation Interagency Committee" throughout the section, substituted "developing" for "raising a" in the third sentence, deleted "new generation of" following "healthy" in that sentence, inserted "child and family service" preceding "resources" in that sentence and substituted "ensure" for "insure" in that sentence.

§ 143B-426.6. County Child and Family Services Interagency Committees; membership; organization; procedures.

(a) County Child and Family Services Interagency Committees shall include a representative of the public schools; social services; mental health; developmental evaluation centers; health departments; county, municipal or regional libraries; agricultural extension offices; and any other child-serving agencies designated by the board of county commissioners.

(b) The board of county commissioners may designate the county manager or any other person as chairman of the county committee. Members of the county committee shall elect one of their number as vice-chairman of the Committee.

(c) Each county committee shall adopt its own rules of procedure, and shall meet regularly at such times and places as it deems necessary. Special meetings of the Committee may be called by the chairman. Each county committee may create working groups needed to assist the Committee. The chairman shall have general administrative authority to organize the work of the Committee. (1979, c. 898, s. 1; 1981, c. 563, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "Child and Family Services" for "New Generation" and "offices" for "office" in subsection (a), substituted "chairman" for "chairperson" in the first sentence of subsection (b), substituted "vice-chairman" for "vice-chairperson" in the second sentence of subsection (b) and substituted "chairman" for "chairperson" in the second and fourth sentences of subsection (c).

§ 143B-426.7. County Child and Family Services Interagency Committees; powers and duties.

County Child and Family Services Interagency Committees have the following powers and duties:

(1) To improve communication and coordination among agency programs for children and their families;
(2) To assess the health and educational status of the county's children;
(3) To review the county's spending for children and to search for ways to eliminate service duplication;
(4) To plan and organize county conferences of citizens and professionals in an effort to assess and improve the health and educational status of children;
(5) To plan and promote coordinated agency efforts to improve conditions such as the infant mortality rate, the nutritional status, and the educational attainment of the county's children;
(6) To recommend to the county commissioners such cooperative efforts and modifications of policy, plans and programs as the council considers necessary and desirable;
(7) Upon approval by the county commissioners, to recommend to the State Child and Family Services Interagency Committee such changes in legislation, policy and administrative regulation as would serve to facilitate the effective delivery of services to children and their families;
(8) To continuously educate and inform the general public regarding matters affecting children and their families; and
(9) To perform such other powers, duties and functions as the board of county commissioners may prescribe. (1979, c. 898, s. 1; 1981, c. 563, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "Child and Family Services" for "New Generation" in the introductory clause and in subdivision (7), and added "and" at the end of subdivision (8).

§ 143B-426.7A. "Blue Book" not incorporated into law.

Nothing in this Part is intended to incorporate into the law the document entitled "A Child Health Plan for Raising a New Generation" produced by the Joint Child Health Planning Task Force as a part of the observance of the International Year of the Child 1979 or any similar health plan. There is no intention to interfere with the authority of the parent except in judicially established instances of child abuse or neglect. (1981, c. 563, s. 1.)

Part 22. North Carolina Agency for Public Telecommunications.

§ 143B-426.8. Definitions.

As used in this Part, except where the context clearly requires otherwise:

(1) "Agency" means the North Carolina Agency for Public Telecommunications.

(2) "Board" means the Board of Public Telecommunications Commissioners.

(3) "Telecommunications" means any origination, creation, transmission, emission, storage-retrieval, or reception of signs, signals, writing, images and sounds, or intelligence of any nature, by wire, radio, television, optical or other electromagnetic systems. (1979, c. 900, s. 1.)

Editor's Note. — Session Laws 1979, c. 900, s. 3, makes this Part effective July 1, 1979.

§ 143B-426.9. North Carolina Agency for Public Telecommunications — creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.

The North Carolina Agency for Public Telecommunications is created. It is governed by the Board of Public Telecommunications Commissioners, composed of 27 members as follows:

(1) A Chairman appointed by, and serving at the pleasure of, the Governor;

(2) Ten at-large members, appointed by the Governor from the general public;

(3) Two members of the North Carolina House of Representatives, appointed by the Speaker of the House of Representatives;

(4) Two members of the North Carolina Senate, appointed by the President of the Senate;

(5) The Secretary of Administration, ex officio;

(6) The Chairman of the Board of Trustees of The University of North Carolina Center for Public Television (if and when established), ex officio;

(7) The Chairman of the State Board of Education, ex officio;

(8) The Chairman of the North Carolina Privacy and Freedom of Information Commission (if and when established), ex officio;

(9) The Chairman of the North Carolina Utilities Commission, ex officio;

(10) The Director of the Public Staff of the North Carolina Utilities Commission, ex officio;

(11) The Chairman of the Public Radio Advisory Committee of the North Carolina Agency for Public Telecommunications, ex officio;

(12) The Superintendent of Public Instruction, ex officio;

(13) The President of The University of North Carolina, ex officio;

(14) The President of the Department of Community Colleges, ex officio; and

(15) Two members ex officio who shall rotate from among the remaining heads of departments enumerated in G.S. 143A-11 or G.S. 143B-6, appointed by the Governor.

The 10 at-large members shall serve for terms staggered as follows: four terms shall expire on June 30, 1980; and three terms shall expire on June 30,

1982; and three terms shall expire on June 30, 1984. Thereafter, the members at large shall be appointed for full four-year terms and until their successors are appointed and qualified. In making appointments of members at large, the Governor shall seek to appoint persons from the various geographic areas of the State including both urban and rural areas; persons from various classifications as to sex, race, age, and handicapped persons; and persons who are representatives of the public broadcast, commercial broadcast, nonbroadcast distributive systems and private education communities of the State.

The terms of the ex officio members are coterminous with their respective terms of office. In the event that any of the offices represented on the Board ceases to exist, the successor officer to the designated member shall become an ex officio member of the Board; if there shall be no successor, then the position on the Board shall be filled by a member to be appointed by the Governor from the general public. The ex officio members shall have the right to vote.

The terms of the members of the North Carolina House of Representatives and the North Carolina Senate are coterminous with their terms in office and until their successors are appointed and qualified.

The terms of the rotating ex officio members shall be of one-year duration, and the schedule of rotation is determined by the Governor.

Each State official who serves on the Board may designate a representative of his department, agency or institution to sit in his place on the Board and to exercise fully the official's privileges of membership.

The Secretary of Administration or his designee serves as secretary of the Board.

Ad interim appointments to fill vacancies on the Board are for the balance of the unexpired term and are made in the same manner as was the original appointment.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

The Board meets quarterly and at other times at the call of the chairman or upon written request of at least six members.

A majority of the Board members shall constitute a quorum for the transaction of business. (1979, c. 900, s. 1.)

§ 143B-426.10. Purpose of Agency.

The North Carolina Agency for Public Telecommunications shall serve as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To advise the Governor, the Council of State, the principal State departments, the University of North Carolina, the General Assembly and all other State agencies and institutions on all matters of telecommunications policy as may affect the State of North Carolina and its citizens;

(2) To foster and stimulate the use of telecommunications programming, services and systems for noncommercial educational and cultural purposes by public agencies for the improvement of the performance of governmental services and functions;

(3) To serve State government, local governments and other public agencies and councils in the following ways:

a. To provide a clearinghouse of information about innovative projects, programs or demonstrations in telecommunications;

b. To provide advice on the acquisition, location and operation of telecommunications systems, equipment, and facilities and to provide particularly such advice as may foster compatibility of systems, equipment and facilities and as may reduce or eliminate duplication or mismatching of systems and facilities;

c. To provide advice on the disposition of excess or unused telecommunications equipment;
d. To provide information and advice on new telecommunications developments and emerging technologies;
e. To provide advice on procurement matters on all purchases and contracts for telecommunications systems, programming and services;
f. To provide information and advice on the most cost-effective means of using telecommunications for management, operations and service delivery;
g. To provide advice and assistance in the evaluation of alternative media programming so that the most efficient and effective products may be developed and used;
h. To provide advice and assistance in the identification of various methods of distributing programs and materials;

(4) To study the utilization of the frequency spectrum and to advise appropriate authorities as to effective frequency management;

(5) To assist in the development of a State plan or plans for the best development of telecommunications systems, both public and private, to insure that all citizens of North Carolina will enjoy the benefits which such systems may deliver;

(6) In addition to and not in place of the programs, projects, and services of The University of North Carolina Center for Public Television (or its functional predecessor), to develop and provide media programs and programming materials and services of a noncommercial educational, informational, cultural or scientific nature;

(7) To undertake innovative projects in interactive telecommunications and teleconferencing whenever such projects might serve to improve services, expand opportunities for citizen participation in government and reduce the costs of delivering a service;

(8) To serve as a means of acquiring governmental and private funds for use in the development of services through telecommunications;

(9) To serve as a means of distributing State funds and awarding grants for any purpose determined to be in furtherance of the purposes of this Part;

(10) To operate such telecommunications facilities or systems as may fall within the purview of this Part or as may be assigned to the Agency by the Governor, by the General Assembly, or by the Secretary of Administration consistent with the provisions of G.S. 143-340(14);

(11) To review, assess and report to the Governor on an annual basis on the telecommunications needs and services of State and local government and on the production capabilities and services, the nonproduction services, and the research and development services offered by the Agency and by all other agencies of State government;

(12) To review, assess and report to the Governor, after a period of not less than two years and not more than three years after the enactment of this Part, on the telecommunications statutes, plans and operations in State government, including those resulting from the enactment of this Part and from revision of statutes pertaining to telecommunications in the Department of Administration;

(13) To serve as liaison between State government and local governments, regional organizations, the federal government, foundations and other states and nations on common telecommunications concerns;

(14) To study and evaluate all existing or proposed statutes, rules or regulations at all levels of government touching upon or affecting telecommunications policy, services, systems, programming, rates or funds and to advise the appropriate officials, agencies and councils;

(15) To acquire, construct, equip, maintain, develop and improve such facilities as may be necessary to the fulfillment of the purpose of the Part;

(16) To provide information and advice on any related matter which may be referred to it by any agency or council of State or local government;

(17) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of telecommunications services within State government and which may increase the delivery of services through telecommunications programs or systems.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the possibilities of telecommunications programming, services and systems in the State of North Carolina. (1979, c. 900, s. 1.)

§ 143B-426.11. Powers of Agency.

In order to enable it to carry out the purposes of this Part, the Agency:

(1) Has the powers of a body corporate, including the power to sue and be sued, to make contracts, to hold and own copyrights and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) May make all necessary contracts and arrangements with any parties which will serve the purposes and facilitate the business of the North Carolina Agency for Public Telecommunications; except that, the Agency may not contract or enter into any agreement for the production by the Agency of programs or programming materials with any person, group, or organization other than government agencies; principal State departments; public and noncommercial broadcast licensees;

(3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber and dispose of such property, real or personal; and construct, maintain, equip and operate any facilities, buildings, studios, equipment, materials, supplies and systems as said Board may deem proper to carry out the purposes and provisions of this Part;

(4) May establish an office for the transaction of its business at such place or places as the Board deems advisable or necessary in carrying out the purposes of this Part;

(5) May apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources for any and all of the purposes authorized in this Part; may extend or distribute the funds in accordance with directions and requirements attached thereto or imposed thereon by the federal agency, the State of North Carolina or any political subdivision thereof, or any public or private lender or donor; and may give such evidences of indebtedness as shall be required, but no indebtedness of any kind incurred or created by the Agency shall constitute an indebtedness of the State of North Carolina or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina or any political subdivision thereof. At no time may the total outstanding indebtedness of the Agency, excluding bond indebtedness, exceed five hundred thousand dollars ($500,000) without approval of the Advisory Budget Commission;

(6) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Agency and incident to the administration and operation thereof, and may pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(7) Subject to the approval of the Advisory Budget Commission and under such conditions as the Board may deem appropriate to the accomplishment of the purposes of this Part, may distribute in the form of grants, gifts, or loans any of the revenues and earnings received by the Agency from its operations;

(8) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be exercised, and may provide for the creation of such divisions and for the appointment of such committees, and the functions thereof, as the Board deems necessary or expedient in facilitating the business and purposes of the Agency;

(9) The Board shall be responsible for all management functions of the Agency. The chairman shall serve as the chief executive officer and shall have the responsibility of executing the policies of the Board. The Executive Director shall be the chief operating and administrative officer and shall be responsible for carrying out the decisions made by the Board and its chairman. The Executive Director shall be appointed by the Governor upon the recommendation of the Board and shall serve at the pleasure of the Governor. The salary of the Executive Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. Subject to the approval of the Board, the Executive Director may appoint, employ, dismiss and fix the compensation of such administrative, clerical and other employees as the Board deems necessary to carry out the purposes of this Part; but the salaries of all employees designated by the Board as professional personnel shall be fixed by the Governor; and any employee who serves as the director of any division of the agency which may be established by the Board shall be appointed with the additional approval of the Secretary of Administration. There shall be an executive committee consisting of three of the appointed members and three of the ex officio members elected by the Board and the chairman of the Board, who shall serve as chairman of the executive committee. The executive committee may do all acts which are authorized by the bylaws of the Agency. Members of the executive committee shall serve until their successors are elected;

(10) May do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section; and

(11) May do any and all things necessary to accomplish the purposes of this Part.

Nothing herein authorizes the Agency to exercise any control over any public noncommercial broadcast licensee, its staff or facilities or over any community antenna television system (Cable TV; CATV), its staff, employees or facilities operating in North Carolina, or the Police Information Network (PIN), its staff, employees or facilities or the Judicial Department.

The property of the Agency shall not be subject to any taxes or assessments. (1979, c. 900, s. 1.)

§ 143B-426.12. Public Radio Advisory Committee — policy; creation; duties; members.

It is the policy of the State of North Carolina that at least one public radio signal shall be made available to every resident of North Carolina, that there be diversity in the kinds of public radio licensees, that there be a uniform policy for extending State financial aid to stations eligible to participate in federal funds for public radio, that State financial support shall constitute less than

one half of the operating budget of any station, that program content shall not be influenced by the State by virtue of State financial support to the stations, and that technical facilities be established and operated to achieve station interconnection.

The Public Radio Advisory Committee of the North Carolina Agency on Public Telecommunications is created. That Committee shall advise the Board on the distribution of State funds to public radio licensees in North Carolina and on any matter which the Board may refer to it. There shall be nine members of said Committee; three of whom shall be representatives selected by the public radio broadcast licensees in the State; six of whom shall be at-large members chosen by the Governor from the general public. The members shall choose one of the at-large members to serve as chairman of the Committee; and that chairman shall serve ex officio as a member of the Board. The terms of the members of the Committee shall be established by the Board. (1979, c. 900, s. 1.)

§ 143B-426.13. Approval of acquisition and disposition of real property.

Any transaction relating to the acquisition or disposition of any estate or interest in real property by the North Carolina Agency for Public Telecommunications shall be subject to prior review by the Governor and Council of State, and shall become effective only after the transaction has been approved by the Governor and Council of State. Upon the acquisition of an estate in real property by the North Carolina Agency for Public Telecommunications, the fee title or other estate shall vest in and the instrument of conveyance shall name "North Carolina Agency for Public Telecommunications" as grantee, lessee, or transferee. Upon the disposition of an interest or estate in real property, the instrument of lease conveyance or transfer shall be executed by the North Carolina Agency for Public Telecommunications. The approval of any transaction by the Governor or Council of State shall be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and the Council of State, attested by the Governor or by the private secretary to the Governor, reciting the approval, affixed to the instrument of acquisition or transfer; the certificate may be recorded as a part of the instrument, and shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1979, c. 900, s. 1.)

§ 143B-426.14. Issuance of bonds.

As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, telecommunications equipment or systems or any other matter or thing which the Agency is herein authorized to acquire, construct, equip, maintain, or operate, the Agency may, with the approval of the Advisory Budget Commission, at one time or from time to time issue negotiable revenue bonds of the Agency. The principal and interest of the revenue bonds shall be payable solely from the revenues to be derived from the operation of all or any part of the Agency's properties and facilities. A pledge of the net revenues derived from the operation of specified properties and facilities of the Agency may be made to secure the payment of the bonds as they mature. Revenue bonds issued under the provisions of this Part shall not be deemed to constitute

a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The bonds and the income therefrom shall be exempt from all taxation within the State. (1979, c. 900, s. 1.)

§ 143B-426.15. Exchange of property; removal of building, etc.

The Agency may exchange any property or properties acquired under the authority of this Chapter for other property or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, facilities, equipment, telecommunications systems or other structures, upon the payment of just compensation. (1979, c. 900, s. 1.)

§ 143B-426.16. Treasurer of the Agency.

The Board shall select its own treasurer from among the at-large members. The Board shall require a corporate surety bond of the treasurer in an amount fixed by the Board, and the premium or premiums thereon shall be paid by the Board as a necessary expense of the Agency. (1979, c. 900, s. 1.)

§ 143B-426.17. Deposit and disbursement of funds.

All Agency funds shall be handled in accordance with the Executive Budget Act. (1979, c. 900, s. 1.)

§ 143B-426.18. Annual audit; copies to be furnished.

At least once in each year the State Auditor shall cause to be made a detailed audit of all moneys received and disbursed by the Agency during the preceding year. The audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show complete financial condition of the Agency. A copy of the audit shall be furnished to each member of the Board and to the officers thereof and to the Governor, the Department of Administration and the Attorney General. (1979, c. 900, s. 1.)

§ 143B-426.19. Purchase of supplies, material and equipment.

All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are applicable to the North Carolina Agency for Public Telecommunications. (1979, c. 900, s. 1.)

§ 143B-426.20. Liberal construction of Part.

It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1979, c. 900, s. 1.)

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-433. Department of Commerce — organization.

The Department of Commerce shall be organized to include:

(1) The State Board of Alcoholic Control,
(2) The North Carolina Utilities Commission,
(3) The Employment Security Commission,
(4) The North Carolina Industrial Commission,
(5) State Banking Commission,
(6) Savings and Loan Association Division,
(7) The State Savings and Loan Commission,
(8) Credit Union Commission,
(9) The North Carolina Milk Commission,
(10) The North Carolina Mutual Burial Association Commission,
(11) North Carolina Cemetery Commission,
(12) The North Carolina Rural Electrification Authority,
(13) Board of Science and Technology,
(14) North Carolina Science and Technology Research Center,
(15) The North Carolina State Ports Authority,
(16) North Carolina National Park, Parkway and Forests Development Council,
(17) Economic Development Board,
(18) Labor Force Development Council,
(19) Energy Policy Council,
(20) Energy Division,
(21) Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes,

and such divisions as may be established pursuant to Article 1 of this Chapter. (1977, c. 198, s. 1; 1979, c. 668, s. 2.)

Effect of Amendments. — The 1979 amendment, effective May 1, 1979, substituted the present subdivision (13) for one which read, "Science and Technology Committee."

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

(a) There is hereby created within the Department of Commerce an Economic Development Board which, in conjunction with the Secretary of Commerce, shall be responsible for promoting the economic development of North Carolina in accord with the policy of the State of North Carolina as set out in G.S. 143B-428. In conjunction with the Secretary of Commerce, the Economic Development Board shall formulate a program for the economic development of the State of North Carolina and assist the Secretary of Commerce in carrying out his duties and powers as the chief economic development spokesman and administrator for the State in matters relating to the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries. The Secretary of Commerce shall prepare a budget, which shall be subject to the approval of the Economic Development Board, for each division of the Department of Commerce concerned with the expansion of

existing industry, the recruitment of new industry and the expansion of the travel and tourism industries. The Secretary of Commerce, with the approval of the Economic Development Board, shall hire the head of each such division and each such person shall serve at the pleasure of the Secretary of Commerce. The Economic Development Board shall meet at least bimonthly at the call of the chairman of the Economic Development Board or the Secretary of Commerce.

The Economic Development Board shall consist of 25 members. The Secretary of Commerce, the Lieutenant Governor (or a person designated by the Lieutenant Governor), and the Speaker of the House of Representatives (or a person designated by the Speaker), shall be members of the Economic Development Board. The Governor shall appoint 22 members to the Board.

The initial appointments by the Governor shall be made on or after the date of ratification, 11 terms to expire July 1, 1979, and 11 terms to expire on July 1, 1981. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of four years. Any vacancy occurring in the membership of the Economic Development Board appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor shall have the authority to remove any member of the Economic Development Board appointed by the Governor.

The Governor shall designate from among the members of the Economic Development Board a chairman and a vice-chairman. The Secretary of Commerce or his designee shall serve as Secretary of the Economic Development Board. If a vacancy occurs in the office of the Lieutenant Governor, the President pro tempore shall fill the vacancy. If a vacancy occurs in the office of the Speaker of the House of Representatives, the Speaker pro tempore shall fill the vacancy.

The members of the Economic Development Board appointed by the Governor shall receive per diem and necessary travel and subsistence expenses payable to members of State boards and agencies generally pursuant to G.S. 138-5 and 138-6, as the case may be; provided, however, that the chairman of the Economic Development Board and the Lieutenant Governor shall not be entitled to receive per diem in addition to salary. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1.

(b) All clerical and other services required by the Economic Development Board shall be supplied by the Secretary of Commerce.

(c) It shall be the duty of the chairman of the Economic Development Board:

(1) To organize the work of the Economic Development Board into committees with respect to the divisions of the Department of Commerce concerned with the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries and

(2) To assign responsibilities to each committee.

The salary of the chairman of the Economic Development Board shall be set by the Governor with the approval of the Advisory Budget Commission. (1977, c. 198, s. 1; 1981, c. 47, s. 6.)

Effect of Amendments. — The 1981 amendment inserted "(or a person designated by the Lieutenant Governor)" and "(or a person designated by the Speaker)" in the first sentence of the second paragraph of subsection (a).

Session Laws 1981, c. 47, s. 7, provides: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in his place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate or Lieutenant Governor may not receive per diem."

§ 143B-436. Advertising of State resources and advantages.

Cross References. — For provision that certain financial assistance and in-kind goods are not to be considered in determining assistance paid under this Chapter, see § 108A-26.

Part 3. Labor Force Development.

§ 143B-438: Repealed by Session Laws 1981, c. 380, s. 1, effective July 1, 1981.

Part 4. Credit Union Commission.

§ 143B-439. Credit Union Commission.

(a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The members of the Credit Union Commission shall elect one of its members to serve as chairman of the Commission to serve for a term to be specified by 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. The Governor shall appoint the seventh member for the same term and in the same manner as the other six members are appointed. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Three 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. At least four members shall be appointed as representatives of the borrowing public and may be members of a credit union but shall not be employees of, or directors of any financial institution or have any interest in any financial institution other than as a result of being a depositor or borrower. 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 chairman of the Credit Union Commission 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. In the event that the composition of the Commission on April 30, 1979, does not conform to that prescribed in the preceding sentences, such composition shall be corrected thereafter by appropriate appointments as terms expire and as vacancies occur in the Commission; provided that no person shall serve on the Commission for more than two complete consecutive terms.

(1979, c. 478, s. 3.)

Effect of Amendments. — The 1979 amendment substituted "Four" for "Three" at the beginning of the seventh sentence and added the eighth sentence and the last sentence.

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Part 5. North Carolina Board of Science and Technology.

§ 143B-440. North Carolina Board of Science and Technology; creation; powers and duties.

The North Carolina Board of Science and Technology of the Department of Commerce is created. The Board has the following powers and duties:

(1) To identify, and to support and foster the identification of, important research needs of both public and private agencies, institutions and organizations in North Carolina;

(2) To make recommendations concerning policies, procedures, organizational structures and financial requirements that will promote effective use of scientific and technological resources in fulfilling the research needs identified;

(3) To allocate funds available to the Board to support research projects, to purchase research equipment and supplies, to construct or modify research facilities, to employ consultants, and for other purposes necessary or appropriate in discharging the duties of the Board. (1973, c. 1262, s. 77; 1977, c. 198, ss. 2, 26; 1979, c. 668, s. 1.)

Effect of Amendments. — The 1979 amendment, effective May 1, 1979, rewrote this section.

§ 143B-441. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and 13 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; two members from private industry in North Carolina; and two members from public agencies in North Carolina. One member shall be from the membership of the North Carolina Senate, appointed by the Lieutenant Governor; and one member shall be from the membership of the North Carolina House of Representatives, appointed by the Speaker of the House. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

The member of the North Carolina Senate and the member of the North Carolina House of Representatives appointed initially to the Board shall serve for terms expiring June 30, 1981. Thereafter their successors shall serve for terms of two years each. The members from public agencies shall serve for terms expiring at the end of the term of the Governor appointing them. Of the remaining nine appointments by the Governor, five shall serve for four years expiring June 30, 1983, and four shall serve for two years expiring June 30, 1981; thereafter terms of all nine of these remaining members appointed by the

Governor shall be for four years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall serve as chairman of the Board. The vice chairman of the Board shall be designated by the Governor from among the members of the Board. The Science Advisor to the Governor shall serve as executive director of the Board. The Secretary of Commerce or his designee shall serve as secretary to the Board.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1. All other members of the Board shall receive per diem and travel and subsistence allowances authorized by G.S. 138-5.

A majority of the Board constitutes a quorum for the transaction of business.

The Secretary of Commerce shall provide all clerical and other services required by the Board. (1979, c. 668, s. 1.)

Effect of Amendments. — The 1979 amendment, effective May 1, 1979, rewrote this section.

Part 6. North Carolina Science and Technology Research Center.

§ 143B-443. Administration by Department of Commerce.

The activities of the North Carolina Science and Technology Research Center will be administered by the Department of Commerce. (1963, c. 846, s. 2; 1967, c. 69; 1977, c. 198, ss. 3, 4, 26; 1979, c. 668, s. 3.)

Effect of Amendments. — The 1979 amendment, effective May 1, 1979, substituted "Department of Commerce" for "Science and Technology Committee" at the end of the section.

Part 8. Energy Division.

§ 143B-450.1. Reports containing individually identifiable energy information to be confidential.

The Energy Division shall keep confidential any individually identifiable energy information to the extent necessary to comply with the confidentiality requirements of the reporting agency, and any such information shall not be subject to the public disclosure requirements of G.S. 132-6. "Individually identifiable energy information" shall be defined as any individual record or portion of a record or aggregated data containing energy information about a person or persons obtained from any source, the disclosure of which could reasonably be expected to reveal information about a specific person. (1981, c. 701, s. 6.)

Editor's Note. — Session Laws 1981, c. 701, s. 7, makes the act effective on July 1, 1981.

Part 10. North Carolina State Ports Authority.

§ 143B-453. Purposes of Authority.

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.

(3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.

(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

(5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.

(6) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.

(7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from such harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. (1945, c. 1097, s. 2; 1953, c. 191, ss. 3, 4; 1977, c. 198, s. 9; 1979, c. 159, s. 2.)

Effect of Amendments. — The 1979 amendment deleted "terminal railroads and facilities" following "harbors of watercraft" in the first sentence.

§ 143B-454. Powers of Authority.

In order to enable it to carry out the purposes of this Part, the said Authority shall:

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt-line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, excluding terminal railroads;

(1979, c. 159, s. 3.)

Effect of Amendments. — The 1979 amendment substituted "excluding" for "including" near the end of subdivision (4).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 143B-454.1. Container shipping.

The State Ports Authority shall provide at the ports of Morehead City and Wilmington adequate equipment and facilities including container cranes at each port as needed, in order to maintain existing and future levels of containerized cargo shipping at both ports and provide and encourage growth in handling of containerized cargoes at both ports. (1979, c. 934.)

§ 143B-456. Issuance of bonds and notes.

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance or operation of any facility, building, structure or any other matter or thing which the Authority is authorized to acquire, construct, equip, maintain, or operate, all or any of them, including authorized special user projects, the Authority is hereby authorized, at one time or from time to time, to borrow money and in evidence thereof to issue bonds, notes and other obligations of the Authority as provided in this Part. Bonds, notes and other obligations may also be issued to (i) establish such reserves as the Authority may determine to be desirable including, without limitation, a debt service reserve fund, and (ii) provide for interest during the estimated period of construction and for a reasonable period thereafter and to provide for working capital.

The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues, income or assets of the Authority. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Authority at such price or prices and under such terms and conditions as may be determined by the Authority. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Authority. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Authority.

(b) Prior to the sale and delivery of any bonds or notes by the Authority, the Advisory Budget Commission shall approve the general purposes of and the general security provisions for any such bonds or notes. Such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Authority shall determine. Bonds or notes may be issued under the provisions of this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Part and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same.

(c) In the discretion of the Authority any obligations issued under the provisions of this Part may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State and, in the case of an authorized special user project, a deed of trust of which the trustee may be an individual who is a resident of the State. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of obligations, revenues or other money under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. The pledge of any assets, income or revenues of the Authority to the payment of the principal of or the interest on any obligations of the Authority shall be valid and binding from the time when the pledge is made and any such assets, income or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

(d) The resolution authorizing any obligations or the trust agreement securing the same may provide that any moneys held pursuant thereto may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Part and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested as provided in G.S. 159-30 or any successor provision thereof.

(e) Obligations issued under the provisions of this Part are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law.

(f) The Authority is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Part, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Authority, for any corporate purpose of the Authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this Part which

relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Part and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations.

(g) Any obligations issued by the Authority under the provisions of this Part, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes.

(h) Obligations issued under the provisions of this Part shall not be deemed to constitute a debt, liability or obligation of the State or of any other public body in the State secured by a pledge of the faith and credit of the State or of any other public body in the State, respectively, but shall be payable solely from the revenues, income or assets of the Authority pledged thereto. Each obligation issued under this Part shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same or the interest thereon except from the revenues, income or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any other public body in the State is pledged to the payment of the principal of or the interest on such obligation. (1945, c. 1097, s. 4; 1975, c. 716, s. 2; 1977, c. 198, s. 9; 1979, c. 159, s. 4; 1981, c. 856, s. 1.)

Effect of Amendments. — The 1979 amendment deleted "terminal railroad" preceding "or any other" in the first sentence of subsection (a).

The 1981 amendment rewrote the section.

Session Laws 1981, c. 856, ss. 4-6, provide:

"Sec. 4. The foregoing provisions of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 5. This act, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

"Sec. 6. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws or parts thereof, the provisions of this act shall be controlling."

§ 143B-456.1. (Effective on certification of adoption of constitutional amendment) Bonds and notes for special user projects.

(a) The Authority is also hereby authorized, subject to the provisions of this section, to issue, at one time or from time to time, bonds and notes to finance special user projects. The term "special user project" shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with any commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine or environmental facility or improvement primarily for the use of one or more private parties. Any such special user project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, restaurant and lodging facilities, warehouses, distribution centers, pollution control facilities, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, waterways, docks, wharves and other improvements necessary or

convenient for ships, tugboats, barges or other vessels or for the construction, maintenance and operation of any building or structure, or addition thereto.

(b) Bonds and notes may be sold to finance special user projects irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions.

(c) The bonds or notes of each issue of the Authority under this section shall be special, limited obligations of the Authority payable solely from such other revenues, income or assets of the Authority as the Authority shall specifically assign or pledge and such funds, collateral and undertakings as any private parties may assign or pledge therefor.

The financing agreement may provide the Authority with rights and remedies in the event of a default by the obligor thereunder including, without limitation, reentry and repossession or leasing or sale or foreclosure of the special user project to others.

The Authority's interest in a special user project may be that of owner, lessor, operator, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the Authority need not have any ownership or possessory interest in the project, and if that of lessor, the lessee may have an option or an obligation to purchase the special user project upon the expiration or termination of the lease.

(d) Bonds and notes issued under the provisions of this section may be secured by one or more agreements, including forecloseable deeds of trust and other trust instruments, which may pledge and assign to the trustee or the holders of its obligations the assets, revenues, and income provided for the security of the bonds or notes, including proceeds from the sale of any special user project, or part thereof, insurance proceeds and condemnation awards, and third-party agreements, and may convey or mortgage the project and other property and collateral to secure a bond issue.

The Authority may subordinate the bonds or notes or its rights, assets, revenues and income derived from any special user project to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

(e) Notwithstanding any other provision of law, the Authority may agree that all contracts relating to the acquisition, construction, installation and equipping of the special user project shall be solicited, negotiated, awarded and executed by the private party or parties for which the Authority is financing the special user project or their agents subject only to such approvals by the Authority as the Authority may require. The Authority may, out of the proceeds of bonds or notes, make advances to or reimburse such private parties or such agents for all or a portion of the costs incurred in connection with such contracts. The provisions of Section 143B-463 of this Part shall have no application to funds and moneys derived pursuant to this section.

(f) The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to G.S. 25-9-607, inclusive, shall apply to transactions under this section to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(e) and G.S. 25-9-302(6) hereby repealed. (1981, c. 856, s. 2.)

Editor's Note. — Session Laws 1981, c. 856, s. 7, as amended by Session Laws 1981, c. 988, s. 1, provides: "The provisions of this act shall become effective upon ratification, except for the provisions of Section 2 of this act, which shall become effective upon there becoming effective an amendment to the North Carolina Constitution authorizing the General Assembly to enact laws dealing with the subject matter of said Section 2." The act was ratified July 7, 1981.

Session Laws 1981, c. 856, ss. 4-6 provide:

"Sec. 4. The foregoing provisions of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as

supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 5. This act, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

"Sec. 6. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws or parts thereof, the provisions of this act shall be controlling."

§ 143B-457. Power of eminent domain.

For the acquiring of rights-of-way and property necessary for the construction of structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State, or by the Board of Transportation, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5; 1973, c. 507, s. 5; 1977, c. 198, s. 9; 1979, c. 159, s. 5.)

Effect of Amendments. — The 1979 amendment deleted "terminal railroads and" following "construction of" near the beginning of the first sentence, and deleted "or by railroad corporations" following "Board of Transportation" near the end of the first sentence.

§ 143B-458. Exchange of property; removal of buildings, etc.

The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this Article. (1945, c. 1097, s. 6; 1977, c. 198, s. 9; 1979, c. 159, s. 6.)

Effect of Amendments. — The 1979 amendment deleted "railroads" preceding "or other structures."

§ 143B-459. Dealing with federal agencies.

The Authority board is authorized to assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the Authority, for the use by such grantee for any purpose included within the general purposes of this Article, as stated in G.S. 143-217, such assignment, transfer, lease, conveyance, grant

or donation to be upon such terms as the Authority board may deem advisable. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including roads, highways, causeways, or bridges and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the Authority board is further authorized to transfer and pay over to the United States of America or to the appropriate agency or department thereof, such of the moneys belonging to the Authority board as may be found needed or reasonably required by said United States of America to meet and pay the amount of judgments or condemnation, including costs, if any to be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow said United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of said facilities before referred to. (1945, c. 1097, s. 7; 1977, c. 198, s. 9; 1979, c. 159, s. 7.)

Effect of Amendments. — The 1979 amendment deleted "terminal railroads" preceding "roads, highways" in the second sentence.

Editor's Note. — Section 143-217, referred to in the first sentence, was recodifed as § 143B-453 by Session Laws 1981, c. 198, s. 9.

§ 143B-460: Repealed by Session Laws 1979, c. 159, s. 8.

§ 143B-463. Deposit and disbursement of funds.

All Authority funds shall be deposited in a bank or banks to be designated by the Authority. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chairman, the acting chairman or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Article and only when the account or expenditure for which the same is to be given in payment has been audited and approved by the Authority or its executive director. (1945, c. 1097, s. 11; 1951, c. 1088, s. 1; 1977, c. 198, s. 9; 1981, c. 856, s. 3.)

Effect of Amendments. — The 1981 amendment deleted a former last sentence which provided: "Any and all revenues and earnings received by the Authority from its operations shall be handled as directed in Section 13, Chapter 820 of the Session Laws of 1949.

Session Laws 1981, c. 856, ss. 4-6 provide:

"Sec. 4. The foregoing provisions of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 5. This act, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

"Sec. 6. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws or parts thereof, the provisions of this act shall be controlling."

Part 11. North Carolina Ports Railway Commission.

§ 143B-469. Creation of Commission.

(a) The North Carolina Ports Railway Commission is hereby created. It shall be governed by a board composed of five members appointed by the Governor, and hereby designated as the Commission.

(b) Members of the Commission shall serve for terms of four years, except that the original members shall be appointed as follows: one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Thereafter, all appointments shall be for terms of four years. Any vacancy occurring in the membership of the board for any cause shall be filled by the Governor for the unexpired term. The Governor shall appoint a chairman from the membership to serve at his pleasure. The board shall elect one of its members as vice-chairman and shall also elect a secretary and a treasurer who need not be a member of the Commission. The board shall meet upon the call of its chairman. A majority of its members shall constitute a quorum for the transaction of its business.

(c) Members of the Commission shall not be entitled to compensation for their services but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties and shall be compensated as provided in G.S. 138-5(a)(1). (1979, c. 159, s. 1.)

§ 143B-469.1. Powers of Commission.

The Commission shall be an agency of the State with all the powers of a body corporate including the following:

(1) To sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) To rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of all such property, real or personal, as the Commission may deem necessary;

(3) To operate, maintain and control all railway equipment and railway operations transferred to it by the State Ports Authority;

(4) To acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports terminal railroads in addition to those transferred to it by the State Ports Authority with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry goods, wares and merchandise over, along or upon the track of such railway or other conveyance;

(5) To make agreements as to scale of wages, seniority and working conditions with railroad employees, including but not limited to, locomotive engineers, locomotive firemen, switchmen, switch engine foremen and hostlers engaged in the operation and servicing of the terminal railways and their equipment;

(6) To connect with or cross any other railway upon payment of just compensation and to receive, deliver to and transport the freight, passengers and the cars of common carrier railroads as though it were an ordinary common carrier;

(7) To appoint, with the approval of the Governor, a general manager of the Commission who shall serve at the pleasure of the board. The salary for the general manager shall be fixed by the Governor with the

approval of the Advisory Budget Commission. The general manager shall have the authority to appoint, employ and dismiss such number of employees as may be deemed necessary by the board to accomplish the purposes of this Article. The compensation of such employees shall be fixed by the board;

(8) To establish an office for the transaction of its business at such place or places, as in the opinion of the Commission, shall be advisable or necessary in carrying out the purposes of this Part;

(9) To pay all necessary costs and expenses involved in and incident to the formation and organization of the Commission, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(10) To apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Commission shall constitute an indebtedness of the State, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing powers of the State, or any political subdivision thereof;

(11) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any manner coming within the purposes or powers of the Commission;

(12) To acquire rights-of-way and the property necessary for the construction of administration buildings, equipment, servicing facilities, terminal railways and structures, railway crossings, bridges and causeways by purchase, by negotiation or by condemnation, and should the Commission elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Commission, and it may proceed in any manner provided for by the general laws of this State;

(13) To do any and all things necessary to carry out and accomplish the purposes of this Article. (1979, c. 159, s. 1.)

Editor's Note. — Session Laws 1979, c. 159, s. 9, provides: "As soon as practicable, the North Carolina State Ports Authority shall transfer to the North Carolina Ports Railway Commission its railway equipment, railway property, and railway operations. This transfer shall include tracks, yards, equipment, trackage rights, franchises, licenses, and leases connected with the railway operations. The transfer is subject to G.S. 143B-455."

§ 143B-469.2. Cooperation with Ports Authority.

It shall be the duty and responsibility of the Commission to cooperate with the North Carolina State Ports Authority to insure that the State ports shall operate efficiently and effectively and to insure the orderly and effect development of the State ports. (1979, c. 159, s. 1.)

§ 143B-469.3. Commission not required to be a common carrier.

None of the powers and duties of the Commission shall be construed as requiring it to become a carrier subject to the Interstate Commerce Act. (1979, c. 159, s. 1.)

ARTICLE 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-473. Department of Crime Control and Public Safety — creation.

Legal Periodicals. — For an article entitled, "A History of Liquor-By-The-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

§ 143B-475. Department of Crime Control and Public Safety — functions.

(a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

(1) The National Guard, Department of Military and Veterans Affairs;
(2) Civil Preparedness, Department of Military and Veterans Affairs;
(3) State Civil Air Patrol, Department of Military and Veterans Affairs;
(4) State Highway Patrol, Department of Transportation;
(5) State Board of Alcoholic Control Enforcement Division, Department of Commerce;
(6) Governor's Crime Commission, Department of Natural and Economic Resources;
(7) Crime Control Division, Department of Natural and Economic Resources;
(8) Criminal Justice Information System Board, Department of Natural and Economic Resources; and
(9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.

(b) The Department shall perform such other functions as may be assigned by the Governor.

(c) All such functions, powers, duties and obligations heretofore vested in any existing agency in Article 5 of Chapter 143B of the General Statutes are hereby transferred to and vested in the Department of Crime Control and Public Safety, except as otherwise provided by the Executive Organization Act of 1973, as amended.

(d) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution and volunteer program for youthful and adult offenders if funds are available. (1977, c. 70, s. 1; 1981, c. 929.)

Cross References. — For transfer of Butner Public Safety Department to Department of Crime Control and Public Safety, see note to § 122-98.

Effect of Amendments. — The 1981 amendment added subsection (d).

§ 143B-476. Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters.

(d) Whenever the Secretary exercises the authority provided in subsection (c) of this section, he shall be authorized to utilize and allocate all available State resources as are reasonably necessary to cope with the emergency or disaster, including directing of personnel and functions of State agencies or units thereof for the purpose of performing or facilitating the initial response to the disaster or emergency. Following the initial response, the Secretary, in consultation with the heads of the State agencies which have or appear to have the responsibility for dealing with the emergency or disaster, shall designate one or more lead agencies to be responsible for subsequent phases of the response to the emergency or disaster. Pending an opportunity to consult with the heads of such agencies, the Secretary may make interim lead agencies designations.

(e) Every department of State government is required to report to the Secretary, by the fastest means practicable, all natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents which appear likely to require the utilization of the services of more than one subunit of State government.

(f) The Secretary is authorized to adopt rules and procedures for the implementation of this section.

(g) Nothing contained in this section shall be construed to supersede or modify those powers granted to the Governor or the Council of State to declare and react to a state of disaster as provided in Chapter 166A of the General Statutes, the Constitution or elsewhere. (1977, c. 70, s. 1; 1979, 2nd Sess., c. 1310, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment added subsections (d), (e), (f) and (g).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsections (d), (e), (f) and (g) are set out.

Part 3. Governor's Crime Commission.

§ 143B-478. Governor's Crime Commission — creation; composition; terms; meetings, etc.

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 32 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Human Resources, the Secretary of the Department of Correction, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a "high crime area"), three police executives (one of whom shall be from a "high crime area"), four citizens (two with knowledge of

juvenile delinquency and the public school system, one representative of a "private juvenile delinquency program," and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Youth Services of the Department of Human Resources, the Administrator for Juvenile Services of the Administrative Office of the Courts, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Human Resources, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Paroles, the Director of the Division of Youth Services, the Administrator for Juvenile Services of the Administrative Office of the Courts, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: the district attorney, the defense attorney, the three sheriffs, the three police executives, the four citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The members of the House of Representatives shall be appointed by the Speaker of the House of Representatives and the members of the Senate shall be appointed by the Lieutenant Governor. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission

members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business. (1965, c. 663; 1977, c. 11, s. 1; 1981, c. 467, ss. 1-5.)

Effect of Amendments. — The 1981 amendment substituted "32" for "29" in the second sentence of subsection (a), deleted "and" following "Human Resources" and added "and the Superintendent of Public Instruction" in paragraph a of subdivision (a)(1), substituted "two members" for "one member" in both places it appears in paragraph d of subdivision (a)(1), deleted "and" following "Youth Services" and added "and the Superintendent of Public Instruction" in the first sentence of subdivision (b)(1), and substituted "members" for "member" in both places it appears in subdivision (b)(4).

Legal Periodicals. — For article entitled, "Juvenile Justice in Transition — A New Juvenile Code for North Carolina," see 16 Wake Forest L. Rev. 1 (1980).

§ 143B-479. Governor's Crime Commission — powers and duties.

(a) The Governor's Crime Commission shall have the following powers and duties:

(1) To serve, along with its adjunct committees, as the chief advisory board to the Governor and to the Secretary of the Department of Crime Control and Public Safety on matters pertaining to the criminal justice system.

(2) To develop a comprehensive statewide plan for the improvement of criminal justice throughout the State which is consistent with and serves to foster the following established goals of the criminal justice system:

a. To reduce crime,

b. To protect individual rights,

c. To achieve justice,

d. To increase efficiency in the criminal justice system,

e. To promote public safety,

f. To provide for the administration of a fair and humane system which offers reasonable opportunities for adjudicated offenders to develop progressively responsible behavior, and

g. To increase professional skills of criminal justice officers.

(3) To assist and participate with the State and local law-enforcement agencies in improving law enforcement and the administration of criminal justice;

(4) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;

(5) To encourage public support and respect for the criminal justice system in North Carolina;

(6) To seek ways to continue to make North Carolina a safe and secure State for its citizens;
(7) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;
(8) To set objectives and priorities for the improvement of law enforcement and criminal justice throughout the State;
(9) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary;
(9a) Administer the Assistance Program for Victims of Rape and Sex Offenses in accordance with G.S. 143B-480.1 *et seq.*
(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to G.S. 143B-480; and
(11) To serve as the primary channel through which local law-enforcement departments and citizens can lend their advice, and state their needs, to the Department of Crime Control and Public Safety.

(b) 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 criminal justice purposes which may be made available for the State by the federal government. The Governor's Crime Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice. In respect to such grants, the Commission shall have authority to review, approve and maintain general oversight of the State plan and its implementation, including subgrants and allocations to local units of government.

All decisions and grants heretofore made by the Governor's Law and Order Commission shall remain in full force and effect unless and until repealed or superseded by action of the Governor's Crime Commission established herein. The present Governor's Commission on Law and Order is terminated on February 28, 1977, and its powers, duties, and responsibilities vest in the Governor's Crime Commission effective March 1, 1977. All directives of the Governor's Crime Commission shall be administered by the Director, Crime Control Division of the Department of Crime Control and Public Safety. (1975, c. 663; 1977, c. 11, s. 2; 1979, c. 107, s. 11; 1981, c. 931, s. 3.)

Effect of Amendments. — The 1979 amendment substituted "G.S. 143B-480" for "G.S. 143B-339" in subdivision (10) of subsection (a).

The 1981 amendment added subdivision (9a) of subsection (a).

§ 143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties.

(a) There are hereby created by way of extension and not limitation, the following adjunct committees of the Governor's Crime Commission: the Crime Prevention and Public Information Committee, the Judicial Planning Committee, the Juvenile Justice Planning Committee, the Law Enforcement Planning Committee, the Corrections Planning Committee, and the Juvenile Code Revision Committee.

(b) The composition of the adjunct committees shall be as designated by the Governor by executive order, except for the Judicial Planning Committee, the

composition of which shall be designated by the Supreme Court. The Governor's appointees shall serve two-year terms beginning March 1, of each odd-numbered year, and members of the Judicial Planning Committee shall serve at the pleasure of the Supreme Court.

(c) The adjunct committees created herein shall report directly to the Governor's Crime Commission and shall have the following powers and duties:

(1) The Crime Prevention and Public Information Committee shall advise the Governor's Crime Commission on the most appropriate and effective methods to foster public awareness of the role of individual citizens, businesses, and community organizations in the prevention and reporting of crime and to foster public awareness of the ability and responsibility of individuals to have an impact on the crime problem; it shall also advise the Governor's Crime Commission on the most appropriate and effective methods of preventing crime, on mobilizing the citizenry through "Community Watch" and other related programs to prevent crime, and on educating the public about the nature of particular crimes and the most effective methods of preventing them.

(2) The Law Enforcement Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to law enforcement, including detention; shall participate in the development of the law-enforcement component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of law-enforcement services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of law-enforcement services.

The Law Enforcement Planning Committee shall maintain contact with the National Commission on Accreditation for Law Enforcement Agencies, assist the National Commission in the furtherance of its efforts, adapt the work of the National Commission by an analysis of law-enforcement agencies in North Carolina, develop standards for the accreditation of law-enforcement agencies in North Carolina, make these standards available to those law-enforcement agencies which desire to participate voluntarily in the accreditation program, and assist participants to achieve voluntary compliance with the standards.

(3) The Judicial Planning Committee (which shall be appointed by the Supreme Court) shall establish court improvement priorities, define court improvement programs and projects, and develop an annual judicial plan in accordance with the Crime Control Act of 1976 (Public Law 94-503); shall advise the Governor's Crime Commission on all matters which are referred to it relevant to the courts; shall consider and recommend priorities for the improvement of judicial services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of judicial services.

(4) The Corrections Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to corrections; shall participate in the development of the adult corrections component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of correction services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of corrections.

(5) The Juvenile Justice Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to

juvenile justice; shall participate in the development of the juvenile justice component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of juvenile justice services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of juvenile justice.

(6) The Juvenile Code Revision Committee shall study problems relating to young people who come within the juvenile jurisdiction of the district court as defined by Article 23 of Chapter 7A of the General Statutes and develop a legislative plan which will best serve the needs of young people and protect the interests of the State; shall study the existing laws, services, agencies and commissions and recommend whether they should be continued, amended, abolished or merged; and shall take steps to insure that all agencies, organizations, and private citizens in the State of North Carolina have an opportunity to lend advice and suggestions to the development of a revised juvenile code. If practical, the Committee shall submit a preliminary report to the General Assembly prior to its adjournment in 1977. It shall make a full and complete report to the General Assembly by March 1, 1979. This adjunct committee shall terminate on February 28, 1979.

(d) The Governor shall have the power to remove any member of any adjunct committee from the Committee for misfeasance, malfeasance or nonfeasance. Each Committee shall meet at the call of the chairman or upon written request of one third of its membership. A majority of a committee shall constitute a quorum for the transaction of business.

(e) The actions and recommendations of each adjunct committee shall be subject to the final approval of the Governor's Crime Commission. (1975, c. 663; 1977, c. 11, s. 3; 1981, c. 605, s. 1.)

Editor's Note. — Article 23 of Chapter 7A, referred to in subdivision (6) of subsection (c), has been repealed. For present provisions concerning the juvenile jurisdiction of the district court, see §§ 7A-523 and 7A-524.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added the second paragraph of subdivision (2) of subsection (c).

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

§ 143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.

There is established an Assistance Program for Victims of Rape and Sex Offenses, hereinafter referred to as the "Program". The Governor's Crime Commission shall administer and implement the Program and shall have authority over all assistance awarded through the Program. The Governor's Crime Commission shall promulgate rules and guidelines for the Program. (1981, c. 931, s. 2.)

§ 143B-480.2. Victim assistance.

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited

to immediate and short-term medical expenses, not to exceed five hundred dollars ($500.00), incurred by the victim during the medical examination and treatment and medical procedures to collect evidence which follow the attack.

(b) Assistance for medical expenses authorized under this section is to be paid directly to the attending hospital and physicians upon the filing of the proper forms in the manner prescribed in the guidelines promulgated by the Governor's Crime Commission together with a certified copy of the police report.

(c) Assistance shall not be awarded unless the rape, attempted rape, sexual offense, or attempted sexual offense was reported to a law-enforcement officer within 72 hours after its occurrence or the Governor's Crime Commission finds there was good cause for the failure to report within that time.

(d) Upon an adverse determination by the Governor's Crime Commission on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County. (1981, c. 931, s. 2.)

§ 143B-480.3. Reduction of benefits; restitution; actions.

(a) Assistance shall be reduced or denied to the extent the medical expenses are recouped through a public or private insurance plan or other victim benefit source.

(b) The Program shall be an eligible recipient for restitution or reparation under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) When any victim who:

(1) has received assistance under this Part;

(2) bring an action for damages arising out of the rape, attempted rape, sexual offense, or attempted sexual offense for which she received that assistance; and

(3) recovers damages including the expenses for which she was awarded assistance,

the court shall make as part of its judgment an order for reimbursement to the Program of the amount of any assistance awarded less reasonable expenses allocated by the court to that recovery. (1981, c. 931, s. 2.)

Editor's Note. — Session Laws 1981, c. 931, s. 1, provides that the act shall be known and may be cited as the Assistance Act for Victims of Rape and Sex Offenses.

Session Laws 1981, c. 931, s. 5, provides that the act shall not apply to any rape, attempted rape, sexual offense or attempted sexual offense which occurs prior to the effective date of the act. The act became effective on July 10, 1981.

Part 4. State Fire Commission.

§ 143B-481. State Fire Commission created — membership.

There is hereby created the State Fire Commission of the Department of Crime Control and Public Safety which shall be composed of 12 voting members as follows: The Executive Secretary and the Legislative Chairman of the North Carolina State Firemen's Association, the Executive Secretary of the North Carolina Association of Fire Chiefs, the Director of the North Carolina Fire College and Pump School, a county fire marshal to be elected by the County Fire Marshal Administrative Association, one member of the House of Representatives appointed by the Speaker of the House, one member of the Senate appointed by the President of the Senate, one mayor or other elected city official appointed by the Governor after consulting with the President of

the League of Municipalities, one county commissioner appointed by the Governor after consulting with the President of the Association of County Commissioners, the Director of Fire and Rescue Training for the North Carolina Department of Insurance, the Director of Fire Training for the North Carolina Department of Community Colleges, and one member appointed by the Governor from the public at large, not employed by government and not directly involved in fire fighting.

The following State officials, or their designees, shall serve by virtue of their offices as nonvoting members of the Commission: the Commissioner of Insurance, the Commissioner of Labor, the State Auditor, the Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Natural Resources and Community Development, and the President of the Department of Community Colleges.

Of the members initially appointed by the Governor, the representative of the public at large shall serve for three years, the representative of the League of Municipalities shall serve for two years and the representative of the Association of County Commissioners shall serve for one year. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Governor may make appointments to fill the unexpired portions of the appointed members of any term vacated by reason of the death, resignation or removal from office. In making such appointment he shall preserve the composition of the Commission required above. Vacancies caused by reason of the death or resignation of ex officio members shall be filled by their respective successors in office.

Appointments made by the Speaker of the House and the President of the Senate shall be for two-year terms beginning on March 1 of odd-numbered years. The legislative members of the Commission shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. A vacancy in either of the legislative places on the Commission shall be filled by the appointing officer for the remainder of the unexpired term.

Members of the State Fire Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as the case may be. (1977, c. 1064, s. 1; 1981, c. 791, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment rewrote the first and second paragraphs and added the fourth paragraph.

Section 6 of Session Laws 1981, c. 791 provides: "The initial appointments by the Speaker of the House and the President of the Senate pursuant to Section 1 of this act may be made at any time after ratification, for terms to expire February 28, 1983. Thereafter their appointments shall be as stated in Section 2. The Governor's appointees to the Fire Commission shall continue to serve under the terms of their previous appointments until their successors are appointed and qualified pursuant to G.S. 143B-481 as rewritten by this act."

§ 143B-482. State Fire Commission — powers and duties.

(a) The State Fire Commission shall have the following powers and duties:

(1) To formally adopt a State Fire Education and Training Plan and a State Master Plan for Fire Prevention and Control;

(2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina;

(3) To increase the professional skills of fire protection and fire-fighting personnel;

(4) To encourage public support for fire prevention and control;
(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 to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the National Fire Prevention and Control Administration of the United States Department of Commerce;
(7) To make studies and recommendations for the improvement of fire prevention and control in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and for effective fire prevention and control education;
(8) To set objectives and priorities for the improvement of fire prevention and control throughout the State;
(9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and for improving fire prevention and control administration and planning within the State of North Carolina;
(10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to support fire prevention and control, planning and administration;
(11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control administrative improvements and crime reduction plans;
(12) To apply for, receive, disburse and audit the use of funds received for [from] any public and private agencies and instrumentalities for fire prevention and control, its administration and plans therefor;
(13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;
(14) To provide technical assistance to State and local fire prevention and control agencies in developing programs for improvement of the fire prevention and control system;
(14a) To serve as a central office for the collection and dissemination of information relative to fire service activities and programs in State government. All State government agencies conducting fire service related programs and activities shall report the status of these programs and activities to the State Fire Commission on a quarterly basis and they shall also report to the State Fire Commission any new programs or changes to existing programs as they are implemented;
(14b) To establish voluntary minimum professional qualifications for all levels of fire service personnel;
(14c) To prepare an annual report to the Governor on its fire prevention and control activities and plans, and to recommend legislation concerning fire prevention and control; and
(15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

(b) Each State agency involved in fire prevention and control shall furnish the executive director of the Fire Commission such information as may be required to carry out the intent of this section. (1977, c. 1064, s. 1; 1981, c. 791, ss. 3, 4.)

Effect of Amendments. — The 1981 amendment designated the former section as subsection (a), added subdivisions (14a) through (14c) to subsection (a) and added subsection (b).

§ 143B-483. State Fire Commission — organization; rules and regulations; meetings.

(a) First Meeting; Organization. — Within 30 days after its appointment, the State Fire Commission shall meet on call of the Secretary of Crime Control and Public Safety and shall elect from its voting members a chairman and vice-chairman.

(b) Rules and Regulations. — The State Fire Commission shall 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 fire protection and fire-fighting purposes which may be made available to the State by the federal government. The State Fire Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the United States Fire Administration, Federal Emergency Management Agency. In respect to such grants, the State Fire Commission shall have authority to review, approve and maintain general oversight to the State plan and its implementation, including subgrants and allocations to local units of government and local fire prevention and control agencies.

All actions taken by the State Fire Commission in the performance of its duties shall be implemented and administered by the Department of Crime Control and Public Safety.

(c) Meetings. — The State Fire Commission shall meet quarterly. Five members shall constitute a quorum. All meetings shall be open to the public. (1977, c. 1064, s. 1; 1981, c. 791, s. 5.)

Effect of Amendments. — The 1981 amendment substituted "United States Fire Administration, Federal Emergency Management Agency" for "National Fire Prevention and Control Administration of the United States Department of Commerce" in the second sentence of subsection (b).

Part 5. Civil Air Patrol.

§ 143B-490. Civil Air Patrol Division — powers and duties.

(a) There is hereby established, within the Department of Crime Control and Public Safety, the Civil Air Patrol Division, which shall be organized and staffed in accordance with this Part and within the limits of authorized appropriations.

(b) The Civil Air Patrol Division shall:

(1) Receive and supervise the expenditure of State funds provided by the General Assembly or otherwise secured by the State of North Carolina for the use and benefit of the North Carolina Wing-Civil Air Patrol;

(2) Supervise the maintenance and use of State provided facilities and equipment by the North Carolina Wing-Civil Air Patrol;

(3) Receive, from State and local governments, their agencies, and private citizens, requests for State approval for assistance by the North Carolina Wing-Civil Air Patrol in natural or man-made disasters or other emergency situations. Such State requested and approved missions shall be approved or denied by the Secretary of Crime Control and Public Safety or his designee under such rules, terms and conditions as are adopted by the Department. (1979, c. 516, s. 1.)

§ 143B-491. Personnel and benefits.

(a) The Wing Commander of the North Carolina Wing-Civil Air Patrol shall certify to the Secretary or his designee those senior members, 18 years of age or older, and who are in good standing, as senior members eligible for benefits. The Wing Commander shall provide the Secretary with two copies of the certification. The Secretary shall acknowledge receipt of, sign, and date both copies and return one to the Wing Commander. The Wing Commander shall, in the form and manner provided above, notify the Secretary of any changes in personnel within 30 days thereof. Upon the Secretary's signature, those members listed on the certification shall be eligible for the benefits listed below.

(b) Those members of the North Carolina Wing-Civil Air Patrol certified under subsection (a) of this section shall be deemed and considered employees of the Department of Crime Control and Public Safety for workers' compensation purposes, and for no other purposes, while performing duties incident to a State requested and approved mission. Such period of employment shall not extend to said members while performing duties incident to a United States Air Force authorized mission or any other Wing activities. (1979, c. 516, s. 1; c. 714, s. 2.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, substituted "workers' compensation" for "workmen's compensation" in subsection (b).

§ 143B-492. State liability.

Unless otherwise specifically provided, the members of the North Carolina Wing-Civil Air Patrol shall serve without compensation and shall not be entitled to the benefits of the retirement system for teachers and State employees as set forth in Chapter 135 of the General Statutes. The provisions of Article 31 of Chapter 143 of the General Statutes, with respect to tort claims against State departments and agencies, shall not be applicable to the activities of the North Carolina Wing-Civil Air Patrol, and the State or its agencies shall not in any manner be liable for injury or damage to any person, firm, or corporation by reason of the acts of the North Carolina Wing-Civil Air Patrol, its subdivisions or any of the members or officers thereof. The State shall not in any manner be liable for any of the contracts, debts, or obligations of the said organization. (1979, c. 516, s. 1.)

Chapter 145.

State Flower, Bird, Tree, Shell, Mammal, Fish, Insect, Stone, Reptile and Rock.

Sec.

§ 145-9. State reptile.

The turtle is adopted as the official State reptile of the State of North Carolina, and the eastern box turtle is designated as the emblem representing the turtles inhabiting North Carolina. (1979, c. 154, s. 1.)

§ 145-10. State rock.

Granite is adopted as the official State rock of the State of North Carolina. (1979, c. 906, s. 1.)

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.

CASE NOTES

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

ARTICLE 2.

Dispositions.

§ 146-3. What lands may be sold.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

§ 146-4. Sales of certain lands; procedure; deeds; disposition of proceeds.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

§ 146-6. Title to land raised from navigable water.

(b) If any land is, by act of man, raised above the high watermark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the commission of the act which caused the raising of the land in question shall have been previously approved in the manner provided in subsection (c) of this section.

(c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such person shall have 30 days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the purpose of the proposed fill is to reclaim lands theretofore lost to the owner by natural causes, no easement to fill shall be required. In such a case the Department shall give the applicant written permission to proceed with the project. If the purpose of the proposed fill is not to reclaim lands lost by natural causes and the Department finds that the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The granting by the State of the written permission or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied with all requisite conditions precedent to the issuance of such written permission or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefor to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(1979, c. 414.)

Effect of Amendments. — The 1979 amendment substituted "commission of the act which caused the raising of the land in question" for "Governor and Council of State" in subsection (b), deleted "the commission of the act which caused the raising of the land in question" at the end of subsection (b), and, in subsection (c), substituted "person" for "riparian owner" in the second sentence, rewrote the third sentence, added the fourth and fifth sentences, and substituted "written permission" for "permit" in two places in the sixth sentence.

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsections (b) and (c) are set out.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

§ 146-12. Easements in lands covered by water.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

CASE NOTES

Cited in MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977).

§ 146-14. Proceeds of dispositions of certain State lands.

Legal Periodicals. — For an article entitled, "Removing Local Elected Officials From Office in North Carolina," see 16 Wake Forest L. Rev. 547 (1980).

ARTICLE 3.

Discovery and Reclamation.

§ 146-17.1. Rewards; reclamation of certain State lands; wrongful removal of timber from State lands.

(a) The Department of Administration, acting on behalf of the State, for the purpose of discovering State lands, may, with the approval of the Governor and Council of State, pay any person, firm or corporation who shall provide information that leads to the successful reclamation of any swamplands or vacant and unappropriated lands of the State, a reward equal to one percent (1%) of the appraised value of the reclaimed land, or one thousand dollars ($1,000), whichever sum is less. All expenses incurred by the Department pursuant to this subsection shall be paid from the State Land Fund, unless otherwise provided by the General Assembly.

(b) The Department of Administration, acting on behalf of the State, may, with the approval of the Governor and Council of State, pay any person, firm or corporation who shall provide information that leads to a successful monetary recovery by the State from any person, firm or corporation who wrongfully cuts or removes timber from State lands, a reward equal to one percent (1%) of the amount of said monetary recovery, or one thousand dollars ($1,000), whichever sum is less. All expenses incurred by the Department pursuant to this subsection shall be paid from said monetary recovery, unless otherwise provided by the General Assembly.

(c) No State employee or official, or other public employee or official, shall be eligible for a reward pursuant to subsections (a) or (b) of this section for providing any information obtained in the normal course of his or her official duties. (1979, c. 742, s. 1.)

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:

(1) Lands necessary for the construction and operation of State buildings and other governmental facilities.
(2) Lands necessary for construction and operation of parking facilities.
(3) An area in the City of Raleigh bounded by Edenton Street, Person Street, Peace Street, the right-of-way of the main line of Seaboard Coast Line Railway and North McDowell Street for the expansion of State governmental facilities, the public interest in, public use of, and the necessity for the acquisition of said area, being hereby declared as a matter of legislative determination.
(4) Lands necessary for the location, expansion, operation and improvement of hospital and mental health facilities and similar institutions maintained by the State of North Carolina.
(5) Lands necessary for public parks and forestry purposes.
(6) Lands involving historical sites, together with such adjacent lands as may be necessary for their preservation, maintenance and operation.
(7) Lands necessary for the location, expansion and improvement of any educational, penal or correctional institution.
(8) Lands necessary to provide public access to the waters within the State.
(9) Lands necessary for agricultural, experimental and research facilities.
(10) Utility and access easement, rights-of-way, estates for terms of years or fee simple title to lands necessary or convenient to the operation of state-owned facilities.
(11) Lands necessary for the development and preservation of the estuarine areas of the State.
(12) Lands necessary for the development of waterways within the State.
(13) Lands necessary for acquisition of all or part of an area of environmental concern, as requested pursuant to G.S. 113A-123.
(14) Lands necessary for the construction of hazardous waste facilities as defined in G.S. 130-166.16(5) and lands necessary for the construction of low-level radioactive waste facilities as defined in G.S. 104E-5(9b). (1969, c. 1091, s. 1; 1973, c. 1284, s. 2; 1981, c. 704, s. 23.)

Editor's Note. —

Session Laws 1973, c. 1284, which added subdivision (13) of this section, was amended by Session Laws 1981, c. 932, s. 2.1, so as to delete the provision in s. 3 of the 1973 act, as amended for expiration of the act on June 30, 1983.

Effect of Amendments. — The 1981 amendment added subdivision (14).

Session Laws 1981, c. 704, ss. 1 and 2 provide:

"Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

"Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for management of hazardous and low-level radioactive waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management."

Sessions Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 146-24. Procedure for purchase or condemnation.

(a) If, after investigation, the Department determines that it is in the best interest of the State that land be acquired, the Department shall proceed to negotiate with the owners of the desired land for its purchase.

(b) If the purchase price and other terms are agreed upon, the Department shall then submit to the Governor and Council of State the proposed purchase, together with a copy of the deed, for their approval or disapproval. If the Governor and Council of State approve the proposed purchase, the Department shall pay for the land and accept delivery of a deed thereto. All conveyances of purchased real property shall be made to "the State of North Carolina," and

no such conveyance shall be made to a particular agency, or to the State for the use or benefit of a particular agency.

(c) If negotiations for the purchase of the land are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right to eminent domain and acquire any such land by condemnation in the same manner as is provided for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes. Upon approval by the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. Approval by no other State agency shall be required as a prerequisite to the exercise of the power of eminent domain by the Department. Provided that when the procedures of Article 9 of Chapter 136 are employed by the Department, any person named in or served with a complaint and declaration of taking shall have 120 days from the date of service thereof within which to file answer. (1957, c. 584, s. 6; G.S., s. 146-105; 1959, c. 683, s. 1; 1967, c. 512, s. 1; 1973, c. 507, s. 5; 1981, c. 245, s. 1.)

Effect of Amendments. — The 1981 amendment added the proviso at the end of subsection (c).

§ 146-25.1. Proposals to be secured for leases.

(b) The Department may negotiate with the prospective lessors for leasing of the needed land, taking into account not only the rental offered, but the type of land, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors. In the event either no proposal or no acceptable proposal is received after advertising in accordance with subsection (a) of this section, the Department may negotiate in the open market for leasing of the needed land.

(1979, c. 43, s. 1.)

Effect of Amendments. — The 1979 amendment added the second sentence of subsection (b).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 7.

Dispositions.

§ 146-30. Application of net proceeds.

The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;

(2) Amounts paid pursuant to G.S. 105-296.1, if any; and

(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchpater, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture, to be used for such specific capital improvement projects or other purposes as are approved by the Director of the Budget and the Advisory Budget Commission. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Natural Resources and Community Development shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as approved by the Director of the Budget and the Advisory Budget Commission. Provided further, the net proceeds derived from the sale of any portion of the land in or around the unincorporated area known as Butner on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Hospital to bring those streets in the unincorporated area known as Butner not on the State highway system up to standards adequate for acceptance on the system, according to a plan adopted by the Department of Administration, Office of State Budget and Management and the Advisory Budget Commission, with the approval of the Board of County Commissioners of Granville County and to build industrial access roads to industries on the Butner lands. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1; 1981, c. 859, s. 23.4; c. 1127, s. 33.)

Cross References. — As to the next proceeds from certain University land sales as trust funds of the University, see § 116-36.1.

Editor's Note. — Section 105-296.1, referred to in this section, does not exist.

Effect of Amendments. — The 1979 amendment added the second sentence of the first paragraph.

The first 1981 amendment, effective July 1, 1981, added the last sentence of the last paragraph.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

The second 1981 amendment substituted "any portion of the land in or around the unincorporated area known as Butner" for "land at John Umstead Hosptial" near the beginning of the proviso added by the first 1981 amendment, substituted "on" for "in" preceding "the State highway system" near the middle of that proviso and added at the end of that proviso "and to build industrial access roads to industries on the Butner lands."

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

ARTICLE 13.

Grants Vacated.

§ 146-61. Civil action to vacate grant.

Legal Periodicals. — For an article entitled, "Removing Local Elected Officials From Office in North Carolina," see 16 Wake Forest L. Rev. 547 (1980).

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146.64. Definitions.

Cross References. — For a section requiring all tax supervisors upon request to furnish the State a report on all properties listed in the name of unknown owners in order to promote the discovery of State lands as defined by subdivision (6), see § 105-302.1.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

Chapter 147.

State Officers.

Article 1.

Classification and General Provisions.

§ 147-1. Public State officials classified.

CASE NOTES

Cited in Sansom v. Johnson, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

§ 147-2. Legislative officers.

Cross References. — As to assaults upon or threats against officers named in this section, see § 14-16.6 et seq. As to authority of the State Bureau of Investigation to investigate assaults upon or threats against such officers, see § 114-15.

§ 147-3. Executive officers.

Cross References. — As to assaults upon or threats against officers named in this section, see § 14-16.6 et seq. As to authority of the State Bureau of Investigation to investigate assaults upon or threats against such officers, see § 114-15.

CASE NOTES

Cited in Sansom v. Johnson, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

§ 147-4. (Effective upon certification of approval of constitutional amendments) Executive officers — election; term; induction into office.

The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor, who shall be elected for a term of four years, by the qualified voters of the State, at the time and place and in the manner prescribed by the Constitution and by Chapter 163.

Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the General Assembly. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law. On the first Thursday after the convening of the General Assembly, the person duly elected Governor shall, in the presence of a joint session of the two houses of the General Assembly, take the oath of office prescribed by law and be immediately inducted into the office of Governor. Should the Governor elected not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some justice of the Supreme Court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in Article III, Sec. 1, of the Constitution shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected. (Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; Rev., s. 5326; C. S., s. 7627; 1931, c. 312, s. 5; 1953, c. 2; 1981, c. 504, s. 7.)

Cross References. — For this section as in effect until certification of approval of the constitutional amendments proposed by Session Laws 1981, c. 504, ss. 1 through 3, see the bound volume. As to election, term and induction of Superintendent to Public Instruction, see § 115C-18.

Effect of Amendments. — The 1981 amendment substituted "by the qualified voters of the State, at the time and place and in the manner prescribed by the Constitution and by Chapter 163" for "by the qualified electors of the State, at the same time and places, and in the same manner, as members of the General Assembly are elected" at the end of the first sentence.

Session Laws 1981, c. 504, s. 20 provides that the amendment to this and other sections shall take effect only upon the approval of the voters of the constitutional amendments proposed in ss. 1 through 3 of the act, and that if the constitutional amendments are approved, the amendment to this section shall become effective at the same time as the constitutional amendments. Session Laws 1981, c. 504, s. 4, provides for the constitutional amendments to be submitted to the qualified voters of the State at the next statewide primary election or statewide general election or at the next statewide election, whichever is earlier. The amendments will be submitted to the voters in May, 1982.

For the amendments proposed by Session Laws 1981, c. 504, ss. 1 through 3, see the notes to N.C. Const., Art. II, §§ 2, 4, 8; Art. III, §§ 2, 7; Art. IV, §§ 9, 18, 19.

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

The salary of the Governor shall be fifty-seven thousand eight hundred sixty-four dollars ($57,864) per annum, payable monthly. He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7.)

Effect of Amendments. — The first 1977, 2nd Sess., amendment, effective July 1, 1978, increased the amount of the expense allowance provided in the second sentence from $5,000 to $10,000.

The second 1977, 2nd Sess., amendment, effective July 1, 1978, increased the Governor's salary from $45,000 to $47,700 per annum.

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

The 1979, 2nd Sess., amendment, effective July 1, 1980, increased the expense allowance provided for in the second sentence from $10,000 to $11,500.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The 1981 amendment, effective January 1, 1982, increased the salary provided in the first sentence from $47,700 to $57,864.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 147-17. May employ counsel in cases wherein State is interested.

Legal Periodicals. — For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

CASE NOTES

Applied in Nash County Bd. of Educ. v. Biltmore Co., 464 F. Supp. 1027 (E.D.N.C. 1978).

§ 147-22: Repealed by Session Laws 1981, c. 309.

§ 147-33. Compensation and expenses of Lieutenant Governor.

The salary of the Lieutenant Governor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of eleven thousand five hundred dollars ($11,500). (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1; 1971, c. 913; 1977, c. 802, s. 42.6; 1977, 2nd Sess., c. 1136, s. 40; 1979, 2nd Sess., c. 1137, s. 32.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, increased the Lieutenant Governor's expense allowance from $4,000 to $10,000.

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

The 1979, 2nd Sess., amendment, effective July 1, 1980, increased the expense allowance from $10,000 to $11,500.

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

Article 4.

Secretary of State.

§ 147-37. Secretary of State; fees to be collected.

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of two dollars ($2.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office. (R. C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; Code, s. 3725; Rev., s. 2742; C. S., s. 3864; 1979, c. 85, s. 2.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, rewrote this section.

§ 147-38: Repealed by Session Laws 1979, c. 85, s. 3, effective July 1, 1979.

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.

Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill . . . . . 25 copies;

University of North Carolina at Charlotte . . . . . 2 copies;

University of North Carolina at Greensboro . . . . . 2 copies;
North Carolina State University at Raleigh . . . . . 2 copies;
East Carolina University at Greenville . . . . . 2 copies;
Duke University . . . . . .25 copies;
Wake Forest College . . . . . 2 copies;
Davidson College . . . . . 2 copies;
North Carolina Supreme Court Library . . . . . 2 copies;
North Carolina Central University . . . . . 5 copies;
Western Carolina University . . . . . 2 copies;
Appalachian State University . . . . . 2 copies;
University of North Carolina at Wilmington . . . . . 2 copies;
North Carolina Agricultural and Technical State University . . 2 copies;
Legislative Library . . . . . 2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University. The provisions in this section shall not be interpreted to include any of the appellate division reports or advance sheets distributed by the Administrative Office of the Courts. Except for reports, bulletins, and other publications issued for free distribution, this section shall not apply to the Museum of Natural History. (1941, c. 379, s. 5; 1955, c. 505, s. 7; 1967, cc. 1038, 1065; 1969, c. 608, s. 1; c. 852, s. 3; 1973, c. 476, s. 84; c. 598; c. 731, s. 2; c. 776; 1977, c. 377; 1979, c. 591, s. 1; 1981, c. 435.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, deleted the Library of Congress and the Department of Cultural Resources from the list of institutions receiving State publications.

The 1981 amendment added the last sentence.

§ 147-50.1. Publications of State officials and department heads deposited with Division of State Library.

Every State official and every head of a State department, institution, or agency issuing any document, report, directory, statistical compendium, bibliography, map, rule, regulation, newsletter, pamphlet, brochure, periodical, or other publications shall deposit five copies with the Division of State Library of the Department of Cultural Resources. "Printed materials" are publications produced by any means, including publications issued by private bodies, such as consultant or research firms, under contract with or under the supervision of a State agency. The Division of State Library shall publish a checklist of publications received from State agencies and shall distribute the checklist without charge to all requesting libraries. The Division of State Library shall forward two of the five copies of all publications received from State agencies to the Library of Congress. The provisions of this section do not apply to the appellate division reports and advance sheets distributed by the Administrative Office of the Courts, the S.B.I. Investigative "Bulletin," or administrative materials intended only for the internal use of a State agency. (1979, c. 591, s. 2.)

Editor's Note. — Session Laws 1979, c. 591, s. 4, makes this section effective July 1, 1979.

§ 147-54.2: Repealed by Session Laws 1979, c. 477, s. 2, effective July 1, 1979.

ARTICLE 5.

Auditor.

§ 147-57: Repealed by Session Laws 1981, c. 884, s. 12.

§ 147-58. Duties and authority of State Auditor.

The duties and authority of the State Auditor shall be as follows:

(25) The Auditor is authorized to contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the Auditor to perform audits of federal grants and programs administered by the State departments and institutions in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency shall subgrant these federal funds to local governments, regional councils of government and other local groups or private or semiprivate institutions or agencies, the Auditor shall have the authority to examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance with State and federal laws and regulations.

The Auditor shall charge and collect from the contracting federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants and programs contracted by him to do. Amounts collected under these arrangements shall be deposited in the State Treasury and be budgeted in the Department of State Auditor and shall be available to hire sufficient personnel to perform these contracted audits and to pay for related travel, supplies and other necessary expenses. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1; 1953, c. 61; 1955, c. 576; 1957, c. 269, s. 1; c. 390; 1969, c. 458, s. 1; 1973, c. 507, s. 5; c. 617, s. 3; c. 1211; c. 1415; 1975, c. 879, s. 46; 1977, c. 996, s. 2; c. 1029, s. 1; 1977, 2nd Sess., c. 1136, s. 36.)

Effect of Amendments. — The 1977, 2nd Sess., amendment added subdivision (25).

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (25) are set out.

§§ 147-59 to 147-61: Repealed by Session Laws 1981, c. 302.

§ 147-62. Assignments of claims against State.

All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest

therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, prepaid legal services, and life insurance companies: Provided further, tnat any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of any credit union organized pursuant to Chapter 54 of the North Carolina General Statutes having a membership at least one half of whom are employed by the State or its institutions, departments, bureaus, agencies or commissions, may authorize, in writing, the periodic deduction from his salary or wages as such employee of a designated lump sum, which shall be paid to such credit unions when said salaries or wages are payable, for deposit to such accounts, purchase of such shares or payment of such obligations as the employee and the credit union may agree: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, motor vehicle inspectors of the Revenue Department, and State prison guards, to the commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of a domiciled State employees' association with a membership of not less then 5,000 members may authorize in writing the periodic deduction from his salary or wages a designated sum to be paid to the employees' association. This plan of payroll deductions for State employees and other association members shall become null and void at such time as the employee association engages in collective bargaining. Nothing in this last proviso shall apply to local boards of education, county or municipal governments or any local governmental units. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128; 1965, c. 1179; 1969, c. 625; 1977, c. 88; 1981, c. 869.)

Effect of Amendments. — The 1981 amendment added the last proviso.

Article 6.

Treasurer.

§ 147-67: Repealed by Session Laws 1981, c. 884, s. 14.

§ 147-69.1. Investments authorized for General Fund and Highway Fund assets.

(a) The Governor and Council of State, with the advice and assistance of the State Treasurer, shall adopt such rules and regulations as shall be necessary and appropriate to implement the provisions of this section.

(b) This section applies to funds held by the State Treasurer to the credit of:

(1) The General Fund;

(2) The Highway Fund.

(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit

Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the Asian Development Bank;

(3) Obligations of the State of North Carolina;

(4) a. Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the Department of Commerce of the State of North Carolina, be fully collateralized;

b. Certificates of deposit issued by banks organized under the laws of the State of North Carolina, or by any national bank having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, be fully collateralized;

c. With respect to savings certificates and certificates of deposit, the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity;

d. Shares of or deposits in any savings and loan association organized under the laws of the State of North Carolina, or any federal savings and loan association having its principal office in North Carolina; provided that any moneys invested in such shares or deposits in excess of the amount insured by the federal government or an agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the Department of Commerce of the State of North Carolina, be fully secured by surety bonds, or be fully collateralized.

e. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

f. Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

(d) Unless otherwise provided by law, the interest or income received and accruing from all deposits or investments of such cash balances shall be paid into the State's General Fund, except that all interest or income received and accruing on the monthly balance of the Highway Fund shall be paid into the State Highway Fund. The cash balances of the several funds may be combined for deposit or investment purposes; and when such combined deposits or investments are made, the interest or income received and accruing from all deposits

or investments shall be prorated among the funds in conformity with applicable law and the rules and regulations adopted by the Governor and Council of State.

(e) The State Treasurer shall cause to be prepared quarterly statements on or before the tenth day of January, April, July and October in each year, which shall show the amount of cash on hand, the amount of money on deposit, the name of each depository, and all investments for which he is in any way responsible. Each quarterly statement shall be delivered to the Governor and Council of State; and a copy shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1; 1969, c. 125; 1975, c. 482; 1979, c. 467, s. 1; c. 717, s. 1; 1981, c. 801, ss. 1, 2.)

Effect of Amendments. — The first 1979 amendment rewrote this section.

The second 1979 amendment added paragraph d in subdivision (c)(4).

The 1981 amendment added paragraphs e and f to subdivision (4) of subsection (c).

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of:

(1) The Teachers' and State Employees' Retirement System,
(2) The Uniform Judicial Retirement System,
(3) The Uniform Solicitorial Retirement System,
(4) The Uniform Clerks of Superior Court Retirement System,
(5) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(6) The General Assembly Medical and Hospital Care Plan,
(7) The Disability Salary Continuation Plan,
(8) The Firemen's Pension Fund,
(9) The Local Governmental Employees' Retirement System,
(10) The Law-Enforcement Officers' Benefit and Retirement Fund,
(11) The Escheat Fund,
(12) The Legislative Retirement Fund,
(13) The State Education Assistance Authority,
(14) The State Property Fire Insurance Fund,
(15) The Stock Workmen's Compensation Fund,
(16) The Mutual Workmen's Compensation Fund,
(17) The Public School Insurance Fund,
(18) The Liability Insurance Trust Fund,
(19) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, and
(20) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c);
(2) General obligations of other states of the United States;
(3) General obligations of cities, counties and special districts in North Carolina;

(4) Obligations of any company incorporated within the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;

(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;

(6) With respect to assets of the Teachers' and State Employees' Retirement System, the Uniform Judicial Retirement System, the Uniform Solicitorial Retirement System, the Uniform Clerks of Superior Court Retirement System, the Firemen's Pension Fund, the Local Governmental Employees' Retirement System, and the Law-Enforcement Officers' Benefit and Retirement Fund (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated within the United States, provided:

a. That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation, as disclosed by its published fiscal annual statements, shall have had an average annual net income plus its average annual fixed charges (as herein used, fixed charges shall mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations, shall include all fixed charges and preferred dividend requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend requirement for preferred stock and its average annual fixed charges for the same period; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend requirements for preferred stock and its fixed charges for the same period;

b. That such corporation shall have no arrears of dividends on its preferred stock;

c. That such common stock is registered on a national securities exchange as provided in the Federal Securities Exchange Act, but such registration shall not be required of the following stocks:

1. The common stock of a bank which is a member of the Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus and undivided profits, of at least twenty million dollars ($20,000,000);

2. The common stock of a life insurance company which has capital funds represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars ($50,000,000);

3. The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus and voluntary reserves, of at least fifty million dollars ($50,000,000);

d. That the preferred stock of such corporation, if any be outstanding, shall qualify for investment under this section;

e. That such corporation, having no preferred stock outstanding, shall have had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the

proper charges for replacements, depreciation, and obsolescence;

f. That such corporation shall have paid a cash dividend on its common stock in each year of the 10-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

g. That in applying the earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges and preferred dividends of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

h. That the total value of common and preferred stocks shall not exceed twenty-five per centum (25%) of the total value of all invested assets of the Retirement Systems; provided, further:

1. Not more than one and one-half per centum (1½%) of the total value of such assets shall be invested in the stock of a single corporation, and provided further;
2. The total number of shares in a single corporation shall not exceed eight per centum (8%) of the issued and outstanding stock of such corporation, and provided further;
3. As used in this subdivision h., value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments.

(c) With respect to investments authorized by subsection (b)(6), the State Treasurer shall appoint an Equity Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The State Treasurer shall also appoint a Secretary of the Equity Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1. (1979, c. 467, s. 2.)

Cross References. — As to investment by community colleges and technical institutes, see § 115D-58.6.

§ 147-69.3. Administration of State Treasurer's investment programs.

(a) The State Treasurer shall establish, maintain, administer, manage, and operate within the Department of State Treasurer one or more investment programs for the deposit and investment of assets pursuant to the provisions of G.S. 147-69.1 and G.S. 147-69.2.

(b) Any official, board, commission, other public authority, local government, school administrative unit, local ABC board, or community college of the State having custody of any funds not required by law to be deposited with and invested by the State Treasurer may deposit all or any portion of such funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments. In the absence of specific statutory provisions to the contrary, any such funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(c) The State Treasurer's investment programs shall be so managed that in the judgment of the State Treasurer funds may be readily converted into cash when needed.

(d) Except as provided by G.S. 147-69.1(d), interest earned on investments shall be credited pro rata to the fund whose assets are invested according to such formula as may be prescribed by the State Treasurer with the approval of the Governor and Council of State.

(e) The State Treasurer shall have full powers as a fiduciary to hold, purchase, sell, assign, transfer, lend and dispose of any of the securities or investments in which any of the programs created pursuant to this section have been invested, and may reinvest the proceeds from the sale of such securities or investments and any other investable assets of the program.

(f) The cost of administration, management, and operation of investment programs established pursuant to this section shall be apportioned equitably among the programs in such manner as may be prescribed by the State Treasurer.

(g) The State Treasurer is authorized to retain the services of such independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other persons or firms possessing specialized skills or knowledge as may be necessary for the proper administration of investment programs created pursuant to this section.

(h) The State Treasurer shall prepare, as of the end of each fiscal year, a report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, and the Advisory Budget Commission.

(i) The State Treasurer's annual report to the General Assembly shall include a full and complete statement of all moneys invested by virtue of the provisions of G.S. 147-69.1 and G.S. 147-69.2, the nature and character of investments therein, and the revenues derived therefrom.

(j) Subject to the provisions of G.S. 147-69.1(e), the State Treasurer shall adopt such rules and regulations as may be necessary to carry out the provisions of this section. (1979, c. 467, s. 3; 1981, c. 445, ss. 4, 5.)

Cross References. — As to investment by community colleges and technical institutes, see § 115D-58.6.

Effect of Amendments. — The 1981 amendment deleted "or" following "commission", inserted "local government, school administrative unit, local ABC board or community college" and deleted "trust" preceding "funds not" in the first sentence of subsection (b).

§ 147-77. Daily deposit of funds to credit of Treasurer.

Cross References. — As to daily deposits by community colleges and technical institutes, see § 115D-58.9.

§ 147-78. Treasurer to select depositories.

The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks or trust company as an official depository of the State. (1925, c. 128, s. 2; 1979, c. 637, s. 4.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, deleted the provision that the Treasurer require a bond or collateral security from the official depository of the State.

§ 147-79. Deposits to be secured; reports of depositories.

(a) The amount of funds deposited by the State Treasurer in an official depository shall be adequately secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the State Treasurer with the approval of the Governor and Council of State. No security is required for the protection of funds remitted to and received by a bank or trust company designated by the State Treasurer under G.S. 142-1 and acting as paying agent for the payment of the principal of or interest on bonds or notes of the State.

(b) Each official depository having deposits required to be secured by subsection (a) of this section may be required to report to the State Treasurer on January 1 and July 1 of each year (or such other dates as he may prescribe) a list of all surety bonds or investment securities securing such deposits. If the State Treasurer finds at any time that any funds of the State are not properly secured, he shall so notify the depository. Upon such notification, the depository shall comply with the applicable law or regulations forthwith.

(c) Violation of the provisions of this section shall be a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1933, c. 461, ss. 1, 1½; 1979, c. 637, s. 3.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, rewrote this section.

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.

CASE NOTES

A State prisoner has no legal right to the mitigation of his punishment. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

The question as to whether a particular inmate is entitled to honor grade status or parole involves policy decisions which should be made by the department and the Parole Board, not the courts. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

ARTICLE 2.

Prison Regulations.

§ 148-12. Diagnostic and classification programs.

Editor's Note. — Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Legal Periodicals. — For an article discussing the presentence diagnostic program in North Carolina, see 9 N.C. Cent. L.J. 133 (1978).

CASE NOTES

Judge Other Than Trial Judge May Impose Sentence. — Where sentencing was delayed for the purpose of a diagnostic evaluation of the defendant under this section, it was not error for a judge other than the trial judge to impose sentence upon the defendant. State v. Sampson, 34 N.C. App. 305, 237 S.E.2d 883 (1977), cert. denied, 294 N.C. 185, 241 S.E.2d 520 (1978).

§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.

(a) The Secretary of Correction may issue regulations regarding the grades of custody in which State prisoners are kept, the privileges and restrictions applicable to each custody grade, and the amount of cash, clothing, etc., to be awarded to State prisoners after their discharge or parole.

(b) With respect to prisoners who are serving prison or jail terms for offenses not subject to Article 81A of Chapter 15A of the General Statutes and prisoners serving a life term for a Class C felony, the Secretary of Correction may, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like.

(c) With respect to all prisoners serving prison or jail terms for felonies that occurred on or after the effective date of Article 81A of Chapter 15A of the General Statutes, the Secretary of Correction and local jail administrators must grant credit toward their terms for good behavior as required by G.S. 15A-1340.7. The provisions of this subsection shall not apply to persons convicted of Class A or Class B felonies or persons sentenced to a life term for a Class C felony.

(d) With respect to prisoners serving prison or jail terms for felonies that occurred on or after the effective date of Article 81A of Chapter 15A, the Secretary of Correction shall issue regulations authorizing gain time credit to be deducted from the terms of such prisoners, in addition to the good behavior credit authorized by G.S. 15A-1340.7. Gain time credit may be granted for meritorious conduct and shall be granted for performance of work inside or outside the prison or jail. Gain time credit earned pursuant to regulations issued under this subsection shall not be subject to forfeiture for misconduct. Gain time shall be administered to qualified prisoners as follows:

(1) Gained Time II. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform short-term work assignments (requiring a minimum of four hours of actual work per day) shall receive credit for work performed at the rate of two days per month.

(2) Gained Time II. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform job assignments requiring a minimum of six hours work per day or who perform in part-time work release programs shall receive credit at the rate of four days per month.

(3) Gained Time III. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform job assignments requiring a minimum of six hours per day with requirements for specialized skills or specialized responsibilities, as well as inmates participating in full-time work release shall receive credit at the rate of six days per month.

The Secretary of Correction may, in his discretion, grant gain time credit at a rate greater than the rates specified in this subsection for meritorious conduct or emergency work performed, provided, however, that gain time granted for emergency work performed shall not exceed 30 days per month, nor shall gain time granted for meritorious conduct exceed 30 days for each act of meritorious conduct.

(e) The Secretary's regulations concerning time deductions authorized by this section and his regulations concerning prisoner conduct issued pursuant to G.S. 15A-1340.7 shall be distributed to and followed by local jail administrators with regard to sentenced jail prisoners. (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409; 1955, c. 238, s. 6; 1979, c. 760, s. 4; 1979, 2nd Sess., c. 1316, ss. 43-46; 1981, c. 662, ss. 8, 9.)

Cross References. — For statute providing the maximum punishment for felonies, effective July 1, 1981, see § 14-1.1.

Effect of Amendments. — The 1979 amendment, effective July 1, 1981, rewrote this section. The 1979 amendatory act was originally made effective July 1, 1980. It was postponed to March 1, 1981, by Session Laws 1979, 2nd Sess., c. 1316; to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

The 1979, 2nd Sess., amendment, effective July 1, 1981, and applicable to offenses committed on or after that date, substituted "for offenses not subject to Article 81A of Chapter 15A of the General Statutes" for "either for felonies that occurred before the effective date of Article 81A of Chapter 15A of the General Statutes" near the beginning of subsection (b), substituted "prisoners serving prison or jail terms" for "State prisoners serving prison terms" and inserted "and local jail administrators" in the first sentence of subsection (c), substituted "subsection" for "section" in the second sentence of subsection (c), deleted "the rate of" preceding "gain time" in two places in the proviso to the last paragraph of subsection (d), and rewrote subsection (e). The 1979, 2nd Sess., amendatory act was originally made effective March 1, 1981. It was postponed to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

The 1981 amendment, effective July 1, 1981, inserted "and prisoners serving a life term for a Class C felony," in subsection (b) and added "all persons sentenced to a life term for a Class C felony" at the end of the last sentence of subsection (c).

§ 148-19. Health services.

(a) The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. A prisoner may be taken, when necessary, to a medical facility outside the State prison system. The Department of Correction shall seek the cooperation of public and private agencies, institutions, officials and individuals in the development of adequate health services to prisoners.

(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.

(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a health care professional authorized by the Board of Medical Examiners to perform such examinations as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the prisoner's physical and mental condition.

(d) The Commission for Mental Health, Mental Retardation and Substance Abuse Services shall prescribe standards for the delivery of mental health services to inmates in the custody of the Department of Correction. The Commission for Mental Health, Mental Retardation and Substance Abuse Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Human Resources shall designate an agency or agencies within the Department of Human Resources to monitor the implementation of such standards by the Department of Correction. The Secretary of Human Resources shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 332; c. 679, s. 7; 1981, c. 51, s. 6; c. 707, ss. 1, 2.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, substituted "Commission for Mental Health, Mental Retardation and Substance Abuse Services" for "Commission for Mental Health and Mental Retardation Services" in subdivision (d).

The second 1981 amendment substituted "health care professional authorized by the Board of Medical Examiners to perform such examinations" for "competent physician" in the first sentence of subsection (c) and deleted "the report of the physician as to" following "regard for" in the second sentence of that subsection.

§ 148-22. Treatment programs.

CASE NOTES

Stated in Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

§ 148-22.2. Procedure when surgical operations on inmates are necessary.

The medical staff of any penal institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the physical condition of the inmate. The decision to perform such operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of said institution. No such operation shall be performed without the consent of the inmate; or, if the inmate be a minor, without the consent of a responsible member of his family, a guardian, or one having legal custody of such minor; or, if the inmate be non compos mentis, then the consent of a responsible member of his family or of a guardian must be obtained. Any surgical operations on inmates of State penal institutions shall also be subject to the provisions of Article 1A of Chapter 90 of the General Statutes and G.S. 90-21.13 and G.S. 90-21.14.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate non compos mentis, the consent of a responsible member of his family, guardian, or one having legal custody of such inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this Article [section], the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for such operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed.

This Article [section] is not to be considered as affecting the provisions of Article 7 of Chapter 35 of the General Statutes dealing with eugenical sterilization. (1919, c. 281, ss. 1, 2; C. S., ss. 7221, 7222; 1947, c. 537, s. 24; 1951, c. 775; 1957, c. 1357, s. 1; 1981, c. 307, ss. 2, 3.)

Effect of Amendments. — This section was formerly § 130-191. It was amended and transferred to Chapter 148 by Session Laws 1981, c. 307, s. 8, which originally designated the new position as § 148-22.1; since that number had already been assigned, the section was renumbered as § 148-22.2. The 1981 amendment also substituted, in the first sentence of the first paragraph, "penal institution" for "penal or charitable hospital or institution" and substituted "physical condition" for "mental or physical condition" and substituted the present last sentence of the first paragraph for the former last sentence, which read: "In any event in which a responsible member of the inmate's family, or guardian for such inmate, cannot be found, as evidenced by the return of a registered letter to the last known address of the guardian or responsible relative, then the local health director of the area in which the hospital or institution is located shall be authorized to give or withhold, on behalf of the inmate, consent to the operation."

Article 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners.

(a) It is declared to be the public policy of the State of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them. The failure of any inmate to perform such a work assignment may result in disciplinary action. Work assignments and employment shall be for the public benefit to reduce the cost of maintaining the inmate population while enabling inmates to acquire or retain skills and work habits needed to secure honest employment after their release.

In exercising his power to enter into contracts to supply inmate labor as provided by this section, the Secretary of Correction shall not assign any inmate to work under any such contract who is eligible for work release as provided in this Article, study release as provided by G.S. 148-4(4), or who is eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, unless suitable work release employment or educational opportunity cannot be found for the inmate, and the inmate is not eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, and shall not agree to supply inmate labor for any project or service unless it meets all of the following criteria:

(1) The project or service involves a type of work by which inmates can develop a skill to better equip themselves to return to society;
(2) The project or service is of benefit to the citizens of North Carolina or units of State or local government thereof;
(3) Repealed by Session Laws 1977, c. 824, s. 2.
(4) Wages shall be paid in an amount not exceeding one dollar ($1.00) per day per inmate by the local or State contracting agency.

(b) As many minimum custody prisoners as are available and fit for road work, who cannot appropriately be placed on work release, study release, or other full-time programs, and as many medium custody prisoners as are available, fit for road work and can be adequately guarded during such work without reducing security levels at prison units, shall be employed in the maintenance and construction of public roads of the State. The number and location of prisoners to be kept available for work on the public roads shall be agreed upon by the governing authorities of the Department of Transportation and the State Department of Correction far enough in advance of each budget to permit proper provisions to be made in the request for appropriations submitted by the Department of Transportation. Any dispute between the Departments will be resolved by the Governor. Prisoners so employed shall be compensated, at rates fixed by the Department of Correction's rules and regulations for work performed; provided, that no prisoner working on the public roads under the provisions of this section shall be paid more than one dollar ($1.00) per day from funds provided by the Department of Transportation to the Department of Correction for this purpose.

(c) As many of the male prisoners available and fit for forestry work shall be employed in the development and improvement of state-owned forests as can be used for this purpose by the agencies controlling these forests.

(d) The remainder of the able-bodied inmates of the State prison system shall be employed so far as practicable in prison industries and agriculture, giving preference to the production of food supplies and other articles needed by state-supported institutions or activities.

(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 Resources and Community Development 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. Such work may include but is not limited to work with State or local government agencies in cleaning, construction, landscaping and maintenance of roads, parks, nature trails, bikeways, cemeteries, landfills or other government-owned or operated facilities.

(f) Adult inmates of the State prison system shall be prohibited from working at or being on the premises of any schools or institutions operated or administered by the State Division of Youth Development. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86; 1975, c. 278; c. 506, ss. 1, 2; c. 682, s. 2; c. 716, s. 7; 1977, c. 771, s. 4; c. 802, s. 25.36; c. 824, ss. 1-3; 1981, c. 516.)

Effect of Amendments. — The 1981 amendment substituted the first through third sentences of subsection (a) for a former sentence which declared it to be the public policy of the state to provide diversified employment for all able-bodied prison inmates in work for the public benefit to reduce the cost of their imprisonment and enable them to acquire work skills.

§ 148-28. Sentencing prisoners to Central Prison; youthful offenders.

Editor's Note. —
Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.

Editor's Note. —
Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-30: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. —
Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.

(a) The Department of Correction shall pay each local confinement facility a standard sum set by the General Assembly in its appropriation acts at a per day, per inmate rate, for the cost of providing food, clothing, personal items, supervision and necessary ordinary medical services to those male inmates committed to the custody of the local confinement facility to serve sentences of 30 to 180 days. This reimbursement shall not include any period of detention prior to actual commitment by the sentencing court. The Department shall also pay to the local confinement facility extraordinary medical expenses incurred for the inmates, defined as follows:

(1) Medical expenses incurred as a result of providing health care to an inmate as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to an inmate as an outpatient (nonhospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the inmate is incarcerated, provided the inmate was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the Department is obtained by the local facility.

(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the judicial district where the facility is located, or any judge of the superior court or a special judge of the superior court assigned to hold court in the judicial district where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that judicial district. If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 180 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(c) When a prisoner is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Parole Commission so that the prisoner will be eligible for misdemeanant parole pursuant to G.S. 148-60.3.

(d) In the event that the prisoner serving a sentence of 30 to 180 days in a local confinement facility is placed on work-release by the sentencing court pursuant to G.S. 148-33.1 (a), the Department of Correction shall be responsible for deducting the appropriate fees from the work-release earnings of the prisoner pursuant to G.S. 148-33.1. In order for the Department of Correction to make the appropriate deductions, it shall be the responsibility of the custodian of the local confinement facility to forward the work-release earnings of the prisoner to the Department of Correction.

(e) Upon entry of a prisoner into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Parole Commission information pertaining to the prisoner so as to make him

eligible for parole consideration pursuant to G.S. 148-60.3. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Parole Commission. The Parole Commission shall approve a form upon which the custodian shall furnish this information, which form will be provided to the custodian by the Department of Correction. (1977, c. 450, s. 3; c. 925, s. 2; 1981, c. 859, s. 25.)

Editor's Note. — Section 148-60.3, referred to in subsections (c) and (e), was repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote this section.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.

(a) Whenever a person is sentenced to imprisonment for a term to be served in the State prison system or a local confinement facility, the Secretary of the Department of Correction may authorize the Director of Prisons or the custodian of the local confinement facility to grant work-release privileges to any such inmate as may be eligible for the program as is hereinafter established. The Secretary of Correction shall authorize immediate work-release privileges for any person serving a sentence not exceeding five years in the State prison system and for whom the presiding judge shall have recommended work-release privileges when (i) it is verified that appropriate employment for the person is available in an area where, in the judgment of the Secretary, the Department of Correction has facilities to which the person may suitably be assigned, and (ii) custodial and correctional considerations would not be adverse to releasing the person without supervision into the free community.

(b) Repealed by Session Laws 1981, c. 541, s. 2.

(c) The State Department of Correction shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for quartering prisoners with work-release privileges. No State or county prisoner shall be granted work-release privileges until suitable facilities for quartering him have been provided in the area where the prisoner has employment or the offer of employment.

(d) The Secretary of Corrections 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. 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.

(e) The State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Department of Correction their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Department of Correction shall retain to his credit such amount as

seems necessary to accumulate a reasonable sum to be paid to him when he is paroled or discharged from prison, and shall make such disbursements from any balance of his earnings as may be found necessary by the Department for the following purposes, considered in a priority order as stated:

(1) To pay travel and other expenses of the prisoner made necessary by his employment;

(2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;

(3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of social services in the county of North Carolina in which such dependents reside;

(3a) To make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is imposed as a condition of work-release privileges pursuant to the provisions of G.S. 148-33.2.

(4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any case before such court.

In addition, the Department of Correction in its discretion may grant a request made in writing by the prisoners for a withdrawal for any other purpose.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The Social Services Commission is authorized to promulgate uniform rules and regulations governing the duties of county social services departments under this section.

(g) No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system while working in the free community or going to or from such employment.

(h) Any prisoner employed under the provisions of this section shall not be entitled to any benefits under Chapter 96 of the General Statutes entitled "Employment Security" during the term of the sentence.

(i) No recommendation for work release shall be made at the time of sentencing in any case in which the presiding judge shall suspend the imposition of sentence and place a convicted person on probation; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time recommend work release. Neither a recommendation for work release by the court or the decision of the Secretary of Correction to place a person on work release shall give rise to any vested statutory right to an individual to be placed on or continued on work release. (1957, c. 540; 1959, c. 126; 1961, c. 420; 1963, c. 469, ss. 1, 2; 1967, c. 684; c. 996, s. 13; 1969, c. 982; 1973, c. 476, s. 138; c. 1262, s. 10; 1975, c. 22, ss. 1-3; c. 679, s. 3; 1977, c. 450, ss. 4, 5; c. 614, s. 6; c. 623, ss. 1, 2; c. 711, s. 29; 1981, c. 541, ss. 1-3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "not exceeding five years" following "imprisonment for a term" in the first sentence of subsection (a), repealed former subsection (b), which concerned the grant of work-release privileges to inmates serving a term greater than five years, and substituted "The Secretary of Correction" for "The Parole Commission" at the beginning of the first sentence of subsection (d). Session Laws 1981, c. 541, § 10, provides that the act "shall apply only to work release decisions involving persons sentenced under Article 81A of Chapter 15A of the General Statutes."

Legal Periodicals. — For a note on prisoner's rights and an inmate's liberty interest in work release programs, see 17 Wake Forest L. Rev. 273 (1981).

Editor's Note. —

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

CASE NOTES

Department May Deduct Cost of Attorneys' Fees From Earnings of Prisoners on Work-Release. — Under the provisions of this section the Department of Corrections may, but is not required to, make deductions from the earnings of a prisoner on work-release and pay to the sentencing court for reimbursement to the State the amount so ordered by the court to reimburse the State for attorney fees paid on behalf of said prisoner. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

Cited in State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

§ 148-33.2. Restitution by prisoners with work-release privileges.

(a) As a rehabilitative measure, the Secretary of the Department of Correction is authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of attaining work-release privileges pursuant to a plea arrangement made under provisions of G.S. 15A-1021. The Secretary shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented, the Secretary shall state in writing why they cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Secretary of the Department of Correction is further authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining work-release privileges. The Secretary shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Secretary of Correction to be imposed as a condition of attaining work-release privileges. If the court determines that restitution or reparation should not be ordered or recommended as a condition of attaining work-release privileges, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of attaining work-release privileges, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Secretary of the Department of Correction shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of work release, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court. (1977, c. 614, s. 7; 1977, 2nd Sess., c. 1147, s. 33; 1981, c. 541, ss. 4-9.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "G.S. 15A-1343(d)" for "G.S. 15-199(10)" in the fourth sentence of subsection (c).

The 1981 amendment, effective July 1, 1981, deleted references to the Parole Commission throughout the section and substituted "is authorized" for "are authorized" in the first sentence of subsection (a) and "is further authorized" for "are further authorized" in the first sentence of subsection (b). Session Laws 1981, c. 541, § 10, provides that the act shall apply only to work release decisions involving persons sentenced under Article 81A of Chapter 15A of the General Statutes."

CASE NOTES

Constitutionality. — Since the decision to impose restitution or reparation is discretionary with the trial court, and the Secretary, and since indigency could be considered in making that decision, subsection (c) of this section and § 148-57.1(c) are not unconstitutional as a denial of equal protection discriminating against indigent defendants. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

Purpose of Section. — The purpose of this section and § 15A-1343(b)(6) is rehabilitation and not additional penalty or punishment, and the sum ordered or recommended must be reasonably related to the damages incurred. If the trial evidence does not support the amount ordered or recommended, then supporting evidence should be required in the sentencing hearing. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

Duty of Sentencing Court as Regards Restitution or Restoration as Prerequisite for Work-Release. — The sentencing court is not only authorized but is required by subsection (c) of this section, when an active sentence is imposed, to consider whether, as a further rehabilitative measure, restitution or restoration should be ordered or recommended to the Secretary of Correction to be imposed as a condition of attaining work-release privileges. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

Conditions Discretionary. — The decision to recommend restitution or reparation is discretionary, and the trial court is not required to impose such a condition. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

Recommendations of Sentencing Court as to Conditions for Grant of Work-Release. — Together subsection (c) of this section and § 15A-1343(b)(6) require that any order or recommendation of the sentencing court for restitution or restoration to the aggrieved party as a condition of attaining work-release privileges must be supported by the evidence. State v. Killian, 37 N.C. App. 234, 245 S.E.2d 812 (1978).

Imposition of Fine Is Not Restitution. — When an active sentence is imposed, the judge should consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Secretary of Correction to be imposed as a condition of attaining work-release privileges; however, the imposition of a fine is not restitution or reparation within the meaning of this statute and should not be included in a judgment under this section. State v. Alexander, 47 N.C. App. 502, 267 S.E.2d 396 (1980).

§ 148-36. Secretary of Correction to control classification and operation of prison facilities.

CASE NOTES

A State prisoner has no legal right to the mitigation of his punishment. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

The question as to whether a particular inmate is entitled to honor grade status or parole involves policy decisions which should be made by the department and the Parole Board, not the courts. Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980).

§ 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 any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons, 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; 1975, c. 879, s. 46; 1977, 2nd Sess., c. 1147, s. 34.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons" for "federal, county or city facilities located in North Carolina" in the first sentence of subsection (b).

Only Part of Section Set Out. — As subsection (a) was not changed by the amendment, it is not set out.

§ 148-42: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. —

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 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, except as provided in subsection (g) of this section, 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).

(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, except as provided in subsection (g) of this section, be punished as a Class J felon.

(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).

(c) Repealed by Session Laws 1979, c. 760, s. 5, effective July 1, 1980.

(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) 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. Persons charged with the offense of escape or attempt to escape under the provisions of this section shall not be entitled to plea conference consideration as provided in G.S. 15A-1021.

(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) (1) 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, willful failure to return to an appointed place and at an appointed time as ordered.

(2) If a person, who would otherwise be guilty of a first violation of G.S. 148-45(g)(1), voluntarily returns to his place of confinement within 24 hours of the time at which he was order to return, such person shall not be charged with an escape as provided in this section but shall be subject to such administrative action as may be deemed appropriate for an escapee by the Department of Correction; said escapee shall not be allowed to be placed on work release for a four-month period or for the balance of his term if less than four months; provided, however, that if such person commits a subsequent violation of this section then such person shall be charged with that offense and, if convicted. punished under the provisions of this section. (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; 1975, cc. 170, 241, 705; c. 770, ss. 1, 2; 1977, c. 732, ss. 3, 4; c. 745; 1979, c. 760, s. 5.)

Cross References. — For statute providing the maximum punishment for felonies, effective July 1, 1981, see § 14-1.1.

Editor's Note. — Section 15-183, referred to in subdivisions (a)(3) and (b)(3) of this section, was repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978. Section 148-12(b), referred to in subdivision (b)(4), was repealed by the same 1977 act.

Effect of Amendments. — The 1979 amendment, effective July 1, 1981, substituted "shall, except as provided in subsection (g) of this section, be punished as a Class J felon" for "shall for the first such offense, except as provided in subsection (g) of this section, 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" in the introductory paragraph in subsection (b) and repealed subsection (c), pertaining to conviction for prison escape subject to another escape conviction. The 1979 amendatory act was originally made effective July 1, 1980. It was postponed to March 1, 1981, by Session Laws 1979, 2nd Sess., c. 1316; to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

CASE NOTES

An exact time is not an essential element of the offense of escape as set out in subdivision (g)(1) of this section and the 24-hour exception provided in subdivision (g)(2) of this section is a defense which a defendant may raise should the evidence warrant such a defense. Therefore, the trial court did not err in denying a defendant's motion to dismiss at the close of the State's evidence on the grounds the warrant did not set out the exact date and time of the alleged escape and further failed to state the period of time was in excess of the 24-hour time limitation found in subdivision (g)(2) of this section. State v. Womble, 44 N.C. App. 503, 261 S.E.2d 263 (1980).

§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.

Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, willfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Department of Correction, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be punished as a Class H felon. (1959, c. 1197; 1967, c. 996, s. 13; 1979, c. 760, s. 5.)

Cited in State v. Faircloth, 297 N.C. 100, 253 S.E.2d 890 (1979).

Cross References. — For statute providing the maximum punishment for felonies, effective July 1, 1981, see § 14-1.1.

Effect of Amendments. — The 1979 amendment, effective July 1, 1981, substituted "punished as a Class H felon" for "guilty of a felony and upon conviction thereof shall be punished by imprisonment in the State's prison for a term not exceeding 10 years in the discretion of the court" at the end of the section. The 1979 amendatory act was originally made effective July 1, 1980. It was postponed to March 1, 1981, by Session Laws 1979, 2nd Sess., c. 1316; to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

§ 148-46.2. Procedure when consent is refused by prisoner.

When the Secretary of Correction finds as a fact that the injury to any prisoner was willfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the chief medical officer of the prison hospital or prison institution shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this Article [section], the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. Any treatment of self-inflicted injuries shall also be subject to the provisions of G.S. 90-21.13 and 90-21.14. (1959, c. 1196; 1967, c. 996, s. 15; 1969, c. 982; 1973, c. 1262, s. 10; 1981, c. 307, ss. 4-7, 9.)

Effect of Amendments. — This section was formerly § 130-191.1. It was amended and transferred to its present position by Session Laws 1981, c. 307, s. 9. The 1981 amendment, also, in the first paragraph, substituted "When the Secretary of Correction finds" for "When a board comprised of the Secretary of Correction, the chief medical officer of a prison hospital or penal institution, and a representative of the State or county social services department of the county where the prisoner is confined, shall convene and find" at the beginning, deleted "made by this board" preceding "have been reduced to writing and entered" near the middle of the paragraph, and substituted "chief medical officer of the prison hospital or prison institution" for "local health director, as defined by G.S. 130-3, or in the event a local health director is not immediately available then the local health director of any adjoining or nearby area." The amendment also added the last sentence of the second paragraph.

ARTICLE 3B.

Facilities and Programs for Youthful Offenders.

§ 148-49.10. Purposes of Article.

Legal Periodicals. — For comment on capital sentencing statute, see 16 Wake Forest L. Rev. 765 (1980).

CASE NOTES

The purpose of this Article as stated in this section is the same purpose stated in former § 148-49.1 of the old Article 3A. State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

Rights accrued by persons under Repealed Article 3A remain unaffected. State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

Article Not Applicable Where Death or a Life Sentence Mandatory. — Neither former Article 3A (repealed) nor this Article of Chapter 148 was intended to apply to convictions or pleas of guilty of crimes for which death or a life sentence is the mandatory punishment. State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977); State v. Mathis, 293 N.C. 660, 239 S.E.2d 245 (1977); State v. Foster, 293 N.C. 674, 239 S.E.2d 449 (1977).

Retroactive Application. — State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977), did not alter any established statutory or judicial rule of law so as to constitute judicial ex post facto decision making in violation of due process of law. At most, it simply held that this Article, which arguably gave a sentencing alternative in a first degree murder case, did not have that effect. Foster v. Barbour, 613 F.2d 59 (4th Cir. 1980).

Cited in State v. Drakeford, 37 N.C. App. 340, 246 S.E.3d 55 (1978).

§ 148-49.11. Definitions.

CASE NOTES

Quoted in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

§ 148-49.12. Treatment of youthful offenders.

CASE NOTES

Stated in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

§ 148-49.13. Classification studies.

Legal Periodicals. — For an article discussing the presentence diagnostic program in North Carolina, see 9 N.C. Cent. L.J. 133 (1978).

§ 148-49.14. Sentencing committed youthful offenders.

CASE NOTES

Statute Requires Determination of Benefit. — To comply with the statutory mandate of this section the sentencing judge must make a determination of whether the defendant would benefit from treatment and supervision as a committed youthful offender. This determination should be based on the trial evidence and evidence presented in the sentencing hearing. State v. Lewis, 38 N.C. App. 108, 247 S.E.2d 282 (1978).

But No Specific Language Is Required. — This section does not require any specific language in order for the "no benefit" finding to be effective. State v. White, 37 N.C. App. 394, 246 S.E.2d 71 (1978).

There is no particular form or wording required of the trial judge in making a determination that a defendant will derive no benefit from sentencing under this section. State v. Safrit, 47 N.C. App. 189, 266 S.E.2d 719 (1980).

"No Benefit" Finding Effectual. — Where the sentencing judge made the "no benefit" finding immediately after, but on the same day and virtually at the same time that judgment and notice of appeal were entered, the judgment remained in fieri despite the notice of appeal since the term of court had not expired, and the "no benefit" finding was effectual. In re Tuttle, 36 N.C. App. 222, 243 S.E.2d 434 (1978) (decided under former § 148-49.4).

Reasons for Finding Not Required. — The trial judge was not required to supply supporting reasons for this finding in the record that the defendant would not derive benefit from treatment and supervision as a committed youthful offender. State v. White, 37 N.C. App. 394, 246 S.E.2d 71 (1978).

Fairness to Defendant Required "De Novo" Sentencing Hearing. — Where the trial court failed to make a "no benefit" finding before imposing a prison sentence on a 19 year old defendant, the case was required to be remanded for de novo sentencing hearing. Fairness to the defendant in imposing sentence requires that the resentencing be de novo with the sentencing judge having authority to impose a new sentence rather than limiting resentencing to a determination of whether the youthful offender would benefit from treatment as a committed youthful offender since on resentencing the judge could find that defendant would benefit from treatment as a committed youthful offender and impose a sentence as provided by this section, or make a "no benefit" finding and impose the same sentence, or a lesser sentence, or a greater sentence if based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. State v. Lewis, 38 N.C. App. 108, 247 S.E.2d 282 (1978).

"No Benefit" Finding Necessary before Sentence Imposed. — The trial court erred in imposing a prison sentence on a 19 year old defendant without finding that the youthful offender would not benefit from treatment and supervision as a committed youthful offender. State v. Lewis, 38 N.C. App. 108, 247 S.E.2d 282 (1978).

Remand Where "No Benefit" Finding Not Made. — Where the trial court sentenced a 17 year old defendant to consecutive terms of life imprisonment without making a "no benefit" finding as required by this section, the trial court erred in not making the finding and the case must be remanded for resentencing. State v. Rupard, 299 N.C. 515, 263 S.E.2d 554 (1980).

The trial court, before sentencing a defendant under 21 years of age to imprisonment, must make a finding showing clearly that the court considered the "committed youthful offender" option and determined that the defendant would not benefit from it. Where, on appeal, no such finding appeared in the record before the appellate court, defendant's sentence was vacated and the case remanded for resentencing. State v. Smith, 43 N.C. App. 376, 258 S.E.2d 847 (1979).

Quoted in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

Cited in State v. Locklear, 294 N.C. 210, 241 S.E.2d 65 (1978).

§ 148-49.15. Parole of committed youthful offenders.

(a) The Parole Commission may at any time after reasonable notice to the Secretary of Correction parole under supervision a committed youthful offender pursuant to the provisions of Article 4 of this Chapter. Parole of a committed youthful offender shall be subject to G.S. 15A-1372 through 15A-1376. When, in the judgment of the Secretary of Correction, a committed youthful offender is ready for parole under supervision, the Secretary may also recommend such action to the Parole Commission. It shall not be necessary for a committed youthful offender to have served one quarter of his sentence before becoming eligible for parole.

(b) When the Parole Commission paroles any committed youthful offender, the time that the committed youthful offender spends at liberty on parole shall be limited and shall be credited toward his active sentence in the same manner as would have occurred had such person been paroled pursuant to Article 4 of this Chapter.

(c) The Parole Commission, after notice to the Secretary of Correction, may release a committed youthful offender on parole within the last 90 days of his maximum term of commitment.

(d) 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 committed youthful offender a certificate to that effect. (1967, c. 996, s. 10; 1973, c. 1153; c. 1262, s. 10; 1975, c. 720, s. 2; 1977, c. 732, s. 2; 1981, c. 662, s. 6.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added the second sentence in subsection (a).

CASE NOTES

Stated in State v. Niccum, 293 N.C. 276, 238 S.E.2d 141 (1977).

Cited in State v. Rupard, 299 N.C. 515, 263 S.E.2d 554 (1980).

§ 148-49.16. Supervision of paroled youthful offenders and revocation of such parole.

(b) If at any time before unconditional discharge of a youthful offender the Parole Commission is of the opinion that for proper reason parole should be revoked, revocation shall proceed under the provisions of Article 85 of Chapter 15A of the General Statutes. After revocation of parole, the Parole Commission may thereafter reinstate parole at such time as in the commission's discretion the youthful offender is ready for reinstatement. Notice to the Secretary of Correction of intent to reinstate parole shall not be required. (1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1975, c. 89; c. 720, s. 2; 1977, c. 732, s. 2; 1977, 2nd Sess., c. 1147, s. 35.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Article 85 of Chapter 15A of the General Statutes" for "Article 4 of this Chapter" in the first sentence of subsection (b).

Only Part of Section Set Out. — As subsection (a) was not changed by the amendment, it is not set out.

ARTICLE 4.

Paroles.

§ 148-52.1. Prohibited political activities of member of Parole Commission.

No member of the Parole Commission 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 who shall violate any of the provisions of this section shall be subject to dismissal from office. (1953, c. 17, s. 4; 1973, c. 1262, s. 10; 1981, c. 260.)

Effect of Amendments. — The 1981 amendment deleted "or employee of the Department of Correction" following "Commission" in the first sentence and deleted "or employee of the Department" following "member" and "or employment" following "office" in the second sentence.

§ 148-53. Investigators and investigators of cases of prisoners.

Editor's Note. —
Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-57.1. Restitution as a condition of parole.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission to be imposed as a condition of parole. If the court determines that restitution or reparation should not be ordered or recommended as a condition of parole, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of parole, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(1977, 2nd Sess., c. 1147, s. 36.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "G.S. 15A-1343(d)" for "G.S. 15-199(10)" at the end of the fourth sentence of subsection (c).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (c) is set out.

CASE NOTES

Constitutionality. — Since the decision to impose restitution or reparation is discretionary with the trial court, the Secretary and the Parole Commission, and since indigency could be considered in making that decision, § 148-33.2(c) and subsection (c) of this section are not unconstitutional as a denial of equal protection discriminating against indigent defendants. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

Conditions Discretionary. — The decision to recommend restitution or reparation is discretionary, and the trial court is not required to impose such a condition. State v. Lambert, 40 N.C. App. 418, 252 S.E.2d 855 (1979).

§§ 148-58, 148-58.1: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. —
Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 148-60: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. —
Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§§ 148-60.2 to 148-62: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. —
Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section.

CASE NOTES

Access to Prison Records.—
In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Does not Include, etc.—
In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

A State prisoner does not have a constitutional right of access to his prison file. Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

However, in certain limited circumstances a claim of constitutional magnitude is raised where a prisoner alleges (1) that information is in his file, (2) that the information is false, and (3) that it is relied on to a constitutionally significant degree. Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

§ 148-76. Duties of Records Section.

CASE NOTES

Access to Prison Records.—
In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

Does not Include, etc.—
In accord with original. See Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

A State prisoner does not have a constitutional right of access to his prison file. Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

However, in certain limited circumstances a claim of constitutional magnitude is raised where a prisoner alleges (1) that information is in his file, (2) that the information is false, and (3) that it is relied on to a constitutionally significant degree. Paine v. Baker, 595 F.2d 197 (4th Cir.), cert. denied, 444 U.S. 925, 100 S. Ct. 263, 62 L. Ed. 2d 181 (1979).

§ 148-101. Commission established; appointment and terms of members; chairman; vacancies; compensation.

Legal Periodicals. — For article, "The Ombudsman, or Citizens' Defender — The North Carolina Experience," see 10 N.C. Cent. L.J. 227 (1979).

§ 148-113. Judicial review.

CASE NOTES

Section Does Not Conflict with N.C. Const., Art. I, § 12, § 17-1; or § 17-2. — This section, requiring an inmate to exhaust his administrative remedies before he is entitled to judicial review of a grievance or complaint within the jurisdiction of the Inmate Grievance Commission, does not conflict with constitutional and statutory provisions guaranteeing the privilege of the writ of habeas corpus, N.C. Const., Art. I, § 21, §§ 17-1 and 17-2, since this section only prescribes the method by which the inquiry into the lawfulness of an inmate's detention is to be conducted. Hoffman v. Edwards, 48 N.C. App. 559, 269 S.E.2d 311 (1980).

The remedy provided by statute for the enforcement of a right created by statute is exclusive, and the party asserting such right must pursue the prescribed remedy and exhaust his administrative remedies before resorting to the courts. Hoffman v. Edwards, 48 N.C. App. 559, 269 S.E.2d 311 (1980).

The superior court had no jurisdiction to entertain a prison inmate's petition for a writ of habeas corpus where the inmate's grievance concerned a disciplinary hearing and fell within the jurisdiction of the Inmate Grievance Commission, and the record does not show that the inmate filed a complaint with the Inmate Grievance Commission or that he exhausted his administrative remedies. Hoffman v. Edwards, 48 N.C. App. 559, 269 S.E.2d 311 (1980).

§§ 148-114 to 148-118: Reserved for future codification purposes.

Article 12.

Interstate Corrections Compact.

§ 148-119. Short title.

This Article shall be known and may be cited as the Interstate Corrections Compact. (1979, c. 623.)

§ 148-120. Governor to execute; form of compact.

The Governor of North Carolina is hereby authorized and requested to execute, on behalf of the State of North Carolina, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

(1) The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one

another, and with the federal government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

(2) As used in this compact, unless the context clearly requires otherwise:

a. "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

b. "Sending state" means a state party to this compact in which conviction or court commitment was had.

c. "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

d. "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

e. "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (2)d. above may lawfully be confined.

(3) a. Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration;

2. Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

4. Delivery and retaking of inmates;

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

b. The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

(4) a. Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, Subsection (1) [paragraph a. of subdivision (3)] shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

b. The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which

it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

c. Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III, Subsection (1) [paragraph a. of subdivision (3)].

d. Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

e. All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

f. Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

g. Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

h. Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits

or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

i. The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

(5) a. Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

b. An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(6) Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto; and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

(7) This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1979, c. 623.)

Chapter 150A.

Administrative Procedure Act.

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; the Department of Correction; and the Utilities Commission. However, Articles 2 and 3 of this Chapter shall not apply to the Department of Transportation in rule-making or administrative hearings as provided for by Chapter 20 of the North Carolina General Statutes or the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final agency decisions, shall apply to the University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but the University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter.

(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; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22.)

Cross References. — As to the Local Government Fiscal Information Act, see §§ 120-30.41 through 120-30.48.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted the Commission of Youth Services from the list of agencies specifically exempted from the provisions of this Chapter.

Legal Periodicals. — For an interpretative analysis of the Administrative Procedure Act, see 53 N.C.L. Rev. 833 (1975).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Application of Articles 2 and 3 of Chapter to Department of Transportation. — The language in this chapter which provides that Articles 2 and 3 of this Chapter shall not apply to the Department of Transportation in rule-making or administrative hearings only applies to actions taken by the department pursuant to Chapter 20 of the General Statutes. Chapter 20 only refers to regulation of motor vehicles. In contrast, Chapter 136 and Chapter 143B provide the Department of Transportation and the Board of Transportation with their respective powers and duties to engage in the planning and construction of the State highway system. It is implicit, therefore, that had the General Assembly wanted to exclude actions of the Department and Board of Transportation under Chapter 136 from the requirements of Articles 2 and 3 of this Chapter, the General Assembly would have done so with the same specificity that it excluded actions taken pursuant to Chapter 20. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Cited in In re Rogers, 297 N.C. 48, 253 S.E.2d 912 (1979); James v. Hunt, 43 N.C. App. 109, 258 S.E.2d 481 (1979); State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979); MacDonald v. University of N.C., 299 N.C. 457, 263 S.E.2d 578 (1980); National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816 (1980); State ex rel. Utilities Comm'n v. Bird Oil Co., 302 N.C. 14, 273 S.E.2d 232 (1981).

§ 150A-2. Definitions.

Cross References. — As to applicability to educational agencies, see § 115C-2. As to the Local Government Fiscal Information Act, see §§ 120-30.41 through 120-30.48.

Editor's Note. — Session Laws 1977, c. 915, s. 10 as amended by Session Laws 1979, c. 1030, s. 2, and Session Laws 1981, c. 688, s. 18, effective July 1, 1981, reads: "This act shall become effective on October 1, 1977."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Not Applicable to Town Boards. — The current general administrative agencies review statutes are expressly not applicable to the decisions of town boards. The North Carolina Administrative Procedure Act provides judicial review only for agency decisions, from which the decisions of local municipalities are expressly exempt. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, — N.C. —, 270 S.E.2d 106 (1980).

The Department of Insurance is an "agency" subject to the provisions of the North Carolina Administrative Procedure Act. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Elements of "Contested Case." — Under the definition of subdivision (2) under this section there are two elements of a "contested case": (1) an agency proceeding; (2) that determined the rights of a party or parties. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Cited in Burton v. New Hanover County Zoning Bd. of Adjustment, 49 N.C. App. 439, 271 S.E.2d 550 (1980).

ARTICLE 2.

Rule Making.

§ 150A-9. Minimum procedural requirements.

Cross References. — As to rule-making authority of the State Alcoholic Beverage Control Commission, see § 18B-207.

CASE NOTES

Construction with Coastal Area Management Act. — The mandatory provisions of the Administrative Procedure Act must be read as complementing the procedural safeguards in the Coastal Area Management Act of 1974 itself. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Quoted in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Stated in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979).

Cited in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 150A-10. Definition.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Amendments to State Guidelines. — Amendments to the State guidelines by the Coastal Resources Commission are considered administrative rule-making under this section and thus subject to the comprehensive additional safeguards contained in the Administrative Procedure Act. Adams v. North Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Administrative agency rules may be grouped into three categories: (1) procedural rules which describe how the agency will discharge its assigned functions and the requirements others must follow in dealing with the agency; (2) legislative rules which are established by an agency as a result of a delegation of legislative power to the agency; and (3) interpretive rules which interpret and apply the provisions of the statute under which the agency operates. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

The Supreme Court is not limited to the label placed on a rule by an agency, but must look instead to the substance of the rule in question. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

A requirement by the Commissioner of Insurance that audited data be submitted in a ratemaking case was a legislative rule and therefore subject to the rule making provisions of the North Carolina Administrative Procedure Act. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Application of Subdivision (4). — The exclusion of policy statements or interpretations "made in the decision of a contested case" included in subdivision (4) of this section clearly was not intended to embrace substantive rules with anticipated future applicability. This is so because of the difference between interpretative and legislative rules and because subdivision (6) of this section, which excludes "interpretative rules and general statements of policy of the agency" would be unnecessary if subdivision (4) of this section were intended to apply to matters beyond the contested case in question. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Applied in Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44 (1979).

§ 150A-11. Special requirements.

In addition to other rule-making requirements imposed by law, each agency shall:

(4) With respect to all proposed rules requiring the expenditure or distribution of State funds, submit to the Director of the Budget a summary of the proposed rule or rules and obtain approval of such expenditure or distribution of State funds prior to publishing the notice of public hearing required by G.S. 150A-12(a). (1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, added subdivision (4).

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

CASE NOTES

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

§ 150A-12. Procedure for adoption of rules.

Cross References. — As to the Local Government Fiscal Information Act, see §§ 120-30.41 through 120-30.48.

Editor's Note. — Session Laws 1977, c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, and Session Laws 1981, c. 688, s. 18, effective July 1, 1981, reads: "This act shall become effective on October 1, 1977."

Quoted in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979).

§ 150A-13. Temporary rules.

If an agency determines in writing that adherence to the notice and hearing requirements of this Article would be contrary to the public interest and that the public health, safety or welfare requires immediate adoption, amendment or repeal of a rule, the agency may adopt, amend or repeal a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practicable. The agency must accompany its rule filing with the Attorney General and the Legislative Research Commission's Administrative Rules Review Committee with the agency's written certification of the finding of need for the temporary rule, together with the reasons for that finding.

This rule may be effective for a period of not longer than 120 days. An agency adopting a temporary rule shall begin normal rule-making procedures on the rule under this Article at the same time the temporary rule is adopted. The adoption of a rule under this section does not subject the effectiveness of the temporary rule to delay by the Administrative Rules Review Committee pursuant to Article 6C of Chapter 120 of the General Statutes. (1973, c. 1331, s. 1; 1981, c. 688, s. 12.)

Cross References. — As to the Local Government Fiscal Information Act, see §§ 120-30.41 through 120-30.48.

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, rewrote this section.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 150A-16. Petition for adoption of rules.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Plaintiff Failing to Exhaust Administrative Remedies Not Entitled to Judical Relief. — Plaintiff collection agency was not entitled to seek declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under this section or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under § 150A-17, and then by seeking judicial review of an adverse Department of Insurance decision under § 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44, cert. denied, 297 N.C. 455, 255 S.E.2d 808 (1979).

§ 150A-17. Declaratory rulings.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Plaintiff Failing to Exhaust Administrative Remedies Not Entitled to Judicial Relief. — Plaintiff collection agency was not entitled to seek declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under § 150A-16 or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under this section, and then by seeking judicial review of an adverse Department of Insurance decision under § 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44, cert. denied, 297 N.C. 455, 256 S.E.2d 177 (1979).

Applied in High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Article 3.

Administrative Hearings.

§ 150A-23. Hearing required; notice; intervention.

Cross References. — As to hearings on classification of water treatment facilities, see § 90A-22.

Legal Periodicals. — For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Delay Due to Rehearing Not "Undue Delay". — The delay caused when the full State Personnel Commission ordered a rehearing of a Department of Transportation employee's dismissal case after the commission declined to accept the recommendation of the hearing officer that a default be entered against the department for its failure to appear was not an undue delay within the meaning of subsection (a) of this section, nor such a delay as could allow the Court of Appeals to treat the order for rehearing as a final agency decision under § 150A-43. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

Factual Allegations to Be Specific. — The same rationale applicable in criminal proceedings, that an indictment must charge the offense with sufficient certainty to apprise the defendant of the specific accusation against him so as to enable him to prepare his defense, is applicable to factual allegations in proceedings pursuant to this section. Parrish v. North Carolina Real Estate Licensing Bd., 41 N.C. App. 102, 254 S.E.2d 268 (1979).

The notice requirements in this section must be strictly construed. Parrish v. North Carolina Real Estate Licensing Bd., 41 N.C. App. 102, 254 S.E.2d 268 (1979).

Notice Sufficient to Comply with Due Process. — Notice published in a newspaper and provided to each member of the county board of elections and each candidate whose name appeared on the ballot for a county office that a public hearing would be held at a specified time and place to inquire into the processes relative to a general election conducted in the county, particularly the processes involving absentee ballots, was sufficient to comply with due process, it not being necessary for the State Board of Elections to particularize any charges in the notice of public hearing. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338 (1980).

Discretionary Intervention under Subsection (d). — While § 1A-1, Rule 24 contains specific requirements which control and limit intervention, subsection (d) of this section clearly provides discretionary intervention in the Commissioner of Insurance by providing that the agency may permit any interested person to intervene "and participate in [the] proceeding to the extent deemed appropriate." In other words, this discretionary intervention is without limitation and this language has been construed to provide intervention broader than the permissive intervention under § 1A-1, Rule 24. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980).

The Commissioner of Insurance acted within his discretion in permitting a consumer group to intervene in an automobile insurance rate case and in allowing hearings to be held throughout the State. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980).

Cited in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 150A-25. Conduct of hearing; answer.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Subsection (a) Permissive, Not Mandatory. — The language of subsection (a) of this section providing that if a party fails to appear after proper service of notice, the agency may proceed and render its decision in the absence of that party, is permissive, not mandatory. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

§ 150A-29. Rules of evidence.

Legal Periodicals. — For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Board of Adjustment Not Required to Sound-Record Hearings. — Municipal corporations are specifically excluded from the requirements of this section and § 150A-37 that trial rules of evidence and production of evidence be followed in proceedings before State agencies. Thus a Board of Adjustment is not required to sound-record its hearings. Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872, cert. denied, 295 N.C. 91, 244 S.E.2d 263 (1978).

Applied in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979); In re Land & Mineral Co., 49 N.C. App. 529, — S.E.2d — (1980).

Cited in Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977); North Carolina Sav. & Loan League v. North Carolina Credit Union Comm'n, 45 N.C. App. 19, 262 S.E.2d 361 (1980).

§ 150A-30. Official notice.

Legal Periodicals. — For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Official Notice of Paper Presented in Hearing on Prior Rate Filing. — While it is the better practice to produce a witness in a ratemaking hearing rather than to rely on exhibits furnished by the witness in earlier hearings, the Commissioner of Insurance did not commit prejudicial error in a homeowners' insurance rate hearing in taking official notice of a paper presented by a witness in a hearing on a prior rate filing and made a part of the order disapproving the prior filing where the commissioner gave the rate bureau adequate notice in the notice of public hearing that he would rely on the paper in the present hearing. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 474, 269 S.E.2d 595 (1980).

Cited in Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977); North Carolina Sav. & Loan League v. North Carolina Credit Union Comm'n, 45 N.C. App. 19, 262 S.E.2d 361 (1980).

§ 150A-33. Powers of hearing officer.

CASE NOTES

Applied in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980).

§ 150A-34. Proposal for decision.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

§ 150A-36. Final agency decision.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Decision Not Made on Unlawful Procedure. — A decision of the State Board of Elections ordering a new election for certain county offices was not made on "unlawful procedure" without findings of fact where the chairman orally announced the board's decision on December 6, 1978, to order a new election because of irregularities in assistance rendered to persons who voted by absentee ballots and in the collection and return of voted absentee ballots; a written decision was filed on the same day incorporating the oral decision; an order was entered December 14, 1978, setting a date for the new election and setting out the rules and procedures for its conduct; and on February 13, 1979, the state board filed a written order containing its findings of fact and conclusions of law. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338 (1980).

Remand Required Where Findings Insufficient. — Where, on review of an order of a state commission permitting petitioner savings and loan association to open a branch office, trial court determined that the commission's findings were insufficient, i.e., lacking the specificity required by this section, the trial court should never have reached the question of whether reversal under § 150A-51(5) was appropriate. Remand for further findings was essential upon concluding that the findings of record presented an inadequate basis for review. Under no applicable theory of law would it be appropriate for the trial court to reverse the commission and substitute its judgment for the commission's. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

§ 150A-37. Official record.

CASE NOTES

Board of Adjustment Not Required to Sound-Record Hearings. — Municipal corporations are specifically excluded from the requirements of this section and § 150A-29 that trial rules of evidence and production of evidence be followed in proceedings before State agencies. Thus a Board of Adjustment is not required to sound-record its hearings. Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872, cert. denied, 295 N.C. 91, 244 S.E.2d 263 (1978).

ARTICLE 4.

Judicial Review.

§ 150A-43. Right to judicial review.

Cross References. — As to hearing and appeal from classification of water treatment facilities, see § 90A-22. As to the right to appeal from an assignment or reassignment decision made by a local board of education, see § 115C-370.

Legal Periodicals. — For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

The Administrative Procedure Act does not preclude entirely the possibility of judicial review by use of the Declaratory Judgment Act or other procedures outside the act. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

"Adequate procedure for judicial review," as those words appear in this section, exists only if the scope of review is equal to that under present Article 4 of this Chapter. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977); State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Scope of Review Must Be Defined. — In presenting appeals to the judicial branch from the State administrative agencies, it is essential that the parties present their contentions as to the applicable scope of judicial review; likewise, the reviewing court should make clear the review standard under which it proceeds. State ex rel. Utilities Comm'n v. Bird Oil Co., 302 N.C. 14, 273 S.E.2d 232 (1981).

Rule-Making Procedure Not Subject to Judicial Review. — An informal hearing conducted by the Commission to consider whether to initiate proceeding to declare the Yadkin River Basin a capacity use area was no more than the § 143-215.13(c) rule-making type procedure and thus the plaintiffs were not entitled to judicial review under § 150A-43 et seq. High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

Necessity for Exhaustion of Administrative Remedies. —

Plaintiff collection agency was not entitled to seek declaratory judgment in the superior court as to the validity and applicability of a regulation of the Department of Insurance prohibiting collection agencies from instituting judicial proceedings on behalf of other persons where plaintiff failed to exhaust available administrative remedies by petitioning the Department of Insurance for amendment or repeal of the regulation under § 150A-16 or seeking a declaratory ruling from the Department of Insurance as to the validity and applicability of the regulation under § 150A-17, and then by seeking judicial review of an adverse Department of Insurance decision under § 150A-43 et seq. Porter v. North Carolina Dep't of Ins., 40 N.C. App. 376, 253 S.E.2d 44, cert. denied, 297 N.C. 455, 256 S.E.2d 808 (1979).

When Exhaustion Not Required. — The failure to exhaust an administrative remedy will not bar judicial review if that remedy has been shown to be inadequate. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Exhaustion of Remedies Not Required in Civil Rights Cases. — Where a state employee asserts civil rights violations under 42 U.S.C. § 1983 for his wrongful dismissal, the superior court retains its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126 of the General Statutes. Williams v. Greene, 36 N.C. App. 80, 243 S.E.2d 156, cert. denied, 295 N.C. 471, 246 S.E.2d 12 (1978).

Meaning of "Person Aggrieved". —

In accord with original. See Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Property Owners, Etc., Within Proposed Corridor of Highway Were Aggrieved. — Plaintiffs were all "aggrieved" by a decision of the State Board of Transportation on the location of an interstate highway within the meaning of this section where the individual plaintiffs are property owners within the proposed corridor of the highway, the members of plaintiff nonprofit corporation are citizens and taxpayers who live in or near the proposed corridor, and plaintiff county's tax base and planning jurisdiction will be affected by the proposed highway. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

The "procedural injury" implicit in agency failure to prepare an environmental impact statement as to a proposed highway project was itself a sufficient "injury in fact" to support standing as "aggrieved parties" under this section as long as such injury is alleged by a plaintiff having sufficient geographical nexus to the site of the challenged project that he may be expected to suffer whatever environmental consequences the project may have. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

"Final Decision". — A decision by the State Board of Transportation to deny plaintiffs a hearing before the board concerning the location of an interstate highway was a "final" decision within the meaning of this section since the decision affected a right which plaintiffs had pursuant to the board's own administrative regulations. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Appellants cannot bring suit pertaining to the inadequacy of the environmental impact statement for a proposed federal-aid highway under either federal statutes or the North Carolina Environmental Policy Act, §§ 113A-1 — 113A-10, unless they show that the State Department of Transportation has requested and received location approval for the highway from the Federal Highway Administration. At that point in the process a final environmental impact statement must have been prepared pursuant to the North Carolina Environmental Policy Act, and at that point the Board of Transportation's commitment to the federal government on the issue of location of the highway corridor is sufficiently final as to the issue of location to allow judicial review. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Claim as to Statute's Unconstitutionality Involved No "Decision". — Plaintiffs cannot obtain judicial review under this section of their claim that § 143B-350(f)(8), conferring on the State Board of Transportation the power and duty to approve all highway construction programs, unconstitutionally delegates legislative power to the board, since the claim involves no agency "decision," but such claim may be heard pursuant to N.C. Const., Art. IV, § 1. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

A decision to end a preliminary inquiry is not "a final agency decision in a contested case." Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Delay Due to Rehearing Insufficient to Make Order for Rehearing a Final Decision. — The delay caused when the full State Personnel Commission ordered a rehearing of a Department of Transportation employee's dismissal case after the Commission declined to accept the recommendation of the hearing officer that a default be entered against the Department for its failure to appear was not an undue delay within the meaning of § 150A-23(a), nor such a delay as could allow the Court of Appeals to treat the order for rehearing as a final agency decision under this section. Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

"Contested Case". — The decision of the State Board of Transportation as to the location of an interstate highway constitutes a "contested case" within the meaning of this section where the North Carolina Environmental Policy Act, §§ 113A-1 — 113A-10, is involved. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

The Administrative Procedure Act does not apply to the Outdoor Advertising Control Act, §§ 136-126 — 136-140, or the regulations published pursuant to the act because there was no statute or administrative rule which required the Department of Transportation to make an agency decision after providing an opportunity for an adjudicatory hearing and the subject controversy is therefore not a contested case within the meaning of this section. National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied, 361 N.C. 400, 273 S.E.2d 446 (1980).

Section 136-134.1 preempts this section and specifically provides the opportunity to have a de novo proceeding before a trial judge which satisfies due process requirements. National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816, cert. denied, 361 N.C. 400, 273 S.E.2d 446 (1980).

Cited in Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872 (1978); In re Partin, 37 N.C. App. 302, 246 S.E.2d 519 (1978); Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978); Blackwell v. Granville County Dep't of Social Servs., 39 N.C. App. 437, 250 S.E.2d 695 (1979); In re Wagstaff, 42 N.C. App. 47, 255 S.E.2d 754 (1979); North Carolina Sav. & Loan League v. North Carolina Credit Union Comm'n, 45 N.C. App. 19, 262 S.E.2d 361 (1980); Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980).

§ 150A-44. Right to judicial intervention when agency unreasonably delays decision.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Quoted in Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

§ 150A-45. Manner of seeking review; time for filing petition; waiver.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Applied in MacDonald v. University of N.C., 299 N.C. 457, 263 S.E.2d 578 (1980).

Cited in Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980).

§ 150A-46. Contents of petition; copies served on all parties; intervention.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Quoted in In re Partin, 37 N.C. App. 302, 246 S.E.2d 519 (1978).

§ 150A-47. Record filed by agency with clerk of superior court; contents of record; costs.

CASE NOTES

This section does not apply to decisions made by town boards, including boards of adjustment. Burton v. New Hanover County Zoning Bd. of Adjustment, 49 N.C. App. 439, 271 S.E.2d 550 (1980).

§ 150A-48. Stay of board order.

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

This section must be construed, etc.
In accord with original. See Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

This section was meant, etc.
In accord with original. See Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978).

Stay of Decision Unavailable Prior to "Final Agency Decision." — This section is a vehicle for reinstatement only "before or during the review proceeding." Since according to § 150A-43 review is available only after a "final agency decision," the stay of a decision is similarly only available after a "final agency decision." Davis v. North Carolina Dep't of Transp., 39 N.C. App. 190, 250 S.E.2d 64 (1978), cert. denied, 296 N.C. 735, 254 S.E.2d 177 (1979).

Exhaustion of Administrative Remedies Not Necessary in Federal Civil Rights Action. — Where a state employee asserts civil rights violations under 42 U.S.C. § 1983 for his wrongful dismissal, the superior court retains its traditional power to grant preliminary injunctive relief without requiring him to exhaust the administrative remedies provided in Chapter 126 of the General Statutes. Williams v. Greene, 36 N.C. App. 80, 243 S.E.2d 156, cert. denied, 295 N.C. 471, 246 S.E.2d 12 (1978).

§ 150A-49. Procedure for taking newly discovered evidence.

CASE NOTES

Cited in National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 150A-50. Review by court without jury on the record.

Legal Periodicals. — For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Judge Not Subject to Rule 52(a) Requirements. — When the judge of the superior court sits as an appellate court to review the decision of an administrative agency pursuant to this section, the judge is not required to make findings of fact and enter a judgment thereon in the same sense as a trial judge pursuant to Rule 52(a) of the Rules of Civil Procedure. In re Arcadia Dairy Farms, Inc., 43 N.C. App. 459, 259 S.E.2d 368 (1979), appeal dismissed, — N.C. —, 265 S.E.2d 393 (1980).

Cited in Blackwell v. Granville County Dep't of Social Servs., 39 N.C. App. 437, 250 S.E.2d 695 (1979); Boehm v. North Carolina Bd. of Podiatry Exmrs., 41 N.C. App. 567, 255 S.E.2d 328 (1979); Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979); National Adv. Co. v. Bradshaw, 48 N.C. App. 10, 268 S.E.2d 816 (1980).

§ 150A-51. Scope of review; power of court in disposing of case.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

Section Not Applicable to Decisions of Town Boards. — The current general administrative agencies review statutes are expressly not applicable to the decisions of town boards. The North Carolina Administrative Procedure Act provides judicial review only for agency decisions, from which the decisions of local municipalities are expressly exempt. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, — N.C. —, 270 S.E.2d 106 (1980).

But Its Principles Are Pertinent. — While this section is not directly applicable to reviews of town board zoning decisions, the principles that provision embodies are highly pertinent. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, — N.C. —, 270 S.E.2d 106 (1980).

Application in Insurance Ratemaking Cases. — This section is the controlling judicial review statute in insurance ratemaking cases. However, to the extent that § 58-9.6(b) adds to the judicial review function and in light of the virtually identical thrust of the two statutes, the Supreme Court applied the review standards of both § 58-9.6 and this section, where those standards may be construed as being consistent with each other. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

While the North Carolina Administrative Procedure Act controls judicial review of insurance ratemaking procedures, the review provisions of §§ 58-9 through 58-27.2 should also apply insofar as those provisions are compatible with the act. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980).

Scope of Review Here Applied as Broader Than in § 58-9.3. — Since the scope of review provided in this Article is substantially broader than that provided by § 58-9.3, the scope of judicial review applicable to a denial by the Commissioner of Insurance of a plan by a domestic insurance company to reorganize under a holding company structure was that provided for in this Article. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

Section 58-9.6(b) (1) and subdivision (1) of this section do not contemplate constitutional review where appellants, the rate bureau and member companies made no assertion that their rights have been prejudiced because any of the findings or conclusions of the Commissioner of Insurance were in violation of any constitutional provisions. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Prohibitions in Subdivisions (2) and (3) Distinguished. — The prohibition against agency action "in excess of statutory authority," § 58-9.6(b) (2) and subdivision (2) of this section, refers to the general authority of an administrative agency properly to discharge its statutorily assigned responsibilities, while the prohibition against agency action "made upon unlawful procedure," § 58-9.6(b) (3) and subdivision (3) of this section, refers to the procedures employed by the agency in discharging its statutorily authorized acts. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Order Not In Excess of Statutory Powers. — An order of the Commissioner of Insurance that data submitted in a ratemaking case be audited was not in excess of his statutory powers as contemplated by § 58-9.6(b) (2) or subdivision (2) of this section. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Attempt to Establish Rule Violated Subdivision (3). — The commissioner's attempt to establish a rule requiring audited data in an insurance ratemaking hearing was "made upon unlawful procedure" as contemplated by § 58-9.6(b) (3) and subdivision (3) of this section where the commissioner sought to establish the rule on an ad hoc adjudication basis rather than following normal North Carolina Administrative Procedure Act rulemaking requirements, since the process of rulemaking would have presented no danger that its use would frustrate the effective accomplishment of the agency's functions. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

The standard of judicial review, etc. —

In accord with original. See North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

Application of "Whole Record" Test. —

In accord with 2nd paragraph in original. See Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980); Weber v. Buncombe County Bd. of Educ., 46 N.C. App. 714, 266 S.E.2d 42 (1980); North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

In accord with 3rd paragraph in original. See Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980); Weber v. Buncombe County Bd. of Educ., 46 N.C. App. 714, 266 S.E.2d 42 (1980); McCormick v. Peters, 48 N.C. App. 365, 269 S.E.2d 168 (1980); North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980); In re Land & Mineral Co., 49 N.C. App. 605, 272 S.E.2d 878 (1980).

The "whole record" test requires the board's judgment to be affirmed if upon consideration of

the whole record as submitted, the facts found by the board are supported by competent, material and substantial evidence, taking into account any contradictory evidence, or evidence from which conflicting inferences could be drawn. Boehm v. North Carolina Bd. of Podiatry Exmrs., 41 N.C. App. 567, 255 S.E.2d 328, cert. denied, 298 N.C. 294, 259 S.E.2d 298 (1979).

The "whole record" test is distinguishable from both de novo review and the "any competent evidence" standard of review. Under the "whole record" test the reviewing court cannot replace the board's judgment between two reasonably conflicting views, even though the court could have reached a different conclusion had the matter been before it de novo. Boehm v. North Carolina Bd. of Podiatry Exmrs., 41 N.C. 567, 255 S.E.2d 328, cert. denied, 298 N.C. 294, 259 S.E.2d 298 (1979).

When evidence is conflicting, the standard for judicial review of administrative decisions in North Carolina is that of the "whole record" test. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

The "whole record" test is applicable to judicial review of administrative decisions in North Carolina, and both § 58-9.6(b) (5) and subdivision (5) of this section put forth that test as a proper standard of judicial review of these insurance ratemaking proceedings. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Consideration of the sufficiency of the evidence to support a decision under the "whole record" test does not allow the Supreme Court to replace the agency's judgment when there are two reasonably conflicting views. However, the Supreme Court is required to take into account the evidence supporting the agency's decision as well as the evidence that detracts from the weight of that evidence and its decision. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

No court can weigh evidence, etc. —

The reviewing court, while obligated to consider evidence of record that detracts from the administrative ruling, is not free to weigh all of the evidence and reach its own conclusions of the merits. If, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

In determining whether reversal or modification of an administrative decision is appropriate under subdivision (5) of this section, the test applied to the evidence must be the "whole record" test. This test does not allow the reviewing court to replace the administrative tribunal's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Instead, the reviewing court is required to examine all of the competent evidence, pleadings, etc., which comprise the "whole record" to determine if there is substantial evidence in the record to support the administrative tribunal's findings and conclusions. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

It is for the administrative agency to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Findings of Fact by Judge Not Required. — When the judge of the superior court sits as an appellate court to review the decision of an administrative agency pursuant to this section, the judge is not required to make findings of fact. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Findings of Fact Supported by Competent, etc. —

In accord with original. See Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Authority of Judge on Review. — The authority of the judge when reviewing the actions of administrative agencies is limited to affirming, modifying, reversing or remanding the decision of the agency. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

The infection of an agency decision by consideration of arbitrary and capricious matter is clearly violative of subdivision (6) of this section. North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980).

Arbitrary and Capricious Action. — Where the Commissioner of Insurance did nothing more, in adopting a complicated and novel formula for determining underwriting profit, than listen to one employee of an insurance department in a sister state which is refining the policy adopted and which was given only limited approval by the Supreme Court of Massachusetts, such an approach is a clear example of an arbitrary and capricious action by an administrative agency as contemplated by the North Carolina legislature in establishing that criterion for judicial review in § 58-9.6(6) and subdivision (6) of this section. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

The commissioner's action ordering audited data in a ratemaking case was arbitrary and capricious as contemplated by § 58-9.6(b)(6) and subdivision (6) of this section, since (1) the order was vague and uncertain in that it did not establish the extent to which examination of "original source documents" was required, (2) it did not make clear whether the auditing must be performed by certified public accountants, other accountants, or actuaries, (3) it did not specify the degree of precision and reliability required of "statistical sampling," (4) it generally did not provide adequate guidelines for compliance with the general conclusion that data in a ratemaking hearing be audited, (5) it included no determination by the commissioner as to the possibility of performance of his new rule nor whether implementation of the rule would be economically feasible, (6) it included no determination whether the statutory time limits could be complied with in face of the new rule, and (7) it included no determination whether the "original source data" contemplated by the new rule was even available for the past years involved in this filing or whether such data, if available, was located in North Carolina or outside the State in the case of the several hundred companies writing insurance in this State. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

Showing necessary to obtain, etc. —

In accord with original. See In re Land & Mineral Co., 49 N.C. App. 605, 272 S.E.2d 878 (1980).

Issuance of Injunction Requiring Insurance Commissioner to Act. — The trial court did not exceed its power and authority by issuing its mandatory injunction requiring the Commissioner of Insurance to approve a domestic insurance corporation's plan to reorganize under a holding company structure where the Commissioner acted arbitrarily and capriciously when he disapproved the plan. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

Adequate Statement of Reasons for Reversing Decision. — Where the judge in reversing the Hearing Aid Dealers and Fitters Board's conclusion, simply stated that the facts found by the agency failed "to support its conclusion of law that the petitioner was grossly incompetent within the purview of § 93D-13(a)(2)," the superior court's conclusion constituted a succinct and adequate statement of its reasons for reversing the agency's decision. Faulkner v. North Carolina State Hearing Aid Dealers & Fitters Bd., 38 N.C. App. 222, 247 S.E.2d 668 (1978).

Remand Required for Insufficiency of Findings under § 150A-36. — Where, on review of an order of a state commission permitting petitioner savings and loan association to open a branch office, trial court determined that the commission's findings were insufficient, i.e., lacking the specificity required by § 150A-36, the trial court should never have reached the question of whether reversal under subdivision (5) of this section was appropriate. Remand for further findings was essential upon concluding that the findings of record presented an inadequate basis for review. Under no applicable theory of law would it be appropriate for the trial court to reverse the commission and substitute its judgment for the commission's. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

Insufficiency of an agency's findings does not relieve the trial court of the responsibility for considering all of the competent evidence in the whole record to determine whether substantial evidence is present to support the commission's conclusions. Community Sav. & Loan Ass'n v. North Carolina Sav. & Loan Comm'n, 43 N.C. App. 493, 259 S.E.2d 373 (1979).

Applied in In re Arcadia Dairy Farms, Inc., 43 N.C. App. 459, 259 S.E.2d 368 (1979); State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979); Wall & Ochs, Inc. v. Hicks, 469 F. Supp. 873 (E.D.N.C. 1979); State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 460, 269 S.E.2d 538 (1980); State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 474, 269 S.E.2d 595 (1980); W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

Quoted in In re Rogers, 297 N.C. 48, 253 S.E.2d 912 (1979).

Cited in Blackwell v. Granville County Dep't of Social Servs., 39 N.C. App. 437, 250 S.E.2d 695 (1979); High Rock Lake Ass'n v. North Carolina Environmental Mgt. Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979); In re Wagstaff, 42 N.C. App. 47, 255 S.E.2d 754 (1979); North Carolina Sav. & Loan League v. North Carolina Credit Union Comm'n, 45 N.C. App. 19, 262 S.E.2d 361 (1980); State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

§ 150A-52. Appeal to appellate division; obtaining stay of court's decision.

CASE NOTES

Appeal Must Follow Theory of the Trial. — Where petitioner relied upon jurisdiction under this section before the trial court, petitioner on appeal could not argue that the trial court had original subject matter jurisdiction pursuant to § 7A-240 based upon a constitutional right to a hearing and judicial review, since an appeal has to follow the theory of the trial. Grissom v. North Carolina Dep't of Revenue, 34 N.C. App. 381, 238 S.E.2d 311 (1977), cert. denied, 294 N.C. 183, 241 S.E.2d 517 (1978) (decided under former § 143-314).

ARTICLE 5.

Publication of Administrative Rules.

§ 150A-58. Short title and definition.

(c) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government; any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, the Employment Security Commission, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, the University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly. (1973, c. 1331, s. 1; 1977, c. 915, s. 7; 1979, c. 541, s. 1.)

Editor's Note. — Session Laws 1977, c. 915, s. 10, as amended by Session Laws 1979, c. 1030, s. 2, and Session Laws 1981, c. 688, s. 18, effective July 1, 1981, reads as follows: "This act shall become effective on October 1, 1977."

Effect of Amendments. — The 1979 amendment inserted "the Employment Security Commission" near the middle of the second sentence of subsection (c).

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

Legal Periodicals. — For an article entitled, "Advisory Rulings by Administrative Agencies: Their Benefits and Dangers," see 2 Campbell L. Rev. 1 (1980).

CASE NOTES

Applied in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979).

§ 150A-59. Filing of rules.

(a) Rules adopted by an agency on or after February 1, 1976, shall be filed with the Attorney General. No rule, except temporary rules adopted under the provisions of G.S. 150A-13, shall become effective earlier than the first day of the second calendar month after that filing. The effectiveness of any rule except a temporary rule under the provisions of G.S. 150A-13 may be delayed by the Legislative Research Commission's Administrative Rules Review Committee pursuant to Article 6C of Chapter 120 of the General Statutes.

(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 January 31, 1976, except that they shall immediately become effective upon filing in accordance with the provisions of this Article. The effectiveness of rules adopted prior to June 29, 1979, shall not be affected by the imposition of the filing requirement with the Director of Research under G.S. 150A-60(5). (1973, c. 1331, s. 1; 1975, c. 69, ss. 1, 2, 5, 6; 1979, c. 571, s. 1; 1981, c. 688, s. 13.)

Effect of Amendments. — The 1979 amendment, effective June 29, 1979, added the second sentence to subsection (c).

The 1981 amendment, effective October 1, 1981, rewrote subsection (a), except for the first sentence.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

CASE NOTES

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979).

§ 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;

(4) Be in the physical form specified by the Attorney General; and

(5) Bear a notation by the Director of Research of the General Assembly that the rule has been filed in accordance with Article 6C of Chapter 120 of the General Statutes. This subsection does not apply to rules adopted by the Industrial Commission, the Utilities Commission, or the Department of Transportation relating to traffic sign ordinances, and road and bridge weight limits. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14.)

Effect of Amendments. — The 1979 amendment, effective June 29, 1979, added subdivision (5).

The 1981 amendment, effective July 1, 1981, in the second sentence of subdivision (5), substituted "does not apply" for "shall not apply," substituted the comma following "Industrial Commission" for "or," and added ", or the Department of Transportation relating to traffic sign ordinances, and road and bridge weight limits" at the end of the sentence.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

§ 150A-63. Publication of rules.

(d) As soon as practicable after February 1, 1976, the Attorney General shall publish, in print, microfiche, or other form, 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.

(e) Reference copies of the compilation, supplements, and recompilations shall be distributed by the Attorney General as soon after publication as practicable, without charge, to the following officials and departments in the following quantities:

(1) One copy to each county of the State, which may be maintained for public inspection in the county in a place determined by the county commissioners; one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals; one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals; one copy for the office of the Governor; and one copy to the Legislative Research Commission for the use of the General Assembly;

(2) Five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1.

(f) The Attorney General shall make available copies of the compilation, and of all supplements, to other persons at a price determined by him to cover publication and mailing costs. Any money received by the Department of Justice pursuant to this section from the sale of copies of the compilation, and of all supplements, shall be deposited in the State treasury in a special funds account to be held in trust for the Department of Justice to defray the expense of future recompilation, publication, and distribution of the Code. All moneys involved shall be subject to audit by the State Auditor.

(g) Notwithstanding any other provision of law, the Employment Security Commission shall file within 15 days of adoption for public inspection and publication purposes only all rules adopted by it with the Attorney General. The Attorney General shall compile, make available for inspection, and publish the rules filed under this subsection. (1973, c. 1331, s. 1; c. 69, ss. 3, 7; c. 688, s. 1; 1979, c. 541, s. 2; 1979, 2nd Sess., c. 1266, ss. 1-3.)

Effect of Amendments. — The 1979 amendment added subsection (g).

The 1979, 2nd Sess., amendment inserted "in print, microfiche, or other form" in the first sentence of subsection (d), rewrote subsection (e), and added the last two sentences of subsection (f).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsections (d), (e), (f) and (g) are set out.

Legal Periodicals. — For an article entitled, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

CASE NOTES

The administrative remedies prescribed by environmental regulations were inadequate because they were not published as required by this article. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 44 N.C. App. 191, 261 S.E.2d 671 (1979).

§ 150A-63.1. Administrative Rules Review Committee reports.

The Attorney General shall retain any reports of the Legislative Research Commission's Administrative Rules Review Committee objecting to the rule and delaying the effectiveness of the rule, and any order ending the delay. He shall append to any compilation, publication, or summation of that rule a

notation that it has been objected to and delayed pursuant to Article 6C of Chapter 120 of the General Statutes and, where applicable, that the delay has been ended. (1981, c. 688, s. 15.)

Editor's Note. — Session Laws 1981, c. 688, s. 22 makes this section effective October 1, 1981.

Session Laws 1981, c. 688, s. 21 contains a severability clause.

Chapter 152.

Coroners.

§ 152-1. (Effective until certification of approval of constitutional amendments) Election; vacancies in office; appointment by clerk in special cases.

In each county a coroner shall be elected by the qualified voters thereof in the same manner and at the same time as the election of members of the General Assembly, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified. If the coroner were elected as the nominee of a political party, then the county commissioners shall consult with the county executive committee of that political party before filling the vacancy, and shall appoint the person recommended by that committee if the party makes a recommendation within 30 days of the occurrence of the vacancy; this sentence shall apply only to the counties of Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the county commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Const., art. 4, s. 24; 1903, c. 661; Rev., ss. 1047, 1049; C. S., ss. 1014, 1018; Ex. Sess. 1924, c. 65; 1935, c. 376; 1981, c. 763, s. 5; c. 830.)

Local Modification. — Alleghany (office of coroner abolished): 1979, c. 29; Bertie and Cumberland (office of coroner abolished): 1979, c. 794; Chowan (office of coroner abolished): 1979, 2nd Sess., c. 1163; Duplin (office of coroner abolished): 1979, c. 231; Hertford (office of coroner abolished): 1979, c. 281; Richmond (office of coroner abolished): 1981, c. 829; Tyrrell (office of coroner reestablished): 1977, 2nd Sess., c. 1172, repealing 1975, c. 96.

Cross References. — For this section as amended effective upon certification of approval of constitutional amendments, see the following section, also numbered 152-1.

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, added the second sentence of the second paragraph.

The second 1981 amendment made the second sentence of the second paragraph applicable to Avery County.

Session Laws 1981, c. 763, s. 15, provides that the act shall apply to vacancies occurring on or after July 1, 1981.

§ 152-1. (Effective upon certification of approval of constitutional amendments) Election; vacancies in office; appointment by clerk in special cases.

In each county a coroner shall be elected by the qualified voters thereof in the manner and at the time prescribed by Chapter 163, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified.

If the coroner were elected as the nominee of a political party, then the county commissioners shall consult with the county executive committee of that political party before filling the vacancy, and shall appoint the person recommended by that committee if the party makes a recommendation within 30 days of the occurrence of the vacancy; this sentence shall apply only to counties of Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the county commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Const., art. 4, s. 24; 1903, c. 661; Rev., ss. 1047, 1049; C. S., ss. 1014, 1018; Ex. Sess. 1924, c. 65; 1935, c. 376; 1981, c. 504, s. 8; c. 763, s. 5; c. 830.)

Cross References. — For this section as in effect until certification of approval of constitutional amendments, see the preceding section also numbered 152-1.

Effect of Amendments. — The first 1981 amendment substituted "in the manner and at the time prescribed by Chapter 163" for "in the same manner and at the same time as the election of members of the General Assembly" in the first paragraph.

Session Laws 1981, c. 504, s. 20 provides that the amendment to this and other sections shall take effect only upon the approval of the voters of the constitutional amendments proposed in ss. 1 through 3 of the act, and that if the constitutional amendments are approved, the amendment to this section shall become effective at the same time as the constitutional amendments. Session Laws 1981, c. 504, s. 4, provides for the constitutional amendments to be submitted to the qualified voters of the State at the next statewide primary election or statewide general election or at the next statewide election, whichever is earlier. The amendments will be submitted to the voters in May, 1982.

For the amendments proposed by Session Laws 1981, c. 504, ss. 1 through 3, see the notes to N.C. Const., Art. II, §§ 2, 4, 8; Art. III, §§ 2, 7; Art. IV, §§ 9, 18, 19.

The second 1981 amendment, effective July 1, 1981, added the second sentence of the second paragraph.

Session Laws 1981, c. 763, s. 15, provides that the act shall apply to vacancies occurring on or after July 1, 1981.

The third 1981 amendment made the second sentence of the second paragraph applicable to Avery County.

Chapter 153A.

Counties.

Article 15.

Public Enterprises.

Part 1. General Provisions.

Sec.
153A-274. Public enterprise defined.

Part 2. Special Provisions for Water and Sewer Services.

153A-284. Power to require connections.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

153A-292. County collection and disposal; tax levy.

Part 4. Long Term Contracts for Disposal of Solid Waste.

153A-299.1. Authority to contract with private firms; contract provisions.
153A-299.2. Solid waste defined.
153A-299.3. Power not limited by §§ 153A-136 or 160A-319.
153A-299.4. Approval by Department of Human Resources.
153A-299.5. Approval by board of commissioners or city council.
153A-299.6. Applicability.

Article 16.

County Service Districts.

153A-301. Purposes for which districts may be established.
153A-302. Definition of service districts.
153A-303. Extension of service districts.
153A-304. Consolidation of service districts.

Article 18.

Planning and Regulation of Development.

Part 1. General Provisions.

Sec.
153A-321. Planning agency.
153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.

Part 2. Subdivision Regulation.

153A-335. "Subdivision" defined.

Part 3. Zoning.

153A-340. Grant of power.
153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments.
153A-345. Board of adjustment.
153A-348. Statute of limitations.
153A-349. [Reserved.]

Part 4. Building Inspection.

153A-357. Permits.
153A-369. Order to take corrective action.

Article 23.

Miscellaneous Provisions.

153A-440.1. Watershed improvement programs.
153A-445. Miscellaneous powers found in Chapter 160A.
153A-447. Certain counties may appropriate funds to Western North Carolina Development Association, Inc.

ARTICLE 2.

Corporate Powers.

§ 153A-10. State has 100 counties.

CASE NOTES

Cited in In re University of N.C., 300 N.C. 563, 268 S.E.2d 472 (1980).

§ 153A-11. Corporate powers.

CASE NOTES

Cited in In re University of N.C., 300 N.C. 563, 268 S.E.2d 472 (1980); Ratliff v. Burney, 505 F. Supp. 105 (W.D.N.C. 1981).

ARTICLE 3.

Boundaries.

§ 153A-22. Redefining electoral district boundaries.

(a) If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the board of commissioners may find as a fact whether there is substantial inequality of population among the districts.

(b) If the board finds that there is substantial inequality of population among the districts, it may by resolution redefine the electoral districts.

(c) Redefined electoral districts shall be so drawn that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable, and each district shall be composed of territory within a continuous boundary.

(d) No change in the boundaries of an electoral district may affect the unexpired term of office of a commissioner residing in the district and serving on the board on the effective date of the resolution. If the terms of office of members of the board do not all expire at the same time, the resolution shall state which seats are to be filled at the initial election held under the resolution.

(e) A resolution adopted pursuant to this section shall be the basis of electing persons to the board of commissioners at the first general election for members of the board of commissioners occurring after the resolution's effective date, and thereafter. A resolution becomes effective upon its adoption, unless it is adopted during the period beginning 150 days before the day of a primary and ending on the day of the next succeeding general election for membership on the board of commissioners, in which case it becomes effective on the first day after the end of the period.

(f) Not later than 10 days after the day on which a resolution becomes effective, the clerk shall file in the Secretary of State's office, in the office of the register of deeds of the county, and with the chairman of the county board of elections, a certified copy of the resolution.

(g) This section shall not apply to counties where under G.S. 153A-58(3)d. or under public or local act, districts are for residence purposes only, and the qualified voters of the entire county nominate all candidates for and elect all members of the board. (1981, c. 795.)

§§ 153A-23, 153A-24: Reserved for future codification purposes.

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-27. Vacancies on the board of commissioners.

Cross References. — As to counties not subject to this section, see § 153A-27.1.

§ 153A-27.1. Vacancies on board of commissioners in certain counties.

(a) If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any registered voters of the county.

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 30 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 30 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(c) To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts.

(d) If the member who vacated the seat was elected as a nominee of a political party, the board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the qualified voters of an area which is less than the entire county were eligible to vote in the general election for the member whose seat is vacant, the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territorial area of the district of the county commissioner.

(f) The provisions of any local act which provides that a county executive committee of a political party shall fill any vacancy on a board of county commissioners are repealed.

(g) Counties subject to this section are not subject to G.S. 153A-27.

(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 6, 14; c. 830.)

Editor's Note. — Session Laws 1981, c. 763, s. 15, provides that the act shall become effective July 1, 1981, and applies to vacancies occurring on or after that date.

Effect of Amendments. — The 1981 amendment made this section applicable to Avery County.

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-40. Regular and special meetings.

(b) The chairman or a majority of the members of the board may at any time call a special meeting of the board of commissioners by signing a written notice stating the time and place of the meeting and the subjects to be considered. The person or persons calling the meeting shall cause the notice to be delivered to the chairman and each other member of the board or left at the usual dwelling place of each at least 48 hours before the meeting and shall cause a copy of the notice to be posted on the courthouse bulletin board at least 48 hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or those not present have signed a written waiver.

If a special meeting is called to deal with an emergency, the notice requirements of this subsection do not apply. However, the person or persons calling such a special meeting shall take reasonable action to inform the other members and the public of the meeting. Only business connected with the emergency may be discussed at a meeting called pursuant to this paragraph.

In addition to the procedures set out in this subsection, a person or persons calling a special or emergency meeting of the board of commissioners shall comply with the notice requirements of Article 33B of General Statutes Chapter 143.

(1977, 2nd Sess., c. 1191, s. 6.)

Editor's Note. — Article 33B of Chapter 143, referred to in subsection (b), was repealed. For present provisions concerning meetings of public bodies, see Chapter 143, Article 33C (§ 143-318.9 to 143-318.18.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective Oct. 1, 1978, added the third paragraph of subsection (b).

Only Part of Section Set Out. — As subsections (a) and (c) were not changed by the amendment, they are not set out.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

CASE NOTES

Cited in MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977).

§ 153A-45. Adoption of ordinances.

CASE NOTES

Cited in MacDonald v. Newsome, 437 F. Supp. 796 (E.D.N.C. 1977).

§ 153A-46. Franchises.

Cross References. — As to the approval, under this section, of long-term contracts entered into by boards of county commissioners for the disposal of solid waste, see § 153A-299.5.

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-60. Initiation of alterations by resolution.

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Article 5.

Administration.

Part 4. Personnel.

§ 153A-92. Compensation.

Cross References. — As to compensation of board of education members, see § 115C-38.

§ 153A-93. Retirement benefits.

(a) The board of commissioners may provide for enrolling county officers and employees in the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (c) of this section and may make payments into such a retirement system or plan on behalf of its employees.

(b) No county may make payments into a retirement system or plan established or authorized by a local act unless the system or plan is certified to be actuarially sound by a qualified actuary as defined in subsection (c) of this section.

(c) A qualified actuary means a member of the American Academy of Actuaries or an individual certified as qualified by the Commissioner of Insurance.

(d) A county which is providing health insurance under G.S. 153A-92(d) may provide health insurance for all or any class of former officers and employees of the county who are receiving benefits under subsection (a) of this section. Such health insurance may be paid entirely by the county, partly by the county and former officer or employee, or entirely by the former officer or employee, at the option of the county. (1973, c. 822, s. 1; 1981, c. 347, s. 1.)

Effect of Amendments. — The 1981 amendment added subsection (d).

§ 153A-98. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or

nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The county manager, with concurrence of the board of county commissioners, or, in counties not having a manager, the board of county commissioners may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a county employee and the reasons for that personnel action. Before releasing the information, the manager or board shall determine in writing that the release is essential to maintaining public confidence in the admin-

istration of county services or to maintaining the level and quality of county services. This written determination shall be retained in the office of the manager or the county clerk, is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the county's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The board of county commissioners may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the county as long as each personnel file so examined is retained.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a misdemeanor and upon conviction shall be fined an amount not more than five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 1; 1981, c. 926, ss. 1, 5-8.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, inserted "of employees, former employees, or applicants for employment" in the first sentence and added the last two sentences of subsection (a), added the last sentence in subdivision (5) and added subdivisions (6) and (7) in subsection (c), added subsections (c1) and (c2) and rewrote subsection (e).

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-103. Number of employees in offices of sheriff and register of deeds.

Subject to the limitations set forth below, the board of commissioners may fix the number of salaried employees in the offices of the sheriff and the register of deeds. In exercising the authority granted by this section, the board of commissioners is subject to the following limitations:

(1) Each sheriff and register of deeds elected by the people has the exclusive right to hire, discharge, and supervise the employees in his office. However, the board of commissioners must approve the appointment by such an officer of a relative by blood or marriage of nearer kinship than first cousin or of a person who has been convicted of a crime involving moral turpitude.

(2) Each sheriff and register of deeds elected by the people is entitled to at least one deputy, who shall be reasonably compensated by the county. The deputy so appointed shall serve at the pleasure of the appointing officer.

Notwithstanding the foregoing provisions of this section, approval of the board of commissioners is not required for the reappointment or continued employment of a near relative of a sheriff or register of deeds who was not related to the appointing officer at the time of initial appointment. (1953, c. 1227, ss. 1, 2; 1969, c. 358, s. 1; 1973, c. 822, s. 1; 1977, c. 36; 1979, c. 551.)

Effect of Amendments. — The 1979 amendment added the second sentence of subdivision (2).

Article 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

Legal Periodicals. — For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

§ 153A-122. Territorial jurisdiction of county ordinances.

Local Modification. — New Hanover: 1981, c. 458.

§ 153A-132. Removal and disposal of abandoned and junked motor vehicles.

Local Modification. — Wake: 1979, c. 375.

§ 153A-136. Regulation of solid wastes.

Cross References. — As to authority of counties, cities and towns to enter into long-term contracts with private persons, firms or corporations notwithstanding the provisions of this section, see § 153A-299.3.

§ 153A-139. Regulation of traffic at parking areas and driveways.

The governing body of any county may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominium complex, or commercial office complex or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. (1979, c. 745, s. 1.)

Local Modification. — Wake: 1981, c. 256.

ARTICLE 7.

Taxation.

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Courts. — To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.

(2) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the county.

(3) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.

(4) Elections. — To provide for all federal, State, district and county elections.

(5) Jails. — To provide for the operation of a jail and other local confinement facilities.

(6) 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.

(7) Schools. — To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.

(8) Social Services. — To provide for public assistance required by Chapters 108A and 111 of the General Statutes.

(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.

(6a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.

(6b) Auditoriums, coliseums, and convention and civic centers. — To provide public auditoriums, coliseums, and convention and civic centers.

(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 Preparedness. — To provide for civil preparedness 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.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(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 18 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 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 as defined in G.S. 153A-274(2).
(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.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. 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 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the effective property tax rate limitation applicable to . . . . . County be increased from . . . . . on the one hundred dollars ($100.00) value of property subject to taxation to . . . . . on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3; 1979, c. 619, s. 4; 1981, c. 66, s. 2; c. 562, s. 11; c. 692, s. 1.)

Effect of Amendments. — The 1979 amendment added "as defined in G.S. 153A-274(2)" at the end of subdivision (29) of subsection (c).

The first 1981 amendment added subdivision (6a) of subsection (c).

The second 1981 amendment, effective October 1, 1981, substituted "108A" for "108" in subdivisions (b)(8) and (c)(30).

The third 1981 amendment added subdivision (6b) of subsection (c).

Session Laws 1981, c. 562, s. 10, contains a severability clause.

CASE NOTES

Appropriation for Dyslexia School Unauthorized. — An appropriation by the Gaston County Board of Commissioners to the Dyslexia School of North Carolina was not authorized by either subdivision (c)(30) of this section or § 153A-255. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

A county's levy of taxes with a rate limitation for the purpose of funding elective abortions for indigents is authorized by subdivision (c)(30) of this section because the taxation is for the purpose of providing a program of public assistance not required by Chapters 108 and 111 of the General Statutes but which, like those required by Chapter 108, is directed to the problems of poverty; furthermore, the program for elective abortions constitutes a "social service program intended to further the health, welfare, education, safety, comfort, and convenience of its citizens" within the meaning of § 153A-255 and is thus authorized by "other portions of the General Statutes" as required by subsection (g) of this section. Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

§ 153A-152.1. Privilege license tax on low-level radioactive and hazardous wastes facilities.

(a) Counties in which hazardous waste facilities as defined in G.S. 130-166.16(5) or low-level radioactive waste facilities as defined in 104E-7(9b) [104E-5(9b)] are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section.

(b) The rate or rates of a tax levied under authority of this section shall be in an amount calculated to compensate the county for the additional costs incurred by it from having a hazardous waste facility or a low-level radioactive waste facility located in its jurisdiction, which costs may include the loss of ad valorem property tax revenues from the property on which a facility is located, the cost of providing any additional emergency services, the cost of monitoring air, surface water, groundwater, and other environmental media to the extent other monitoring data is not available, and other costs the county establishes as being associated with the facilities and for which it is not otherwise compensated.

(c) Any person or firm taxed pursuant to this section may appeal the tax rate to the board, but shall pay the tax when due, subject to a refund when the appeal is resolved by the board or in the courts. (1981, c. 704, s. 16.)

Editor's Note. — Session Laws 1981, c. 704, ss. 1 and 2 provide:

"Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

"Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for management of hazardous and low-level radioactive waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

The reference in subsection (a) to § 104E-7(9b) should be to § 104E-5(9b). The error has been corrected in brackets in the section as set out above.

§ 153A-153. Animal tax.

CASE NOTES

Applied in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

Article 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-158. Power to acquire property.

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C. S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21.)

Local Modification. — Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; Caswell: 1981, c. 941; Columbus: 1981, c. 270; Franklin and Granville: 1981, c. 941; Johnston: 1981, c. 459; Pender: 1981, c. 283; Person: 1981, c. 941; Sampson: 1981, c. 459; Vance and Warren: 1981, c. 941.

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, added the second sentence.

Legal Periodicals. — For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

§§ 153A-159 to 153A-162: Repealed by Session Laws 1981, c. 919, s. 20, effective January 1, 1982.

Cross References. — For present provisions as to eminent domain, see Chapter 40A.

Editor's Note. — Repealed section 153A-159 was amended by Session Laws 1981, c. 692, s. 2.

ARTICLE 9.

Special Assessments.

§ 153A-185. Authority to make special assessments.

A county may make special assessments against benefited property within the county for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;

(2) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(3) Acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works;

(4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205.

A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project. (1963, c. 985, s. 1; 1965, c. 714; 1969, c. 474, s. 1; 1973, c. 822, s. 1; 1975, c. 487, s. 1; 1979, c. 619, s. 11.)

Cross References. — As to applicability to assessments levied by water and sewer authorities established pursuant to Chapter 162A, Article 1, see G.S. § 162A-6.

Effect of Amendments. — The 1979 amendment inserted "collection" near the middle of subdivision (2), and added "of all types, including septic tank systems or other on-site collection or disposal facilities or systems" at the end of subdivision (2).

§ 153A-195. Hearing on preliminary assessment roll; revision; confirmation; lien.

Cross References. — As to meaning of term "county tax collector," see G.S. § 162A-6.

§ 153A-196. Publication of notice of confirmation of assessment roll.

Cross References. — As to meaning of term "county tax collector," see G.S. § 162A-6.

§ 153A-205. Improvements to subdivision and residential streets.

(a) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets that are a part of the State maintained system located in the county and outside of a city and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary

Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(b) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets located in the county and outside of a city in order to bring those streets up to the standards of the Secondary Roads Council so that they may become a part of the State maintained system and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(c) Before a county may finance all or a portion of the cost of improvements to a subdivision or residential street, it must receive a petition for the improvements signed by at least seventy-five percent (75%) of the owners of property to be assessed, who must represent at least seventy-five percent (75%) of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. The petition shall state that portion of the cost of the improvement to be assessed, which shall be the local share required by policies of the Secondary Roads Council. A county may treat as a unit and consider as one street two or more connecting State-maintained subdivision or residential streets in a petition filed under this subsection calling for the improvement of subdivision or residential streets subject to property owner sharing in the cost of improvement under policies of the Department of Transportation.

Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment as provided in G.S. 153A-189. Property owned, leased, or controlled by railroad companies shall be included in determining frontage and the number of owners to the extent the property is subject to assessment under G.S. 160A-222. Property owned, leased, or controlled by railroad companies that is not subject to assessment shall not be included in determining frontage or the number of owners.

No right of action or defense asserting the invalidity of street assessments on grounds that the county did not comply with this subsection in securing a valid petition may be asserted except in an action or proceeding begun within 90 days after the day of publication of the notice of adoption of the preliminary assessment resolution.

(d) This section is intended to provide a means of assisting in financing improvements to subdivision and residential streets that are on the State highway system or that will, as a result of the improvements, become a part of the system. By financing improvements under this section, a county does not thereby acquire or assume any responsibility for the street or streets involved, and a county has no liability arising from the construction of such an improvement or the maintenance of such a street. Nothing in this section shall be construed to alter the conditions and procedures under which State system streets or other public streets are transferred to municipal street systems

pursuant to G.S. 136-66.1 and 136-66.2 upon annexation by, or incorporatiom of, a municipality. (1975, c. 487, s. 2; c. 716, s. 7; 1981, c. 768.)

Effect of Amendments. — The 1981 amendment added the last sentence of the first paragraph of subsection (c).

Article 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

§ 153A-212. Cooperation in law-enforcement matters.

A county may cooperate with the State and other local governments in law-enforcement matters, as permitted by G.S. 160A-283 (joint auxiliary police), by G.S. 160A-288 (emergency aid), G.S. 160A-288.1 (assistance by State law enforcement officers), and by Chapter 160A, Article 20, Part 1. (1973, c. 822, s. 1; 1979, c. 639, s. 2.)

Effect of Amendments. — The 1979 amendment inserted "the State and" near the beginning of the section, and "G.S. 160A-288.1 (assistance by State law enforcement officers)" near the end of the section.

Part 2. Local Confinement Facilities.

§ 153A-221. Minimum standards.

Cross References. — As to detention of juveniles in holdover facilities meeting the minimum standards of this section where no juvenile detention home is available, see § 7A-576.

§ 153A-222. Inspections of local confinement facilities.

Department personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement and treatment of prisoners and to determine whether the facility meets the minimum standards published pursuant to G.S. 153A-221. The inspector shall make a written report of each inspection and submit it within 30 days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility does not meet the minimum standards. The governing body shall consider the report at its first regular meeting after receipt of the report and shall promptly initiate any action necessary to bring the facility into conformity with the standards. Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Human Resources who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been inmates of the facility being inspected. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to

an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the inmate or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 822, s. 1; 1981, c. 586, s. 6.)

Cross References. — As to detention of juveniles in holdover facilities inspected pursuant to §§ 108-79 through 108-81 and this section where no juvenile detention home is available, see § 7A-576.

Effect of Amendments. — The 1981 amendment added the language beginning "Notwithstanding the provisions of G.S. 8-53."

§ 153A-223. Enforcement of minimum standards.

If an inspection conducted pursuant to G.S. 153A-222 discloses that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

(1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior regular resident superior court judge for the judicial district in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, request a contested case hearing, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150A, Article 3. The issues shall be: (i) whether the facility meets the minimum standards; (ii) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (iii) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final agency decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary to the senior regular resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior regular resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The Secretary, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150A-37, with the senior regular resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1; 1981, c. 614, ss. 20, 21.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, inserted "request a contested case hearing" in the first sentence of subdivision (2), rewrote former subdivision (3) as the present subdivision (4), added the present subdivision (3), redesignated the former subdivisions (4) and (5) as the present subdivisions (5) and (6), respectively, added the third sentence in subdivision (6), and rewrote the fifth sentence of subdivision (6).

§ 153A-229. Jailers' report of jailed defendants.

The person having administrative control of a local confinement facility must furnish to the clerk of superior court a report listing such information reasonably at his disposal as is necessary to enable said clerk of superior court to comply with the provisions of G.S. 7A-109.1. (1973, c. 1286, s. 23; 1981, c. 522.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, substituted "The" for "A" at the beginning of the section and substituted "must furnish to the clerk of superior court a report listing such information reasonably at his disposal as is necessary to enable said clerk of superior court to comply with the provisions of G.S. 7A-109.1" for "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."

ARTICLE 12.

Roads and Bridges.

§ 153A-239. Public road defined.

Local Modification. — Brunswick: 1979, 2nd Sess., c. 1319; Cabarrus: 1981, c. 568, amending 1979, 2nd Sess., c. 1319.

§ 153A-240. Naming roads and assigning street numbers in unincorporated areas.

A county may be ordinance name or rename any public road within the county and not within a city, and may assign or reassign street numbers for use on such a road. In naming or renaming a public road, a county may not

(1) Change the name, if any, given to the road by the Board of Transportation, unless the Board of Transportation agrees;

(2) Change the number assigned to the road by the Board of Transportation, but may give the road a name in addition to its number; or

(3) Give the road a name that is deceptively similar to the name of any other public road in the vicinity.

A county shall not name or rename a road or assign or reassign street numbers on a road until it has held a public hearing on the matter. At least 10 days before the day of the hearing, the board of commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the county courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of such hearing in at least one newspaper of general circulation published in the county. After naming or renaming a public road, or assigning or reassigning street numbers on a public road, a county shall cause notice of its action to be given to the local postmaster with jurisdiction over the road, to the Board of Transportation, and to any city within five miles of the road.

This section does not repeal or modify Chapter 945 of the Session Laws of 1953, which pertains to naming streets in Kannapolis. (1957, c. 1068; 1973, c. 507, s. 5; 822, s. 1; 1981, cc. 112, 518.)

Local Modification. — Brunswick: 1979, 2nd Sess., c. 1319; Cabarrus: 1981, c. 568, amending 1979, 2nd Sess., c. 1319; Forsyth: 1981, c. 558; Guilford: 1979, c. 283.

Effect of Amendments. — The first 1981 amendment substituted "at the County Courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of such hearing in each newspaper of general circulation published in the county" for "in at least three places along the road involved" in the second sentence of the second paragraph.

The second 1981 amendment substituted "at least one" for "each" preceding "newspaper" in the second sentence of the second paragraph.

§ 153A-241. Closing public roads or easements.

Local Modification. — Guilford: 1979, c. 282; 1981, c. 59.

CASE NOTES

Applied in Whitehead Community Club v. Hoppers, 43 N.C. App. 671, 260 S.E.2d 94 (1979).

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This section does not apply to closing a portion of a street in a subdivision that has been offered for dedication but never accepted by a public authority nor opened for public use. Subdivision streets are not open to the public as a matter of right until they have been accepted on behalf of the public in a manner recognized by law. County authorities can only proceed under this section to close a road after an offer of dedication has been accepted and public rights have attached. See opinion of Attorney General to William P. Mayo, County Attorney, Beaufort County, 49 N.C.A.G. 188 (1980).

§ 153A-244. Railroad revitalization programs.

Any county is authorized to participate in State and federal railroad revitalization programs necessary to insure continued or improved rail service to the county, as are authorized in Article 2D of Chapter 136 of the General Statutes. County participation includes the authority to enter into contracts with the North Carolina Department of Transportation to provide for the nonfederal matching funds for railroad revitalization programs. Such funds may be comprised of State funds distributed to the counties under the provisions of G.S. 136-44.38 and of county funds. County governments are also authorized to levy local property tax for railroad revitalization programs subject to G.S. 153A-149(d). County funds for any project may not exceed ten percent (10%) of total project costs. (1979, c. 658, s. 4.)

Article 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-248. Health-related appropriations.

(a) A county may appropriate revenues not otherwise limited as to use by law:

(1) To a licensed facility for the mentally retarded, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the facility is available to residents of the county. The facility need not be located within the county.

(2) To a sheltered workshop or other private, nonprofit, charitable organization offering work or training activities to the physically or mentally handicapped, and may otherwise assist such an organization.

(3) To an orthopedic hospital, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the hospital is available to residents of the county. The hospital need not be located within the county.

(4) To a training center or other private, nonprofit, charitable organization offering education, treatment, rehabilitation, or developmental

programs to the physically or mentally handicapped, and may otherwise assist such organizations; provided, however, such action shall be with the concurrence of the county board of education; and provided, further, that within 30 days after receipt of the request for concurrence, the county board of education shall notify the board of county commissioners whether it concurs, and should it fail to so notify the board of county commissioners within such period, it shall be deemed to have concurred.

(b) The ordinance making the appropriation shall state specifically what the appropriation is to be used for, and the board of commissioners shall require that the recipient account for the appropriation at the close of the fiscal year. (1967, cc. 464, 1074; 1969, c. 802; 1973, c. 822, s. 1; 1977, c. 474; 1979, c. 1074, s. 2.)

Effect of Amendments. — The 1979 amendment added subdivision (4) to subsection (a).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Legislative Intent. — The General Assembly has consistently delegated specific responsibility for the special education of learning-disabled children to the State and local boards of education. Given this pattern of specific and comprehensive legislation in that field it is highly unlikely the General Assembly intended, by enacting subdivision (a)(2) of this section, to authorize county boards of commissioners to appropriate funds directly to schools for dyslexic children. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

The sheltered workshop is designed to deal with health problems fundamentally different from those presented by dyslexic children. As a consequence the objectives, organizational structure, and therapeutic philosophy of a sheltered workshop are markedly different from those of a school for dyslexic children. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Subdivision (a)(2) Inapplicable to Learning-Disabled Children. — While the general terms of subdivision (a)(2) of this section could conceivably be construed to address the problem of inadequate educational opportunities for learning-disabled children in the school system, it is evident that the specific remedies prescribed in §§ 115-315.7, et seq., 115-377, and 115-384 are controlling. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

School for Dyslexic Children Not within Ambit of Sheltered Workshop Provision. — An appropriation to a school for dyslexic children does not come within the ambit of this section authorizing appropriations to sheltered workshops and like institutions which provide work or training for the physically and mentally handicapped. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Subdivision (a)(2) of this section cannot be reasonably interpreted to encompass schools for dyslexic children. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Appropriation for Dyslexic School Unauthorized. — An appropriation by the Gaston County Board of Commissioners to the Dyslexia School of North Carolina was not authorized by subdivision (a)(2) of this section. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

§ 153A-250. Ambulance services.

Cross References. — As to providing of emergency medical, rescue, and ambulance service by rural fire protection districts, see § 69-25.4.

Part 2. Social Service Provisions.

§ 153A-255. Authority to provide social service programs.

Each county shall provide social service programs pursuant to Chapter 108A and Chapter 111 and may otherwise undertake, sponsor, organize, engage in, and support other social service programs intended to further the health, welfare, education, safety, comfort, and convenience of its citizens. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1973, c. 822, s. 1; 1981, c. 562, s. 12.)

Effect of Amendments. — The 1981 amendment, effective October 1, 1981, substituted "108A" for "108."

Session Laws 1981, c. 562, s. 10, contains a severability clause.

CASE NOTES

Appropriation for Dyslexia School Unauthorized. — An appropriation by the Gaston County Board of Commissioners to the Dyslexia School of North Carolina was not authorized by either § 153A-149(c)(30) or this section. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

A program for elective abortions for indigents constitutes a "social service program intended to further the health, welfare, education, safety, comfort, and convenience of its citizens" within the meaning of this section and is thus authorized by "other portions of the General Statutes" as required by § 153A-149(g). Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

§ 153A-258: Reserved for future codification purposes.

Part 3. Health and Social Services Contracts.

§ 153A-259. Counties authorized to contract with other entities for health and social services.

A county is authorized to contract with any governmental agency, person, association, or corporation for the provision of health or social services provided that the expenditure of funds pursuant to such contracts shall be for the purpose for which the funds were appropriated and is not otherwise prohibited by law. (1979, 2nd Sess., c. 1094, s. 2.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1094, s. 6, provides: "This act is effective upon ratification. All contracts which would be permissible under this act which were entered into on or after April 20, 1979, are hereby validated. The act was ratified on June 17, 1980."

The preamble to Session Laws 1979, 2nd Sess., c. 1094, cites as the reason for the enactment Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979), requiring statutory authority for third party contracts.

§ 153A-260: Reserved for future codification purposes.

ARTICLE 14.

Libraries.

§ 153A-265. Library board of trustees.

Local Modification. — Burke: 1977, 2nd Sess., c. 1168.

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems,

(2) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems,

(3) Solid waste collection and disposal systems and facilities,

(4) Airports,

(5) Off-street parking facilities,

(6) Public transportation systems. (1965, 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; 1977, c. 514, s. 1; 1979, c. 619, s. 1.)

Effect of Amendments. — The 1979 amendment added "of all types, including septic tank systems or other on-site collection or disposal facilities or systems" at the end of subdivision (2).

Part 2. Special Provisions for Water and Sewer Services.

§ 153A-284. Power to require connections.

A county may require the owner of improved property located so as to be served by a water line or sewer collection line owned or operated by the county to connect his premises with the water or sewer line and may fix charges for these connections. (1963, c. 985, s. 1; 1965, c. 969, s. 2; 1973, c. 822, s. 1; 1979, c. 619, s. 13.)

Effect of Amendments. — The 1979 amendment substituted "line" for "system" after "sewer" near the end of the section.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

§ 153A-292. County collection and disposal; tax levy.

The board of county commissioners of any county is hereby empowered to establish and operate garbage, refuse, and solid waste collection and disposal facilities, or either, in areas outside of incorporated cities and towns where, in its opinion, the need for such facilities exists. The board may by ordinance regulate the use of such garbage, refuse, and solid waste disposal facilities; the nature of the solid wastes disposed of therein; and the method of disposal. Ordinances so adopted may be enforced by any law-enforcement officer having jurisdiction, which shall include, but not be limited to, officers of the county sheriff's department, county police department and the State Highway Patrol. The board may contract with any municipality, individual, or privately owned corporation to collect and dispose, or collect or dispose, of garbage, refuse, and solid waste in any such area provided no county shall be authorized by this Article to levy a disposal fee upon any municipality located in that county if the board of commissioners levy a countywide tax on property which provides in part for financing such disposal facilities. In the disposal of garbage, refuse, and solid waste, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, refuse, and solid waste, it may charge fees for such collection service sufficient in its opinion to defray the expense of collection. Counties and municipalities therein are authorized to establish and operate joint collection and disposal facilities, or either of these, upon such terms as the governing bodies may determine. Such agreement shall be in writing and executed by the governing body of the participating units of local government.

The board of commissioners of each county is hereby authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies.

The board of county commissioners may use any vacant land owned by the county, and it may acquire by purchase or condemnation suitable land for the disposal sites, and in the event condemnation of said lands is necessary, the procedure used shall be that set forth in Chapter 40A of the North Carolina General Statutes.

The board may impose fees for the use of the disposal site, and if the county provides for collection services, it shall charge fees sufficient to defray the expense of collection.

The board of commissioners of each county is authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies. The board of commissioners is authorized to make appropriations from these tax funds, and from nonrevenue funds which may be available. Provided that the county board of commissioners may authorize the erection of a gate across a state- or county-maintained highway leading directly to a sanitary landfill or garbage disposal site which is operated by the county. The gate may be erected at or in close proximity to the boundary of the landfill or garbage disposal site. The cost of the erection of the gate and its maintenance is to be borne by the county, and the gate shall be closed upon authority of the county commissioners. (1961, c. 514, s. 1; 1971, c. 568; 1973, c. 535; c. 822, s. 2; 1981, c. 919, s. 22.)

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, substituted "Chapter 40A" for "Chapter 40" near the end of the third paragraph.

Part 4. Long Term Contracts for Disposal of Solid Waste.

§ 153A-299.1. Authority to contract with private firms; contract provisions.

The boards of county commissioners on behalf of counties and city councils on behalf of cities and towns are hereby authorized to enter into contracts with any private person, firm or corporation to dispose of by sale or otherwise, solid waste generated within their geographic boundaries or brought into their geographic boundaries. Without intending to limit the provisions which may be included in such contracts, the contracts may specifically include provisions for:

(1) Payment by the county, city or town of a fee or other charge to the private person, firm or corporation to accept and dispose of the solid waste;

(2) Periodic increases or adjustments in the fees or other charges to be paid by the counties, cities or towns to the private person, firm or corporation;

(3) Warranties from the counties, cities or towns with respect to the quantity of the solid waste it will deliver and transfer to the private person, firm or corporation and warranties relating to the content or quality of the solid waste;

(4) Legal and equitable title to the solid waste passing to the private person, firm or corporation upon delivery of the solid waste to the private person, firm or corporation; and

(5) A long term of duration up to a period of 60 years. (1979, 2nd Sess., c. 1135, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1135, s. 7 makes the act effective July 1, 1980.

§ 153A-299.2. Solid waste defined.

As used in this Part, the term "solid waste" shall include but not be limited to trash, debris, garbage, litter, discarded cans or receptacles or any other type of waste or garbage material whatsoever. (1979, 2nd Sess., c. 1135, s. 2.)

§ 153A-299.3. Power not limited by §§ 153A-136 or 160A-319.

Counties, cities and towns may enter into long-term contracts as described in G.S. 153A-299.1 of this Part notwithstanding the provisions of G.S. 153A-136 limiting a franchise granted by a board of county commissioners for the collection and disposal of solid waste to a term of no more than seven years and notwithstanding the provisions of G.S. 160A-319 limiting a franchise granted by a city for the collection and disposal of solid waste to a term of no more than 60 years. (1979, 2nd Sess., c. 1135, s. 3.)

§ 153A-299.4. Approval by Department of Human Resources.

The Department of Human Resources must approve all contracts entered into pursuant to this Part before such contract may become effective. (1979, 2nd Sess., c. 1135, s. 4.)

§ 153A-299.5. Approval by board of commissioners or city council.

Approval of any contract under this Part by the board of county commissioners or city council shall be governed by G.S. 153A-46 as to counties or by G.S. 160A-76 as to cities and towns. (1979, 2nd Sess., c. 1135, s. 5.)

§ 153A-299.6. Applicability.

This Part shall apply only to Beaufort County, Craven County, Edgecombe County, Hyde County, Lenoir County, Martin County, New Hanover County, Pamlico County, Pitt County, Washington County, Wilson County, and to any and all incorporated cities and towns situated within the foregoing counties. (1979, 2nd Sess., c. 1135, s. 6; 1981, c. 458, s. 4.)

Effect of Amendments. — The 1981 amendment added New Hanover to the list of counties.

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 of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
(5) Solid waste collection and disposal systems;
(6) Water supply and distribution systems;
(7) Ambulance and rescue;
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375; 1979, c. 595, s. 1; c. 619, s. 6.)

Effect of Amendments. — The first 1979 amendment added subdivision (8).

The second 1979 amendment added "of all types, including septic tank systems or other on-site collection or disposal facilities or systems" at the end of subdivision (4).

Session Laws 1979, c. 595, s. 3, provides: "This act applies to existing projects and programs as well as new projects and programs. The financing or operation, or both, of a project or program authorized by General Statutes Chapter 139, Article 21 of General Statutes Chapter 143, General Statutes Chapter 156, or any other law, may be discontinued under the law by which it was initiated and may be undertaken by a service district as defined in General Statutes Chapter 153A or 160A."

§ 153A-302. Definition of service districts.

(a) Standards. — In determining whether to establish a proposed service district, the board of commissioners shall consider:

(1) The resident or seasonal population and population density of the proposed district;

(2) The appraised value of property subject to taxation in the proposed district;

(3) The present tax rates of the county and any cities or special districts in which the district or any portion thereof is located;

(4) The ability of the proposed district to sustain the additional taxes necessary to provide the services planned for the district;

(5) If it is proposed to furnish water, sewer, or solid waste collection services in the district, the probable net revenues of the projects to be financed and the extent to which the services will be self-supporting;

(6) Any other matters that the commissioners believe to have a bearing on whether the district should be established.

The board of commissioners may establish a service district if, upon the information and evidence it receives, the board finds that

(1) There is a demonstrable need for providing in the district one or more of the services listed in G.S. 153A-301;

(2) It is impossible or impracticable to provide those services on a countywide basis;

(3) It is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax levies; and

(4) There is a demonstrable demand for the proposed services by persons residing in the district.

Territory lying within the corporate limits of a city or sanitary district may not be included unless the governing body of the city or sanitary district agrees by resolution to such inclusion.

(b) Report. — Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;

(2) A statement showing that the proposed district meets the standards set out in subsection (a); and

(3) A plan for providing one or more of the services listed in G.S. 153A-301 to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class

of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners. (1973, c. 489, s. 1; c. 822, s. 2; 1981, c. 53, s. 1.)

Effect of Amendments. — The 1981 amendment deleted "by first-class mail" following "mailed" and inserted "by any class of U.S. mail which is fully prepaid" in the fourth sentence of subsection (c). Section 3 of Session Laws 1981, c. 53 provides that the act is effective with respect to all notices mailed after ratification of the act [February 26, 1981].

§ 153A-303. Extension of service districts.

(a) Standards. — The board of commissioners may by resolution annex territory to any service district upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and

(2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. — The board of commissioners may also by resolution extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the board for annexation to the service district.

(c) Territory lying within the corporate limits of a city or sanitary district may not be annexed to a service district unless the governing body of the city or sanitary district agrees by resolution to such annexation.

(d) Report. — Before the public hearing required by subsection (e), the board shall cause to be prepared a report containing:

(1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;

(2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a), (b), and (c); and

(3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the clerk to the board for at least two weeks before the date of the public hearing.

(e) Hearing and Notice. — The board shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (d) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(f) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2; 1981, c. 53, s. 2.)

Effect of Amendments. — The 1981 amendment added the next to last sentence of subsection (e). Section 3 of Session Laws 1981, c. 53 provided that the act is effective with respect to all notices mailed after ratification of the act [February 26, 1981].

§ 153A-304. Consolidation of service districts.

(a) The board of commissioners may by resolution consolidate two or more service districts upon finding that:

(1) The districts are contiguous or are in a continuous boundary;

(2) The services provided in each of the districts are substantially the same; or

(3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report. — Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the districts to be consolidated;

(2) A statement showing the proposed consolidation meets the standards of subsection (a); and

(3) If necessary, a plan for increasing the services for one of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the clerk to the board for at least two weeks before the public hearing.

(c) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2; 1981, c. 53, s. 2.)

Effect of Amendments. — The 1981 amendment added the next to last sentence of subsection (c). Section 3 of the Session Laws 1981, c. 53 provided that the act is effective with respect to all notices mailed after ratification of the act [February 26, 1981].

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

CASE NOTES

A county sign ordinance did not violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution or N.C. Const., Art. I, § 19 because the county would not enforce the ordinance with respect to any person owning or operating a sign in certain municipalities within the county since counties could not exercise zoning authority within a city which had enacted a zoning ordinance and counties could defer from zoning within cities. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

§ 153A-321. Planning agency.

A county may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the county and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

An agency created or designated pursuant to this section may include but shall not be limited to one or more of the following, with any staff that the board of commissioners considers appropriate:

(1) A planning board or commission of any size (not less than three members) or composition considered appropriate, organized in any manner considered appropriate;
(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1979, c. 611, s. 6.)

Effect of Amendments. — The 1979 amendment inserted "but shall not be limited to" near the beginning of the second paragraph.

§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.

Before adopting or amending any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. (1959, c. 1006, s. 1; c. 1007; 1973, c. 822, s. 1; 1981, c. 891, ss. 2, 9.)

Effect of Amendments. — The 1981 amendment, effective September 1, 1981, substituted "ten days" for "fifteen days" in the third sentence, and added the last sentence.

CASE NOTES

Applied in Lee v. Simpson, 44 N.C. App. 611, 261 S.E.2d 295 (1980).

Part 2. Subdivision Regulation.

§ 153A-330. Subdivision regulation.

CASE NOTES

Applied in Springdale Estates Ass'n v. Wake County, 47 N.C. App. 462, 267 S.E.2d 415 (1980).

§ 153A-331. Contents and requirements of ordinance.

Cross References. — As to developers required to file map or plat of subdivision streets, see § 136-102.6. As to subdivision regulation by cities, see § 160A-371.

§ 153A-335. "Subdivision" defined.

For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(1979, c. 611, s. 2.)

Local Modification. — Transylvania: 1979, c. 349.

By virtue of Session Laws 1979, c. 313, Rutherford should be stricken from the replacement volume.

Effect of Amendments. — The 1979 amendment substituted "subdivided and recorded" for "platted" near the beginning of subdivision (1).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (1) are set out.

CASE NOTES

Applied in Springdale Estates Ass'n v. Wake County, 47 N.C. App. 462, 267 S.E.2d 415 (1980).

Part 3. Zoning.

§ 153A-340. Grant of power.

For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict

(1) The height, number of stories, and size of buildings and other structures,
(2) The percentage of lot that may be occupied,
(3) The size of yards, courts, and other open spaces,
(4) The density of population, and
(5) The location and use of buildings, structures, and land for trade, industry, residence, or other purposes, except farming.

These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6.)

Effect of Amendments. — The 1981 amendment, effective September 1, 1981, added the last sentence.

Legal Periodicals. — For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

CASE NOTES

Constitutionality of Ordinances Generally. — It is the duty of the municipal authorities in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town; and when such ordinance is adopted it is presumed to be valid; and, the courts will not declare it invalid unless it is clearly shown to be so. This is true when the constitutionality of an

ordinance is attacked, and no law or ordinance will be declared unconstitutional unless clearly so and every reasonable intendment will be made to sustain it. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

A county sign ordinance did not violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution or N.C. Const., Art. I, § 19 because the county would not enforce the ordinance with respect to any person owning or operating a sign in certain municipalities within the county since counties could not exercise zoning authority within a city which had enacted a zoning ordinance and counties could defer from zoning within cities. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

Or Provide for Unconstitutional Taking of Property. — Provision of a county sign ordinance requiring nonconforming uses to be discontinued within three years from the effective date of the ordinance, thus giving the owner of a nonconforming sign a three-year period in which to amortize or depreciate the cost of the sign, is reasonable and does not provide for an unconstitutional taking of property. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

Kennel Operation Was Not "Farming". — Dogs do not constitute livestock, and a dog breeding and kennel operation does not constitute "farming" so as to exempt the property used therefor from a county's zoning authority pursuant to this section. Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980), cert. denied, — N.C. —, 274 S.E.2d 227 (1981).

§ 153A-342. Districts; zoning less than entire jurisdiction.

CASE NOTES

A county sign ordinance did not violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution or N.C. Const., Art. I, § 19 because the county would not enforce the ordinance with respect to any person owning or operating a sign in certain municipalities within the county since counties could not exercise zoning authority within a city which had enacted a zoning ordinance and counties could defer from zoning within cities. County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672, cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments.

To exercise the powers conferred by this Part, a county shall create or designate a planning agency under the provisions of this Article or of a local act. The planning agency shall prepare a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the ordinance. Upon completion, the planning agency shall certify the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a certified ordinance from the planning agency. Following its required public hearing, the board of commissioners may refer the ordinance back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation. The board of commissioners is not bound by the recommen-

dations, if any, of the planning agency. (1959, c. 1006, s. 1; 1965, c. 194, s. 3; 1973, c. 822, s. 1; 1979, c. 611, s. 3.)

Effect of Amendments. — The 1979 amendment, in the first paragraph, substituted "proposed zoning ordinance" for "zoning plan" near the beginning of the second sentence, substituted "such" for "a zoning" near the middle of the second sentence; substituted "ordinance" for "plan" at the end of the third sentence, near the middle of the fourth sentence, near the end of the fifth sentence, and near the beginning of the sixth sentence; and substituted "shall" for "may" near the beginning of the fifth sentence.

Legal Periodicals. — For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

§ 153A-345. Board of adjustment.

(a) The board of commissioners may provide for the appointment and compensation, if any, of a board of adjustment consisting of at least five members, each to be appointed for three years. In appointing the original members of the board, or in filling vacancies caused by the expiration of the terms of existing members, the board of commissioners may appoint some members for less than three years to the end that thereafter the terms of all members do not expire at the same time. The board of commissioners may provide for the appointment and compensation, if any, of alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of a regular member, has and may exercise all the powers and duties of a regular member. If the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have at least one resident as a member of the board of adjustment.

A county may designate a planning agency to perform the duties of a board of adjustment in addition to its other duties.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an ordinance adopted pursuant to this Part. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifiying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment may, in passing upon appeals, vary or modify any regulation or provision of the ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.

(e) The board of adjustment, by a vote of four-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman may in his official capacity administer oaths to witnesses in any matter coming before the board. (1959, c. 1006, s. 1; 1965, c. 194, s. 4; 1967, c. 1208, ss. 5-7; 1973, c. 822, s. 1; 1979, c. 611, s. 4; c. 635; 1981, c. 891, s. 8.)

Local Modification. — Mecklenburg: 1981, cc. 293, 583.

Effect of Amendments. — The first 1979 amendment added "or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance" at the end of the fifth sentence of subsection (b).

The second 1979 amendment, effective January 1, 1980, added the third and fourth sentences of subsection (e).

The 1981 amendment, effective September 1, 1981, substituted "Any petition for review by the superior court shall be filed with the clerk of superior court" for "Any appeal to the superior court shall be taken" at the beginning of the first sentence of subsection (e), substituted "every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case" for "the appellant" in that sentence, and substituted "aggrieved party" for "appellant" and inserted "by" preceding "registered mail" in the fourth sentence of subsection (e).

Legal Periodicals. — For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

CASE NOTES

Quoted in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

Cited in Davis v. Zoning Bd. of Adjustment, 41 N.C. App. 579, 255 S.E.2d 444 (1979).

§ 153A-347. Part applicable to buildings constructed by the State and its subdivisions.

Legal Periodicals. — For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

§ 153A-348. Statute of limitations.

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Part or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within nine months as provided in G.S. 1-54.1. (1981, c. 705, s. 2.)

Editor's Note. — Session Laws 1981, c. 705, ss. 3, 4, provides that:

"Sec. 3. This act shall not effect pending litigation.

"Sec. 4. A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under Article 18, Part 1 of G.S. Chapter 153A or other applicable law, enacted prior to the effective date of this act [June 26, 1981] shall be brought within nine months of the effective date of this act."

§ 153A-349: Reserved for future codification purposes.

Part 4. Building Inspection.

§ 153A-350. "Building" defined.

Legal Periodicals. — For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

§ 153A-357. Permits.

No person may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, removal, or demolition of any building;

(2) The installation, extension, or general repair of any plumbing system;

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any

kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing twenty-five hundred dollars ($2500) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2.)

Effect of Amendments. — The 1981 amendment, effective thirty days after ratification, added the next to last sentence. The act was ratified on June 25, 1981.

§ 153A-369. Order to take corrective action.

If, upon a hearing held pursuant to G.S. 153A-368, the inspector finds that the building is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall issue a written order, directed to the owner of the building, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe; provided, that where the inspector finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1979, c. 611, s. 5.)

Effect of Amendments. — The 1979 amendment added the proviso at the end of the section.

Article 19.

Regional Planning Commissions.

§ 153A-391. Creation; admission of new members.

CASE NOTES

Stated in Hyde v. Land-Of-Sky Regional Council, 572 F.2d 988 (4th Cir. 1978).

Article 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

CASE NOTES

Stated in Casey v. Wake County, 45 N.C. App. 522, 263 S.E.2d 360 (1980).

Cited in Vaughn v. County of Durham, Durham County Dep't of Social Servs., 34 N.C. App. 416, 240 S.E.2d 456 (1977).

§ 153A-440.1. Watershed improvement programs.

A county may establish and maintain a county watershed improvement program pursuant to G.S. 139-41 or 139-41.1 and for these purposes may appropriate funds not otherwise limited as to use by law. A county watershed improvement program or project may also be financed pursuant to G.S. 153A-301 or by any other financing method available to counties for this purpose. (1981, c. 251, s. 2.)

§ 153A-445. Miscellaneous powers found in Chapter 160A.

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. — Joint Exercise of Powers.
(2) Chapter 160A, Article 20, Part 2. — Regional Councils of Governments.
(3) G.S. 160A-487. — Financial support for rescue squads.
(4) G.S. 160A-488. — Art galleries and museums.
(5) G.S. 160A-492. — Human relations programs.
(6) G.S. 160A-497. — Senior citizens programs.
(7) G.S. 160A-489. — Auditoriums, coliseums, and convention and civic centers.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties. (1973, c. 822, s. 1; 1975, c. 19, s. 61; 1979, 2nd Sess., c. 1094, s. 3; 1981, c. 692, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment added subdivision (6) of subsection (a).

Session Laws 1979, 2nd Sess., c. 1094, s. 6, provides: "This act is effective upon ratification. All contracts which would be permissible under this act which were entered into on or after April 20, 1979, are hereby validated." The act was ratified on June 17, 1980.

The preamble to Session Laws 1979, 2nd Sess., c. 1094 cites as the reason for the enactment Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979), requiring statutory authority for third party contracts.

The 1981 amendment added subdivision (7) of subsection (a).

§ 153A-447. Certain counties may appropriate funds to Western North Carolina Development Association, Inc.

(a) The board of county commissioners of the counties hereafter named are authorized to appropriate funds to the Western North Carolina Development Association, Inc., for the public good and welfare of said counties. The amount to be expended by each county shall be determined in the discretion of the board of commissioners.

(b) This section shall apply to the counties of Avery, Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey. (1979, c. 674, ss. 1, 2.)

Chapter 156.

Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

ARTICLE 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Supplemental proceeding.

The proceedings initiated under this Chapter may be, to the extent practicable, supplemented by the procedures of Chapter 40A. (Code, s. 1324; Rev., s. 4028; C. S., s. 5260; 1981, c. 919, s. 23.)

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, rewrote this section, which formerly provided that the proceeding under this Subchapter should be as prescribed in Article 2 of the Chapter Eminent Domain.

SUBCHAPTER II. DRAINAGE BY CORPORATION.

ARTICLE 3.

Manner of Organization.

§ 156-43. Incorporation of canal already constructed; commissioners; reports.

CASE NOTES

Encumbrance on Property. — In an action to compel corporate defendant to purchase property from plaintiffs in accordance with the parties' purchase contract, where defendant alleged that a judgment creating a canal corporation created a lien on the subject property which constituted an encumbrance unsatisfactory to it and rendered plaintiffs' title unmarketable, the trial court erred in directing verdict in defendant's favor on this ground, since the judgment creating a canal corporation was not entered into evidence at trial; there was no indication in the record on appeal that the trial court took judicial notice of the judgment; a copy of the judgment was not included in the record on appeal; and there was thus no evidence of a canal constituting an encumbrance on the subject property. Waters v. North Carolina Phosphate Corp., 50 N.C. App. 252, 273 S.E.2d 517 (1981).

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

Cross References. — As to application to the State Soil and Water Conservation Commission for grants for nonfederal costs relating to small watershed projects authorized under Public Law 566 (83rd Congress as amended), see § 139-53 et seq.

§ 156-67. Condemnation of land.

If it shall be necessary to acquire a right-of-way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be, to the extent practicable, supplemented by the provisions of Chapter 40A Eminent Domain and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C. S., s. 5325; 1981, c. 919, s. 24.)

Effect of Amendments. — The 1981 amendment, effective January 1, 1982, substituted "to the extent practicable, supplemented by the provisions of Chapter 40A Eminent Domain," for "substantially as provided by law for the condemnation of rights-of-way for railroads so far as the same may be applicable" in the second sentence.

ARTICLE 6.

Drainage Commissioners.

§ 156-79. Election and organization under original act.

Local Modification. — Pitt County Drainage District: 1979, c. 817.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1981

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1981 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina