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Under the Direction of
D. P. HARRIMAN, S. C. WILLARD, W. L. JACKSON
AND K. S. MAWYER

Volume 3C pt 2

Chapters 144 to 156

1983 Replacement

Annotated through 303 S.E.2d 102. For complete scope of
annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume.

THE MICHIE COMPANY
Law Publishers
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1983

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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 1983 Session, which are within the scope of such volume, and brings to date the annotations included therein.

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

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

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

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

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this 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.

Testing

The purpose of this test is to determine the effectiveness of the proposed system. The test will be conducted in a controlled environment and will involve the use of a variety of test cases. The results of the test will be used to evaluate the system's performance and to identify any areas for improvement.

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Scope of Volume

Statutes:

Permanent portions of the general laws enacted by the General Assembly at the 1983 Session, affecting Chapters 144 through 156 of the General Statutes.

Annotations:

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

- South Eastern Reporter 2nd Series through Volume 303, p. 102.
- Federal Reporter 2nd Series through Volume 707, p. 523.
- Bankruptcy Reports through Volume 29, p. 815.
- Federal Supplement through Volume 562, p. 911.
- Federal Rules Decisions through Volume 97, p. 544.
- Supreme Court Reporter through Volume 103, p. 2468.
- North Carolina Law Review through Volume 61, p. 744.
- Wake Forest Law Review through Volume 19, p. 150.
- Campbell Law Review through Volume 5, p. 262.
- Duke Law Journal through 1983, p. 195.
- North Carolina Central Law Journal through Volume 13, p. 282.
- Opinions of the Attorney General.

The General Statutes of North Carolina

1983 Supplement

VOLUME 3C

Chapters 144 to 156

Chapter 146.

State Lands.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 7.

Dispositions.

Sec.

Application of net proceeds.

146-30. (Effective July 1, 1984) Application of net proceeds.

Sec.

146-30. (Effective until July 1, 1984)

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 7.

Dispositions.

§ 146-30. (Effective until July 1, 1984) 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 Subchapter, 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 provide water and sewers and 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, and the Office of State Budget and Management, 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; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1983, c. 717, s. 87; c. 761, s. 166.)

Section Set Out Twice. — The section above is effective until July 1, 1984. For this section as amended effective July 1, 1984, see the following section, also numbered 146-30.

Editor's Note. —

Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Session Laws 1983, c. 761, s. 259, is a severability clause.

Effect of Amendments. —

Session Laws 1983, c. 717, s. 87, effective July 11, 1983, substituted "and the Office of State Budget and Management" for "Office of State Budget and Management and the Advisory Budget Commission" in the last sentence of the last paragraph.

Session Laws 1983, c. 761, s. 166, effective July 15, 1983, substituted "water and sewers" for "sewers" following "to the credit of the Hospital to provide" in the last sentence of the last paragraph.

§ 146-30. (Effective July 1, 1984) 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 Subchapter, 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 provided by transfer of funds from those accounts in the Budget Appropriation Act. 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 provided by transfer of funds from those accounts in the Budget Appropriation Act. In the Budget Appropriation Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. 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 provide water and sewers and 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, and the Office of State Budget and Management, 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; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1983, c. 717, ss. 86, 86.1, 86.2, 87; c. 761, s. 166.)

Section Set Out Twice. — The section above is effective July 1, 1984. For this section as in effect until July 1, 1984, see the preceding section, also numbered 146-30.

Editor's Note. —

Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Session Laws 1983, c. 761, s. 259, is a severability clause.

Effect of Amendments. —

Session Laws 1983, c. 717, s. 87, effective July 11, 1983, substituted "and the Office of State Budget and Management" for "Office of State Budget and Management and the Advisory Budget

Commission" in the last sentence of the last paragraph.

Session Laws 1983, c. 761, s. 166, effective July 15, 1983, substituted "water and sewers" for "sewers" following "to the credit of the Hospital to provide" in the last sentence of the last paragraph.

Session Laws 1983, c. 717, ss. 86, 86.1 and 86.2, effective July 1, 1984, substituted "provided by transfer of funds from those accounts in the Budget Appropriation Act" for "approved by the Director of the Budget and the Advisory Budget Commission" at the end of the third and fourth sentences of the last paragraph, and inserted the present fifth through eighth sentences.

ARTICLE 17.

Title in State.

§ 146-79. Title presumed in the State; tax titles.

CASE NOTES

The statutory presumption created by this section is not unconstitutional. *State v. Taylor*, — N.C. App. —, 300 S.E.2d 42 (1983).

The presumption created by this section is reasonable since title to all lands in North Carolina, except those previously granted by the Crown, originated from

the State, and the State has ultimate title to the soil. In addition, the statute does not authorize a "taking" of property. The presumption of title in the State lasts only until the rival claimant establishes valid title in himself. *State v. Taylor*, — N.C. App. —, 300 S.E.2d 42 (1983).

Chapter 147.

State Officers.

<p style="text-align: center;">Article 2.</p> <p style="text-align: center;">Expenses of State Officers and State Departments.</p> <p>Sec.</p> <p>147-6. Expenses paid by warrants; statements filed.</p> <p style="text-align: center;">Article 2A.</p> <p style="text-align: center;">Annuities for State Employees.</p> <p>147-9.2. Definitions.</p> <p>147-9.4. Deferred Compensation Plan.</p> <p style="text-align: center;">Article 3.</p> <p style="text-align: center;">The Governor.</p> <p>147-11. (Effective until January 1, 1985) Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.</p> <p>147-11. (Effective January 1, 1985) Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.</p> <p>147-12. Powers and duties of Governor.</p> <p>147-15. Salary of private secretary.</p> <p>147-16. Records kept; certain original applications preserved.</p> <p>147-16.2. Continuing effect of executive order.</p> <p>147-26. To procure great seal of State; its description.</p> <p>147-31. [Repealed.]</p> <p>147-33. Compensation and expenses of Lieutenant Governor.</p> <p style="text-align: center;">Article 3A.</p> <p style="text-align: center;">Emergency War Powers of Governor.</p> <p>147-33.7 to 147-33.11. [Reserved.]</p> <p style="text-align: center;">Article 3B.</p> <p style="text-align: center;">North Carolina Housing Commission.</p> <p>147-33.12. Commission established.</p> <p>147-33.13. Membership.</p> <p>147-33.14. Terms.</p> <p>147-33.15. Vacancies.</p> <p>147-33.16. Expenses.</p> <p>147-33.17. Officers.</p> <p>147-33.18. Quorum; voting.</p> <p>147-33.19. Meetings.</p> <p>147-33.20. Staff.</p>	<p>Sec.</p> <p>147-33.21. Powers and duties.</p> <p style="text-align: center;">Article 4.</p> <p style="text-align: center;">Secretary of State.</p> <p>147-35. Salary of Secretary of State.</p> <p>147-45. Distribution of copies of State publications.</p> <p>147-54.3 to 147-54.7. [Reserved.]</p> <p style="text-align: center;">Article 4A.</p> <p style="text-align: center;">Constitutional Amendments Publication Commission.</p> <p>147-54.8. Constitutional Amendments Publication Commission.</p> <p>147-54.9. Officers; meetings; quorum.</p> <p>147-54.10. Powers.</p> <p style="text-align: center;">Article 5.</p> <p style="text-align: center;">Auditor.</p> <p>147-55. [Repealed.]</p> <p>147-56. [Repealed.]</p> <p>147-58. [Repealed.]</p> <p>147-62. [Recodified.]</p> <p>147-63, 147-64. [Recodified.]</p> <p style="text-align: center;">Article 5A.</p> <p style="text-align: center;">Auditor.</p> <p>147-64.1. Salary of State Auditor.</p> <p>147-64.2. Legislative policy and intent.</p> <p>147-64.3. Legislative and management control system.</p> <p>147-64.4. Definitions.</p> <p>147-64.5. Cooperation with Joint Legislative Commission on governmental operations and other governmental bodies.</p> <p>147-64.6. Duties and responsibilities.</p> <p>147-64.7. Authority.</p> <p>147-64.8. Independence.</p> <p>147-64.9. Rules and regulations.</p> <p>147-64.10. Powers of appointment.</p> <p>147-64.11. Review of office.</p> <p>147-64.12. Conflict of interest.</p> <p>147-64.13. Construction.</p> <p>147-64.14. Severability.</p> <p style="text-align: center;">Article 6.</p> <p style="text-align: center;">Treasurer.</p> <p>147-65. Salary of State Treasurer.</p> <p>147-68. To receive and disburse moneys; to make reports.</p> <p>147-69. Deposits of State funds in banks and savings and loan associations regulated.</p>
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Sec.
 147-69.2. Investments authorized for special funds held by State Treasurer.
 147-69.3. Administration of State Treasurer's investment programs.
 147-76. Liability for false entries in his books.
 147-78. Treasurer to select depositories.
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 147-85. Fiscal year.
 147-86.1. Pool account for local government unemployment compensation.
Article 7.
Secretary of Revenue.
 147-87. Secretary of Revenue; appointment; salary.

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-6. Expenses paid by warrants; statements filed.

All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn on the State Treasurer. The officer of State or head of any department thereof shall file an itemized statement of the salaries, bills for purchase of equipment and other expenses of his department, and warrants shall be drawn on the State Treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of State or head of any department thereof, as evidenced by statements so approved and filed. The State Treasurer is hereby authorized and directed to pay said warrants. (1919, c. 117, s. 2; C.S., s. 7630; 1983, c. 913, s. 44.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted "by the State Auditor" following "drawn" in the first sentence and rewrote the second sentence. The act also amended the section catchline.

ARTICLE 2A.

Annuities for State Employees.

§ 147-9.2. Definitions.

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

- (1) "Board" shall mean the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan established pursuant to Chapter 433 of the 1971 Session Laws and G.S. 143B-426.24.
- (1a) "Chief executive officer" shall mean the person or group of persons responsible for the administration of any department or agency of the State of North Carolina, or of a wholly owned institution or instrumentality thereof, or an agent of such chief executive officer duly authorized to enter into the contracts with State employees referred to in G.S. 147-9.3 and 147-9.4.
- (4) "Plan" shall mean the North Carolina Public Employee Deferred Compensation Plan. (1971, c. 433, s. 1; 1983, c. 559, s. 2.)

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

Effect of Amendments. — The 1983

amendment, effective June 17, 1983, redesignated former subdivision (1) as subdivision (1a), inserted present subdivision (1), and added subdivision (4).

§ 147-9.4. **Deferred Compensation Plan.**

Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, the chief executive officer of an employer, on behalf of the employer, may from time to time enter into a contract with an employee under which the employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before 1 January 1983, and is not constructively received by the employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

An employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the employee before his election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such necessary regulations and procedures as are adopted by the Board, and on forms prepared or approved by it. Notwithstanding any other provisions of law, the amount by which the salary of an employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 3; 1983, c. 559, s. 3.)

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, rewrote this section.

ARTICLE 3.

The Governor.

§ 147-11. (Effective until January 1, 1985) **Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.**

The salary of the Governor shall be sixty thousand seven hundred

sixty-eight dollars (\$60,768) 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 a warrant drawn on the State Treasurer. 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; 1983, c. 761, s. 194; c. 913, s. 45.)

Section Set Out Twice. — The section above is effective until Jan. 1, 1985. For this section as amended effective Jan. 1, 1985, see the following section, also numbered 147-11.

Editor's Note. — Session Laws 1983, c. 761, s. 259, is a severability clause.

Effect of Amendments. —

Session Laws 1983, c. 761, s. 194, effective July 1, 1983, substituted "sixty

thousand, seven hundred sixty-eight dollars (\$60,768)" for "fifty-seven thousand, eight hundred sixty-four dollars (\$57,864)".

Session Laws 1983, c. 913, s. 45, effective July 22, 1983, substituted "a warrant drawn on the State Treasurer" for "the State Treasurer on a warrant issued by the Auditor" in the third sentence.

§ 147-11. (Effective January 1, 1985) Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

The salary of the Governor shall be eighty-five thousand dollars (\$85,000) 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 a warrant drawn on the State Treasurer. 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; 1983, c. 761, ss. 194, 195; c. 913, s. 45.)

Section Set Out Twice. — The section above is effective Jan. 1, 1985. For this section as in effect until Jan. 1, 1985, see the preceding section, also numbered 147-11.

Editor's Note. — Session Laws 1983, c. 761, s. 259, is a severability clause.

Effect of Amendments. —

Session Laws 1983, c. 761, s. 194, effective July 1, 1983, substituted "sixty thousand, seven hundred sixty-eight dollars (\$60,768)" for "fifty-seven

thousand, eight hundred sixty-four dollars (\$57,864)".

Session Laws 1983, c. 913, s. 45, effective July 22, 1983, substituted "a warrant drawn on the State Treasurer" for "the State Treasurer on a warrant issued by the Auditor" in the third sentence.

Session Laws 1983, c. 761, s. 195, effective Jan. 1, 1985, substituted "eighty-five thousand dollars (\$85,000)" for "sixty thousand, seven hundred sixty-eight dollars (\$60,768)".

§ 147-12. Powers and duties of Governor.

In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

- (1) He is to supervise the official conduct of all executive and ministerial officers; and when he shall deem it advisable he shall visit all State institutions for the purpose of inquiring into the management and needs of the same.

(1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C.S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148; 1981 (Reg. Sess., 1982), c. 1191, ss. 3, 4, 68; 1983, c. 913, s. 46.)

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

Effect of Amendments. —

The 1983 amendment, effective July 22, 1983, deleted "and for the purpose of

paying the expenses of such visitation the Auditor is hereby directed to draw an order on the Treasurer in favor of the Governor to pay his expenses for each visitation" at the end of subdivision (1).

§ 147-15. Salary of private secretary.

The salary of the private secretary to the Governor shall be fixed by the Governor. (R.C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Code, ss. 1689, 3721; P.R. 1901, c. 405; 1903, c. 729; Rev., s. 2737; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; C.S., s. 3859; 1921, c. 227; 1929, c. 322, ss. 1, 2; 1945, c. 45; 1953, c. 675, s. 22; 1955, c. 910, s. 4; c. 1313, s. 8; 1961, c. 738, s. 1; 1983, c. 717, s. 88.)

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983

amendment, effective July 11, 1983, deleted "with the approval of the Advisory Budget Commission" at the end of the section.

§ 147-16. Records kept; certain original applications preserved.

The Governor shall cause to be kept the following records:

- (1) A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.
- (2) An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the Governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application. (1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; Code, ss. 3322, 3323; Rev., s. 5331; C.S., s. 7639; 1983, c. 913, s. 47.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted "which shall be paid upon the warrant of the Auditor" at the end of subdivision (2).

§ 147-16.2. Continuing effect of executive order.

(a) Any executive order of the Governor which creates a board, committee, council, or commission expires two years after the effective date of the executive order, unless the Governor specifies an expiration date in the order; provided however that any such executive order which was in effect on July 1, 1983, expires on June 30, 1985, unless the Governor specified a different expiration date in any such order.

(b) The Governor may extend any such executive order for additional periods of up to two years by doing so in writing before the expiration of the order. (1983, c. 733, s. 1.)

Editor's Note. — Session Laws 1983, c. 733, s. 2, makes this section effective upon ratification. The act was ratified July 13, 1983.

§ 147-26. To procure great seal of State; its description.

The Governor shall procure for the State a seal, which shall be called the great seal of the State of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half-fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of grain in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out.

The background on the seal shall contain a depiction of mountains running from left to right to the middle of the seal and an ocean running from right to left to the middle of the seal. A side view of a three-masted ship shall be located on the ocean and to the right of Plenty. The date "May 20, 1775" shall appear within the seal and across the top of the seal. The date "April 12, 1776" shall appear within the seal and across the bottom of the seal. The words "esse quam videri" shall appear at the bottom around the perimeter. The words "THE GREAT SEAL of the STATE of NORTH CAROLINA"

shall appear around the perimeter. No other words, figures or other embellishments shall appear on the seal.

It shall be the duty of the Governor to file in the office of Secretary of State an impression of the great seal, certified to under his hand and attested by the Secretary of State, which impression so certified the Secretary of State shall carefully preserve among the records of his office. (1868-9, c. 270, s. 35; 1883, c. 392; Code, ss. 3328, 3329; 1893, c. 145; Rev., s. 5339; C.S., s. 7646; 1971, c. 167, s. 1; 1983, c. 257, s. 1.)

Editor's Note. — Session Laws 1981, c. 257, s. 2, provides: "This act shall not invalidate any Seal presently on display or heretofore used."

Effect of Amendments. — The 1983 amendment, effective Jan. 1, 1984,

divided the former third sentence of the second paragraph into the present first through third sentences, inserting the language regarding the date April 12, 1776.

§ 147-31: Repealed by Session Laws 1983, c. 913, s. 48, effective July 22, 1983.

§ 147-33. Compensation and expenses of Lieutenant Governor.

The salary of the Lieutenant Governor shall be 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; 1983, c. 761, s. 211.)

Editor's Note. — Session Laws 1983, c. 761, s. 259, is a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, rewrote the first sentence, which read:

"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."

ARTICLE 3A.

Emergency War Powers of Governor.

§§ 147-33.7 to 147-33.11: Reserved for future codification purposes.

ARTICLE 3B.

North Carolina Housing Commission.

§ 147-33.12. Commission established.

There is established within the Office of the Governor the North Carolina Housing Commission. (1983, c. 778, s. 1.)

Editor's Note. — Session Laws 1983, c. 778, s. 4, makes this Article effective July 1, 1983.

Session Laws 1983, c. 778, s. 3, provides

that the expenses of the Commission shall be paid from nontax revenues in the Housing Finance Agency.

§ 147-33.13. Membership.

The North Carolina Housing Commission shall consist of 15 members as follows:

- (1) Five shall be appointed by the Governor;
- (2) Three shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
- (3) Three shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121;
- (4) The Secretary of Natural Resources and Community Development or a deputy secretary of the department designated by him shall serve ex officio;
- (5) The Secretary of Commerce or a deputy secretary of the department designated by him shall serve ex officio;
- (6) The State Treasurer or a deputy State treasurer designated by him shall serve ex officio;
- (7) The Chairman of the Board of Directors of the Housing Finance Agency or the executive director of the agency, if designated by him, shall serve ex officio. (1983, c. 778, s. 1.)

§ 147-33.14. Terms.

Of the five persons appointed under G.S. 147-33.13(1), two shall serve terms to expire June 30, 1985, and three shall serve terms to expire June 30, 1986. Of the three persons appointed under G.S. 147-33.13(2), one shall serve a term to expire June 30, 1985, and two shall serve terms to expire June 30, 1986. Of the three persons appointed under G.S. 147-33.13(3), one shall serve a term to expire June 30, 1985, and two shall serve terms to expire June 30, 1986. Subsequent terms shall be for three years. (1983, c. 778, s. 1.)

§ 147-33.15. Vacancies.

Vacancies in appointments by the Governor shall be filled by the Governor for the remainder of the unexpired term. Vacancies in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. (1983, c. 778, s. 1.)

§ 147-33.16. Expenses.

Members of the Commission shall receive per diem and necessary travel expenses in accordance with G.S. 138-5, except that persons in categories G.S. 147-33.13(4) through (6) shall be reimbursed in accordance with G.S. 138-6, and persons under G.S. 147-33.13(7) shall be reimbursed under G.S. 138-5 or 138-6, as appropriate. (1983, c. 778, s. 1.)

§ 147-33.17. Officers.

The Governor shall choose a chairman from among the membership of the Commission, but no ex officio member of the Commission may serve as chairman. The Commission shall elect from its membership a vice-chairman and shall elect a secretary. (1983, c. 778, s. 1.)

§ 147-33.18. Quorum; voting.

- (a) Eight members of the Commission shall constitute a quorum.
 (b) All members of the Commission have the right to vote on all issues before the Commission. (1983, c. 778, s. 1.)

§ 147-33.19. Meetings.

The initial meeting of the Commission shall be called by the chairman. Subsequent meetings shall be held upon the call of the chairman or upon the written request of five members. (1983, c. 778, s. 1.)

§ 147-33.20. Staff.

The Commission shall be administratively located in the Office of the Governor which shall provide necessary clerical equipment and administrative services to the Commission, provided the Commission shall be consulted with regard to hiring and discharging its own staff. (1983, c. 778, s. 1.)

§ 147-33.21. Powers and duties.

The Commission shall have the following powers and duties:

- (1) To oversee and update State housing policy, and develop and implement a State housing action plan.
- (2) To encourage communication, cooperation and consultation between State agencies in housing policy, and be available to mediate such conflict between State agencies.
- (3) To foster allocation of resources by State agencies with housing responsibilities that are consistent with the State housing policy and action plan.
- (4) To obtain necessary information from other State agencies concerning housing.
- (5) To submit to the Governor and the General Assembly a biennial report on the state of housing in North Carolina.
- (6) To promote cost efficiency and lower construction costs in housing while retaining quality construction.
- (7) To propose and review legislation relating to housing.
- (8) To adopt necessary rules and regulations to implement this Article. (1983, c. 778, s. 1.)

ARTICLE 4.*Secretary of State.***§ 147-35. Salary of Secretary of State.**

The salary of the Secretary of State shall be set by the General Assembly in the Budget Appropriation Act. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C.S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 14; 1977, c. 802, s. 42.7; 1983, c. 761, s. 212.)

Editor's Note. — Session Laws 1983, amendment, effective July 1, 1983, c. 761, s. 259, is a severability clause. rewrote this section.

Effect of Amendments. — The 1983

§ 147-45. Distribution of copies of State publications.

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
Public Education, Department of	1	0
Superintendent of Public Instruction	3	1
Controller	1	0
Division of Community Colleges	3	1
Regional Service Centers	1 ea.	0
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Natural Resources and Community Develop- ment, Department of	1	0
Division of Environmental Management	2	0
Board of Natural Resources and Community Development	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Human Resources, Department of	3	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health, Mental Retardation, and Substance Abuse Services,		

Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk — Senate	1	1
Principal Clerk — House	1	1
Reading Clerk — Senate	1	1
Reading Clerk — House	1	1
Sergeant at Arms — House	1	1
Sergeant at Arms — Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1

Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell College	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Atlantic Christian College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J. C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1

St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, c. 269, s. 1; cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38; 1975, c. 19, s. 59; c. 879, s. 46; 1975, 2nd

Sess., c. 983, s. 115; 1977, c. 379, s. 1; c. 679, s. 8; c. 771, s. 4; 1979, c. 358, s. 27; 1981, c. 412, ss. 4, 5; 1981 (Reg. Sess., 1982), c. 1348, s. 2; 1983, c. 842.)

Effect of Amendments. —

The 1983 amendment, effective July 20, 1983, added to the table of agencies and institutions receiving copies of Session Laws and Senate and House Journals the following institutions, together with the number of copies each is to receive:

Catawba College, Gardner-Webb College, Greensboro College, High Point College, Livingstone College, Mars Hill College, Meredith College, Methodist College, North Carolina Wesleyan College, Queens College, Sacred Heart College, St. Andrews Presbyterian College, Salem College, and Warren Wilson College.

§§ 147-54.3 to 147-54.7: Reserved for future codification purposes.

ARTICLE 4A.

Constitutional Amendments Publication Commission.

§ 147-54.8. Constitutional Amendments Publication Commission.

(a) There is established within the Department of the Secretary of State the Constitutional Amendments Publication Commission (hereinafter "Commission").

(b) The Commission shall consist of three members who shall serve ex officio as follows: The Secretary of State, the Attorney General, and the Legislative Services Officer. (1983, c. 844, s. 1.)

Editor's Note. — Session Laws 1983, c. 844, s. 4, makes this Article effective upon ratification. The act was ratified July 20, 1983.

Session Laws 1983, c. 844, s. 2, provides: "Nothing contained in this act shall

affect the validity of the voting on any proposed constitutional amendment, including the exercise of any powers by the Constitutional Amendments Publication Commission."

§ 147-54.9. Officers; meetings; quorum.

(a) The Secretary of State shall be the Chairman of the Commission.

(b) A quorum shall consist of all three members.

(c) The Commission shall meet on the call of the Chairman or any two members. (1983, c. 844, s. 1.)

§ 147-54.10. Powers.

At least 60 days before an election in which a proposed amendment to the Constitution, or a revised or new Constitution, is to be voted on, the Commission shall prepare an explanation of the amendment, revision, or new Constitution in simple and commonly used language.

The summary prepared by the Commission shall be printed by the Secretary of State, in a quantity determined by the Secretary of State. A copy shall be sent along with a news release to each county board of elections, and a copy shall be available to any registered voter or

representative of the print or broadcast media making request to the Secretary of State. The Secretary of State may make copies available in such additional manner as he may determine. (1983, c. 844, s. 1.)

ARTICLE 5.

Auditor.

§ 147-55: Repealed by Session Laws 1983, c. 913, s. 1, effective July 22, 1983.

Editor's Note. — Repealed § 147-55 Session Laws 1983, c. 761, s. 259, is a was amended by Session Laws 1983, c. 761, s. 213. severability clause.

§ 147-56: Repealed by Session Laws 1983, c. 913, s. 1, effective July 22, 1983.

§ 147-58: Repealed by Session Laws 1983, c. 913, s. 1, effective July 22, 1983.

§ 147-62: Recodified as § 143-3.3 by Session Laws 1983, c. 913, s. 49, effective July 22, 1983.

§§ 147-63, 147-64: Recodified as § 143-3.4 by Session Laws 1983, c. 913, ss. 50, 51, effective July 22, 1983.

ARTICLE 5A.

Auditor.

§ 147-64.1. Salary of State Auditor.

(a) The salary of the State Auditor shall be set by the General Assembly in the Budget Appropriation Act.

[(b) This section is effective only if G.S. 147-64.1 is enacted by the General Assembly in House Bill 517, 1983 Session.] (1983, c. 761, s. 214; c. 913, s. 2.)

Editor's Note. — Session Laws 1983, c. 913, s. 57, makes this Article effective upon ratification. The act was ratified July 22, 1983.

The reference in subsection (b) of this section to House Bill 517 of the 1983 Session refers to Session Laws 1983, c. 913, which enacted this Article and made other changes in the General Statutes.

Session Laws 1983, c. 761, s. 259, is a severability clause.

Effect of Amendments. — Session Laws 1983, c. 761, s. 214, rewrote this section. The amendment was made effective on the effective date of enactment of this section, and only effective if this section was enacted in H.B. 517 (Chapter 913). As stated in the Editor's note above, Chapter 913 became effective on July 22, 1983.

§ 147-64.2. Legislative policy and intent.

The General Assembly is ultimately responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, and shaping the administrative structure to perform the work of government throughout the State, and is held finally accountable for how the funds are spent and what is accomplished with them. The legislature should, therefore, provide the basic direction for audits of State agencies.

In the interest of reducing audit overlap and expense at all levels of government, the General Assembly and the Auditor should promote, to the extent possible, coordinated nonduplicating audits of public programs and activities of all governmental levels throughout the State.

It is the intent of this Article that all State agencies, and entities supported, partially or entirely, by public funds be subject to audit under the policy guidance of the Auditor. Such audits shall be made to assist in furnishing the General Assembly, the Governor, the executive departments and agencies of the State, the governing bodies and executive departments of the political subdivisions of the State, and the public in general with an independent evaluation of public program performance. (1983, c. 913, s. 2.)

§ 147-64.3. Legislative and management control system.

It is the intent of this Article that the State Auditor shall perform or coordinate all audit functions for State government. As appropriate, all State agencies are encouraged to establish, maintain, and use effective systems of management control. The adequacy of these control systems will be reviewed by the Auditor. The Auditor may, at his discretion, use such reviews to limit his audit activity or to suggest guidelines, make recommendations, and provide assistance where necessary within the resources available. (1983, c. 913, s. 2.)

§ 147-64.4. Definitions.

The words and phrases used in this Article have the following meanings:

- (1) "Audit". — An independent review or examination of government organizations, programs, activities, and functions. The purpose of an audit is to help ensure full accountability and assist government officials and employees in carrying out their responsibilities. The elements of such an audit are:
 - a. Financial and compliance: to determine whether financial operations are properly conducted, whether the financial reports of an audited entity are presented fairly, and whether the entity has complied with applicable laws and regulations; and,
 - b. Economy and efficiency: to determine whether the entity is managing or utilizing its resources (such as personnel and property) in an economical and efficient manner and the causes of any inefficiencies or uneconomical practices, including inadequacies in laws and regulations, management information systems, administrative policies and procedures, or organizational structures; and,

- c. Program results: to determine whether the desired results or benefits are being achieved, whether the objectives established by the General Assembly or other authorizing body are being met, and whether the agency has considered alternatives which might yield desired results at lower costs.
 - d. An audit may include all three elements or only one or two. It is not intended or desirable that every audit include all three. Economy and efficiency and program result audits should be selected when their use will meet the needs of expected users of audit results.
- (2) "Accounting system". — The total structure of records and procedures which discover, record, classify, and report information on the financial position and operating results of a governmental unit or any of its funds, balanced account groups, and organizational components.
 - (3) "Federal agency". — Any department, agency, or instrumentality of the federal government and any federally owned or controlled corporation.
 - (4) "State agency". — Any department, institution, board, commission, committee, division, bureau, officer, official or any other entity for which the State has oversight responsibility, including but not limited to, any university, mental or specialty hospital, community or technical college, technical institute, clerk of court. (1983, c. 913, s. 2.)

§ 147-64.5. Cooperation with Joint Legislative Commission on governmental operations and other governmental bodies.

(a) Joint Legislative Commission on Governmental Operations. — The Auditor shall furnish copies of any and all audits requested by the Joint Legislative Commission on Governmental Operations. Accordingly, the Auditor shall, upon request by the chairmen, appear before the Commission to present findings and answer questions concerning the results of these audits. The Commission is hereby authorized to use these audit findings in its inquiries concerning the operations of State agencies and is empowered to require agency heads to advise the Commission of actions taken or to be taken on any recommendations made in the report or explain the reasons for not taking action.

(b) Requests for Auditor Assistance. — Committees of the General Assembly, the Governor, and other State officials may make written requests that the Auditor undertake, to the extent deemed practicable and within the resources provided, a specific audit or investigation; provide technical assistance and advice; and provide recommendations on management systems, finance, accounting, auditing, and other areas of management interest.

(c) Cooperation with Other Governmental Bodies. — The Auditor shall cooperate, act, and function with other audit or evaluation organizations in the State, with appropriate councils or committees of other states, with governing bodies of the political subdivisions of the State, and with federal agencies in an effort to maximize the extent of intergovernmental audit coordination and thereby avoid unnecessary duplication and expense of audit effort. Nothing in this Article is intended nor shall it be construed as giving the Auditor

control over the internal auditors of any agency. (1983, c. 913, s. 2.)

§ 147-64.6. Duties and responsibilities.

(a) It is the policy of the General Assembly to provide for the auditing of State agencies by the impartial, independent State Auditor.

(b) The duties of the Auditor are independently to examine into and make findings of fact on whether State agencies:

- (1) Have established adequate operating and administrative procedures and practices; systems of accounting, reporting and auditing; and other necessary elements of legislative or management control.
- (2) Are providing financial and other reports which disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of such programs and operations.
- (3) Are promptly collecting, depositing, and properly accounting for all revenues and receipts arising from their activities.
- (4) Are conducting programs and activities and expending funds made available in a faithful, efficient, and economical manner in compliance with and in furtherance of applicable laws and regulations of the State, and, if applicable, federal law and regulation.
- (5) Are determining that the authorized activities or programs effectively serve the intent and purpose of the General Assembly and, if applicable, federal law and regulation.

(c) The Auditor shall be responsible for the following acts and activities:

- (1) Audits made or caused to be made by the Auditor shall be conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the United States General Accounting Office, or other professionally recognized accounting standards-setting bodies.
- (2) Financial and compliance audits may be made at the discretion of the Auditor without advance notice to the organization being audited. Audits of economy and efficiency and program results shall be discussed in advance with the prospective auditee unless an unannounced visit is essential to the audit.
- (3) The Auditor, on his own initiative and as often as he deems necessary, or as requested by the Governor or the General Assembly, shall, to the extent deemed practicable and consistent with his overall responsibility as contained in this act, make or cause to be made audits of all or any part of the activities of the State agencies.
- (4) The Auditor, at his own discretion, may, in selecting audit areas and in evaluating current audit activity, consider and utilize, in whole or in part, the relevant audit coverage and applicable reports of the audit staffs of the various State agencies, independent contractors, and federal agencies. He shall coordinate, to the extent deemed practicable, the auditing conducted within the State to meet the needs of all governmental bodies.

- (5) 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.

- (6) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions, or recommendations he deems appropriate concerning any aspect of such agency's activities and operations.
- (7) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited into the general fund as nontax revenue.
- (8) The Auditor shall examine as often as may be deemed necessary the accounts kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the General Assembly, with copy of such report to the Governor and Attorney General. In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.
- (9) The Auditor may examine the accounts and records of any bank or financial institution relating to transactions with the State Treasurer, or with any State agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.
- (10) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various State agencies which are supported partially or entirely from State funds. Such examinations

will be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient, or otherwise inadequate, he shall prescribe and supervise the installation of such changes, as in his judgment, appear necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful financial statements and reports. In all cases in which major changes in the accounting systems are made, he will be responsible for seeing that the new system is designed to accumulate information required for the preparation of budget reports and other financial reports. In instances in which State agencies wish to develop, upgrade, revise, or otherwise alter their accounting systems, said agencies shall request the Auditor to make a survey of their systems to ascertain if the change is desirable. To the extent that he deems necessary and within available resources, the Auditor shall review the proposed changes in the system which may include an examination of the system's justification, design, documentation, controls, applications and specifications, or any other related documentation he may determine necessary in formulating his opinion on the requested change. Equipment or related software to be used, in whole or in part, to operate the accounting system may be acquired only upon the prior written approval of the Auditor.

- (11) The Auditor shall transmit to the General Assembly annually a complete statement of the funds of the State, of its revenues and of the public expenditures during the preceding fiscal year, with copies of such statements furnished to the Governor and to such other persons as may be deemed advisable.

This Comprehensive Annual Financial Report shall be prepared in accordance with generally accepted principles of governmental accounting. Accordingly, each and every State agency is hereby required to furnish by September 1 of each year financial statements to the Auditor for all its funds prepared in accordance with generally accepted principles of governmental accounting and in the form required by the Auditor.

Furthermore, the Auditor shall, through appropriate tests, satisfy himself concerning the propriety of the data presented in said comprehensive report and express the appropriate auditor's opinion in accordance with generally accepted auditing standards.

- (12) The Auditor shall provide in a written statement to the Governor and Attorney General, and other appropriate officials, such facts as are in his possession which pertain to the apparent violation of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.
- (13) At the conclusion of an audit, the Auditor or his designated representative shall discuss the audit with the official whose office is subject to audit and submit necessary underlying facts developed for all findings and recommendations which may be included in the audit report. On audits of economy and efficiency and program results, the auditee's written

response shall be included in the final report if received within 30 days from receipt of the draft report.

- (14) The Auditor shall provide copies of each audit report to the General Assembly, the Governor, the Chief Executive Officer of each agency audited, and other persons as the Auditor deems appropriate. He shall also file a copy of the audit report in the Auditor's office, which will be a permanent public record; Provided, nothing in this subsection shall be construed as authorizing or permitting the publication of information whose disclosure is otherwise prohibited by law.
- (15) It is not the intent of the audit function, nor shall it be so construed, to infringe upon or deprive the General Assembly and the executive or judicial branches of State government of any rights, powers, or duties vested in or imposed upon them by statute or the Constitution.

(d) Reports and Work Papers. — The Auditor shall maintain for 10 years a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under his authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of his office shall be retained according to an agreement between the Auditor and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the Auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them.

Except as provided above, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential. (1983, c. 913, s. 2.)

Editor's Note. — The reference in this section to "this Act" refers to Chapter 913, which enacted this Article and made other changes in the General Statutes.

§ 147-64.7. Authority.

(a) Access to Persons and Records. —

- (1) The Auditor and his authorized representatives shall have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, investments, and any other documentation of any State agency. The review of State tax returns shall be limited to matters of official business and the Auditor's report shall not violate the confidentiality provisions of tax laws.
- (2) The Auditor and his duly authorized representatives shall have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation which is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to:
- a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.
 - b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State. In order

to determine that payments to providers of social and medical services are legal and proper, the providers of such services will give the Auditor, or his authorized representatives, access to the records of recipients who receive such services.

- (3) The Auditor shall, for the purpose of examination and audit authorized by this act, have the authority, and will be provided ready access, to examine and inspect all property, equipment, and facilities in the possession of any State agency or any individual, private corporation, institution, association, board, or other organization which were furnished or otherwise provided through grant, contract, or any other type of funding by the State of North Carolina, or the federal government.
 - (4) All contracts or grants entered into by State agencies or political subdivisions shall include, as a necessary part, a clause providing access as intended by this section.
 - (5) The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as they relate to transactions with any agency of the State.
- (b) Experts; Contracted Audits. —
- (1) The Auditor may obtain the services of independent public accountants, qualified management consultants, or other professional persons and experts as he deems necessary or desirable to carry out the duties and functions assigned under the act.
 - (2) No State agency may enter into any contract for auditing services which may impact on the State's comprehensive annual financial report without consultation with, and the prior written approval of, the Auditor, except in instances where audits are called for by the Governor under G.S. 143-3 and he shall so notify the Auditor. The Auditor shall prescribe policy and establish guidelines containing appropriate criteria for selection and use of independent public accountants, qualified management consultants, or other professional persons by State agencies and governing bodies to perform all or part of the audit function.
- (c) Authority to Administer Oaths, Subpoena Witnesses and Records, and Take Depositions. —
- (1) For the purposes of this Article the Auditor or his authorized representative shall have the power to subpoena witnesses, to take testimony under oath, to cause the deposition of witnesses (residing within or without the State) to be taken in a manner prescribed by law, and to assemble records and documents, by subpoena or otherwise. The subpoena power granted by this section may be exercised only at the specific written direction of the Auditor or his chief deputy.
 - (2) In case any person shall refuse to obey a subpoena, the Auditor shall invoke the aid of any North Carolina court within the jurisdiction of which the investigation is carried on or where such person may be, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Auditor or officers designated by the Auditor, there to produce records, if so ordered, or to

give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. (1983, c. 913, s. 2.)

Editor's Note. — The reference in this section to "this Act" refers to Chapter 913, which enacted this Article and made other changes in the General Statutes.

§ 147-64.8. Independence.

The Auditor shall maintain independence in the performance of his authorized duties. Except as otherwise provided by law, neither the General Assembly nor the Governor nor any department or agency of the executive or judicial branches of State government shall have the authority to limit the scope, direction, or report of an audit undertaken by the Auditor. No State regulatory agency shall by any fiscal or administrative requirements attempt to limit the scope, direction, or report of an audit undertaken by the Auditor. (1983, c. 913, s. 2.)

§ 147-64.9. Rules and regulations.

The Auditor shall make and enforce such reasonable rules and regulations as are necessary for the operation of his office. The Auditor shall install an adequate accounting system for his office and shall keep or cause to be kept a complete, accurate, and adequate record of all fiscal transactions of his office. (1983, c. 913, s. 2.)

§ 147-64.10. Powers of appointment.

The Auditor may, subject to the provisions of the State Personnel Act, appoint all employees necessary to perform the duties and functions assigned to him by the provisions of this Article.

Except where otherwise provided in this Article, all powers and duties vested in the Auditor may be delegated by him to deputies, assistants, employees, or other auditors, consultants, professionals, and experts, whose services are obtained in accordance with the provisions of this act; but the Auditor shall retain responsibility for the powers and duties so delegated. (1983, c. 913, s. 2.)

§ 147-64.11. Review of office.

The Auditor may, on his own initiative and as often as he deems necessary, or as requested by the General Assembly, cause to be made a quality review audit of the operations of his office. Such a "peer review" shall be conducted in accordance with standards prescribed by the accounting profession. Upon the recommendation of the Advisory Budget Commission, the Joint Legislative Commission on Governmental Operations may contract with an independent public accountant, qualified management consultant, or other professional person to conduct a financial and compliance, economy and efficiency, and program result audit of the State Auditor. (1983, c. 913, s. 2.)

§ 147-64.12. Conflict of interest.

(a) To preserve the independence and objectivity of the audit function, the Auditor and his employees may not, unless otherwise expressly authorized by statute, serve in any capacity on an administrative board, commission, or agency of government of a political subdivision of the State or any other organization that, under the provisions of this act, they have the responsibility or authority to audit. Nor shall they have a material, direct or indirect financial, or other economic interest in the transactions of any State agency.

(b) The Auditor shall not conduct an audit on a program or activity for which he had management responsibility or in which he has been employed during the preceding two years. The General Assembly shall otherwise provide for the necessary audit of programs and activities within the meaning of this subsection. (1983, c. 913, s. 2.)

§ 147-64.13. Construction.

This Article shall be construed liberally in the aid of its declared purpose. It is the intent of this Article that the establishment of the Office of the Auditor and the duties, powers, qualifications, and purposes herein specified shall take precedence over any conflicting part or application of any other law. (1983, c. 913, s. 2.)

§ 147-64.14. Severability.

If any provision of this Article or the application thereof to any person, State agency, political subdivision, or circumstance is held invalid, such invalidation shall not affect other provisions or applications of this Article which can be given effect without the invalid provision of application, and to this end the provisions of this Article are declared severable. (1983, c. 913, s. 2.)

ARTICLE 6.

Treasurer.

§ 147-65. Salary of State Treasurer.

The salary of the State Treasurer shall be as established in the Budget Appropriation Act. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C.S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 16; 1977, c. 802, s. 42.9; 1983, c. 761, s. 215.)

Editor's Note. — Session Laws 1983, c. 761, s. 259, is a severability clause. amendment, effective July 1, 1983, rewrote this section.

Effect of Amendments. — The 1983

§ 147-68. To receive and disburse moneys; to make reports.

(a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer.

(b) No moneys shall be paid out of the treasury except on warrant unless there is a legislative appropriation or authority to pay the same.

(1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C.S., s. 7682; 1955, c. 577; 1957, c. 269, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 65; 1983, c. 913, s. 52.)

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

Effect of Amendments. —

The 1983 amendment, effective July 22, 1983, deleted “by the State Disbursing Officer or the State Auditor or the State

Treasurer in the lawful exercise of their duties and responsibilities” from the end of subsection (a) and deleted “of the State Disbursing Officer or the State Auditor or the State Treasurer, and” following “except on warrant” in subsection (b).

§ 147-69. Deposits of State funds in banks and savings and loan associations regulated.

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which he may deposit or cause to be deposited any of the public funds, and such accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing his official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing his signature to warrants, checks or any other instrument he is required by law to sign. No bank or savings and loan association shall make any charge for exchange or for the collection of any warrant drawn on the Treasurer or for the transmission of any funds which may come into the hands of the State Treasurer, or any other State department, agency, bureau or commission; provided, that banks and savings and loan associations organized under the laws of the State of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the Commissioner of Revenue the proceeds of collections of revenue, not over twenty cents (20¢) for each check in the amount of not over one thousand dollars (\$1,000), and for each check for an amount in excess of one thousand dollars (\$1,000), such banks and savings and loan associations may charge not over twenty cents (20¢) plus one-tenth of one percent (1/10 of 1%) of the amount of such check in excess of one thousand dollars (\$1,000). The Commissioner of Banks and the bank examiners, and the Administrator of the Savings and Loan Division, and savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making

deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for such deposit. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C.S., s. 7684; 1931, c. 127, s. 1; c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2; 1977, c. 401, s. 1; 1983, c. 158, s. 4.)

Effect of Amendments. — The 1983 amendment, effective April 8, 1983, rewrote this section so as to include references to savings and loan associations.

§ 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 and Rescue Workers' 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 Administra-

- tion on real estate located within the State of North Carolina;
- (5a) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(6), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars (\$100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems.
- (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 and Rescue Workers' 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 or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system, but such registration shall not be required of the following stocks:
 1. The common stock of a bank or bank holding company 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 5-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 including securities convertible into common 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;

4. Up to five per cent (5%) of the limits authorized in subdivision h. may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars (\$50,000,000).
- i. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(1979, c. 467, s. 2; 1983, c. 702, ss. 1-9.)

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

Effect of Amendments. — The 1983 amendment, effective July 7, 1983, inserted "and Rescue Workers'" in subdivision (a)(8), added subdivision (b)(5a), inserted "and Rescue Workers'" following "Firemen's" in the introductory language of subdivision (b)(6), inserted "or quoted through the National Association of Securities Dealers' Automated

Quotations (NASDAQ) system" in the introductory language of subdivision (b)(6)c, inserted "or bank holding company" in subdivision (b)(6)c.1, substituted "5-year period" for "10-year period" in subdivision (b)(6)f, inserted "including securities convertible into common stocks" following "stocks" in subdivision (b)(6)h, added a new subparagraph 4 to subdivision (b)(6)h, and added a new subdivision i to subdivision (b)(6).

§ 147-69.3. Administration of State Treasurer's investment programs.

(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, provided that any occupational licensing board as defined in G.S. 93B-1 may participate in one of the investment programs established pursuant to this section regardless of whether or not the funds were required by law to be deposited with and invested by the State Treasurer. 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. Upon request from any depositor eligible under this subsection, the State Treasurer may authorize moneys invested pursuant to this subsection to be withdrawn by warrant on the State Treasurer.

(1979, c. 467, s. 3; 1981, c. 445, ss. 4, 5; 1983, c. 515, s. 1; c. 702, s. 10.)

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

Effect of Amendments. —

The first 1983 amendment, effective from and after July 1, 1983, added the

proviso at the end of the first sentence of subsection (b).

The second 1983 amendment, effective July 7, 1983, added the last sentence to subsection (b).

§ 147-76. Liability for false entries in his books.

If the Treasurer of the State shall wittingly or falsely make, or cause to be made, any false entry or charge in any book by him as Treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the Governor, the General Assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with intent, in any of said instances, to defraud the State or any person, such Treasurer shall be guilty of a misdemeanor, and fined, at the discretion of the court, not exceeding three thousand dollars (\$3,000), and imprisoned not exceeding three years. (R.C., c. 34, s. 68; Code, s. 1119; Rev., s. 3606; C.S., s. 7691; 1983, c. 913, s. 53.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted “with the Auditor” following “required to make.”

§ 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, savings and loan association or associations, or trust company as an official depository of the State. (1925, c. 128, s. 2; 1979, c. 637, s. 4; 1983, c. 158, s. 5.)

Effect of Amendments. — The 1983 amendment, effective April 8, 1983, inserted “savings and loan association or associations.”

§ 147-84. Refund of excess payments.

Whenever taxes or other receipts of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State treasury in excess of the amount found legally due the State, said excess amount shall be refunded to the person entitled thereto. (1925, c. 128, s. 7; 1983, c. 913, s. 54.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, rewrote this section, which formerly provided for the prescribing and furnishing of forms, daily reports, and refund of excess payments.

§ 147-85. Fiscal year.

The fiscal year of the State government shall annually close on the thirtieth day of June. (1868-9, c. 270, s. 77; 1883, c. 60; Code, s. 3360; 1885, c. 334; 1905, c. 430; Rev., s. 5378; C.S., s. 7692; 1921, c. 229; Ex. Sess. 1921, c. 7; 1925, c. 89, s. 21; 1983, c. 913, s. 55.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted the second sentence, which read “The accounts of the Treasurer, the Auditor and the charitable and penal institutions of the State shall be annually closed on that date.”

§ 147-86.1. Pool account for local government unemployment compensation.

(d) The Director of the Budget shall be authorized to transfer from the interest earned on the pool account, to the State Treasurer's departmental budget, such funds as may be necessary to defray the Treasurer's cost of administering the pool account. (1977, c. 1124; 1983, c. 717, s. 89.)

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

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, substituted "Director of the Budget" for "Advisory Budget Commission" in subsection (d).

ARTICLE 7.

Secretary of Revenue.

§ 147-87. Secretary of Revenue; appointment; salary.

A Secretary of Revenue shall be appointed by the Governor on January 1, 1933, and quadrennially thereafter. The term of office of the Secretary shall be four years and until his successor is appointed and qualified. His salary shall be fixed by the General Assembly in the Budget Appropriation Act. (1921, c. 40, ss. 2, 6; 1929, c. 232; 1973, c. 476, s. 193; 1983, c. 717, s. 90.)

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, sub-

stituted "General Assembly in the Budget Appropriation Act" for "the Governor, with the approval of the Advisory Budget Commission."

Chapter 148.
State Prison System.

<p style="text-align: center;">Article 1.</p> <p style="text-align: center;">Organization and Management.</p> <p>Sec.</p> <p>148-4.1. Release of inmates.</p> <p style="text-align: center;">Article 2.</p> <p style="text-align: center;">Prison Regulations.</p> <p>148-11. Authority to make regulations.</p> <p>148-13. Regulations as to custody grades, privileges, gain time credit, etc.</p> <p>148-18.1. Confiscation of unauthorized articles.</p> <p>148-22. Treatment programs.</p> <p style="text-align: center;">Article 3.</p> <p style="text-align: center;">Labor of Prisoners.</p> <p>148-26.1. Definitions.</p> <p>148-26.2 to 148-26.4. [Repealed.]</p> <p>148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return</p>	<p>Sec.</p>	<p>to custody of Department of Correction.</p> <p style="text-align: center;">Article 3B.</p> <p style="text-align: center;">Facilities and Programs for Youthful Offenders.</p> <p>148-49.11. Definitions.</p> <p>148-49.12. Treatment of youthful offenders.</p> <p>148-49.14. Sentencing committed youthful offenders.</p> <p style="text-align: center;">Article 5.</p> <p style="text-align: center;">Farming Out Convicts.</p> <p>148-70. Management and care of inmates; prison industries; disposition of products of inmate labor.</p> <p style="text-align: center;">Article 12.</p> <p style="text-align: center;">Interstate Corrections Compact.</p> <p>148-121. Proceedings to be open; all documents public records; exception.</p>
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ARTICLE 1.

Organization and Management.

§ 148-4.1. Release of inmates.

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

(b) Except as provided in subsection (c), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section six months prior to the discharge date otherwise applicable, and three months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2. (1983, c. 557, s. 1.)

Editor's Note. — Session Laws 1983, c. 557, s. 4, makes this section effective July 1, 1983.

ARTICLE 2.

*Prison Regulations.***§ 148-11. Authority to make regulations.**

The Secretary shall adopt rules for the government of the State prison system and shall file and publish such rules in accordance with the provisions of Article 5 of Chapter 150A. In the case of temporary rules, such rules shall become effective immediately upon adoption by the Secretary and shall be filed in accordance with G.S. 150A-13 within two working days of adoption. The Secretary shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C.S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4; 1967, c. 996, ss. 14, 15; 1973, c. 1262, s. 10; 1983, c. 147, s. 1.)

Effect of Amendments. — The 1983 amendment, effective 60 days after ratification, substituted the present first and second sentences for the former first sentence of this section, which read “The Secretary shall propose rules and regu-

lations for the government of the State prison system, which shall become effective when approved by the Department of Correction.” The act was ratified April 7, 1983.

CASE NOTES

Fair Sentencing Act. — Although the principal provisions of the Fair Sentencing Act are codified in Chapter 15A, Article 81A of the General Statutes, the act resulted in revisions to other portions of the general statutes. See, e.g., Chapter 14, Articles 1, 2, 2A, 33; Chapter 15A, Articles 58, 81A, 82, 83, 85, 85A, 89,

91; Chapter 148, Article 2, and Chapter 162, Article 4. *State v. Ahearn*, — N.C. —, 300 S.E.2d 689 (1983).

For discussion of the historical background, policies, purposes, and implementation of the new Fair Sentencing Act, see *State v. Ahearn*, — N.C. —, 300 S.E.2d 689 (1983).

§ 148-13. Regulations as to custody grades, privileges, gain time credit, etc.

(f) The provisions of this section do not apply to persons sentenced to a term of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a). (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; 1983, c. 560, s. 3.)

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

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, added subsection (f).

§ 148-18.1. Confiscation of unauthorized articles.

Any item of personal property which a prisoner in any correctional facility is prohibited from possessing by State law or which is not authorized by rules adopted by the Secretary of Correction shall, when found in the possession of a prisoner, be confiscated and

destroyed or otherwise disposed of as the Secretary may direct. Any unauthorized funds confiscated under this section or funds from the sale of confiscated property shall be deposited to Inmate Welfare Fund maintained by the Department of Correction. (1983, c. 289.)

Editor's Note. — Session Laws 1983, c. 289, s. 2, makes this section effective upon ratification. The act was ratified May 9, 1983.

§ 148-22. Treatment programs.

(a) The general policies, rules and regulations of the Department of Correction shall provide for humane treatment of prisoners and for programs to effect their correction and return to the community as promptly as practicable. Visits and correspondence between prisoners and approved friends shall be authorized under reasonable conditions, and family members shall be permitted and encouraged to maintain close contact with the prisoners unless such contacts prove to be hurtful. Casework, counseling, and psychotherapy services provided to prisoners may be extended to include members of the prisoner's family if practicable and necessary to achieve the purposes of such programs. Education, library, recreation, and vocational training programs shall be developed so as to coordinate with corresponding services and opportunities which will be available to the prisoner when he is released. Programs may be established for the treatment and training of mentally retarded prisoners and other special groups. These programs may be operated in segregated sections of facilities housing other prisoners or in separate facilities.

(1917, c. 286, s. 15; C.S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5; 1975, c. 679, ss. 1, 2; 1977, c. 297; 1983, c. 376.)

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

Effect of Amendments. — The 1983 amendment, effective May 23, 1983, substituted the present last two sentences of subsection (a) for a former final sentence,

which read, "Programs for the treatment and training of mentally retarded prisoners and other special groups shall be established in segregated sections of facilities housing other prisoners or in separate facilities when this is practicable."

ARTICLE 3.

Labor of Prisoners.

§ 148-26.1. Definitions.

The following definitions apply:

(1) to (3) Repealed by Session Laws 1983, c. 709, s. 1, effective July 1, 1983.

(1975, c. 682, s. 3; 1983, c. 709, s. 1.)

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

Effect of Amendments. — The 1983 amendment, effective July 1, 1983,

deleted subdivisions (1), (2), and (3), which defined "area administrator," "area commission," and "area command," respectively.

§§ 148-26.2 to 148-26.4: Repealed by Session Laws 1983, c. 709, s. 1, effective July 1, 1983.

§ 148-33.2. Restitution by prisoners with work-release privileges.

CASE NOTES

Applied in *State v. Simpson*, — N.C. App. —, 300 S.E.2d 412 (1983).

§ 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.

(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;
- (4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b); or
- (5) Any person previously convicted of escaping or attempting to escape from the State prison system.

(e) Repealed by Session Laws 1983, c. 465, s. 5, effective October 1, 1983.

- (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, 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 ordered 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; 1983, c. 465, ss. 1-5.)

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

Effect of Amendments. —

The 1983 amendment, effective Oct. 1, 1983, in subsection (b) deleted “or” at the end of subdivision (3), inserted “or” at the end of subdivision (4), and added subdivision (5); deleted subsection (e), which read “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”; and in the first sentence of subdivision (g)(1) deleted “or any youthful offender granted relief under G.S. 148-49.1 et seq.” preceding “who shall fail to return.”

CASE NOTES

Proof of Lawfulness of Custody and Type of Offense, etc. —

When a defendant is charged with escape from the State prison system under this section the State is entitled to introduce evidence of any and all convictions for which defendant was in custody at the time of escape. *State v. Hammond*, — N.C. —, 300 S.E.2d 361 (1983).

Before a defendant can be convicted of felonious escape, the State must prove beyond a reasonable doubt that at the time of his escape defendant was serving a sentence of incarceration imposed for the conviction of a felony. *State v. Hammond*, — N.C. —, 300 S.E.2d 361 (1983).

When a defendant is charged with escape under this statute, the State has the burden of proving that defendant was in the legal custody of the Department of Correction at the time of the escape. Testimony concerning the kind of crimes for which defendant was sentenced to prison is relevant and competent evidence which

the State may introduce in order to meet its burden of proof on this issue. *State v. Hammond*, — N.C. —, 300 S.E.2d 361 (1983).

The defense of duress or escaping against his will, will not be available to a prisoner charged with escape except where such defendant meets all of the following five requirements. (1) The prisoner is faced with a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future; (2) there is no time for a complaint to the authorities or there exists a history of futile complaints which make any result from such complaints illusory; (3) there is no time or opportunity to resort to courts; (4) there is no evidence of force or violence used towards prison personnel or other “innocent” persons in the escape; and (5) the prisoner immediately reports to the proper authorities when he has attained a position of safety from the immediate threat. *State v. Watts*, 60 N.C. App. 141, 298 S.E.2d 436 (1982).

ARTICLE 3B.

*Facilities and Programs for Youthful Offenders.***§ 148-49.11. Definitions.**

As used in this Article, a “youthful offender” is a person under twenty-one (21) years of age in the custody of the Secretary of Correction or a person under twenty-five (25) years of age who is in the custody of the Secretary of Correction but who has not been convicted of a violent or a Class A, B, C, D, E, F, or G felony. A “committed youthful offender” is a youthful offender who shall have the benefit of early release under the provisions of G.S. 148-49.15. All rights accrued by persons prior to October 1, 1977, shall not be affected. (1949, c. 297, s. 2; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2; 1983, c. 531, s. 1.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to persons convicted of crimes committed on or after that date, inserted “or a person under twenty-five (25) years

of age who is in the custody of the Secretary of Correction but who has not been convicted of a violent or a Class A, B, C, D, E, F, or G felony” at the end of the first sentence.

§ 148-49.12. Treatment of youthful offenders.

(a) To the extent practicable in light of the needs of the youthful offenders and of the needs and resources of the prison system, the Secretary of Correction shall house youthful offenders under twenty-one (21) years of age in facilities separate from prisoners more than twenty-one (21) years of age. Those youthful offenders more than twenty-one (21) years of age shall be housed in accordance with policies established by the Secretary of Correction. In any case where the program needs of a youthful offender or the resources of the Department of Correction prohibit such separate housing, the youthful offender may be assigned to any prison facility pursuant to G.S. 148-4 and G.S. 148-36 as the Secretary of Correction shall deem appropriate. Facilities designated for the housing of youthful offenders shall be, to the extent feasible, adapted to the needs and treatment of youthful offenders. The Secretary shall endeavor to provide personnel specially qualified by training, experience, and personality for treatment of youthful offenders.

(1967, c. 996, s. 10; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 732, s. 2; 1983, c. 531, s. 2.)

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

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to persons convicted of crimes

committed on or after that date, inserted “under twenty-one (21) years of age” and substituted “more than twenty-one (21) years” for “over 21 years” in the first sentence of subsection (a) and inserted the second sentence of that subdivision.

§ 148-49.14. Sentencing committed youthful offenders.

As an alternative to a sentence of imprisonment as is otherwise provided by law, when a person under 21 years of age is convicted of an offense punishable by imprisonment and the court does not suspend the imposition or execution of sentence and place him on probation, the court may sentence such person to the custody of the Secretary of Correction for treatment and supervision as a committed youthful offender. When a person under twenty-five (25) years of age is convicted of a crime punishable by imprisonment but which is not a Class A, B, C, D, E, F, or G felony, or a violent crime, and the court does not suspend the imposition or execution of sentence and place him on probation, the court may sentence such a person to the custody of the Secretary of Correction as a committed youthful offender. At the time of commitment the court shall fix a maximum term not to exceed the limit otherwise prescribed by law for the offense of which the person is convicted or 20 years, whichever is less. When the maximum permitted penalty for the offense is imprisonment for one year or longer, the maximum term imposed shall not be for less than one year. If the court shall find that a person under 21 years of age should not obtain the benefit of release under G.S. 148-49.15, it shall make such "no benefit" finding on the record. Whenever the court shall suspend the imposition or execution of sentence and place a person on probation, the court shall not order commitment as a committed youthful offender; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time commit the person, if he is still under 25 years of age, to the custody of the Secretary of Correction as a committed youthful offender. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2; 1983, c. 531, s. 3.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to persons convicted of crimes committed on or after that date, inserted

the present second sentence and in the last sentence substituted "twenty-five (25)" for "twenty-one (21)."

CASE NOTES

But No Specific Language, etc. — In accord with 1st paragraph in bound

volume. See *State v. Abee*, 60 N.C. App. 99, 298 S.E.2d 184 (1982).

ARTICLE 5.

Farming Out Convicts.

§ 148-70. Management and care of inmates; prison industries; disposition of products of inmate labor.

The State Department of Correction in all contracts for labor shall provide for feeding and clothing the inmates and shall maintain, control and guard the quarters in which the inmates live during the time of the contracts; and the Department shall provide for the guarding and working of such inmates under its sole supervision and control. The Department may make such contracts for the hire of the

inmates confined in the State prison as may in its discretion be proper. In accordance with the provisions of Article 11 of Chapter 66 of the General Statutes, the Department may use the labor of inmates confined in the State prison in work on farms and manufacturing, either within or without the State prison. The Department may dispose of the products of the labor of the inmates, either in farming or in manufacturing or in other industry at the State prison system, to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State. Provided however, no manufacturing or other industry shall be established, supervised or controlled by the Department unless specifically approved by the Governor pursuant to G.S. 66-58(f).

All departments, institutions and agencies of this State which are supported in whole or in part by the State shall give preference to Department of Correction products in purchasing articles and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction, and no article or commodity available from the Department of Correction shall be purchased by any such State department, institution, or agency from any other source without permission of the board of award provided for in G.S. 143-52, unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the board of award, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of Article 3 of Chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Department of Correction, but the Department of Correction shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the board of award or with competitive bids which the board of award may in its discretion require, taking into consideration the best interest of the State as a whole. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C.S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2; 1967, c. 996, s. 13; 1975, c. 730, s. 1; 1983, c. 717, s. 14.)

Editor's Note. —

Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983

amendment, effective July 11, 1983, substituted "Governor" for "Advisory Budget Commission" in the last sentence of the first paragraph.

ARTICLE 12.

*Interstate Corrections Compact.***§ 148-121. Proceedings to be open; all documents public records; exception.**

(a) Except as provided in subsection (c) of this section, at least 30 days before a transfer of a North Carolina inmate to another state system pursuant to this Article is approved, the Secretary of Correction shall give notice that the transfer is being considered. The Secretary shall give notice of the proposed transfer by:

- (1) Notifying the district attorney of the district where the prisoner was convicted, the judge who presided at the prisoner's trial, the law-enforcement agency that arrested the prisoner, and the victim of the prisoner's crime;
- (2) Posting notice at the courthouse in the county in which the prisoner was convicted; and
- (3) Notifying any other person who has made a written request to receive notice of a transfer of the prisoner.

(b) Except as provided in subsection (c) of this section, all written comments regarding a transfer are public records under General Statutes Chapter 132.

(c) If, in the discretion of the Secretary, such notice or disclosure requirements provided for in this section would jeopardize the safety of persons or property, the provisions of this section do not apply. (1983, c. 874.)

Editor's Note. — Session Laws 1983, c. 874, s. 2, makes this section effective upon ratification. The act was ratified July 20, 1983.

Chapter 150A.

Administrative Procedure Act.

Article 1.	Sec.	Article 5.
General Provisions.		Publication of Administrative Rules.
Sec.		150A-58. Short title and definition.
150A-1. Scope and policy.	150A-50. Review by court without jury on the record.	150A-59. Filing of rules and executive orders.
150A-2. Definitions.	150A-51. Scope of review; power of court in disposing of case.	150A-60. Form of rules.
Article 2.		150A-63. Publication of executive orders and rules.
Rule Making.		150A-63.1. Administrative Rules Review Committee and Governor's Administrative Rules Review Commission reports.
150A-10. [Repealed.]		
150A-11. Special requirements.		
150A-12. Procedure for adoption of rules.		
150A-13. Temporary rules.		
150A-14. Adoption by reference.		
Article 4.		
Judicial Review.		
150A-46.1. Review de nova.		
150A-47. Record filed by agency with clerk of superior court;		

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 Governor's Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board, and the Utilities Commission. The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150A-13 which shall apply. 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.

(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; 1983, c. 147, s. 2; c. 927, s. 13.)

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

Effect of Amendments. —

The first 1983 amendment, effective 60

days after ratification, substituted the present second and third sentences of the first paragraph of subsection (a) for the former second sentence thereof, which read, "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." The act was ratified Apr. 7, 1983.

The second 1983 amendment, effective Nov. 1, 1983, inserted "The Governor's Administrative Rules Review Commission" in the present second sentence of subsection (a).

CASE NOTES

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insur-

ance rate case, see *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 845 (1983).

§ 150A-2. Definitions.

As used in this Chapter,

(8a) "Rule" means each agency regulation, standard or statement of general applicability that implements or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

- a. Statements concerning only the internal management of an agency and not affecting the private rights or procedures available to the public. The term "rule", however, includes qualification for employment of any agency.
- b. Declaratory rulings issued pursuant to G.S. 150A-17;
- c. Intra-agency memoranda, except those to agency staff which implement or prescribe law or policy;
- d. Statements of policy or interpretations that are made in the decision of a contested case;
- e. Policies, if communicated to the public by use of signs or symbols, concerning
 - (i) the use or creation of public roads and bridges;
 - (ii) the areas of public facilities and times when public facilities are open to the public; or
 - (iii) safety in use of public facilities.
- f. Interpretative rules and general statements of policy of the agency; or
- g. Orders establishing or fixing rates or tariffs.

(1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1.)

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

Effect of Amendments. — The 1983 amendment, effective Jan. 1, 1984, added subdivision (8a).

CASE NOTES

Standard on Review of City's Special Zoning Request Decisions. — Although the North Carolina Administrative Procedure Act provides judicial review only for agency decisions and exempts cities and

other local municipalities, a similar standard of review is appropriate to review city council special zoning request decisions. *Jennewein v. City Council*, — N.C. App. —, 302 S.E.2d 7 (1983).

ARTICLE 2.

Rule Making.

§ 150A-9. Minimum procedural requirements.

Editor's Note. — Session Laws 1983, c. 883, s. 1, provides: "All rules adopted under the provisions of Article 2 of Chapter 150A of the General Statutes which are in effect on January 1, 1985, are repealed effective July 1, 1985, unless approved by the 1985 Session of the General Assembly. The approval of rules

by the General Assembly shall not be deemed to enact the approved rules or to prohibit their subsequent amendment, repeal, or recodification by the agency."

Session Laws 1983, c. 883, s. 3, makes the act effective upon ratification. The act was ratified July 20, 1983.

§ 150A-10: Repealed by Session Laws 1983, c. 641, s. 2, effective January 1, 1984.

§ 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). For purposes of this subdivision, "State funds" shall have the same meaning as defined in G.S. 143-1 and shall also apply to the funding of all occupational licensing boards included under G.S. 150A-1. Any occupational licensing board that has proposed rules but has not filed the rules prior to the effective date of this section shall submit the rules to the Director of the Budget for approval. (1973, c. 1331, s.1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185.)

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

Editor's Note. — Session Laws 1983, c. 761, s. 259, is a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, added the last two sentences to subdivision (4).

§ 150A-12. Procedure for adoption of rules.

(b) The agency shall transmit copies of the notice to the Attorney General, the Governor, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7.)

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

Effect of Amendments. — Session Laws 1983, c. 927, s. 3, effective Aug. 1, 1983, deleted a reference to the Director

of Research of the Legislative Services Commission in the first sentence of subsection (b).

Session Laws 1983, c. 927, s. 7, effective Nov. 1, 1983, inserted “the Governor” in the first sentence of subsection (b).

§ 150A-13. Temporary rules.

(a) If an agency which is not exempted from the notice and hearing requirements of this Article by G.S. 150A-1 determines in writing that:

- (1) Adherence to the notice and hearing requirements of this Article would be contrary to the public interest; and that
- (2) The immediate adoption, amendment, or repeal of a rule is necessitated by:
 - a. The public health, safety, or welfare; or
 - b. The effective date of a recent act of the General Assembly or the United States Congress; or
 - c. A federal regulation; or
 - d. A court order,

the agency may adopt, amend, or repeal the 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 with the agency’s written certification of the finding of need for the temporary rule, together with the reasons for that finding and a copy of the notice of hearing on the proposed permanent rule.

The written certification of the finding of need for the temporary rule shall be signed by:

- (1) The member of the Council of State in the case of the Departments of Justice, Insurance, Public Instruction, Labor, Agriculture, Treasurer, State Auditor, or Secretary of State.
- (2) The chairman of the board in the case of an occupational licensing board.
- (3) The Governor in the case of all other agencies.

(b) If the Department of Transportation, Revenue, or Correction determines in writing that the immediate adoption, amendment, or repeal of a rule is necessitated by:

- (1) The public health, safety, or welfare; or
- (2) The effective date of a recent act of the General Assembly or the United States Congress; or
- (3) A federal regulation; or
- (4) A court order,

the agency may adopt, amend, or repeal the rule. The agency must accompany its rule filing with the Attorney General and the Governor with the agency’s written certification of the finding of need for the

temporary rule signed by the Governor together with the reasons for that finding. In the case of the Department of Correction, in addition to the reasons set forth in subdivisions (1) through (4) of this subsection, the Department may file a temporary rule when necessary for the management and control of persons under the custody or supervision of the Department in extraordinary circumstances as certified by the Secretary. The Department shall file any temporary rule within two working days of its adoption by the Secretary under G.S. 148-11.

(1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8.)

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

Effect of Amendments. —

Session Laws 1983, c. 857, effective Sept. 1, 1983, added the second paragraph of subsection (a) and inserted “signed by the Governor” in the second sentence of subsection (b).

Session Laws 1983, c. 927, s. 4, effective

Aug. 1, 1983, deleted “and the Legislative Research Commission’s Administrative Rules Review Committee” following “Attorney General” in the last sentence of subsection (a) and in the second sentence of subsection (b).

Session Laws 1983, c. 927, s. 8, effective Nov. 1, 1983, inserted “and the Governor” in the second sentence of subsection (b) following “Attorney General.”

§ 150A-14. Adoption by reference.

An agency may adopt by reference in its rules, without publishing the adopted matter in full:

- (1) All or any part of a code, standard, or regulation which has been adopted by any other agency of this State or any agency of the United States or by a generally recognized organization or association; or
- (2) Any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency.
- (3) Any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by reference in its rules job classification standards, including but not limited to those relating to qualifications and salary levels.

The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule, it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and any charge therefor as of the time the rule is adopted. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19.)

Effect of Amendments. —

The first 1983 amendment, effective Jan. 1, 1984, added subdivision (3).

The second 1983 amendment, effective July 15, 1983, deleted “but which does not

include any State policy or State rule as defined in G.S. 150A-10” at the end of subdivision (2).

ARTICLE 3.

Administrative Hearings.

§ 150A-30. Official notice.

CASE NOTES

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insur-

ance rate case, see *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 845 (1983).

§ 150A-32. Designation of hearing officer.

CASE NOTES

A hearing officer is a creature of statute. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 586 (1983).

The commissioner and hearing officer may act only as the legislature has prescribed. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 586 (1983).

Although the office of Commissioner of Insurance is one created by N.C. Const., Art. III, § 7(1), his power and authority emanate from the General Assembly and are limited by legislative prescription. The only power he has to fix rates is such

power as the General Assembly has delegated to and vested in him. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 586 (1983).

For discussion of the respective powers and duties of the Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 845 (1983).

§ 150A-33. Powers of hearing officer.

CASE NOTES

Powers Generally. — When an agency of State government determines to use the services of a hearing officer, it is this section that prescribes his powers. The powers are limited to six categories: administering oaths, signing and issuing subpoenas, taking depositions, regulating the course of hearings, providing for pretrial conferences of parties to simplify issues, and making application to the court for a contempt order. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 586 (1983).

Proposal for Decision Required of Hearing Officer. — Under the Admin-

istrative Procedure Act, when the services of a hearing officer are used, there must be a "proposal for decision" by the hearing officer. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 586 (1983).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 845 (1983).

§ 150A-34. Proposal for decision.

CASE NOTES

Powers of Hearing Officer Generally. — When an agency of State government determines to use the services of a hearing officer, it is § 150A-33 that prescribes his powers. The powers are limited to six categories: administering oaths, signing and issuing subpoenas, taking depositions, regulating the course of hearings, providing for pretrial conferences of parties to simplify issues, and making application to the court for a contempt order. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

Proposal for Decision Required. — Under the Administrative Procedure Act,

when the services of a hearing officer are used, there must be a “proposal for decision” by the hearing officer. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 586 (1983).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, — N.C. App. —, 300 S.E.2d 845 (1983).

ARTICLE 4.

Judicial Review.

§ 150A-43. Right to judicial review.

Legal Periodicals. —

For comment discussing life insurance, divorce, and inheritance tax in light of In

re Kapoor, 303 N.C. 102, 277 S.E.2d 403 (1981), see 13 N.C. Cent. L.J. 253 (1982).

§ 150A-45. Manner of seeking review; time for filing petition; waiver.

Local Modification. — City of Durham: 1983, c. 373.

§ 150A-46.1. Review de novo.

Notwithstanding any other provision of this Article, if the final agency decision imposes a monetary civil penalty or a monetary administrative penalty, and if the petition filed under G.S. 150A-46 so requests, the court shall hear that issue de novo. (1983, c. 919, s. 1.)

Editor's Note. — Session Laws 1983, c. 919, s. 5, makes this section effective with respect to final agency decisions made on or after Jan. 1, 1984.

§ 150A-47. Record filed by agency with clerk of superior court; contents of record; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the

entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. If the petitioner has requested review de novo under G.S. 150A-46.1, the judge may dispense with any of the requirements of the first sentence of this section if they are not necessary for the review de novo. (1973, c. 1331, s. 1; 1983, c. 919, s. 3.)

Effect of Amendments. — The 1983 amendment, effective with respect to final agency decisions made on or after Jan. 1, 1984, added the last sentence.

§ 150A-50. Review by court without jury on the record.

The review of agency decisions under this Chapter shall be conducted by the court without a jury. Except as provided in G.S. 150A-46.1, the court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo. (1973, c. 1331, s. 1; 1983, c. 919, s. 2.)

Effect of Amendments. — The 1983 amendment, effective with respect to final agency decisions made on or after Jan. 1, 1984, added “Except as provided in G.S. 150A-46.1” at the beginning of the second sentence.

CASE NOTES

Standard on Review of City’s Special Zoning Request Decisions. — Although the North Carolina Administrative Procedure Act provides judicial review only for agency decisions and exempts cities and other local municipalities, a similar standard of review is appropriate to review city council special zoning request decisions. *Jennewein v. City Council*, — N.C. App. —, 302 S.E.2d 7 (1983).

§ 150A-51. Scope of review; power of court in disposing of case.

The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150A-29(a) or 150A-30 in view of the entire record as submitted; or

(6) Arbitrary or capricious.

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

If the review was de novo under G.S. 150A-46.1, the court may affirm, remand, reverse, or modify the case or decision based on evidence presented to the court. (1973, c. 1331, s. 1; 1983, c. 919, s. 4.)

Effect of Amendments. — The 1983 amendment, effective with respect to final agency decisions made on or after Jan. 1, 1984, added the last paragraph.

CASE NOTES

I. IN GENERAL.

Unlawful Delegation of Power To Make Final Decision. — Where the Commissioner of Insurance delegated to his appointed hearing officer the power to make the final agency decision, the Commissioner made an unlawful delegation of his powers. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 586 (1983).

For discussion of the respective powers and duties of the Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, — N.C. App. —, 300 S.E.2d 845 (1983).

Applied in *North Carolina State Bar v. Frazier*, — N.C. App. —, 302 S.E.2d 648 (1983).

Quoted in *North Carolina Dep't of Cor. v. Gibson*, — N.C. —, 301 S.E.2d 78 (1983).

II. "WHOLE RECORD" TEST.

The standard of judicial review, etc. —

In accord with original. See *Dailey v. North Carolina State Bd. of Dental Exmrs.*, — N.C. App. —, 299 S.E.2d 473 (1983); *Burrow v. Randolph County Bd. of Educ.*, — N.C. App. —, 301 S.E.2d 704 (1983).

Court May Not Replace Agency's, etc. —

The whole record test does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been heard before it de novo. *Dailey v. North Carolina State Bd. of Dental Exmrs.*, — N.C. App. —, 299 S.E.2d 473 (1983).

The mere existence of conflicting evidence does not permit the reviewing court to weigh the evidence and substitute its determination for that of the administrative agency. The credibility of the witnesses and the resolution of conflicts in their testimony is a matter for the agency, not a reviewing court. *Dailey v. North Carolina State Bd. of Dental Exmrs.*, — N.C. App. —, 299 S.E.2d 473 (1983).

Agency's Findings of Fact Supported by Competent Evidence, etc. —

The law of this State regarding the respective roles of the administrative agency and the reviewing court concerning conflicting evidence is premised on the notion that the credibility of the witnesses and the resolution of conflicts in their testimony is for the agency, not a reviewing court, and the findings of the agency supported by competent evidence, are conclusive upon judicial review of the agency's order. *Dailey v. North Carolina State Bd. of Dental Exmrs.*, — N.C. App. —, 299 S.E.2d 473 (1983).

Agency's Judgment Must Be Affirmed If, 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 on the merits. If, after all the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand. Substantial evidence in this context has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Dailey v. North Carolina State Bd. of Dental Exmrs.*, — N.C. App. —, 299 S.E.2d 473 (1983).

ARTICLE 5.

Publication of Administrative Rules.

§ 150A-58. Short title and definition.

(b) Repealed by Session Laws 1983, c. 641, s. 4, effective January 1, 1984.

(c) Repealed by Session Laws 1983, c. 147, s. 3, effective 60 days after ratification (April 7, 1983). (1973, c. 1331, s. 1; 1977, c. 915, s. 7; 1979, c. 541, s. 1; 1983, c. 147, s. 3; c. 641, s. 4.)

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

defined "agency." The act was ratified April 7, 1983.

Effect of Amendments. — The first 1983 amendment, effective 60 days after ratification, deleted subsection (c), which

The second 1983 amendment, effective Jan. 1, 1984, deleted subsection (b), which defined the word "rule."

§ 150A-59. Filing of rules and executive orders.

(a) Rules adopted by an agency on or after February 1, 1976, and executive orders of the Governor shall be filed with the Attorney General. No rule, except temporary rules adopted under the provisions of G.S. 150A-13 or curative rules adopted pursuant to G.S. 120-30.28, shall become effective earlier than the first day of the second calendar month after that filing.

(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). The effectiveness of rules adopted prior to December 31, 1983, shall not be affected by the imposition of the filing requirement with the Governor 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; 1981 (Reg. Sess., 1982), c. 1233, s. 6; 1983, c. 641, s. 5; c. 927, s. 5.)

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

orders" in the catchline and inserted "and executive orders of the Governor" in the first sentence of subsection (a).

Effect of Amendments. — The first 1983 amendment, effective Jan. 1, 1984, inserted "and executive

The second 1983 amendment, effective Nov. 1, 1983, added the last sentence of subsection (c).

§ 150A-60. Form of rules.

In order to be acceptable for filing, the rule must:

- (4) Be in the physical form specified by the Attorney General; and
- (5) Bear a notation by the Governor that the rule has been filed in accordance with Part 2 of Article 1 of Chapter 143B. 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; 1983, c. 927, ss. 6, 9.)

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

Effect of Amendments. —

Session Laws 1983, c. 927, s. 6, effective Aug. 1, 1983, inserted a period after “Attorney General” in subdivision (4) and deleted the remaining language of the section.

Session Laws 1983, c. 927, s. 9, effective Nov. 1, 1983, reenacted subdivisions (4)

and (5) as they read prior to the amendment by s. 6 of the act and in the first sentence of subdivision (5) substituted “Governor” for “Director of Research of the General Assembly” and substituted “Part 2 of Article 1 of Chapter 143B” for “Article 6C of Chapter 120 of the General Statutes.” Subdivisions (4) and (5) have been set out as amended by S.L. 1983, c. 927, s. 9.

§ 150A-63. Publication of executive orders and rules.

(a) The Attorney General shall compile, index and publish executive orders of the Governor and all rules filed and effective pursuant to the provisions of this Article.

(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; 1981 (Reg. Sess., 1982), c. 1359, s. 6; 1983, c. 641, s. 6.)

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

Effect of Amendments. —

The 1983 amendment, effective Jan. 1, 1984, inserted “executive orders of the Governor and” in subsection (a).

§ 150A-63.1. Administrative Rules Review Committee and Governor’s Administrative Rules Review Commission reports.

The Attorney General shall retain any reports of the Legislative Research Commission’s Administrative Rules Review Committee’s or the Governor’s Administrative Rules Review Commission’s objection to a rule. He shall append to any compilation, publication, or summation of that rule a notation that it has been objected to pursuant to Article 6C of Chapter 120 of the General Statutes and, where applicable, that the objection has been removed. (1981, c. 688, s. 15; 1981 (Reg. Sess., 1982), c. 1233, s. 7; 1983, c. 927, s. 10.)

Effect of Amendments. —

The 1983 amendment, effective Nov. 1, 1983, inserted “or the Governor’s Admin-

istrative Rules Review Commission’s” in the first sentence. The act also amended the section catchline.

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Editor's Note. —

Session Laws 1983, c. 36, §§ 1 to 5, provide:

"Section 1. The Office of Coroner in Moore County is abolished, and Chapter 152 of the General Statutes is not applicable to Moore County.

"Sec. 2. Section 1 of this act shall become effective only if approved by the voters of Moore County. The Moore County Board of Elections shall hold a referendum on the day of the next statewide primary election, statewide election, or statewide general election, whichever comes first, on the question of approval of Section 1 of this act. The referendum shall be held in accordance with the provisions of Chapter 163 of the General Statutes, and the form of the ballot shall be:

FOR approval of an act abolishing

the Office of Coroner in Moore County.

AGAINST approval of an act abolishing the Office of Coroner in Moore County."

"Sec. 3. In the event that a majority of votes are cast in favor of the approval of Section 1 of this act, then it shall become effective on the first day of the second calendar month after the election. In the event that less than a majority of the votes are cast in favor of the approval of Section 1 of this act, it shall have no force or effect.

"Sec. 4. The Moore County Board of Elections shall file a certification of the results of the election with the Secretary of State.

"Sec. 5. This act is effective upon ratification."

The act was ratified February 25, 1983.

Chapter 153A. Counties.

- Article 4.**
Form of Government.
Part 1. General Provisions.
Sec.
153A-27.1. Vacancies on board of commissioners in certain counties.
- Article 6.**
Delegation and Exercise of the General Police Power.
153A-132. Removal and disposal of abandoned and junked motor vehicles.
- Article 7.**
Taxation.
153A-149. Property taxes; authorized purposes; rate limitation.
- Article 8.**
County Property.
Part 3. Disposition of County Property.
153A-176. Disposition of property.
- Article 9.**
Special Assessments.
153A-185. Authority to make special assessments.
153A-186. Bases for making assessments.
153A-193.1. Discounts authorized.
153A-194. Preliminary assessment roll; publication.
153A-196. Publication of notice of confirmation of assessment roll.
153A-204.1. Maintenance assessments.
- Article 10.**
Law Enforcement and Confinement Facilities.
Part 2. Local Confinement Facilities.
153A-216. Legislative policy.
153A-220. Jail and detention services.
153A-221. Minimum standards.
- Sec.
153A-221.1. Standards and inspections.
153A-222. Inspections of local confinement facilities.
153A-223. Enforcement of minimum standards.
153A-227. [Repealed.]
- Article 14.**
Libraries.
153A-272. Designation of library employees to register voters.
- Article 16.**
County Service Districts.
153A-309. EMS services in fire protection districts.
- Article 17.**
153A-310 to 153A-319. [Reserved.]
- Article 18.**
Planning and Regulation of Development.
Part 1. General Provisions.
153A-322. Supplemental powers.
153A-325. Submission of statement concerning improvements.
153A-326 to 153A-329. [Reserved.]
Part 3. Zoning.
153A-340. Grant of power.
Part 4. Building Inspection.
153A-357. Permits.
153A-361. Stop orders.
153A-373. Records and reports.
- Article 23.**
Miscellaneous Provisions.
153A-440.1. Watershed improvement programs; drainage and water resources development projects.
153A-448. Mountain ridge protection.

ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-1. Definitions.

Local Modification. — New Hanover:
1983, c. 365.

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-27.1. Vacancies on board of commissioners in certain counties.

(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, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 6, 14; c. 830; 1983, c. 418.)

Only Part of Section Set Out. — As 1983, deleted “New Hanover” from the the rest of the section was not affected by list of counties in subsection (h). the amendment, it is not set out.

Effect of Amendments. —

The 1983 amendment, effective June 2,

ARTICLE 5.

*Administration.*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.

CASE NOTES

Government Employees Cannot Impose Unconstitutional Conditions on Public Employment. — Deputies work at the pleasure of the sheriff. However, government employees including sheriffs can neither impose unconstitutional conditions upon public employment such as

requiring employees to relinquish their rights of free speech and association nor discharge employees for a constitutionally infirm reason. *Joyner v. Lancaster*, 553 F. Supp. 809 (M.D.N.C. 1982).

ARTICLE 6.

*Delegation and Exercise of the General Police Power.***§ 153A-132. Removal and disposal of abandoned and junked motor vehicles.**

(c) **Removal of Vehicles.** — A county may remove to a storage garage or area an abandoned or junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section. A vehicle may not be removed from private property, however, without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized county official or employee has declared the vehicle to be a health or safety hazard. Appropriate county officers and employees have a right, upon presentation of proper credentials, to enter on any premises within the county ordinance-making jurisdiction at any reasonable hour in order to determine if any vehicles are health or safety hazards. The county may require a person requesting the removal from private property of an abandoned or junked motor vehicle to indemnify the county against any loss, expense, or liability incurred because of the vehicle's removal, storage, or sale.

When an abandoned or junked motor vehicle is removed, the county shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) **Hearing Procedure.** — Regardless of whether a county does its own removal and disposal of motor vehicles or contracts with another person to do so, the county shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

- (1) If the county operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
- (2) If the county operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. Provide by contract or ordinance for a schedule of reasonable towing fees,
 - b. Provide a procedure for a prompt fair hearing to contest the towing,
 - c. Provide for an appeal to district court from that hearing,
 - d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 - e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the county may destroy it.

(e) and (f) Repealed by Session Laws 1983, c. 420, s. 10, effective July 1, 1983.

(1971, c. 489; 1973, c. 822, s. 1; 1975, c. 716, s. 5; 1983, c. 420, ss. 8 — 10.)

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

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, rewrote the second paragraph of subsec-

tion (c), rewrote subsection (d), and deleted subsections (e) and (f), relating to the disposal of junked motor vehicles and vehicles without plates or identification numbers, respectively.

§ 153A-135. Regulation of places of amusement.

Editor's Note. — By virtue of Session Laws 1981, c. 412, ss. 4 and 5, the reference in this section to the State Board of Alcoholic Control now refers to the State Alcoholic Beverage Control Commission.

ARTICLE 7.

Taxation.

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) appraised value of property subject to taxation before the application of any assessment ratio. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents (\$1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

- (1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county tax supervisor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
- (2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
- (3) Air Pollution. — To maintain and administer air pollution control programs.
- (4) Airports. — To establish and maintain airports and related aeronautical facilities.
- (5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.
- (6) Animal Protection and Control. — To provide animal protection and control programs.
- (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.
- (10b) Economic Development. — To provide for economic development as authorized by G.S. 158-12.
- (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.
- (16a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.
- (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 108A 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.

(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; 1983, c. 511, ss. 1, 2.)

Only Part of Section Set Out. — As 13, 1983, added subdivisions (c)(10b) and the rest of the section was not affected by (c)(16a).
the amendment, it is not set out.

Effect of Amendments. —

The 1983 amendment, effective June

ARTICLE 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-158. Power to acquire property.

Local Modification. —

Union: 1983, c. 150.

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property.

A county may dispose of any real or personal property belonging to it according to the procedures prescribed in Chapter 160A, Article 12. For purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the county, the board of commissioners, and the county official who most nearly performs the same duties performed by the specified city official. For purposes of this section, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more county officials designated by the board of county commissioners. (1868, c. 20, ss. 3, 8; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1983, c. 130, s. 2.)

Effect of Amendments. — The 1983 amendment, effective April 1, 1983, added the last sentence.

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, renovating, enlarging, maintaining, operating, or otherwise building or improving
 - a. Beach erosion control or flood and hurricane protection works; and
 - b. Watershed improvement projects, drainage projects and water resources development projects (as those projects are defined in G.S. 153A-301).
- (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; 1983, c. 321, s. 1.)

Local Modification. — Mecklenburg: amendment, effective May 17, 1983, 1983, c. 189. rewrote subdivision (3).

Effect of Amendments. — The 1983

§ 153A-186. Bases for making assessments.

(b) For beach erosion control or flood and hurricane protection works, watershed improvement projects, drainage projects and water resources development projects, assessments may be made on the basis of:

- (1) The frontage abutting on the project, at an equal rate per foot of frontage; or
- (2) The frontage abutting on a beach or shoreline or watercourse protected or benefited by the project, at an equal rate per foot of frontage; or
- (3) The area of land benefited by the project, at an equal rate per unit of area; or
- (4) The valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or

(5) A combination of two or more of these bases.

(c) Whenever the basis selected for assessment is either area or valuation, the board of commissioners shall provide for the laying out of one or more benefit zones according (i), in water or sewer projects, to the distance of benefited property from the project being undertaken and (ii), in beach erosion control or flood and hurricane protection works, watershed improvement projects, drainage projects and water resources development projects, to the distance from the shoreline or watercourse, the distance from the project, the elevation of the land, or other relevant factors. If more than one benefit zone is established, the board shall establish differing rates of assessment to apply uniformly throughout each benefit zone.

(1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1; 1983, c. 321, ss. 2, 3.)

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

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, inserted “watershed improvement projects, drainage projects and water resources development projects,” in the

introductory language of subsection (b), inserted “or watercourse” in subdivision (b)(2), and inserted “watershed improvement projects, drainage projects and water resources development projects” and “or watercourse” in item (ii) of the first sentence of subsection (c).

§ 153A-193.1. Discounts authorized.

The board of commissioners is authorized to establish a schedule of discounts to be applied to assessments paid before the expiration of 30 days from the date that notice is published of confirmation of the assessment roll pursuant to G.S. 153A-196. Such a schedule of discounts may be established even though it was not included among the terms of payment as specified in the preliminary assessment resolution or final assessment resolution. The amount of any discount may not exceed thirty percent (30%). (1983, c. 381, s. 1.)

Editor’s Note. — Session Laws 1983, c. 381, s. 7, makes this section effective upon ratification and applicable to any project for which the preliminary as-

essment roll is prepared after the effective date. The act was ratified May 24, 1983.

§ 153A-194. Preliminary assessment roll; publication.

When the total cost of a project has been determined, the board of commissioners shall cause a preliminary assessment roll to be prepared. The roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, including the schedule of discounts, if such a schedule is to be established and the name of the owner of each lot, parcel, or tract as far as this can be ascertained from the county tax records. A map of the project on which is shown each lot, parcel, or tract assessed, the basis of its assessment, the amount assessed against it, and the name of its owner as far as this can be ascertained from the county tax records is a sufficient assessment roll.

After the preliminary assessment roll has been completed, the board shall cause the roll to be filed in the clerk’s office, where it shall

be available for public inspection, and shall set the time and place for a public hearing on the roll. At least 10 days before the date set for the hearing, the board shall publish a notice that the preliminary assessment roll has been completed. The notice shall describe the project in general terms, note that the roll in the clerk's office is available for inspection, and state the time and place for the hearing on the roll. In addition, at least 10 days before the date set for the hearing, the board shall cause a notice of the hearing to be mailed by first-class mail to each owner of property listed on the roll. The mailed notice shall state the time and place of the hearing, note that the roll in the clerk's office is available for inspection, and state the amount as shown on the roll of the assessment against the property of the owner. The person designated to mail these notices shall file with the board a certificate stating that they were mailed by first-class mail and on what date. In the absence of fraud, the certificate is conclusive as to compliance with the mailing requirements of this section. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1; 1983, c. 381, s. 2.)

Editor's Note. — Session Laws 1983, c. 381, s. 7, makes the act effective upon ratification and applicable to any project for which the preliminary assessment roll is prepared after the effective date. The act was ratified May 24, 1983.

Effect of Amendments. — The 1983 amendment, effective May 24, 1983, inserted "including the schedule of discounts, if such a schedule is to be established" in the second sentence of the first paragraph.

§ 153A-196. Publication of notice of confirmation of assessment roll.

No earlier than 20 days from the date the assessment roll is confirmed, the county tax collector shall publish once a notice that the roll has been confirmed. The notice shall also state that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published and that if they are not paid within this time, all installments thereof shall bear interest as determined by the board of commissioners. The notice shall also state the schedule of discounts, if one has been established, to be applied to assessments paid before the expiration date for payment of assessments without interest. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1; 1983, c. 381, s. 3.)

Editor's Note. — Session Laws 1983, c. 381, s. 7, makes the act effective upon ratification and applicable to any project for which the preliminary assessment roll is prepared after the effective date. The

act was ratified May 24, 1983.

Effect of Amendments. — The 1983 amendment, effective May 24, 1983, added the last sentence.

§ 153A-204.1. Maintenance assessments.

(a) In order to pay for the costs of maintaining and operating a project, the board of commissioners may annually or at less frequent intervals levy maintenance and operating assessments for any project purpose set forth in G.S. 153A-185(3) on the same basis as the original assessment. The amount of these assessments shall be determined by the board of commissioners on the basis of the board's estimate of the cost of maintaining and operating a project during the ensuing budget period, and the board's decision as to the amount of the assessment

is conclusive. In determining the total cost to be included in the assessment the board may include estimated costs of maintaining and operating the project, of necessary legal services, of interest payments, of rights-of-way, and of publishing and mailing notices and resolutions. References to "total costs" in provisions of this Article that apply to maintenance and operating assessments shall be construed to mean "total estimated costs." Within the meaning of this section a "budget period" may be one year or such other budget period as the board determines.

(b) All of the provisions of this Article shall apply to maintenance and operating assessments, except for G.S. 153A-190 through G.S. 153A-193. (1983, c. 321, s. 4.)

Editor's Note. — Session Laws 1983, c. 321, s. 7, makes this section effective upon ratification. The act was ratified May 17, 1983.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-216. Legislative policy.

The policy of the General Assembly with respect to local confinement facilities is:

- (4) Adequate qualifications and training of the personnel of local confinement facilities are essential to improving the quality of these facilities. The State shall establish entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities to include training as a condition of employment in a local confinement facility pursuant to the provisions of Chapter 17C and Chapter 17E and the rules promulgated thereunder. (1967, c. 581, s. 2; 1973, c. 822, s. 1; 1983, c. 745, s. 4.)

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

Effect of Amendments. — The 1983 amendment, effective Sept. 1, 1983, in the first sentence of subdivision (4) inserted "qualifications and," substituted "are" for "is," and substituted "improving the quality of these facilities" for "improvement of the quality of administration of those facilities" and rewrote the second sentence.

§ 153A-220. Jail and detention services.

The Commission has policy responsibility for providing and coordinating State services to local government with respect to local confinement facilities. The Department shall:

- (5) Repealed by Session Laws 1983, c. 745, s. 5, effective September 1, 1983.

(1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1; 1983, c. 745, s. 5.)

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

Effect of Amendments. — The 1983 amendment, effective Sept. 1, 1983, deleted subdivision (5), which read, "Provide for training of personnel of local confinement facilities."

§ 153A-221. Minimum standards.

(b) In developing the standards and any amendments thereto, the Secretary shall consult with organizations representing local government and local law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives' Association. The Secretary shall also consult with interested State departments and agencies, including the Department of Correction, the Department of Human Resources, the Department of Insurance, and the North Carolina Criminal Justice Education and Training Standards Commission, and the North Carolina Sheriffs' Education and Training Standards Commission.

(1967, c. 581, s. 2; 1973, c. 476, ss. 128, 133, 138; c. 822, s. 1; 1983, c. 745, s. 6; c. 768, s. 20.)

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

Effect of Amendments. — The first 1983 amendment, effective Sept. 1, 1983, in the second sentence of subsection (b) substituted "Department of Correction" for "State Department of Social Rehabilitation and Control," deleted "and"

preceding "the Department of Insurance," and inserted the language following "Insurance."

The second 1983 amendment, effective July 15, 1983, also substituted "Correction" for "Social Rehabilitation and Control" in the second sentence of subsection (b).

§ 153A-221.1. Standards and inspections.

The legal responsibility of the Secretary of Human Resources and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Department of Human Resources is hereby expanded to give said Department the same legal responsibility as to the State-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134A-37.

The Secretary of Human Resources shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by G.S. 134-36 in line with the recommendations of the report entitled *Juvenile Detention in North Carolina: A Study Report* (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Human Resources shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10; 1975, c. 426, s. 2; 1983, c. 768, s. 21.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted “G.S. 134A-37” for “G.S. 134-37” in the second sentence of the first paragraph.

§ 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, the treatment of prisoners, the maintenance of entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities as provided for in G.S. 153A-216(4), and to determine whether the facilities meet 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; 1983, c. 745, s. 7.)

Effect of Amendments. —

The 1983 amendment, effective Sept. 1, 1983, in the second sentence substituted “the” for “and” preceding “treatment of prisoners,” inserted the language

beginning “the maintenance of” and ending “G.S. 153A-216(4),” and substituted “facilities meet” for “facility meets.”

§ 153A-223. Enforcement of minimum standards.

If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and supervisory and administrative personnel of a local confinement facility do not meet the entry level employment standards established pursuant to Chapter 17C or Chapter 17E or 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:

(1947, c. 915; 1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1; 1981, c. 614, ss. 20, 21; 1983, c. 745, s. 8.)

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

Effect of Amendments. —

The 1983 amendment, effective Sept. 1,

1983, in the introductory language inserted the language beginning “the jailers” and ending “Chapter 17E or that”.

§ 153A-227: Repealed by Session Laws 1983, c. 745, s. 9, effective September 1, 1983.

ARTICLE 12.

*Roads and Bridges.***§ 153A-239. Public road defined.****Local Modification. —**

Avery: 1983, c. 98; Brunswick: 1983, c. 98; Cabarrus: 1983, c. 98; New Hanover:

1983, c. 98; Stokes: 1983, c. 299; Surry: 1983, c. 299.

§ 153A-240. Naming roads and assigning street numbers in unincorporated areas.**Local Modification. —**

Avery: 1983, c. 98; Brunswick: 1983, c. 98; Cabarrus: 1983, c. 98; New Hanover:

1983, c. 98; Stokes: 1983, c. 299; Surry: 1983, c. 299.

ARTICLE 14.

*Libraries.***§ 153A-272. Designation of library employees to register voters.**

The governing body of each public library with four or more employees shall designate at least one employee of the library to be appointed by the county board of elections to register voters pursuant to G.S. 163-80(a)(6). With the approval of the board of elections, additional employees may also be designated for this purpose by the governing body. (1983, c. 588, s. 1.)

Editor's Note. — Session Laws 1983, c. 588, s. 4, makes this section effective Oct. 1, 1983.

ARTICLE 16.

*County Service Districts.***§ 153A-309. EMS services in fire protection districts.**

(a) If a service district is established under this Article for fire protection purposes under G.S. 153A-301(2), and it was not also established under this Article for ambulance and rescue purposes under G.S. 153A-301(7), the board of county commissioners may, by resolution, permit the service district to provide emergency medical, rescue, and/or ambulance services, and may levy property taxes for such purposes under G.S. 153A-307.

(b) The resolution expanding the purposes of the district under this section shall take effect at the beginning of a fiscal year commencing after its passage. (1983, c. 642.)

Editor's Note. — Session Laws 1983, c. 642, s. 2, makes this section effective upon ratification. The act was ratified June 29, 1983.

ARTICLE 17.

§§ 153A-310 to 153A-319: Reserved for future codification purposes.

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-322. Supplemental powers.

A county or its designated planning agency may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning agency that it may create or designate pursuant to this Article. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1983, c. 377, s. 8.)

Editor's Note. —

Chapter 157A, referred to in this section, was transferred to Chapter 160A, Article 19, Part 3B (§ 160A-399.1 et seq.) by Session Laws 1973, c. 426, s. 62.

Effect of Amendments. —

The 1983 amendment, effective Oct. 1, 1983, inserted "and compensate members of" in the third paragraph.

§ 153A-325. Submission of statement concerning improvements.

A county may by ordinance require that when a property owner improves property at a cost of more than twenty-five hundred dollars (\$2500) but less than five thousand dollars (\$5,000), the property owner must, within 14 days after the completion of the work, submit to the county tax supervisor a statement setting forth the nature of the improvement and the total cost thereof. (1983, c. 614, s. 4.)

Editor's Note. — Session Laws 1983, c. 614, s. 6, makes this section effective upon ratification. The act was ratified June 24, 1983. Session Laws 1983, c. 614, s. 5, provides that the act shall not apply to Wilson, Nash and Edgecombe Counties.

§§ 153A-326 to 153A-329: Reserved for future codification purposes.

Part 2. Subdivision Regulation.

§ 153A-335. "Subdivision" defined.

Local Modification. —
Scotland: 1983, c. 96.

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.

A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

For the purpose of this section, the term "structures" shall include floating homes. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6; 1983, c. 441.)

Effect of Amendments. —

The 1983 amendment, effective June 6, 1983, added the last two paragraphs.

Part 4. Building Inspection.

§ 153A-357. Permits.

No person may commence or proceed with:

- (1) The construction, reconstruction, alteration, repair, movement to another site, 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 five thousand dollars (\$5,000) 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; 1983, c. 377, s. 2; c. 614, s. 2.)

Cross References. —

For provision that a county may by ordinance require that when a property owner improves property at a cost of more than \$2500.00 but less than \$5000.00 the property owner must submit a statement setting forth the nature of the improvement and the total cost thereof, see § 153A-325.

Editor's Note. — Session Laws 1983, c. 614, s. 5, provides that the act shall not apply to Wilson, Nash and Edgecombe Counties.

Effect of Amendments. —

The first 1983 amendment, effective Oct. 1, 1983, inserted "movement to another site" in subdivision (1).

The second 1983 amendment, effective June 24, 1983, substituted "five thousand dollars (\$5,000)" for "twenty-five hun-

dred dollars (\$2500)" in the next-to-last sentence.

§ 153A-361. Stop orders.

Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance written notice of appeal, with a copy to the local inspector. The Commissioner shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and the Commissioner shall rule on the appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on an appeal, no further work may take place in violation of a stop order. Appeals from a stop order based on violations of any other local ordinance relating to buildings shall be taken to the local official designated by that ordinance and shall be taken, heard, and decided in the same manner as prescribed herein for appeals to the Commissioner. Violation of a stop order constitutes a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1983, c. 377, s. 4.)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, inserted "involving alleged violation of the State Building Code or any approved

local modification thereof" in the third sentence and inserted the next-to-last sentence.

§ 153A-373. Records and reports.

The inspection department shall keep complete, and accurate records in convenient form of each application received, each permit issued, each inspection and reinspection made, and each defect found, each certificate of compliance granted, and all other work and activities of the department. These records shall be kept in the manner and for the periods prescribed by the North Carolina Department of Cultural Resources. The department shall submit periodic reports to the board of commissioners and to the Commissioner of Insurance as the board or the Commissioner may require. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1983, c. 377, s. 6.)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, deleted "permanent," following "shall

keep complete," in the first sentence and inserted the present second sentence.

ARTICLE 23.

*Miscellaneous Provisions.***§ 153A-440.1. Watershed improvement programs; drainage and water resources development projects.**

(a) 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, G.S. 153A-185 or by any other financing method available to counties for this purpose.

(b) A county may establish and maintain drainage projects and water resources development projects (as those projects are defined by G.S. 153A-301) and for these purposes may appropriate funds not otherwise limited as to use by law. A county drainage project or water resources development project may also be financed pursuant to G.S. 153A-301, G.S. 153A-185, or by any other financing method available to counties for this purpose. (1981, c. 251, s. 2; 1983, c. 321, ss. 5, 6.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, designated the first paragraph of this section as subsection (a), in subsection (a) inserted a reference to § 153A-185, and added subsection (b).

§ 153A-448. Mountain ridge protection.

Counties may enact and enforce mountain ridge protection ordinances pursuant to Article 14 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 14 unless the county has removed itself from the coverage of Article 14 through the procedure provided by law. (1983, c. 676, s. 2.)

Editor's Note. — Session Laws 1983, c. 676, s. 4, makes this section effective upon ratification. The act was ratified July 5, 1983.

Chapter 156.

Drainage.

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-78.1. Municipalities.

Cross references. — As to property taxes to provide for drainage projects or programs, see § 160A-209.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

September 1, 1983

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1983 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



