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THE GENERAL STATUTES OF NORTH CAROLINA

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1983 SUPPLEMENT

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

Under the Direction of
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Volume 3C pt 1

Chapters 137 to 143B

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.

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Preface

This Supplement to Replacement Volume 3C contains the general laws of a permanent nature enacted by the General Assembly through 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 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.



Scope of Volume

Statutes:

Permanent portions of the general laws enacted by the General Assembly at the 1983 Session, affecting Chapters 137 through 143B 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 137 to 143B

Chapter 137.
Rural Rehabilitation.

Article 2.

North Carolina Rural Rehabili-
tation Corporation.

Sec.

137-31.5. Audit.

ARTICLE 2.

North Carolina Rural Rehabilitation Corporation.

§ 137-31.5. Audit.

The operations of the Corporation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1953, c. 724, s. 5; 1983, c. 913, s. 26.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, rewrote this section, which formerly provided for a periodic audit by the State

Auditor, a statement of the financial condition of the Corporation, and the furnishing of copies of such audit and statement.

Chapter 138.

Salaries, Fees and Allowances.

Sec.	Sec.
138-4. Governor to set salaries of administrative officers; exceptions.	138-6. Travel allowances of State officers and employees.
138-5. Per diem and allowances of State boards, etc.	

§ 138-4. Governor to set salaries of administrative officers; exceptions.

The salaries of all State administrative officers not subject to the State Personnel Act shall be payable in equal monthly installments, and if no provision is otherwise made by law, shall be set by the Governor subject to consultation with the Advisory Budget Commission.

Whenever by law it is provided that a salary shall be fixed or set by the General Assembly in the Budget Appropriation Act, and that office or position is filled by appointment of the Governor, or the appointment is subject to the approval of the Governor, or is made by a commission a majority of whose members are appointed by the Governor, then the Governor may, after consultation with the Advisory Budget Commission, increase or decrease the salary of a new appointee by a maximum of ten percent (10%) over or under the salary of that position as provided in the Budget Appropriation Act, such increased or decreased salary to remain in effect until changed by the General Assembly or until the end of the fiscal year, whichever occurs first. This section does not apply to any office filled by election by the people, and does not apply to any office in the legislative or judicial branches. (1947, c. 898; 1957, c. 541, s. 1; 1983, c. 717, s. 49.)

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, rewrote this section.

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

(a) Except as provided in subsections (c) and (f) of this section, members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

- (1) Compensation at the rate of fifteen dollars (\$15.00) per diem for each day of service;
- (2) A subsistence allowance of
 - a. Fifteen dollars (\$15.00) per day for each day of service when the member did not spend the night away from his home,
 - b. Forty-two dollars (\$42.00) per day for each day of service when the member spent the night away from his home;

- (3) Reimbursement of travel expenses at the rates allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a).
- (4) For convention registration fees, the actual amount expended, as shown by receipt.

(1961, c. 833, s. 5; 1963, c. 1049, s. 1; 1965, c. 169; 1971, c. 1139; 1973, c. 1397; 1979, c. 838, s. 18; 1979, 2nd Sess., c. 1137, s. 29; 1983, c. 761, s. 24; c. 923, s. 217.)

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. 260, made the 1983 amendment effective July 15, 1983, but the effective date was changed to July 1, 1983, by Session Laws 1983, c. 923, s. 217.

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

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "forty-two dollars (\$42.00)" for "thirty-five dollars (\$35.00)" in subdivision (a)(2)b.

§ 138-6. Travel allowances of State officers and employees.

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

- (1) For transportation by privately owned automobile, twenty-five cents (25¢) per mile of travel and the actual cost of tolls paid. No reimbursement shall be made for the use of a personal car in commuting from an employee's home to his duty station in connection with regularly scheduled work hours. Any designation of an employee's home as his duty station by a department head shall require prior approval by the Office of State Budget and Management on an annual basis.
- (2) For bus, railroad, Pullman, or other conveyance, actual fare.
- (3) In lieu of actual expenses incurred for subsistence, payment of forty-two dollars (\$42.00) per day when traveling in-state or fifty-four dollars (\$54.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:
 - a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;
 - b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business.
- (4) For convention registration fees not to exceed thirty dollars (\$30.00) per convention.

(1961, c. 833, s. 6; 1963, c. 1049, s. 2; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, ss. 1, 2; 1973, c. 595, s. 1; c. 1456; 1975, c. 892, s. 1; 1977, c. 928; 1977, 2nd Sess., c. 1136, s. 38.1; c. 1237, ss. 1, 2; 1979, c. 34, s. 1; c. 1002, s. 1; c. 1050, s. 1; 1979, 2nd Sess., c. 1137, s. 26; 1981, c. 859, ss. 57-59; 1983, c. 761, s. 22; c. 913, s. 27; c. 923, s. 217.)

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. 260, made the 1983 amendment effective July 15, 1983, but the effective date was changed to July 1, 1983, by Session Laws 1983, c. 923, s. 217.

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

Effect of Amendments. —

The first 1983 amendment, effective

July 1, 1983, in subdivision (a)(3) substituted "forty-two dollars (\$42.00)" for "thirty-five dollars (\$35.00)" and "fifty-four dollars (\$54.00)" for "forty-five dollars (\$45.00)".

The second 1983 amendment, effective July 22, 1983, deleted the former last sentence of subdivision (1) of subsection (a), which read "The State Auditor shall in the routine audit of an agency determine compliance with this subdivision."

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 2.

Sec.

North Carolina Symphony Society.

authorized to provide space
for Art Society.

Sec.

140-13. Audit.

140-8. Audit.

Article 3.

North Carolina Art Society.

140-12. Department of Administration

ARTICLE 2.

North Carolina Symphony Society.

§ 140-8. Audit.

The operations of the North Carolina Symphony Society, Inc., shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1943, c. 755, s. 4; 1983, c. 913, s. 28.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, rewrote this section.

ARTICLE 3.

North Carolina Art Society.

§ 140-12. Department of Administration authorized to provide space for Art Society.

Subject to the approval of the Governor after consultation with the Advisory Budget Commission, the Department of Administration is authorized and empowered to set apart, for the administration of the affairs of the State Art Society, Incorporated, space in any of the public buildings in Wake County which may be so used without interference with the conduct of the business of the State. (1961, c. 1152; 1983, c. 717, ss. 52, 53.)

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 "after consultation with the Advisory Budget Commission" for "and the Advisory Budget Commission" and substituted "Wake County" for "the City of Raleigh."

§ 140-13. Audit.

The operations of the North Carolina Art Society, Inc., shall be subject to the oversight of the State Auditor pursuant to Article 5A

of Chapter 147 of the General Statutes. (1961, c. 1152; 1977, c. 702, s. 1; 1983, c. 913, s. 29.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, rewrote this section.

Chapter 142. State Debt.

Article 1.

General Provisions.

Sec.

142-8. Application of §§ 142-1 to 142-9.

Article 4.

Sinking Fund Commission.

142-30 to 142-43. [Repealed.]

Article 5.

Sinking Funds for Highway Bonds.

142-44 to 142-46. [Repealed.]

Article 5A.

Exchange and Cancellation of Bonds Held in Sinking Funds; Invest- ment of Moneys.

142-47 to 142-49. [Repealed.]

Article 6.

Citations to Bond and Note Acts.

Sec.

[Repealed.]

Article 7.

General Fund Bond Sinking Fund.

142-50 to 142-54. [Repealed.]

ARTICLE 1.

General Provisions.

§ 142-8. Application of §§ 142-1 to 142-9.

General Statutes 142-1 to 142-9, both inclusive, as amended, shall be applicable to all bonds or certificates of the State heretofore issued and now outstanding, and to all bonds or certificates of the State that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. However, any provisions of G.S. 142-1 to G.S. 142-9 in conflict with the "Registered Public Obligations Act", Chapter 159E of the General Statutes, shall not apply. (Code, s. 3570; 1887, c. 287, s. 3; Rev., s. 5028; C.S., s. 7408; Ex. Sess. 1921, c. 66, s. 7; 1965, c. 181, s. 2; 1983, c. 322, s. 2.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, added the second sentence.

ARTICLE 4.

Sinking Fund Commission.

§§ 142-30 to 142-43: Repealed by Session Laws 1983, c. 913, s. 30, effective July 22, 1983.

ARTICLE 5.

Sinking Funds for Highway Bonds.

§§ 142-44 to 142-46: Repealed by Session Laws 1983, c. 913, s. 30, effective July 22, 1983.

ARTICLE 5A.

Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

§§ 142-47 to 142-49: Repealed by Session Laws 1983, c. 913, s. 30, effective July 22, 1983.

ARTICLE 6.

Citations to Bond and Note Acts.

(Repealed by Session Laws 1983, c. 913, s. 30, effective July 22, 1983.)

ARTICLE 7.

General Fund Bond Sinking Fund.

§§ 142-50 to 142-54: Repealed by Session Laws 1983, c. 913, s. 30, effective July 22, 1983.

Chapter 143.

State Departments, Institutions and Commissions.

Article 1.	Sec.
Executive Budget Act.	
Sec.	women contractors: purpose.
143-3.3. Assignments of claims against State.	143-49. Powers and duties of Secretary.
143-3.4. Warrants for money paid into treasury by mistake.	143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.
143-4. Advisory Budget Commission.	143-53. Rules and regulations.
143-7. Itemized statements and forms; exemptions from § 147-64.6(c)(10).	143-56. Certain purchases excepted from provisions of Article.
143-10.1. Budget required to include State cost of local programs.	143-58.1. Unauthorized use of public purchase or contract procedures for private benefit.
143-11. Survey of departments.	143-60. Rules and regulations covering certain purposes.
143-11.1. [Repealed.]	143-63. Financial interest of officers in sources of supply; acceptance of bribes.
143-16.1. Federal funds.	
143-18.1. Decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for.	Article 5.
143-20. Accounting records.	Check on License Forms, Tags and Certificates Used or Issued.
143-20.1. Annual financial statements.	143-106. [Repealed.]
143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.	Article 7.
143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.	Inmates of State Institutions to Pay Costs.
143-34.6. Deposit of payroll deductions.	143-118.1. Secretary of Human Resources may compromise account.
143-34.7 to 143-34.9. [Reserved.]	143-119. Payments.
Article 1.2.	143-120. Determining who is able to pay.
Legislative Committee on Agency Review.	143-127. Money paid into State treasury.
143-34.25 to 143-34.27. [Expired.]	143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.
Article 2D.	Article 8.
North Carolina Board for Need-Based Student Loans.	Public Building Contracts.
143-47.21. Creation of Board.	143-129.2. Construction, design and operation of solid waste management facilities.
143-47.24. Powers and duties.	143-134.1. Interest on final payments due to prime contractors; payments to subcontractors.
Article 3.	143-135.3. Procedure for settling controversies arising
Purchases and Contracts.	
143-48. State policy; cooperation in promoting the use of small, minority, physically handicapped and	

GENERAL STATUTES

Sec.

from contracts; civil actions on disallowed claims; appeal to Board.

143-135.5. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose.

143-135.6 to 143-135.9. [Reserved.]

Article 8A.

Board of State Contract Appeals.

- 143-135.10. Board of State Contract Appeals — Creation; powers and duties.
- 143-135.11. Board of State Contract Appeals — Members; selection; quorum; compensation.
- 143-135.12. Board of State Contract Appeals — Officers.
- 143-135.13. Board of State Contract Appeals — Meetings.
- 143-135.14. Appeals from the Board of State Contract Appeals.
- 143-135.15. No evidence admitted on appeal; remission for further evidence.
- 143-135.16. Record on appeal; extent of review.
- 143-135.17. Relief pending review on appeal.
- 143-135.18. Appeal to Supreme Court.
- 143-135.19. Judgment on appeal enforced by mandamus.
- 143-135.20. Peremptory mandamus to enforce order when no appeal.

Article 9.

Building Code Council and Building Code.

- 143-138. North Carolina State Building Code.
- 143-139.2. Enforcement of insulation requirements; certificate for occupancy; no electric service without compliance.

Article 9A.

Manufactured Housing and Mobile Homes.

- Part 1. North Carolina Manufactured Housing Board.
- 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

Article 9B.

North Carolina Code Officials Qualification Board.

Sec.

143-151.13. Required standards and certificates for Code-enforcement officials.

Article 10.

Various Powers and Regulations.

- 143-154. Expenditures for departments and institutions; accounting and warrants.
- 143-155. [Repealed.]

Article 12.

Law-Enforcement Officers' Retirement System.

- 143-166. Law-Enforcement Officers' Retirement System.
- 143-166.01. Transfer of membership from Local Governmental Employees' Retirement System to Law-Enforcement Officers' Retirement System.
- 143-166.02. Death Benefit Plan.
- 143-166.03. Special annuity accounts.
- 143-166.04. Separate benefit plan.

Article 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

- 143-166.1. Purpose.
- 143-166.2. Definitions.

Article 13.

Publications.

- 143-168. Reports; conciseness.
- 143-169. Limitations on publications.
- 143-169.1. State agency public document mailing lists to be updated.
- 143-170.1. Statement of cost of public documents; chief administrator charged with compliance.

Article 19.

Roanoke Island Historical Association.

143-203. [Repealed.]

Article 21.

Water and Air Resources.

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

Sec.

143-214.1. Water; water quality standards and classifications; duties of Environmental Management Commission.

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

143-215.3. General powers of Environmental Management Commission and Department of Natural Resources and Community Development; auxiliary powers.

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

143-215.5. Judicial review.

Part 3. Dam Safety Law.

143-215.25. Definitions.

Part 4. Federal Water Resources Development Projects.

143-215.40. Resolutions and ordinances assuring local cooperation.

Part 8. Grants for Water Resources Development Projects.

Sec.

143-215.71. Purposes for which grants may be requested.

143-215.73. Recommendation and disbursal of grants.

Article 24.

Wildlife Resources Commission.

143-243. Organization of the Commission; election of officers; Robert's Rules of Order.

143-246. Executive Director; appointment, qualifications and duties.

Article 36.

Department of Administration.

143-340. Powers and duties of Secretary.

143-341. Powers and duties of Department.

143-342.1. State-owned office space; fees for use by self-supporting agencies.

143-345.7. Repair and reconstruction of the Western Residence of the Governor.

143-345.8. North Carolina Purchase Directory.

Article 38.

Water Resources.

143-356, 143-357. [Repealed.]

ARTICLE 1.

Executive Budget Act.

§ 143-1. Scope and definitions.

Editor's Note. — Session Laws 1983, c. 761, s. 257, provides that the provisions of this Article, the Executive Budget Act, are reenacted and shall remain in full force and effect and are incorporated in the act by reference.

§ 143-3.3. Assignments of claims against State.

All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section

shall not apply to assignments made in favor of hospitals, building and loan associations, prepaid legal services, uniform rental firms to allow employees of the Department of Transportation to rent day-glo orange shirts or vests as required by federal and State law, and medical, hospital, disability and life insurance companies: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of any credit union organized pursuant to Chapter 54 of the North Carolina General Statutes having a membership at least one half of whom are employed by the State or its institutions, departments, bureaus, agencies or commissions, may authorize, in writing, the periodic deduction from his salary or wages as such employee of a designated lump sum, which shall be paid to such credit unions when said salaries or wages are payable, for deposit to such accounts, purchase of such shares or payment of such obligations as the employee and the credit union may agree: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, motor vehicle inspectors of the Revenue Department, and State prison guards, to the commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of a domiciled State employees' association with a membership of not less than 5,000 members may authorize in writing the periodic deduction from his salary or wages a designated sum to be paid to the employees' association. This plan of payroll deductions for State employees and other association members shall become null and void at such time as the employee association engages in collective bargaining. Nothing in this last proviso shall apply to local boards of education, county or municipal governments or any local governmental units. Provided further, that subject to the rules and regulations adopted by the Director of the Budget, any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions may authorize in writing the withholding from his salary or wages an amount to satisfy his pledge to the State Employees Combined Campaign. Provided further, that subject to any rules and regulations adopted by the Director of the Budget, any employee of a local board of education or community college may authorize in writing the withholding from his salary or wages a periodic deduction of a designated sum to be paid to any organization which qualifies for recognition of exemption by the Internal Revenue Service as a charitable organization as defined in section 501(c)(3) of the Internal Revenue Code which has first been approved by his local board of education or community college board. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128; 1965, c. 1179; 1969, c. 625; 1977, c. 88; 1981, c. 869; 1981 (Reg. Sess., 1982), c. 1282, ss. 14, 15; 1983, c. 680; c. 913, s. 49.)

Editor's Note. — This section is former § 147-62, as recodified by Session Laws 1983, c. 913, s. 49.

Session Laws 1983, c. 913, s. 57, makes the recodification effective upon ratification. The act was ratified July 22, 1983.

Effect of Amendments. — Session Laws 1983, c. 680, effective July 5, 1983,

inserted "uniform rental firms to allow employees of the Department of Transportation to rent day-glo orange shirts or vests as required by federal and State law, and medical, hospital, disability" preceding "and life insurance companies" in the first proviso of the first sentence.

§ 143-3.4. Warrants for money paid into treasury by mistake.

(a) Whenever the Governor and Council of State are satisfied that moneys have been paid into the treasury through mistake, they may direct a warrant be drawn therefor on the Treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes nor to payments on bonds and mortgages.

(b) Whenever any real property mortgaged to the State, or bought in for the benefit of the State, of which a certificate shall have been given to a former purchaser, is sold by the Attorney General on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the State, with costs and expenses, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract. A warrant shall not be drawn for such surplus money but upon satisfactory proof, by affidavit or otherwise, of the legal rights of such person. (1868-9, c. 270, ss. 66, 68; Code, ss. 3351, 3352; Rev., ss. 5366, 5368; C.S., ss. 7676, 7678; 1983, c. 913, ss. 50, 51.)

Editor's Note. — Subsection (a) of this section is former § 147-63 and subsection (b) of this section is former § 147-64, as recodified by Session Laws 1983, c. 913, ss. 50 and 51.

Session Laws 1983, c. 913, s. 57 makes the recodification effective upon ratification. The act was ratified July 22, 1983.

Effect of Amendments. — The 1983

amendment, effective July 22, 1983, substituted "a warrant be drawn therefor" for "the Auditor to draw his warrant therefor" in subsection (a) and substituted "A warrant shall not be drawn" for "The Auditor shall not draw his warrant" in the second sentence of subsection (b).

§ 143-4. Advisory Budget Commission.

The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, three other Senators appointed by the President of the Senate, three other Representatives appointed by the Speaker of the House, and five other persons appointed by the Governor shall constitute the Advisory Budget Commission. If the Governor appoints any members of the General Assembly to the Advisory Budget Commission, he must appoint an equal number from the Senate and House of Representatives.

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

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

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

vacancy. A vacancy in one of the other seats on the Commission shall be filled by appointment by the officer who appointed the person causing the vacancy.

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

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

In all matters where action on the part of the Advisory Budget Commission is required by this Article, 10 members of the Commission shall constitute a quorum for performing the duties or acts required by the Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768; 1955, c. 578, s. 3; 1957, c. 269, s. 2; 1973, c. 820, ss. 1-3; 1979, 2nd Sess., c. 1137, ss. 25, 29.1, 37; 1981, c. 859, s. 47.1; 1983, c. 48, ss. 1-3.)

Effect of Amendments. —

The 1983 amendment, effective March 4, 1983, substituted "three other Senators" for "two other Senators," "three other Representatives" for "two other Representatives," and "five other

persons" for "four other persons" in the first sentence of the first paragraph, added the second sentence of the first paragraph, and in the last paragraph substituted "10" for "eight" preceding "members."

§ 143-7. Itemized statements and forms; exemptions from § 147-64.6(c)(10).

The statements and estimates required under G.S. 143-6 shall be itemized in accordance with the budget classification adopted by the Director, and upon forms prescribed by him, and shall be approved and certified by the respective heads or responsible officer of each department, bureau, board, commission, institution, or agency submitting same. Official estimate blanks which shall be used in making these reports shall be furnished by the Director of the Budget.

The Office of the Governor, and the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative Services Commission and any other commission in the legislative branch are exempt from G.S. 147-64.6(c)(10).

(1925, c. 89, s. 7; 1929, c. 100, s. 7; 1957, c. 269, s. 2; 1983, c. 761, s. 19.)

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

Effect of Amendments. — The 1983 amendment added the second paragraph. Session Laws 1983, c. 761, s. 19, provides that this amendment is effective only if

H.B. 517 is enacted and is effective on the same date that G.S. 147-64.6(c)(10) is effective. H.B. 517 was enacted as Chapter 913. The act, including new § 147-64.6, was made effective upon ratification; it was ratified July 22, 1983.

§ 143-10.1. Budget required to include State cost of local programs.

The Office of State Budget and Management and the Director, with the advice of the Commission, shall prepare the State budget in a format that adequately and fairly reflects the continuation costs for the State's share of locally operated programs established by statute or State appropriation. These continuation costs shall be computed using the same budget preparation guidelines and rules prepared by the Office of State Budget and Management for use in State agency and institution budgets. Furthermore, in the projections for expansion costs related to employee compensation, the budget shall include the expansion costs necessary to cover the State's share of salary and salary-related items for employees in locally operated State-funded programs. Local governments or organizations spending State funds to operate local programs shall provide necessary information to the Office of State Budget and Management to establish the necessary continuation and expansion costs. (1983, c. 761, s. 13.)

Editor's Note. — Session Laws 1983, c. 761, s. 260 makes this section effective July 15, 1983.

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

§ 143-11. Survey of departments.

On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend funds as hereinbefore defined, in the interest of economy and efficiency, and a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures

for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receive or may receive for use and expenditure any State funds as hereinbefore defined, in accordance with the classification adopted by the Director, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the budget with:

- (1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.
- (2) An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.
- (3) A statement of special funds.
- (4) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two appropriation years.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix. (1925, c. 89, s. 12; 1929, c. 100, s. 11; 1983, c. 717, s. 54.)

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 "and the Commission or any of its members retain the right to submit separately to the General Assembly such

statement of disagreement and the particulars thereof as representing their views" for "and shall cause to be incorporated therein such statement of disagreement and the particulars thereof, as the Commission or any of its members shall deem proper to submit as representing their views" at the end of the third sentence of the first paragraph.

§ 143-11.1: Repealed by Session Laws 1983, c. 717, s. 55, effective July 11, 1983.

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be

cited as the Separation of Powers Act of 1983."

§ 143-16.1. Federal funds.

All federal funds shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by law. Proposed budgets recommended to the General Assembly by the Governor and Advisory Budget Commission shall include information concerning the federal expenditures in State agencies, departments and institutions in the same manner as State funds. The Director of the Budget may adopt rules and regulations establishing uniform planning, budgeting and fiscal procedures, not inconsistent with federal law, that ensure that all federal funds shall be expended in a standardized manner. (1977, 2nd Sess., c. 1219, s. 45; 1983, c. 717, s. 56; c. 761, s. 57.)

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. — The first 1983 amendment, effective July 11, 1983, inserted "except as otherwise pro-

vided by law" at the end of the first sentence and in the second sentence deleted "all appropriate" preceding "information" and inserted "in the same manner as State funds."

The second 1983 amendment, effective July 15, 1983, added the sentence beginning "The Director of the Budget . . ."

§ 143-18.1. Decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for.

(a) After consultation with the Advisory Budget Commission and upon the request of the administration of a State agency or institution, the Director of the Budget may decrease the scope of a capital improvement project.

(b) After consultation with the Advisory Budget Commission and upon the request of the administration of a State agency or institution, the Director of the Budget may when, in his opinion, it is in the best interest of the State to do so, increase the cost of a capital improvement project within the appropriation made to that State agency or institution within the capital improvement appropriation to that agency or institution for that biennium, provided that the project may not be increased in scope under the authority of this subsection.

(c) Upon the request of the administration of any State agency or institution, the Director of the Budget may accept funds by gift or grant for the construction of a capital improvement project not specifically provided for or authorized by the General Assembly. These funds shall be placed in a special reserve account to be held by the State Treasurer until the end of the biennium in which the account was established or until the capital improvement project is authorized by the Director of the Budget after consultation with the Advisory Budget Commission and the Capital Building Authority, whichever occurs first. These funds shall be invested and the interest thereon shall be added to the reserve. If the project is not authorized by the end of that biennium, the State Treasurer shall pay the funds accumulated in the special reserve account to the grantor or donor. Upon the establishment of a special reserve account under

this section, the Director of the Budget shall notify the Speaker of the House and President of the Senate of the receipt of the funds and the existence of the reserve account. Upon the request of the administration of any State agency or institution, the Governor, after consultation with the Advisory Budget Commission and the Capital Building Authority, may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by receipts, special funds, self-liquidating indebtedness, other funds, or any combination of funds, but not including funds appropriated from the General Fund. All expenditures under this authorization shall be handled in full compliance with the provisions of the Executive Budget Act.

The agency shall support its request for such capital improvement project, or projects, with the following information: the estimated annual operating costs for (i) utilities; (ii) maintenance; (iii) repairs; (iv) additional personnel; (v) any and all other expenses to the State resulting from the addition of this facility to the plant of the institution. (1965, c. 841, s. 1; 1983, c. 717, s. 57.)

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, rewrote the former first two paragraphs of this section as subsections (a) and (b), and the first paragraph of subsection (c).

§ 143-20. Accounting records.

The Director shall be responsible for keeping a record of the appropriations, allotments, expenditures, and revenues of each State department, institution, board, commission, officer, or other agency in any manner handling State funds. These records shall be kept in summary form, or in as much detail as the Director may deem advisable. (1925, c. 89, s. 22; 1929, c. 100, s. 22; 1955, c. 578, s. 5; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37; 1983, c. 913, s. 31.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted the former last sentence, which related to audits of records of the State auditor and State Treasurer for periods

preceding the transfer of preaudit and related functions from the Auditor's office to the Director of the Budget. The act also amended the catchline.

§ 143-20.1. Annual financial statements.

Beginning with fiscal years ending in 1984 and each and every year thereafter, all State agencies shall prepare annual financial statements on all funds administered by them no later than 60 days subsequent to the close of the fiscal year then ended in accordance with generally accepted accounting principles as described in authoritative pronouncements and interpreted and/or prescribed by the State Auditor, and in such form as he may require. The State Auditor shall publish guidelines specifying the procedures to implement the necessary records, procedures, and accounting systems to reflect these statements on the proper basis of accounting.

Accordingly, the State Auditor shall combine the financial statements for the various agencies into a Comprehensive Annual Financial Report for the State of North Carolina in accordance with

generally accepted accounting principles. These statements, with the Auditor's opinion, shall be published as the official financial statements of the State and shall be distributed to the Governor, members of the General Assembly, heads of departments, agencies and institutions of the State and other interested parties. The State Auditor shall notify the Director of the Budget of any and all State agencies which have not complied fully with the requirements of this provision within the specified time, and the Director of the Budget shall employ whatever means necessary, including the withholding of allotments, to ensure immediate corrective actions. (1983, c. 913, s. 32.)

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

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

All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata, including appropriations for the State Auditor, the State Treasurer, and Administrative Office of the Courts when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. (1929, c. 100, s. 26; 1955, c. 578, s. 7; 1973, c. 476, s. 193; 1981, c. 859, s. 47.1; 1983, c. 717, s. 58.)

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 "by and with the advice and consent of a majority of the Advisory

Budget Commission" preceding "to declare and determine the amounts" in the second sentence.

§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and agencies; Provided, however, that actual receipts, in excess of the amounts budgeted may be expended only when justified by extenuating circumstances and authorized by the Director of the Budget.

The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations the amount of receipts actually certified in General Fund Codes compared to the amount actually collected and expended in a fiscal year. This report shall apply to the previous fiscal year and shall be submitted by February 15 of each year. (1929, c. 100, s. 28; 1981 (Reg. Sess., 1982), c. 1282, s. 66; 1983, c. 761, s. 14.)

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

Effect of Amendments. —

The 1983 amendment, effective July 15, 1983, deleted "except federal receipts" following "provided, however,

that actual receipts" near the end of the first paragraph, and substituted "actually certified" for "budgeted" following "the amount of receipts" near the middle of the first sentence of the second paragraph.

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

Temporary Provision Effective Until June 1, 1984. — Session Laws 1983, c. 761, s. 225, rewrites G.S. 143-27.2 effective July 1, 1983. However, Session Laws 1983, c. 923, s. 217, repeals Session Laws 1983, c. 761, s. 225, effective June 1, 1984. Hence, until June 1, 1984, G.S. 143-27.2 reads as follows:

"§ 143-27.2. Discontinued service retirement allowance and severance wages for certain State employees. —

The Director of the Budget, upon written request of a State department and with the recommendation of the State Personnel Officer, is authorized to pay either a discontinued service allowance or severance wages to a State employee when the Director determines that the closing of a State institution or a reduction in force will accomplish economies

in the State Budget. Severance wages shall not be paid to an employee who chooses a discontinued service retirement. Severance wages shall not be subject to employer or employee retirement contributions.

"Notwithstanding any other provisions of the State's retirement laws, any employee of the State who is a member of the Teachers' and State Employees' Retirement System or the Law Enforcement Officers' Retirement System and who has his job involuntarily terminated as a result of economies in the State Budget may be entitled to a discontinued service retirement allowance, subject to the approval of the employing agency and the availability of agency funds. An unreduced discontinued service retirement

allowance, not otherwise allowed, may be approved for employees with 25 or more years of creditable retirement service who are at least 55 years of age; or a discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 50 years of age, reduced by one-fourth of one percent ($\frac{1}{4}$ of 1%) for each month that retirement precedes his fifty-fifth birthday. In cases where a discontinued service retirement

allowance is approved, the employing agency shall make a lump sum payment to the Administrator of the State Retirement Systems equal to the actuarial present value of the additional liabilities imposed upon the System, to be determined by the System's consulting actuary, as a result of the discontinued service retirement, plus an administrative fee to be determined by the Administrator."

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

§ 143-34.6. Deposit of payroll deductions.

Employer and employee salary-related contributions and deductions for employees whose salaries were paid from the general fund, Highway Fund, agency receipts, or any combination thereof shall not be withdrawn or transferred except to an account whose cash balance earns interest for the general fund or Highway Fund, as provided in G.S. 147-69.1, until payment is made directly to the ultimate agency or party to whom they are due. (1983, c. 761, s. 27.)

Editor's Note. — Session Laws 1983, c. 761, s. 260, makes this section effective July 15, 1983.

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

§§ 143-34.7 to 143-34.9: Reserved for future codification purposes.

ARTICLE 1.2.

Legislative Committee on Agency Review.

§§ 143-34.25 to 143-34.27. Expired.

Editor's Note. — This Article has expired pursuant to § 143-34.25(d), which provided that the Committee

would terminate and the authority granted by the Article would expire on June 30, 1983.

ARTICLE 2D.

North Carolina Board for Need-Based Student Loans.

§ 143-47.21. Creation of Board.

The North Carolina Board for Need-Based Student Loans, hereinafter referred to as the Board, is established in the Office of State Budget and Management to provide financial assistance on the basis of demonstrated need as determined by the Board to students who are residents of North Carolina and who are accepted in an accredited degree-granting program, in any school, college or university, leading to graduation as physicians, dentists, optometrists, pharmacists, nurses, nurse instructors, nurse

anesthetists, medical technicians, social workers, psychologists or other health professionals, or leading to graduation as mathematicians or scientists as so determined by the Board. (1981 (Reg. Sess., 1982), c. 1388, s. 4; 1983, c. 761, ss. 176, 177.)

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

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, sub-

stituted "Student Loans" for "Medical Student Loans" in the first line, and inserted "or leading to graduation as mathematicians or scientists" in the last line.

§ 143-47.24. Powers and duties.

The Board shall administer a program of student loans and scholarships to those students designated in G.S. 143-47.21 that it determines have demonstrated financial need and who otherwise qualify. The loans administered pursuant to this Article shall be repaid in a manner to be determined by the Board. There shall be no forgiveness of any portion of the loans.

The Board shall promulgate rules and regulations for the administering of the program.

The Board shall prepare a written annual report giving an account of its proceedings, transactions and any recommendations it may have and shall submit this report to the Governor and the General Assembly.

All staff, clerical and other services required by the Board shall be supplied by the Office of the State Budget and Management. The position of Executive Secretary to the Board shall be appointed by the State Budget Officer and is exempt from G.S. 126-5(a). The compensation of the Secretary shall be fixed by the State Budget Officer after consultation with the Office of State Personnel. (1981 (Reg. Sess., 1982), c. 1388, s. 4; 1983, c. 761, ss. 180, 181.)

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 the first paragraph and the last two sentences to the fourth paragraph.

ARTICLE 3.

Purchases and Contracts.

§ 143-48. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose.

It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is to provide for the effective and

economical acquisition, management and disposition of goods and services by and through the Department of Administration. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 692, s. 2.)

Effect of Amendments. — The 1983 amendment, effective July 6, 1983, rewrote this section.

§ 143-49. Powers and duties of Secretary.

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

- (4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. All receipts from the transfer or sale of such surplus, obsolete or unused equipment of State departments, institutions and agencies which are supported by appropriations from the general fund, except where such receipts have been anticipated for, or budgeted against the cost of replacements, shall be placed by the Secretary in an equipment reserve fund from which expenditures may be made only with prior approval of the Director of the Budget and after consultation with the Advisory Budget Commission. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.
- (6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Human Resources, and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration after consultation with the Advisory Budget Commission may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1; 1983, c. 717, ss. 60, 62.)

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 "prior approval of the Director of

the Budget and after consultation with the Advisory Budget Commission" for "prior approval of the Director of the Budget and the Advisory Budget Commission" in the second sentence of subdivision (4) and substituted "Secretary of Administration after consultation with the Advisory Budget Commission" for "Advisory Budget Commission" in the first sentence of subdivision (6).

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

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of five thousand dollars (\$5,000) and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration, after consultation with the Advisory Budget Commission, when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration after consultation with the Advisory Budget Commission, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the

name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, ss. 2, 3; 1983, c. 717, s. 61.)

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 "after consultation with" for "with the approval of" preceding "the Advisory Budget Commission" in two places.

§ 143-53. Rules and regulations.

The Secretary of Administration after consultation with the Advisory Budget Commission shall have the necessary authority to adopt rules and regulations governing the following:

- (1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.
- (2) Prescribing routine for securing bids on items that do not exceed five thousand dollars (\$5,000) in value.
- (3) Defining contractual services for the purposes of G.S. 143-49 (3).
- (4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.
- (5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.
- (6) Prescribing conditions under which partial, progressive and multiple awards may be made.
- (7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.
- (8) Providing conditions under which bids may be rejected in whole or in part.
- (9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.
- (10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than state-appropriated.
- (11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Adopting any other rules and regulations to carry out the duties and purpose of this Article.

The purpose of rules and regulations promulgated hereunder shall be to promote sound purchasing management. Such rules and regulations shall become effective in accordance with the provisions of Chapter 150A of the General Statutes. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4; 1983, c. 717, ss. 63-64.1.)

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 "The Secretary of Administration after consultation with the Advisory Budget Commission" for "The Advisory Budget Commission" at

the beginning of the introductory paragraph, and in the last paragraph deleted "and prior to adoption, they shall be submitted to the Attorney General for opinion as to the legal effects thereof" at the end of the first sentence and substituted "in accordance with the provisions of chapter 150A of the General Statutes" for "upon filing with the Secretary of State" in the second sentence.

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

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

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

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

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review. (1931, c. 261, s. 7; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 953; 1983, c. 717, ss. 65, 66.)

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 "Unless" for "Except" at the beginning of the introductory paragraph, deleted a

comma and "with the approval of the Advisory Budget Commission," preceding "the purchase of supplies," deleted "not" preceding "be mandatory", all in the introductory paragraph and deleted "with the approval of the Advisory Budget Commission" at the end of subdivision (2).

§ 143-58.1. Unauthorized use of public purchase or contract procedures for private benefit.

(a) It shall be unlawful for any person, by the use of the powers, policies or procedures described in this Article or established hereunder, to purchase, attempt to purchase, procure or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

- (1) The department, institution or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution or agency involved, or the public benefit or convenience; and
- (2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Article or established thereunder.

(c) A violation of this section is a misdemeanor punishable by fine, imprisonment up to two years, or both, in the discretion of the court. (1983, c. 409.)

Editor's Note. — Session Laws 1983, c. 409, s. 2, makes this section effective Oct. 1, 1983.

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

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

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

Further, the Secretary of Administration, after consultation with the Advisory Budget Commission, may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 268, s. 2; 1983, c. 717, ss. 67, 68.)

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 "after consultation with" for "with the approval of" following "Secretary of Administration" in the first and second paragraphs.

§ 143-63. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the Secretary of Administration, nor any assistant of his, nor any member of the Advisory Budget Commission shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Secretary, assistant or member of the Commission shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 717, s. 81.)

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 "nor of the Standardization Committee" following "Advisory Budget Commission," in the first sentence and deleted "or Committee" following "the Commission" in the first and last sentences.

ARTICLE 5.

Check on License Forms, Tags and Certificates Used or Issued.

§ 143-106: Repealed by Session Laws 1983, c. 913, s. 33, effective July 22, 1983.

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-118.1. Secretary of Human Resources may compromise account.

The Secretary of Human Resources or the agent of the Secretary to whom this power has been delegated by the Secretary of Human Resources is hereby empowered to enter into contracts of compromise of accounts owing the said institutions for past, present or future care at the said institutions, including but not limited to the

authority to enter into a contract to charge nothing, which contract shall be binding on the respective institution under the terms and for the period specified in such contract. The rate of charge fixed by such contract shall be paid on a monthly basis, or in lump sum for those amounts already accrued for the duration of the contract; said rates or decision to make no charge shall be determined in the discretion of the Secretary or the agent by the ability to pay of the patient or those responsible in law for his support. In any action by any of the said institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, a verified and itemized statement of account accompanied by a contract entered into pursuant to this section shall have the same effect in instituting a prima facie case as the statement of account filed pursuant to G.S. 143-118. This section shall not be construed as mandatory and if such contract is not entered into or shall terminate, or if the obligor shall default in the payment of the said compromise amount or any installment thereof, then the full monthly charge shall accrue on the patient's account. (1967, c. 958; 1973, c. 476, s. 133; 1983, c. 23, s. 1.)

Effect of Amendments. — The 1983 amendment, effective Feb. 22, 1983, substituted the language beginning "The Secretary of Human Resources" and ending "delegated by the Secretary of Human Resources is" for "The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, or the Department of

Human Resources or the agent of these said boards, to whom this power has been delegated by resolution of the respective boards, are" at the beginning of the first sentence, and substituted "discretion of the Secretary or the agent" for "discretion of the board or their agents" near the middle of the second sentence.

§ 143-119. Payments.

Such cost, when so fixed and determined by the Secretary of Human Resources or the agent of the Secretary to whom this power has been delegated by the Secretary of Human Resources shall be paid by the patient, pupil or inmate thereof, or by his parent, guardian, trustee or other person legally responsible therefor, and the payment thereof shall constitute a valid expenditure of the funds of any such pupil, patient or inmate by any fiduciary who may be in the control of such funds, and a receipt for the payment of such costs in the hands of such fiduciary shall be a valid voucher to the extent thereof in the settlement of his accounts of his trust. Immediately upon the determination of the cost, as herein provided for, the Director of the institution shall notify the patient, pupil, inmate, parent, guardian, trustee, or such other person who shall be legally responsible for the payment thereof, of the monthly amount thereof, and such statement shall be rendered from month to month. The Secretary or agent is vested with full and complete authority to arrange with the patient, pupil, inmate, parent, guardian, trustee, or other person legally responsible for the cost, for the payment of any portion of such cost monthly or otherwise, in the event such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall not be able to pay the total cost. The head of the various institutions shall annually file with the Auditor of the State a list of all unpaid accounts. The provisions of the Article directing the Secretary or agent to ascertain which of the inmates are nonindigent and able to pay for their care, maintenance and treatment, and also directing said Secretary or agent to make cer-

tain periodical demands upon the guardians or other persons responsible for said inmates for the payment of said charges, and which further directs the Secretary or agent to remove all of those inmates found able to pay but who refuse to pay and all of the other provisions of this Article relating to the manner in which the Secretary or agent shall collect said costs, shall be construed to be directory provisions on the part of the Secretary or agent and not mandatory, and the failure on the part of the Secretary or agent to perform any or all of said provisions shall not affect the right of the State institutions so named to recover in any action brought for that purpose, either during the lifetime of said inmates or after their death, in an action against their guardian if alive, or other fiduciary, or against the inmate himself, and if dead, against their personal representatives for the cost of their care, maintenance and treatment in said institutions. (1925, c. 120, s. 3; 1935, c. 186, s. 2; 1983, c. 23, s. 2; c. 806.)

Effect of Amendments. — The first 1983 amendment, effective Feb. 22, 1983, substituted "Secretary of Human Resources or the agent of the Secretary to whom this power has been delegated by the Secretary of Human Resources" for "respective boards of trustees or directors for each institution" in the first sentence, in the second sentence substituted "Director of the institution" for "superintendent of the institution," at the beginning of the third sentence substituted "The Secretary or agent is" for

"The respective board of trustees or directors of the various institutions are," and rewrote the fifth sentence, so as to substitute references to the Secretary or agent for references to the boards of directors or authorities of the institutions.

The second 1983 amendment, effective July 18, 1983, inserted "funds of any such pupil, patient or inmate by any fiduciary who may be in the" in the first sentence of the section as amended by Session Laws 1983, c. 23, s. 2.

§ 143-120. Determining who is able to pay.

From and after March 4, 1925, the Secretary of Human Resources or the agent of the Secretary to whom this power has been delegated by the Secretary of Human Resources shall ascertain which of the various patients, pupils or inmates thereof, or which of the parents, guardians, trustees, or other persons legally responsible therefor, are financially able to pay the cost, to be fixed and determined by this Article, and so soon as it shall be ascertained such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall be notified of such cost, and in general of the provisions of this Article and such patient, pupil, inmate or the parent, guardian, trustee, or other person legally responsible therefor shall have the option to pay the same or to remove the patient, pupil, or inmate from such institution, unless such person was committed by an order of a court of competent jurisdiction, in which event the liability for the cost as fixed by this Article shall be fixed or determined and payment shall be made in accordance with the terms of this Article. (1925, c. 120, s. 4; 1983, c. 23, s. 3.)

Effect of Amendments. — The 1983 amendment, effective Feb. 22, 1983, substituted "Secretary of Human Resources or the agent of the Secretary to whom this power has been delegated by the

Secretary of Human Resources" for "respective boards of trustees or directors of each institution" near the beginning of the section.

§ 143-127. Money paid into State treasury.

All money collected by any institution pursuant to this Article shall be by such institution paid into the State treasury, and shall be by the State Treasurer credited to the account of the institution collecting and turning the same into the treasury, and shall be paid out by warrants drawn as in cases of appropriations made for the maintenance of such institutions and shall be used by such institution as it uses and is authorized by law to use appropriations made for maintenance. (1925, c. 120, s. 11; 1983, c. 913, s. 34.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted “by the Auditor” following “paid out by warrants drawn.”

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

(d) Notwithstanding any other provisions of the law, the income and financial resources of the natural or adoptive parents of persons under the age of 21 who since July 1, 1978, had spent a total of at least 180 days as long-term patients in public or private certified intermediate care facilities, skilled nursing facilities, or hospitals, shall not be taken into account in the determination of whether that child is eligible for medical assistance under Article 2, Part 5 of Chapter 108 of the General Statutes and Title XIX of the Social Security Act. (1971, c. 218, s. 1; 1973, c. 476, s. 133; c. 775; 1975, c. 19, s. 48; 1979, c. 838, ss. 25-27; 1983, c. 12.)

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

Editor’s Note. —

Article 2, Part 5, of Chapter 108, referred to in this section, was repealed by Session Laws 1981, c. 275, s. 1, effective October 1, 1981. For present provi-

sions as to social services, see Chapter 108A.

Effect of Amendments. — The 1983 amendment, effective Feb. 14, 1983, substituted “facilities, skilled nursing facilities, or hospitals” for “or skilled nursing facilities” near the middle of subsection (d).

ARTICLE 8.

Public Building Contracts.

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

Local Modification. —
County of Davidson: 1983, c. 295;
County of New Hanover: 1983, c. 365;

Tyrrell County Board of Education:
1983, c. 580.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

Local Modification. — City of Durham: 1983, c. 458.

§ 143-129.2. Construction, design and operation of solid waste management facilities.

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. 130A-290.

(b) To acknowledge the highly complex and innovative nature of solid waste management technology for processing mixed solid waste, the relatively limited availability of existing and proven proprietary technology involving solid waste management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article 8, or any other general, special or local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall include:

- (1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;
- (2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of such proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of such proposal;
- (3) Such other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to such request for proposals may be evaluated on the basis of a technical analysis of facility

design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon such other factors and information as the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, such determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article 8, or any other general, local or special law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

- (1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain such a solid waste management facility, upon such terms and conditions for such consideration and for such term or duration, not to exceed 40 years, as may be agreed upon by the unit of local government and such person;
- (2) Payment by the unit of local government of a fee or other charge to such person for acceptance, processing, recycling, management and disposal of solid waste;
- (3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste management facility guaranteed quantities of solid wastes; and
- (4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste management facility.

(f) The construction work for any facility or structure which is ancillary to the solid waste management facility and which does not involve storage and processing of solid waste or the separation, extraction and recovery of useful or marketable forms of energy and materials from solid waste at the solid waste management facility, shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1. Such ancillary facilities shall include but shall not necessarily be limited to the following: roads, water and sewer lines to the facility limits, transfer stations, scale house, administration buildings and residue and bypass disposal sites. (1983, c. 795, ss. 4, 8.1.)

Editor's Note. — Session Laws 1983, c. 795, s. 9, makes this section, which was enacted by s. 4 of the act, effective upon ratification. The act was ratified July 18, 1983.

Session Laws 1983, c. 795, s. 8, con-

tains a severability clause.

Effect of Amendments. — Session Laws 1983, c. 795, s. 8.1, effective Jan. 1, 1984, substituted "G.S. 130A-290" for "G.S. 130-166.16" in subsection (a).

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

(a) On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said prime contractor shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

(b) Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.

(c) The percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor

shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

(d) Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner. (1959, c. 1328; 1967, c. 860; 1979, c. 778; 1983, c. 804, ss. 1, 2.)

Editor's Note. — Session Laws 1983, c. 804, s. 3, makes the amendment effective upon ratification and applicable only to contracts executed on or after that date. The act was ratified July 18, 1983.

Effect of Amendments. — The 1983

amendment, effective July 18, 1983, designated the existing provisions of this section as subsection (a) and added subsections (b), (c), and (d). The act also amended the catchline.

§ 143-135. Limitation of application of Article.

Local Modification. — County of Davidson: 1983, c. 295; County of Macon and Macon County School Administrative Unit: 1983, c. 355; City of Monroe: 1983, c. 270.

By virtue of S.L. 1981, c. 511, Monroe should be stricken from the main volume.

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

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

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

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

Alternatively, in lieu of instituting a civil action in a superior court, the contractor may, as to the portion of the claim which may be denied by the Secretary of Administration, within 30 days from receipt of the decision, appeal the decision to the Board of State Contract Appeals as provided in G.S. 143-135.10.

The submission of the claim to the Secretary of Administration within the time set out in this section and the filing of an action in the superior court or the filing of a notice of appeal to the Board of State Contract Appeals within the time set out in this section shall be a condition precedent to bringing an action under this section and shall not be a statute of limitations.

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

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

"Contractor" as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1; 1973, c. 1423; 1975, c. 879, s. 46; 1981, c. 577; 1983, c. 761, s. 190.)

Editor's Note. —

Session Laws 1983, c. 761, s. 192, makes the amendment to this section effective July 15, 1983, and applicable to decisions made by the Secretary of Administration and the State Highway Administrator on or after January 1, 1984.

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

Effect of Amendments. —

The 1983 amendment, effective July 15, 1983, added the present fourth paragraph and inserted "or the filing of a notice of appeal to the Board of State Contract Appeals" following "superior

court" in the first sentence of the present fifth paragraph.

CASE NOTES

For interpretation and interaction between this section and the rule enunciated in *Smith v. State*, 289 N.C. 303, 222 S.E.2d 412 (1976), which abrogates the State's sovereign immunity in

contract actions in which no remedy had been provided, see *Middlesex Constr. Corp. v. State ex rel. State Art Museum Bldg. Comm'n*, — N.C. —, 299 S.E.2d 640 (1983).

§ 143-135.5. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose.

It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State construction projects. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is the effective and economical construction of public buildings. (1983, c. 692, s. 1.)

Editor's Note. — Session Laws 1983, c. 692, s. 4, makes this section effective

upon ratification. The act was ratified July 6, 1983.

§§ 143-135.6 to 143-135.9: Reserved for future codification purposes.

ARTICLE 8A.

Board of State Contract Appeals.

§ 143-135.10. Board of State Contract Appeals — Creation; powers and duties.

There is created the Board of State Contract Appeals with the authority to hear and decide appeals from the decisions of the Secretary of Administration made pursuant to G.S. 143-135.3, and the State Highway Administrator, made pursuant to G.S. 136-29, concerning claims raised under State construction contracts. Notice of the appeal shall be filed with the Board within 30 days after notice of a final decision by the agency head. Except as expressly provided otherwise in this Article, appeals to the Board shall be subject to Article 3 of Chapter 150A of the General Statutes. (1983, c. 761, s. 187.)

Editor's Note. — Session Laws 1983, c. 761, s. 192, makes this Article effective on July 15, 1983, and applicable to decisions made by the Secretary of Adminis-

tration and the State Highway Administrator on or after January 1, 1984.

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

**§ 143-135.11. Board of State Contract Appeals —
Members; selection; quorum; compensation.**

(a) The Board of State Contract Appeals shall consist of five members with three appointed by the Governor and two appointed by the General Assembly.

(b) The Governor shall appoint three members not later than July 1, 1983. One of the three members appointed by the Governor shall be either experienced in building or highway construction or engaged in the business of general contracting. The first member shall serve until June 30, 1984, the second member shall serve until June 30, 1985, and the third member shall serve until June 30, 1986. Thereafter, the members of the Board appointed by the Governor shall serve four-year terms. The General Assembly shall appoint one member upon the recommendation of the President of the Senate and the General Assembly shall appoint one member upon the recommendation of the Speaker of the House of Representatives; these appointments shall be made in accordance with G.S. 120-121. The members appointed by the General Assembly shall serve until June 30, 1984. Thereafter, the appointment of their successors shall be for terms of two years.

(c) Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. Members appointed by the General Assembly to fill vacancies shall be appointed in accordance with G.S. 120-122.

(d) The Governor shall have the right to remove any member for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.

(e) The members of the Board shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and a salary of two hundred dollars (\$200.00) per day when hearing appeals.

(f) The majority of the Board shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Board shall be supplied by the Secretary of Administration.

(h) The Board shall promulgate rules and regulations governing the conduct of hearings which shall include the requirements that rules of evidence shall apply and that sworn testimony shall be received and recorded in a verbatim transcript prepared by a court reporter. (1983, c. 761, s. 187.)

**§ 143-135.12. Board of State Contract Appeals —
Officers.**

The Board of State Contract Appeals shall have a chairman and a vice-chairman. The chairman shall be appointed by the Governor from among the members of the Board and shall serve at his pleasure. (1983, c. 761, s. 187.)

§ 143-135.13. Board of State Contract Appeals — Meetings.

The Board shall meet on the call of the chairman. The first meeting shall be held on or before January 1, 1984, and shall be for the purpose of promulgating rules and regulations consistent with this Article. (1983, c. 761, s. 187.)

§ 143-135.14. Appeals from the Board of State Contract Appeals.

(a) No party to a proceeding before the Board may appeal from any final order or decision of the Board unless within 30 days after the entry of such final order or decision, the party aggrieved by such decision or order shall file with the Board notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Board.

(b) Any party may appeal from all or any portion of any final order or decision of the Board in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Board, to each party to the proceeding to the addresses as they appear in the files of the Board in the proceeding. The failure of any party, other than the Board, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.

(c) The Board may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Board.

(d) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.

(e) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals. (1983, c. 761, s. 187.)

§ 143-135.15. No evidence admitted on appeal; remission for further evidence.

No evidence shall be received at the hearing on appeal to the Court of Appeals but if any party shall satisfy the court that evidence has been discovered since the hearing before the Board of State Contract Appeals that could not have been obtained for use at that hearing by the exercise of reasonable diligence, and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the Board with directions to take such subsequently discovered evidence, and after consideration thereof, to make such order as the Board may deem proper, from which order an appeal shall lie as in the case of any other final order from which an appeal may be taken as provided in G.S. 143-135.14. (1983, c. 761, s. 187.)

§ 143-135.16. Record on appeal; extent of review.

(a) On appeal the court shall review the record and the exceptions and assignments of error in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Board of State Contract Appeals, not shown in the record, shall be considered under the rules of appellate procedure.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Board action. The court may affirm or reverse the decision of the Board, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Board's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of statutory authority or jurisdiction of the Board;
or
- (3) Made upon unlawful proceedings; or
- (4) Affected by other errors of law; or
- (5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Board. (1983, c. 761, s. 187.)

§ 143-135.17. Relief pending review on appeal.

Pending judicial review, the Board of State Contract Appeals is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, a judge of the Court of Appeals is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Board or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court. (1983, c. 761, s. 187.)

§ 143-135.18. Appeal to Supreme Court.

In all appeals heard in the Court of Appeals, any party may file a motion for review in the Supreme Court of the decision of the Court of Appeals under G.S. 7A-31, and in cases entitled to be appealed as a matter of right under G.S. 7A-30 any party may appeal to the Supreme Court from the decision of the Court of Appeals under the same rules and regulations as are prescribed by law for appeals, and such court may advance the cause on its docket. (1983, c. 761, s. 187.)

§ 143-135.19. Judgment on appeal enforced by mandamus.

In all cases in which, upon appeal, an order or decision of the Board of State Contract Appeals is affirmed, in whole or in part, the appellate court may include in its decree a mandamus to the appropriate party to put said order in force, or so much thereof as shall be affirmed or the appellate court may make such other order as it deems appropriate. (1983, c. 761, s. 187.)

§ 143-135.20. Peremptory mandamus to enforce order when no appeal.

(a) If no appeal is taken from an order or decision of the State Board of Contract Appeals within the time prescribed by law and the person to which the order or decision is directed fails to put the same in operation, as therein required, the Board may apply to the judge regularly assigned to the superior court district which includes Wake County, or to the resident judge of said district at chambers upon 10 days' notice, for a peremptory mandamus upon said person for the putting in force of said order or decision; and if said judge shall find that the order of said Commission was valid and within the scope of its powers, he shall issue such peremptory mandamus.

(b) An appeal shall lie to the Court of Appeals in behalf of the Board or the defendant, from the refusal or the granting of such peremptory mandamus. The remedy prescribed in this section for enforcement of orders of the Board is in addition to other remedies prescribed by law. (1983, c. 761, s. 187.)

ARTICLE 9.

Building Code Council and Building Code.

§ 143-138. North Carolina State Building Code.

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

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

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

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing 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.

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

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

- (1) Any boiler regulations adopted by the Board of Boiler Rules,
- (2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and
- (3) Any regulations relating to sanitation adopted by the Department of Human Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

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

(1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2D; c. 1348, s. 1; 1983, c. 614, 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.

Local Modification. — Town of Carrboro: 1983, c. 730.

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 1983 amendment, effective June 24, 1983, substituted "five thousand dollars (\$5,000)" for "twenty-five hundred dollars (\$2500)" in the fourth paragraph of subsection (b).

§ 143-139.2. Enforcement of insulation requirements; certificate for occupancy; no electric service without compliance.

(a) In addition to other enforcement provisions set forth in this Chapter, no single family or multi-unit residential building on which construction is begun in North Carolina on or after January 1, 1978, shall be occupied until it has been certified as being in compliance with the minimum insulation standards for residential construction, as prescribed in the North Carolina State Building Code or as approved by the Building Code Council as provided in G.S. 143-138(e).

(c) This section shall apply only in any county or city that elects to enforce the insulation and energy utilization standards of the State Building Code pursuant to G.S. 143-151.27. (1977, c. 792, s. 7; 1983, c. 377, 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 Oct. 1, 1983, deleted the former second sentence of

subsection (a), which made it the duty of each county government and each municipality to provide for a building inspection program for certification of compliance with this section, and added subsection (c).

ARTICLE 9A.

Manufactured Housing and Mobile Homes.

Part 1. North Carolina Manufactured Housing Board.

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

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

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

The Commissioner of Insurance or his designee shall serve as chairman of the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint the manufactured home supplier and set-up contractor. The Commissioner of Insurance shall appoint two representatives of the general public. Except for the representatives from the general pub-

lic and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years to begin on October 1, 1981, except that the persons appointed by the General Assembly upon the recommendation of the Speaker shall serve two-year terms to expire on September 30, 1985, and the persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve for three-year terms to expire on September 30, 1986. In the event of any vacancy of a position appointed by the Governor or Commissioner of Insurance, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

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

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

(1981, c. 952, s. 2; 1983, c. 717, ss. 107-109, 114.)

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 "General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121" for "Speaker of the House of Representatives" in the third sentence of the second paragraph of subsection (a), substituted "General Assembly upon the recommendation of the

President Pro Tempore of the Senate in accordance with G.S. 120-121" for "President Pro Tempore of the Senate" in the fourth sentence of the second paragraph of subsection (a), and substituted the present first three sentences of the third paragraph of subsection (a) for a former first sentence, which read "The members of the Board shall serve for terms of three years, to begin on October 1, 1981, except that those first appointed as the representative of the banking and finance business, the representative of the insurance business, the manufactured home supplier, and the set-up contractor shall serve for terms of one year." The amendment also substituted "Except for the

representatives from the general public and the persons appointed by the General Assembly” for “Except for the

representatives from the general public” at the beginning of the sixth sentence of the second paragraph of subsection (a).

ARTICLE 9B.

North Carolina Code Officials Qualification Board.

§ 143-151.13. Required standards and certificates for Code-enforcement officials.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for such period (not less than one year nor more than three years) as specified by the Board’s regulations, or until June 30, 1983, whichever is later, to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have his probationary or temporary certificate extended beyond the specified period by renewal or otherwise. The Board may by regulation provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.

(1977, c. 531, s. 1; 1979, cc. 521, 829; 1983, c. 90.)

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 March 24, 1983,

inserted “or until June 30, 1983, whichever is later” following “Board’s regulations” in the first sentence of subsection (d).

ARTICLE 10.

Various Powers and Regulations.

§ 143-154. Expenditures for departments and institutions; accounting and warrants.

All expenditures of any character allowed by the General Assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution. (1917, c. 289; C.S., s. 7528; 1983, c. 913, s. 35.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted “State Auditor’s” preceding

“warrants shall be made” in the first sentence.

§ 143-155: Repealed by Session Laws 1983, c. 913, s. 36, effective July 22, 1983.

ARTICLE 12.

Law-Enforcement Officers' Retirement System.

§ 143-166. **Law-Enforcement Officers' Retirement System.**

(a) A retirement system is established and placed under the administration of a board of trustees for the purpose of providing retirement allowances under the provisions of this section for eligible law-enforcement officers, as an employees' trust in conformance with section 401(a) of the Internal Revenue Code of 1954 as amended. It shall be known as the "Law Enforcement Officers' Retirement System" and by such name all of its business transacted, its funds invested, and its cash and other property held.

To provide the employer funding of benefits under this section and the death benefits under the employee welfare plan provided in G.S. 143-166.02, there shall be paid (i) contributions of two dollars (\$2.00) for each cost of court assessed under G.S. 7A-304 and (ii) contributions by the employers of law-enforcement officers to the extent expressly required in annual and biennial appropriation acts or any other acts of the North Carolina General Assembly.

(a1) The board of trustees shall set a uniform annual percentage rate of contribution payable by the State and each county, city, town or political subdivision thereof (hereinafter referred to as an employer) necessary to fund the benefits and allowances provided under this section for law-enforcement officers employed by each employer who are members of this Retirement System. The employer shall pay monthly into the Retirement System an amount equal to the annual percentage rate of contribution multiplied by the total monthly compensation of members employed by the employer; Provided, the employer rate of contribution required of an employer other than the State shall be reduced in an amount equivalent to any appropriations for such purpose as are made from time to time by the North Carolina General Assembly. The Board of Trustees shall adopt such rules and regulations as are necessary and reasonable for the collection of employer contributions.

(b) For the purpose of determining the recipients of benefits under this Article and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Trustees of the Law Enforcement Officers' Retirement System." The membership of the Board of Trustees shall consist of 10 members, as follows:

- (1) The State Treasurer, who shall be chairman ex officio;
- (2) Repealed by Session Laws 1983, c. 913, s. 37, effective July 22, 1983.
- (3) The State Insurance Commissioner, who shall be a member ex officio;
- (4) Five members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police

officer, one a law-enforcement officer employed by the State, one a retired law-enforcement officer in receipt of an allowance from the Retirement System, and one representing the public at large;

- (5) Two members to be appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate in accordance with G.S. 120-121. Neither member appointed by the General Assembly may be an active or retired law-enforcement officer. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(d) The said Board of Trustees shall have control of all payments to be made from such fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this Article and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining any benefits under this Article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law. The Board of Trustees shall have authority to determine the membership eligibility or status of any member or applicant of any and all of those who come within the categories of law-enforcement officers named in subsection (m) of this section in accordance with general rules and regulations adopted by the Board and the decision of the Board of Trustees as to such membership eligibility or status shall be final.

(e) There shall be kept in the office of the said Board of Trustees by the secretary, records which shall give a complete history and record of all actions of the Board of Trustees in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or Board members.

(f) On or before the first day of January of each year the said Board of Trustees shall make to the Governor of the State of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such fund. The operations of the Board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Board of Trustees of the said fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold the same for the uses of said fund in accordance with the purposes of this Article. The State Treasurer shall be the custodian of the fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(h) In case the amount derived from the different sources mentioned and included in this Article shall not be sufficient at any time to enable the said Board of Trustees to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said fund shall be replenished sufficiently to warrant the resumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(i) In order for an officer to be eligible for retirement benefits under this Article, he shall contribute into the fund herein created six percent (6%) of his compensation received for each pay period beginning on or after July 1, 1977. Such rate shall apply uniformly to all members of the Law-Enforcement Officers' Retirement System, without regard to their coverage under the Social Security Act. The mode of payment to the fund shall be determined by the Board of Trustees. Provided, that any officer so contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall pay into the fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income. Compensation on which the member contributes shall not include any payments for unused sick leave.

(i1) (Contingent on Filing by July 30, 1985, of a Favorable Letter of Determination or Ruling from the I.R.S.) Pick Up of Officer Contributions. — Anything within this section to the contrary notwithstanding and pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended:

- (1) The State shall pick up and pay the contributions which would be payable by State-employed officers as members under subsection (i) of this section with respect to the service of officers after the effective date of this subsection; and
- (2) A county, city, town or other political subdivision of the State (hereinafter referred to as "other employer") may elect to enter into an agreement with the Board of Trustees to pick up and pay the contributions which would be payable by officers employed by other employers as members under subsection (i) of this section with respect to the service of their officers after the effective date of this subsection and after the effective date of such agreements; Provided, this provision to pick up and pay the officers' contributions by other employers shall apply only to such other employers who are participating employers in the Local Governmental Employees' Retirement System or who administer some other employers' trust qualified under sections 401(a), 403(a) or 405(a) of the Internal Revenue Code of 1954 as amended, and then only if such other employers have elected to pick up and pay employee contributions for all their other employees to the other qualified employees' trust.

The officers' contributions picked up by the State or other employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be

credited to the Regular Contributions Account and accumulated within the account in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Members' contributions picked up by the State or other employer shall be payable from the same source of funds used for the payment of compensation of a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State or other employer. This deduction, however, shall not reduce his compensation. Picked-up contributions shall be transmitted to the System monthly for the preceding month by means of a warrant drawn by the State or other employer and payable to the Law-Enforcement Officers' Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed.

(j) Any member who is no longer a law-enforcement officer, who has 15 or more years of creditable service, who leaves his total accumulated contributions in the Retirement System, and who is 50 years of age or older, may apply for and receive a deferred retirement allowance. Any member who is no longer a law-enforcement officer, who has five or more years of creditable service, who leaves his total accumulated contributions in the Retirement System, and who is 55 years of age or older, may apply for and receive a deferred retirement allowance. The deferred retirement allowance shall be computed in the same manner as is the basic service retirement allowance set forth in G.S. 143-166(y).

(q) The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided.

(r) through (w). Repealed by Session Laws 1983, c. 468, s. 6, effective June 8, 1983.

(x1) As of December 31 of each year, the Board of Trustees shall determine the ratio of the Consumer Price Index to that index of the previous year. Each beneficiary receiving a basic service retirement allowance, a basic disability retirement allowance, or an alternative to those allowances as of July 1 of the year of determination shall be entitled to have his total allowance increased effective July 1 of the year following the year of determination by the same percentage increase by the ratio calculated to the nearest tenth of one percent (1/10 of 1%); provided, however, that increase:

- (1) Shall not exceed four percent (4%) in any year; and
- (2) Shall be limited to the annual actuarial gain of the Retirement System.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average) as published by the United States Department of Labor, Bureau of Labor Statistics.

(x4) From and after July 1, 1980, the total monthly benefits to or on account of persons who commenced receiving benefits from the Retirement System prior to July 1, 1977, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

<i>Period Benefits Commenced</i>	<i>Percentage</i>
July 1, 1976, to June 30, 1977	1½%
July 1, 1975, to June 30, 1976	8%
July 1, 1974, to June 30, 1975	15%
Prior to July 1, 1974	23%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(x7) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1982, shall be adjusted by an increase of four percent (4%).

(y) Any member may retire on a basic service retirement allowance who: has attained 50 years of age and has completed 15 or more years of creditable service; or has completed 30 or more years of creditable service; or has attained 55 years of age and has completed five or more years of creditable service; Provided however, any member who was in service October 8, 1981, who had attained 55 years of age, may retire.

Under such rules and regulations as are otherwise adopted by the Board of Trustees, a member eligible to retire under this subsection shall receive a basic service retirement allowance equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation (calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average), multiplied by the number of years of his creditable service, and reduced by one-third of one percent (1/3 of 1%) for each month by which his date of retirement precedes his 55th birthday, except that no reduction in the basic service retirement allowance shall apply to any member who has 30 or more years of creditable service at the time of his retirement. When the last 12 months of compensation prior to retirement are used in computing average final compensation, the compensation for such 12-month period shall not include any payments for unused sick leave.

On and after July 1, 1980, creditable service on which the retirement allowance is based shall include one month of credit for each 20 days or fraction thereof of sick leave standing to the member's credit upon retirement, as certified by the member's employer, but not to exceed one month's credit for each two years of membership service or fraction thereof earned by the member. Unused sick leave for purposes of this section shall not be deemed to be standing to the credit of the member to the extent the member is compensated for such leave. Creditable service for purposes of determining eligibility for service retirement, disability retirement, early retirement, a vested deferred allowance, or any other benefit allowed under this Article shall not include unused sick leave standing to the credit of the member.

Any member who is less than 55 years of age with five or more years of creditable service and who has been totally and permanently incapacitated for duty, or any member who is less than 55 years of age with one or more years of membership service and who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place may, upon application of the member or his employer, be retired by the Board of Trustees on a basic disability retirement allowance as is set

forth below. The Board of Trustees shall not grant a basic disability retirement allowance to any member for whom application for disability retirement is received more than a year after the onset of incapacity for duty or, if the member is in receipt of compensation from his employer on account of such incapacity for duty for more than one year, more than 30 days after the cessation of that compensation. Provided, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

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

Under such rules and regulations as are otherwise adopted by the Board of Trustees, a member eligible for a basic disability retirement allowance shall receive a disability retirement equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation calculated as the average annual compensation of a member during the four consecutive years of membership service producing the highest such average, multiplied by the number of years of creditable service which he would have had if he had continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

On and after July 1, 1981, the Board of Trustees shall determine whether a disability beneficiary who retired after July 1, 1981, is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his basic retirement allowance and the gross compensation earned as a law-enforcement officer during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation, excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his basic disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the basic disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his basic disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a basic service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The Board of Trustees shall implement the provisions of this subsection by the adoption of necessary and reasonable rules and regulations.

As a condition to the receipt of the basic disability retirement allowance provided for in this subsection, each disability beneficiary shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as a compensation for services, including fees, commissions or similar items and income derived from business for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

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

(y1) Notwithstanding any other provision of this Article, any officer may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

(1) Leaves of Absence Terminated Prior to July 1, 1983. — The cost to an officer whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the officer's credit in his Regular Contributions Account equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the System's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the officer could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the board of trustees.

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

(z) Recodified as G.S. 143-166.02 by Session Laws 1983, c. 468, s. 7, effective June 8, 1983. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963, cc. 144, 939, 953; 1965, c. 351, ss. 1, 2; 1967, c. 691, s. 52; c. 943; 1971, c. 80, ss. 1, 2; c. 837, s. 6; c. 1235; 1973, c. 931; 1977, c. 783, s. 4; c. 1090; 1977, 2nd Sess., c. 1204, s. 3; 1979, c. 467, s. 19; c. 838, ss. 97, 100-102, 105; c. 976, ss. 1, 2; 1979, 2nd Sess., c. 1137, ss. 65, 68, 72; c. 1214; c. 1215, ss. 1, 2; c. 1225, ss. 1-5; 1981, c. 672, s. 3; c. 859, ss. 43, 45; c. 940,

s. 3; c. 975, s. 1; c. 978, s. 5; c. 980, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 48; 1983, c. 468, ss. 1-7, 10; c. 533, s. 3; c. 761, ss. 220, 232, 241; c. 913, ss. 37, 38.)

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

Editor's Note. —

Section 11 of S.L. 1983, c. 468, makes subsection (i1) effective on the first day of any calendar month within 60 days after the filing with the Secretary of State of North Carolina of a favorable letter of determination or ruling from the Internal Revenue Service that the Law Enforcement Officers' Retirement System is an employees' trust qualified under Section 401(a) of the Internal Revenue Code of 1954 as amended, but only if such determination letter or ruling is filed by June 30, 1985.

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

Effect of Amendments. —

Session Laws 1983, c. 468, ss. 1 to 7, effective June 8, 1983, rewrote subsection (a), deleted the former first, third and fourth paragraphs of subsection (i), substituted "Article" for "section" in subsection (q), deleted subsections (r), (s), (t), (u), (v) and (w), redesignated subsection (z) as new § 143-166.02, and substituted references to the Law Enforcement Offi-

cers' Retirement System for references to the Law-Enforcement Officers' Benefit and Retirement Fund, references to the Retirement System for references to the Retirement Fund, and references to the Board of Trustees for references to the Board of Commissioners.

Session Laws 1983, c. 468, s. 10, added subsection (i1). For the effective date of this subsection, see the Editor's Note, above.

Session Laws 1983, c. 533, s. 3, effective July 1, 1983, added subsection (y1).

Session Laws 1983, c. 761, ss. 220, 232, and 241, effective July 1, 1983, added subsection (a1), added subsection (x7), and added the proviso at the end of the first paragraph of subsection (y).

Session Laws 1983, c. 913, ss. 37 and 38, effective July 22, 1983, deleted subdivision (2) of subsection (b), which read "The State Auditor, who shall be a member ex officio" and rewrote the second sentence of subdivision (f), which formerly provided for an annual audit and examination of the receipts and disbursement of the Board of Commissioners.

§ 143-166.01. Transfer of membership from Local Governmental Employees' Retirement System to Law-Enforcement Officers' Retirement System.

(a) Any employer, as the term is defined in G.S. 128-21(11), participating in the North Carolina Local Governmental Employees' Retirement System may, until June 30, 1981, allow law-enforcement officers, as the term is defined in G.S. 143-166(m), employed by such employer who are members of the North Carolina Local Governmental Employees' Retirement System to transfer membership from said Retirement System and become members of the Law-Enforcement Officers' Retirement System; Provided, that any employer allowing law-enforcement officers to transfer shall pay a lump sum amount to the Law-Enforcement Officers' Retirement System equal to the difference between the full cost, as defined in subsection (e) of this section, and the officers' and employer contributions transferred by virtue of subsection (b) of this section.

(b) Upon written request of a law-enforcement officer who meets the requirements of subsection (a), filed with the Board of Trustees of the Local Governmental Employees' Retirement System stating that he desires to transfer his membership in the Local Governmental Employees' Retirement System and become a member of the Law-Enforcement Officers' Retirement System, and upon the lump

sum payment by the employer of the full cost, as defined in subsection (e), the Local Governmental Employees' Retirement System is hereby authorized, empowered, and directed to transfer to the Law-Enforcement Officers' Retirement System:

- (1) All of the officer's accumulated contributions that were made on compensation received as a law-enforcement officer, together with the accumulated regular interest thereon, standing to the credit of such employee in the Local Governmental Employees' Retirement System; and
- (2) An amount equal to the normal and accrued liability payments that were made because of service rendered as a law-enforcement officer which have been made to the Local Governmental Employees' Retirement System by reason of such service to the employer calculated as the result of multiplying the normal and accrued liability percentage in effect at the time of the transfer times the compensation paid for service rendered as a law-enforcement officer.

Upon such transfer being made, the officer shall immediately become a member of the Law-Enforcement Officers' Retirement System and the service transferred shall no longer be creditable in the Local Governmental Employees' Retirement System.

(c) The Board of Trustees of the Law-Enforcement Officers' Retirement System is hereby authorized, empowered, and directed to receive any funds transferred as provided in this section as follows:

- (1) Upon receipt of a transferring officer's contributions, such contributions shall be deposited in the officer's regular contributions account; and
- (2) Upon receipt of the amount equal to the normal and accrued liability payments that were made by the employer because of service rendered as a law-enforcement officer from the Local Governmental Employees' Retirement System and the additional amount required to fund the full cost of benefits as determined in subsection (e) of this section, such funds shall be deposited in the Accumulation Account.

(d) The creditable service of an officer who transfers to the Law-Enforcement Officers' Retirement System shall be the service that was creditable as a law-enforcement officer in the Local Governmental Employees' Retirement System.

(e) The term "full cost" as used in this section shall be calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account such transferred service credits providing for a retirement allowance at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon advice of the consulting actuary.

(f) The Board of Trustees of the Law-Enforcement Officers' Retirement System is authorized and empowered to make and promulgate suitable rules and regulations to carry out the provisions of this section. (1979, c. 1058, ss. 1-6; 1983, c. 468, ss. 1, 2.)

Effect of Amendments. — The 1983 amendment, effective June 8, 1983, substituted references to the Law-Enforcement Officers' Retirement System for references to the Law-Enforcement Officers' Benefit and Retirement Fund, substituted references

to the Retirement System for references to the Law-Enforcement Officers' Retirement System, and substituted references to the Board of Trustees for references to the Board of Commissioners throughout this section.

§ 143-166.02. Death Benefit Plan.

There is created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System, and under which the members of the Retirement System, shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death in service of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs; or
- (2) The compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his death occurs; or
- (3) If the member had applied for and was entitled to receive a disability retirement allowance under the system and such disability retirement allowance had not been discontinued or revoked within 366 days of his last date of actual service, the compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his last day of actual service occurred,

subject to a maximum of twenty thousand dollars (\$20,000), less any death benefit paid from the Separate Benefit Fund. Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the system on his death. For the purposes of this plan, a member shall be deemed to be in service at the date of his death if his last day of actual service occurred not more than 90 days before the date of his death or if his last day of actual service occurred not more than 366 days before the date of his death if such member during said one-year period had applied for and was entitled to receive a disability retirement allowance under the system, provided said disability retirement allowance had not been discontinued or revoked during said one-year period.

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

- (4) In administration of the death benefit contained in this subsection, the following shall apply:

- a. For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
 - b. Last day of actual service shall be:
 1. When employment has been terminated, the last day the member actually worked;
 2. When employment has not been terminated, the date on which an absent member's sick and annual leave expired.
 - c. A member on leave of absence from his position as a law-enforcement officer for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a law-enforcement officer during the 12-month period immediately prior to the month in which death occurred, not to exceed twenty thousand dollars (\$20,000), less any death benefit paid from the Separate Benefit Fund.
- (5) The provisions of the Retirement System pertaining to administration, G.S. 143-166(a) through (f), and management of funds, G.S. 143-166(g), are hereby made applicable to the Plan.
- (6) Accidental Death Benefit. — In addition to all other death benefits provided by this section, there shall be paid an amount from the Plan not to exceed two thousand one hundred dollars (\$2,100) in total on account of the death of any law enforcement officer, without regard to membership in the Retirement System, caused by an accident while in the actual performance of duty. In order for this benefit to be paid, the death of the officer must have occurred within one year of the accident and a claim made by the beneficiaries made within one year of the accident and a claim made by the beneficiaries made within one year of the death of the officer. The beneficiaries and amounts payable hereunder are:
- a. The sum of one thousand dollars (\$1,000) as partial reimbursement for burial expenses payable to the surviving spouse, parent or legal representatives of the officer;
 - b. The sum of five hundred dollars (\$500.00) to the surviving spouse of the officer or, if there is no surviving spouse, the legal representatives of the officer; and
 - c. The sum of two hundred dollars (\$200.00) to each child of the officer who is under the age of 18 years or who is disabled. (1983, c. 468, ss. 1, 2, 7.)

Editor's Note. — This section was recodified pursuant to Session Laws former subsection (z) of § 143-166, as 1983, c. 468, s. 7, effective June 8, 1983.

Effect of Amendments. — Session Laws 1983, c. 468, s. 7, which recodified this section as § 143-166.02, also added subdivision (6). Pursuant to Session Laws 1983, c. 468, ss. 1 and 2, references

to the Retirement Fund and the Board of Commissioners have been changed to refer to the Retirement System and the Board of Trustees, respectively.

§ 143-166.03. Special annuity accounts.

(a) **Election.** — The State and any county, city, town or political subdivision thereof (hereinafter referred to as an employer), and any member, may elect to pay special contributions to be credited to designated individual accounts of members of the Retirement System, in addition to any contributions as otherwise required by this Article, to provide annuities to members payable at retirement and throughout life which are in addition to the basic service and disability retirement allowances under G.S. 143-166 (y). Such election by an employer, other than the State, shall be effective only after a written agreement is entered into between an employer and the Board of Trustees of the Retirement System, under conditions as are hereinafter required. The special contributions paid by employers are hereby declared expended as a public purpose.

(b) **Contribution Limits and Nondiscrimination.** — A member may elect to contribute up to but no more than ten percent (10%) of his compensation within any calendar year into an account. An employer may elect to contribute up to but no more than fifteen percent (15%) of a member's compensation within any calendar year into a member's account, reduced by any percentage contributed by the member. Provided, an employer making an election to pay special contributions for members of the Retirement System shall:

- (1) Pay special contributions for all of their employees who are members of this Retirement System; and
- (2) Pay identical percentage rates of special contribution for all members.

(c) **Benefits.** — The special contributions credited to the designated individual accounts of members shall accumulate together with such rate of interest as the Board of Trustees may from time to time determine and shall, upon the retirement of a member, provide such additional retirement allowance as the Board of Trustees shall determine on the basis of the tables and rate of interest last adopted by the Board of Trustees for this purpose. In order that future retirement allowances of members as a result of the special contributions of employers might be determinable, any agreement between an employer and the Board of Trustees shall include the requirements that:

- (1) The employer will pay special contributions for minimum periods of 24 consecutive months, but may cease such contributions within said 24 months upon written notice to the Board of Trustees; and
- (2) When the employer elects to cease special contributions within said 24 months in (1) above, special contributions may not be resumed by the employer for a period of 12 consecutive months from the month of cessation.

(d) **No Reversions to Employers.** — Upon the death or withdrawal from the Retirement System of a member for whom an employer has paid special contributions, such contributions shall not revert to the employer but shall be redesignated by the employer for the individual accounts of other members.

(e) State Contributions for State-Employed Members. — Under all other requirements and conditions herein provided, the State of North Carolina shall contribute to the individual accounts of members who are employed by the State an amount equal to five percent (5%) of the compensation of each such member. The special contributions so paid shall be paid from the same source as a member's compensation and shall be in addition to the State's contributions to fund the basic service and disability retirement allowances provided under the Retirement System.

(f) Applicability of Retirement System Provisions. — The provisions of the Retirement System pertaining to administration and management of funds under G.S. 143-166 are hereby made applicable to special annuity accounts. (1983, c. 468, s. 8.)

Editor's Note. — Session Laws 1983, c. 468, s. 11, makes this section effective upon ratification. The act was ratified June 8, 1983.

§ 143-166.04. Separate benefit plan.

(a) Plan Created. — One dollar (\$1.00) of the sum derived from the cost of court provided for in G.S. 7A-304 shall be set aside and held in a separate fund to be used by the Board of Trustees of the Retirement System to create an employee welfare benefit plan that is separate and apart from the Retirement System and under which coverage shall be provided for:

- (1) All law-enforcement officers in the State, as defined in G.S. 143-166(m), without regard to whether they are members of this Retirement System; and
- (2) All former law-enforcement officers in the State, as defined in G.S. 143-166(m), who had 20 or more years of service as an officer or are in receipt of a disability retirement allowance from any State-administered retirement system;

who shall hereinafter be referred to as participants.

(b) Benefits. — The Board of Trustees shall promulgate such rules and regulations as are necessary to establish benefits under the plan, within the availability of funds, to provide:

- (1) A death benefit payable in a lump sum to the designated beneficiary of a participant; and
- (2) An accident and sickness disability insurance benefit.

(c) Coverage Limits. — Benefits payable hereunder shall be payable on account of participants in the plan who have been enrolled as a participant for six or more months or, if an actively employed officer, at any time after enrollment if death or disability resulted from an accident. If the amounts in the fund are not sufficient at any time to enable the Board of Trustees to pay benefits due participants in full, then an equitably graded percentage of such payments shall be made to participants.

(d) Administration. — The Board of Trustees shall provide for benefits under the plan by either creating or participating in a separate trust fund qualified under section 501(c) (9) of the Internal Revenue Code of 1954 as amended. The provisions of the Retirement System pertaining to administration and management of funds under G.S. 143-166 are hereby made applicable to this plan. (1983, c. 468, s. 9.)

Editor's Note. — Session Laws 1983, c. 468, s. 11, makes this section effective upon ratification. The act was ratified June 8, 1983.

ARTICLE 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.1. Purpose.

In consideration of hazardous public service rendered to the people of this State, there is hereby provided a system of benefits for dependents of law-enforcement officers, firemen, rescue squad workers and senior Civil Air Patrol members killed in the discharge of their official duties. (1959, c. 1323, s. 1; 1965, c. 937; 1973, c. 634, s. 2; 1975, c. 284, s. 6; 1977, c. 797; 1983, c. 761, s. 236.)

Editor's Note. — Session Laws 1983, c. 761, s. 259, is a severability clause. **Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, deleted the second sentence, which defined the official duties of a fireman.

§ 143-166.2. Definitions.

(f) The term "official duties" means those duties performed while en route to, engaged in, or returning from training, or in the course of responding to, engaged in or returning from a call by the department of which he is a member, or from a call for assistance from any department or such organization within the State of North Carolina or within a service area contiguous to the borders of the State of North Carolina, when served or aided by a department from within the State of North Carolina. While within the State of North Carolina, any eligible person, as defined in this section or in G.S. 118-38, who renders service or assistance, of his own volition, at the scene of an emergency, is performing his official duties when:

- (1) Reasonably apparent circumstances require prompt decisions and actions to protect persons and property; and
- (2) The necessity of immediate action is so reasonably apparent that any delay in acting would seriously worsen the property damage or endanger any person's life. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048; 1979, c. 516, ss. 2, 3; c. 869; 1981, c. 944, s. 1; 1983, c. 761, s. 237.)

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 1, 1983, added subsection (f).

ARTICLE 13.

*Publications.***§ 143-168. Reports; conciseness.**

The annual or biennial reports now authorized or required to be printed by the several State agencies and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of those agencies and institutions. The details of the work of the agencies and institutions shall not be printed when not necessary to an intelligent understanding of such work, but totals and results may be tabulated and printed in their reports. (1911, c. 211, s. 2; 1917, c. 202, s. 2; C.S., s. 7294; 1931, c. 261, s. 3; 1955, c. 983; 1961, c. 243, s. 2; 1983, c. 866, s. 1.)

Editor's Note. — Session Laws 1983, c. 866, s. 8, provides that the act shall apply only to publications printed after October 1, 1983.

Effect of Amendments. — The 1983

amendment, effective October 1, 1983, deleted the third sentence, which related to rules of the Department of Administration as to publication of annual and biennial reports.

§ 143-169. Limitations on publications.

(a) Repealed by Session Laws 1983, c. 866, s. 2, effective October 1, 1983.

(1911, c. 211, s. 2; C.S., s. 7302; 1931, c. 261, s. 3; c. 312, ss. 14, 15; 1955, c. 1203; 1961, c. 243, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1983, c. 866, s. 2.)

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

Editor's Note. — Session Laws 1983, c. 866, s. 8, provides that the act shall apply only to publications printed after October 1, 1983.

Effect of Amendments. — The 1983 amendment, effective October 1, 1983, deleted subsection (a), which related to rules of the Department of Administration as to publications of State agencies and institutions other than annual or biennial reports.

§ 143-169.1. State agency public document mailing lists to be updated.

(a) On or before July 1 of each year, beginning with July 1, 1976, the head of every agency of this State shall certify to the Director of the Budget that the mailing lists for each public document issued by his agency have been carefully reviewed, updated and corrected within the previous 12 months. The above date may be extended by the Director of the Budget for 90 days for good cause shown. The reviewed, updated and corrected mailing lists shall be comprised only of those persons and organizations who, within the previous 12 months, have either requested that they be included in such a mailing list or have renewed a request that they be so included, or are recipients contemplated for receipt of the pertinent public document by express provision of statute or judicial order.

(b) For the purposes of this Article, the term "public document" shall mean any annual, biennial, regular or special report or publication of which at least 200 copies are printed, but shall not include intra-agency communications nor agency correspondence.

(c) For the purposes of this Article, the term "agency" shall mean and include, as the context may require, State department, institution, commission, committee, board, division, bureau, officer or official; provided, however, the provisions of this section shall not apply to the General Assembly, the Department of Revenue, the Department of Commerce, or to the Administrative Office of the Courts and the court system. (1975, c. 362, s. 1; 1983, c. 866, ss. 3-5.)

Editor's Note. — Session Laws 1983, c. 866, s. 8, provides that the act shall apply only to publications printed after October 1, 1983.

Effect of Amendments. — The 1983

amendment, effective October 1, 1983, added the language beginning "or are recipients" at the end of the third sentence of subsection (a) and rewrote subsections (b) and (c).

§ 143-170.1. Statement of cost of public documents; chief administrator charged with compliance.

(a) Every agency of this State publishing a public document, other than one published for the principal purpose of sale to the public, shall cause the following statement to be printed adjacent to the identification of the agency responsible for the publication:

"(number of copies) copies of this public document were printed at a cost of \$____, or \$____ per copy."

For the purposes of this Article the term "cost" shall include only direct reproduction costs in the form of labor and materials."

(b) The chief administrator of the agency authorizing the printing is charged with agency compliance with the provisions of this Article. (1983, c. 866, ss. 6, 7.)

Editor's Note. — Session Laws 1983, c. 866, s. 8, makes this section effective October 1, 1983, and applicable only to

publications printed after the effective date.

ARTICLE 19.

Roanoke Island Historical Association.

§ 143-203: Repealed by Session Laws 1983, c. 913, s. 39, effective July 22, 1983.

ARTICLE 21.

Water and Air Resources.

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

§ 143-214.1. Water; water quality standards and classifications; duties of Environmental Management Commission.

(e) Proposed Adoption and Assignment of Classification. — Prior to the adoption by the Environmental Management Commission of the series of classifications and standards applicable thereto as specified in subsection (a)(1) of this section, prior to the assignment by the Environmental Management Commission of any such classifications to any waters as specified in subsection (a)(3) of this section, and prior to any modification of any of such actions previously taken by the Environmental Management Commission, the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the requirements of G.S. 150A-12.

(1) to (3). Repealed by Session Laws 1983, c. 296, s. 1, effective May 11, 1983.

(1951, c. 606; 1957, c. 1275, s. 2; 1967, c. 892, s. 1; 1969, c. 822, s. 1; 1973, c. 1262, s. 23; 1975, c. 19, s. 50; c. 583, s. 8; c. 655, s. 5; 1977, c. 771, s. 4; 1979, c. 633, s. 6; 1979, 2nd Sess., c. 1199; 1983, c. 296, 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 May 11, 1983, sub-

stituted "requirements of G.S. 150A-12" for "the following requirements:" at the end of the introductory paragraph of subsection (e) and deleted former subdivisions (1) through (3) of subsection (e).

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

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

- (1) All applications for permits and for renewal of existing permits for pretreatment facilities, outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Environmental Management Commission may prescribe the form of such applications. All applications shall be filed with the Environmental Management Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Environmental Management Commission

shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from the applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application. The Environmental Management Commission may adopt such rules as it deems necessary, to be published as a part of its rules of procedure, with respect to the consideration of any application for permit or renewal and to the granting or denial thereof. Such rules may require the submission of plans and specifications and such other information as the Environmental Management Commission deems necessary to the proper evaluation of the application.

- (2) a. The Department of Natural Resources and Community Development, pursuant to appropriate rules of procedure adopted by the Environmental Management Commission, shall refer each application for permit, or renewal of an existing permit, for pretreatment facilities, outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Environmental Management Commission concurs in the proposed determination, it shall cause notice of the application and of the proposed determination, along with any other data that the Environmental Management Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Environmental Management Commission through its official rules, shall prescribe the form and content of the notice.
The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.
 - b. Permits for discharges to the surface waters of domestic wastes for single family dwellings of 1,000 gallons per day or less shall be issued without the above required notice. The Commission shall by regulation delegate the issuance of such permits to local health departments.
- (3) If any person desires a public meeting on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Environmental Management Commission within 30 days following date of the notice of application. The Environmental Management Commission shall consider all such requests for meeting, and if the Environmental Management Commission determines that there is a significant public interest in holding such meeting, at least 30 days' notice of such meeting shall be given to all persons to whom notice of application was sent and to any other person requesting notice. At least 30 days prior to the date of meeting, the

Environmental Management Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. The Environmental Management Commission, through its official rules, shall prescribe the form and content of the notices.

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

- (4) Not later than 60 days following notice of application or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Environmental Management Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Environmental Management Commission and all decisions denying application for permit or renewal shall be in writing.

- (5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5; c. 1262, s. 23; 1975, c. 19, s. 51; c. 583, ss. 2-4; c. 655, ss. 1, 2; 1977, c. 771, s. 4; 1979, c. 633, s. 5; 1983, c. 296, 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 11, 1983, deleted "by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet or point source or treatment works or disposal system discharging to the surface waters of the states lies and" preceding "by publication" in the second paragraph of

subdivision (c)(2)a, deleted "posted at the courthouse door of the county in which the pretreatment facility, outlet, point source, treatment works or disposal systems lies, and shall cause the notice to be" preceding "published at least one time" in the third sentence of the first paragraph of subdivision (c)(3), and substituted "meeting" and "meetings" for "hearing" and "hearings," respectively, throughout subdivision (c)(3).

§ 143-215.3. General powers of Environmental Management Commission and Department of Natural Resources and Community Development; auxiliary powers.

(a) Additional Powers. — In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

- (1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of

Articles 21, 21A and 21B and rules of procedure establishing and amplifying the procedures to be followed in the administration of these Articles, including rules and regulations providing for the charge of a reasonable fee for processing or publicizing applications for permits issued under these Articles and for reviewing, processing and publicizing applications for construction grant awards under the Federal Water Pollution Control Act; provided, however, that there shall be no fee charged to any farmer who submits an application which pertains to his farming operations. Any fees related to construction grants charged by the Commission shall be consistent with federal regulations. Fees for processing permits under these Articles shall not exceed one hundred dollars (\$100.00) for any single permit application. No regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4.

- (2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Environmental Management Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data), to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropri-

- ate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
- (3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article.
 - (4) To delegate such of the powers of the Environmental Management Commission as the Environmental Management Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department of Natural Resources and Community Development; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Environmental Management Commission; and provided further that the Environmental Management Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subsection (a)(12) for the abatement of existing water or air pollution. Any employee of the Department of Natural Resources and Community Development to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Environmental Management Commission.
 - (5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the Environmental Management Commission has occurred, or, in the discretion of the Environmental Management Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Environmental Management Commission may deem necessary for the enforcement of any of the provisions of this Article or of any official action of the Environmental Management Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Environmental Management Commission.
 - (6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.
 - (7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Environmental Management Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner

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

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

- (8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Envi-

ronmental Management Commission, after public hearing held pursuant to the provisions of General Statutes Chapter 150A, Article 2, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article. The Environmental Management Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

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

Notice of hearing shall be given in accordance with the provisions of G.S. 150A-12.

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

- (9) If an investigation conducted pursuant to this Article reveals a violation of any regulations, standards, or limitations adopted by the Environmental Management Commission pursuant to this Article, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or 143-215.109, the Environmental Management Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Environmental Management Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Environmental Management Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.
- (10) To require any laboratory facility performing or seeking to perform any tests, analyses, measurements, or monitoring required by this Article or regulations of the Environmental Management Commission implementing the provisions

of this Article to be certified by the Environmental Management Commission in accordance with standards established for such facilities in its regulations; and to charge a reasonable fee for certifying any such laboratory facility.

- (11) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.
- (12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Environmental Management Commission shall fix a place and time for a hearing before the Environmental Management Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Environmental Management Commission shall either affirm, modify or set aside the order of the assistant director.

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

- (13) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.
- (14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally

effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4; 1979, c. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4; 1983, c. 296, ss. 5-8.)

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 May 11, 1983, deleted the last sentence of subdivision (a)(1), which dealt with a public hearing prior to adoption of rules or regulations

relating to permit or grant application fees, substituted "General Statutes Chapter 150A, Article 2" for "G.S. 143-215.4" in the second sentence of the first paragraph of subdivision (a)(8), rewrote the third paragraph of subdivision (a)(8), and deleted subdivisions (a)(11) and (a)(13).

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

(a) **Persons Entitled to Notice, Mailing List.** — In any proceeding pursuant to G.S. 143-215.1, 143-215.2, 143-215.3, the Department shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to G.S. 143-214.1 and 143-215, the Department shall give notice as provided by G.S. 150A-12. It shall be the duty of the Department to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Department, ask to be permanently recorded on such mailing list. In addition to the manner of giving notice prescribed by G.S. 150A-12, the Department shall give notice of any proceeding under G.S. 143-214.1 and 143-215 to all persons on its mailing list.

(1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 10; c. 1262, s. 23; 1977, c. 374, s. 1; c. 771, s. 4; 1983, c. 296, s. 9.)

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

Effect of Amendments. — The 1983

amendment, effective May 11, 1983, rewrote the second sentence of subsection (a) and added the last sentence thereof.

§ 143-215.5. Judicial review.

(b) Any person against whom a final order or decision of the Environmental Management Commission is entered pursuant to hearing conducted by the Environmental Management Commission under G.S. 143-215.4(d), or is entered upon review of an order or decision by a hearing officer or member or members of the Environmental Management Commission to whom such authority has been duly delegated, may appeal from the order or decision of the Environmental Management Commission within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, to the Superior Court of Wake County or of the county where the order or decision is effective. Upon such appeal the

Department shall send a transcript certified by the Environmental Management Commission of all testimony and exhibits introduced before the Environmental Management Commission, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined in accordance with G.S. 150A-50 and G.S. 150A-51. Appeals from the judgment and orders of the superior court shall lie to the Court of Appeals. No bond shall be required of the Environmental Management Commission to the Court of Appeals.

- (1) Upon appeal filed by any party, the Department shall forthwith furnish each party to the proceeding with a copy of a certified transcript and exhibits filed with the Environmental Management Commission. A reasonable charge shall be paid the Department for said copies.
- (2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 108, s. 88; c. 698, s. 11; c. 1262, s. 23; 1983, c. 296, 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 May 11, 1983, sub-

stituted the present third sentence of the first paragraph of subsection (b) for the former third and fourth sentences thereof.

Part 3. Dam Safety Law.

§ 143-215.25. Definitions.

As used in this Part, unless the context otherwise requires:

- (2) "Dam" means the dam (and appurtenant works) for the impoundment or diversion of water, except that it shall not include:
 - a. Any dam constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or any other department or agency of the United States government, when such department or agency designed or approved plans and supervised construction.
 - b. Any dam or flood retarding structure constructed with financial assistance from the United States Soil Conservation Service, when said agency designed or approved plans and supervised construction.
 - c. The exemptions conferred by items a and b of this subdivision shall cease when the supervising federal agency relinquishes authority for the operation and maintenance to a local entity.
 - d. Any dam licensed by the Federal Power Commission, or for which a license application is pending with the Federal Power Commission, or for use in connection with electric generating facilities to be constructed pursuant to a certificate of public convenience and necessity from the North Carolina Utilities Commission, provided that small power producers as defined in G.S. 62-3(27a) shall be subject to the provisions of this

Part even though certified by the North Carolina Utilities Commission.

- e. Any dam under a single private ownership, providing protection only to land or other property under such ownership, and posing no threat to life or property below the property under such single ownership.
- f. Any dam less than 15 feet in height (measured from original stream bottom to crest of dam) or whose impoundment capacity is less than 10 acre-feet.

(1967, c. 1068, s. 3; 1973, c. 1262, ss. 23, 38; 1977, c. 771, s. 4; c. 878, ss. 2, 4; 1983, c. 306.)

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

amendment, effective May 13, 1983, added the proviso at the end of paragraph (2)d.

Effect of Amendments. — The 1983

Part 4. Federal Water Resources Development Projects.

§ 143-215.40. Resolutions and ordinances assuring local cooperation.

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

(1969, cc. 724, 968; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1983, c. 717, s. 69.)

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 11, 1983, substituted "after the Governor consults with the Advisory Budget Commission" for "and the Advisory Budget Commission" in the first sentence of subsection (a).

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

Part 8. Grants for Water Resources Development Projects.

§ 143-215.71. Purposes for which grants may be requested.

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

- (3) Construction costs for water management (flood control and drainage) purposes, including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent (66 2/3%), but only of that portion of the project specifically allocated for such flood control or drainage purposes.
- (6) Land acquisition and facility development for water-based recreation sites operated by local governments — fifty percent (50%). (1979, c. 1046, s. 1; 1983, c. 450.)

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 6, 1983, in subdivision (3) inserted “flood control and” preceding “drainage” in the parenthetical language and added “but only of

that portion of the project specifically allocated for such flood control or drainage purposes” at the end of the subdivision, and in subdivision (6) inserted “water-based” preceding “recreation sites” and deleted “at impoundments owned by the United States” following “operated by local governments.”

§ 143-215.73. Recommendation and disbursement of grants.

After review of grant applications, the Secretary shall forward those approved or approved in part to the Advisory Budget Commission, which shall review the recommendations for the transfer of funds from the Department’s reserve fund into accounts for specific projects. After review by the Advisory Budget Commission, project funds shall be disbursed and monitored by the Department of Natural Resources and Community Development. (1979, c. 1046, s. 1; 1983, c. 717, s. 70.)

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 “for the transfer of funds” for “and approve or disapprove the transfer of funds” in the first sentence and “After review” for “After approval” at the beginning of the second sentence.

ARTICLE 24.

*Wildlife Resources Commission.***§ 143-243. Organization of the Commission; election of officers; Robert's Rules of Order.**

The Commission shall hold at least two meetings annually, one in January and one in July, and seven members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times within the State as may be deemed necessary for the efficient transaction of the business of the Commission. The Commission may hold additional or special meetings at any time at the call of the chairman or on call of any five members of the Commission. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Article, and shall have an official seal, which shall be judicially noticed.

At the first scheduled meeting of the Commission after July 1, 1977, and on July 1 of each odd-numbered year thereafter, the Commission shall select from among its membership a chairman and a vice-chairman who shall serve for terms of two years or until their successors are elected and qualified. The Secretary of Natural Resources and Community Development or his designee shall serve as secretary of the Commission.

The chairman shall guide and coordinate the official actions and official activities of the Commission in fulfilling its program responsibility for (1) the appointment and separation of the executive director of the Commission, (2) organizing the personnel of the Commission, (3) setting the statewide policy of the Commission, (4) budgeting and planning the use of the Wildlife and Motorboat Funds, subject to the approval of the General Assembly, (5) holding public hearings, and (6) adopting regulations as authorized by law. The chairman shall report to and advise the Governor on the official actions and work of the Commission and on all wildlife conservation and boating safety matters that affect the interest of the people of the State.

Meetings of the Commission shall be conducted pursuant to Robert's Rules of Order. (1947, c. 263, s. 7; 1973, c. 825, s. 4; 1977, c. 771, s. 4; c. 906, s. 4; 1983, c. 717, ss. 71, 72.)

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 "in the City of Raleigh" following

"at least two meetings annually" and deleted "and places" following "held at such other times" in the first sentence of the first paragraph and substituted "General Assembly" for "Advisory Budget Commission and the legislature" in item (4) of the third paragraph.

§ 143-246. Executive Director; appointment, qualifications and duties.

The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The

Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the Governor after consultation with the Advisory Budget Commission, and said Director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1947, c. 263, s. 10; 1957, c. 541, s. 17; 1969, c. 844, s. 5; 1979, c. 830, s. 7; 1981, c. 884, s. 11; 1983, c. 717, s. 73.)

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 "after consultation with the Advisory Budget Commission" for "subject to the approval of the Advisory Budget Commission" in the fifth sentence.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

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

CASE NOTES

I. IN GENERAL.

The effect of the Tort Claims Act, etc. —

The Tort Claims Act waived the sovereign immunity of the State in those instances in which injury is caused by the negligence of a State employee and the injured person is not guilty of contributory negligence, giving the injured party the same right to sue as any other litigant. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

The State may be sued in tort only as authorized in the Tort Claims Act. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

North Carolina State Ports Authority, etc. —

As an agency of the State, the State

Ports Authority is clothed with immunity from actions based on its alleged negligence from whatever source except to the extent that such immunity has been waived, and that the State, by virtue of the enactment of State Tort Claims Act, has specifically and explicitly waived that immunity as to tort claims falling within the ambit of that act without regard to the nature of the function out of which they arise. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

The language of the State Tort Claims Act and § 143B-454(1), vesting the Ports Authority with authority to sue or be sued, when read together, evidence a legislative intent that the Authority be authorized to sue as plaintiff in its own name in the courts of the State but con-

templates that all tort claims against the Authority for money damages will be pursued under the State Tort Claims Act. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

Superior court had no jurisdiction over an action, etc. —

Since the Tort Claims Act provides that tort actions against the State, its departments, institutions, and agencies must be brought before the Industrial Commission, the superior and district courts of this State have no jurisdiction over a tort claim against the State, or its agencies, and in this case, the North Carolina State Ports Authority, an agency of the State. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

Recovery Must Be Based on Negligent Act, etc. —

The State Tort Claims Act authorizes the Industrial Commission to entertain claims arising as a result of a negligent act of any officer, employee, involuntary servant, or agent of the State while acting within the scope of his office, employment, service, agency, or authority under circumstances where the State, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

Under the Tort Claims Act, jurisdiction is vested in the Industrial Commission to hear claims against the State for personal injuries sustained by any person as a result of the negligence of a State employee while acting within the scope of his employment.

Guthrie v. North Carolina State Ports Auth., — N.C. —, 299 S.E.2d 618 (1983).

Cited in *Riggan v. North Carolina State Hwy. Patrol*, — N.C. App. —, 300 S.E.2d 252 (1983).

II. PROCEDURE.

Limitation on Claims Same As If Agency Were Private Person. — The legal limitation on the right to allow a claim under the provisions of the State Tort Claims Act is limited to the same category with respect to tort claims against the agency covered as if such agency were a private person and such private person would be liable under the laws of North Carolina. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

As to joinder of the State in the State courts as a third-party defendant, etc. —

Even though, under § 1A-1, Rule 14(c) of the North Carolina Rules of Civil Procedure (third party practice), the State may be made a third party in a tort action, the rules governing liability and the limits of liability of the State and its agencies as provided in the State Tort Claims Act apply. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

Contribution Among Tort-Feasors Act. — Although under the Uniform Contribution Among Tort-Feasors Act (§ 1B-1), the State may be sued for contribution as a joint tort-feasor, the rules governing and limiting the liability of the State and its agencies as provided in the Tort Claims Act apply. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

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

CASE NOTES

Cited in *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

ARTICLE 33C.

Meetings of Public Bodies.§ 143-318.9. **Public policy.**

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

ARTICLE 36.

Department of Administration.§ 143-340. **Powers and duties of Secretary.**

The Secretary of Administration has the following powers and duties:

- (19) Any motor vehicle parked in a state-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in violation of the "Rules and Regulations Governing State-Owned Parking Lots" dated September, 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of that vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such lots pursuant to this section except where such motor vehicle is wilfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage. Any motor vehicle parked without authorization on state-owned public grounds within the City of Raleigh under the control of the Department of Administration other than a designated parking area may be removed from that property to a storage area and the registered owner of the vehicle shall be liable for removal and storage fees.
- (25) To make available, on a cost basis, to city and county agencies the services of the State telephone network. These services are to be charged to the local governments based on the proportional cost of maintaining and operating the system and in accordance with rules and regulations adopted by the Governor and approved by the Council of State. (1957, c. 215, s. 2; c. 269, s. 1; 1969, c. 627; c. 1267, s. 4; 1971, c. 280; c. 1097, s. 2; 1975, c. 204; c. 879, s. 46; 1977, c. 119; c. 288, s. 2; 1979, c. 901, ss. 1, 2; c. 930; 1981, c. 696; 1981 (Reg. Sess., 1982), c. 1239, s. 4; 1983, c. 406; c. 420, s. 7.)

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

Cross References. — As to post-towing procedures, see § 20-219.9 et seq.

Effect of Amendments. —

The first 1983 amendment, effective May 27, 1983, added subdivision (25).

The second 1983 amendment, effective July 1, 1983, substituted "and the registered owner of that vehicle shall become liable for removal and storage charges" for "subject to the lien creation, notice and hearing provisions of G.S. 20-161.2" at the end of the first sentence of subdivision (19).

§ 143-341. Powers and duties of Department.

The Department of Administration has the following powers and duties:

(8) General Services:

- a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.
- b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.
- c. To provide necessary night watchmen for the public buildings and grounds.
- d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.
- e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.
- f. Struck out by Session Laws 1959, c. 68, s. 3.
- g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Secretary, to make application for and procure a post-office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Secretary may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.
- h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.
- i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:
 1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
 2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.

3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department.
5. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.
7. To adopt, with the approval of the Governor, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all state-owned motor vehicles under the control of the Department, and to enforce those rules and regulations; and to adopt, with the approval of the Governor, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules and regulations adopted by the Department pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Department and approved by the Governor is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
- 7a. To adopt with the approval of the Governor and the advice of the Advisory Budget Commission and to enforce rules, pursuant to Chapter 150A of the General Statutes, and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for commuting. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned

passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a.

A state-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 12,600 miles per year unless the individual's duties are (i) routinely related to public safety or (ii) are likely to expose him routinely to life threatening situations. The Department of Administration shall verify, on a quarterly basis, that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual is employed cannot justify the lower mileage for the quarter in view of the minimum annual rate, the permanent assignment shall be revoked immediately.

Every individual who uses a State-owned passenger motor vehicle, pick-up truck, or van to drive between his official work station and his home, shall reimburse the State for these trips at the current motor pool rate established by the Department of Administration. If the round trip is 13 miles or less, reimbursement shall be for 13 miles times 20 work days per month; if the round trip is more than 13 miles, reimbursement shall be for the actual round trip mileage times 20 work days per month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursements on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the general fund. This paragraph shall not apply to law-enforcement officers in the following agencies whose primary duties are not administrative: (i) State Bureau of Investigation, (ii) Alcohol law-enforcement agents of the Department of Crime Control and Public Safety, and (iii) the Butner Public Safety Department, probation and parole officers or to members of the Council of State. This paragraph also shall not apply to members of the Highway Patrol in Troops A through H or to other members of the Highway Patrol whose primary duties are not administrative as determined by the Highway

Patrol Commander. This paragraph also shall not apply to up to 350 employees of the Division of Highways of the Department of Transportation who are subject to 24-hour emergency call in the performance of their official duties or to up to 400 employees of the Division of Highways, during the construction season, who are required to work abnormal hours and on weekends on highway construction contract work, in the discretion of the Secretary of the Department of Transportation. The Department of Administration, Motor Fleet Management Division shall report to the Joint Legislative Commission of Governmental Operations every 90 days on exemptions from the commuting fees granted under the provisions of this paragraph.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a state-owned passenger motor vehicle, pick-up truck or van to any individual who:

- I. Uses the vehicle for other than official business except in accordance with the commuting rules;
- II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;
- III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;
- IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him and does not cure the deficiency within 30 days of receiving a request to do so;
- V. Abuses the vehicle; or
- VI. Violates other rule or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor and the advice of the Advisory Budget Commission, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the

- approval of the Governor and the advice of the Advisory Budget Commission, may revoke this delegation of authority.
8. To adopt and administer rules and regulations for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
 9. To acquire motor vehicle liability insurance on all state-owned motor vehicles under the control of the Department.
 10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.
 11. To report annually to the General Assembly on any rules adopted, amended or repealed under paragraphs 3, 7, or 7a of this subdivision.
- j. To establish and operate a central telephone system, central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules and regulations adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.
 - k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules, regulations, and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.
 - l. To provide necessary information service for visitors to the Capitol.
 - m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.
- (9) Information Processing Services. — With respect to all executive departments and agencies of State government, except the Department of Justice and The University of North Carolina:

- a. To establish and operate information processing centers and services to serve two or more departments on a cost-sharing basis, if the Computer Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services;
- b. With the approval of the Computer Commission, to charge, on a time basis, each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services;
- c. With the approval of the Computer Commission, to require any department served to transfer to the Department of Administration ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services;
- d. With the approval of the Computer Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers and services;
- e. With the approval of the Computer Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information processing equipment and personnel in the departments affected by this subdivision to facilitate more efficient and economic use of information processing resources in these departments; and
- f. To develop and promote training programs to improve the technical and managerial capability of personnel in information processing functions.

No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information processing center established under this subdivision until safeguards for the data's security satisfactory to the department head and the Secretary of Administration have been designed and installed and are fully operational. Nothing in this section may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This subdivision does not affect the provisions of G.S. 147-58 or G.S. 143-340(14). Notwithstanding any other provision of law, the Department of Administration shall provide information processing services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission.

- (10) Block Grants. — To establish and maintain a block grants manual that will ensure uniform administration of block grant funds. The manual shall be a comprehensive source of reference for all general and statewide administrative procedures for block grant funds. The manual shall contain the applicable procedures for: the contents of an application, which shall be as simple as possible; the awarding of

or contracting with block grant funds; auditing, which shall, to the extent possible, promote the use of single audits of grantees; the ensuring of civil rights compliance by grantees; and monitoring. (1957, c. 215, s. 2; c. 269, s. 1; 1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3; 1975, c. 399, ss. 1, 2; c. 879, s. 46; 1979, c. 136, s. 1; c. 544; 1979, 2nd Sess., c. 1137, s. 38; 1981, c. 300; c. 859, ss. 48-51; 1981 (Reg. Sess., 1982), c. 1282, s. 62; 1983, c. 267, s. 1; c. 717, s. 74; c. 761, ss. 58, 151, 173, 174; c. 923, s. 217.)

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

Temporary Provision Effective Until June 30, 1984. — Session Laws 1983, c. 761, s. 151(a) amended the sixth sentence of the third paragraph of subdivision (8)i 7a. by substituting "450 employees" for "350 employees" and "500 employees" for "400 employees". Section 151(b) of the Act provides that prior to assigning any additional personnel authorized by s. 151(a) the Secretary of Transportation shall report to the Joint Legislative Commission on Governmental Operations about the nature and number of the assignments, and the Secretary of Transportation shall report to the 1984 Regular Session of the General Assembly concerning the use of the increased exception and any necessity for extending the increase beyond June 30, 1984. Section 151(c) makes s. 151(a) effective until June 30, 1984.

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. 267, effective May 6, 1983, rewrote subdivision (9).

Session Laws 1983, c. 717, s. 74, effective July 11, 1983, deleted "and the Advisory Budget Commission" following "to require on a schedule determined by the Department" in subdivision (8)i 3 and deleted "and the Advisory Budget Commission" following "the Governor" throughout subdivision (8)i 7 and added subdivision (8)i 11.

Session Laws 1983, c. 761, s. 58, added subdivision (10).

Session Laws 1983, c. 761, ss. 173 and 174, as amended by S.L. 1983, c. 923, s. 217, effective July 15, 1983, in the first sentence of the third paragraph of subdivision (8)i 7a. substituted "who uses" for "who is permanently assigned" near the beginning, deleted "and who uses that vehicle" following "truck or van", and substituted "these" for "those" preceding "trips" near the end, and substituted "every 90 days" for "every 60 days" in the last sentence of the third paragraph of subdivision (8)i 7a.

§ 143-342.1. State-owned office space; fees for use by self-supporting agencies.

The Department shall determine equitable fees for the use of State owned and operated office space, and it shall assess all self-supporting agencies using any of this office space for payment of these fees. For the purposes of this section, self-supporting agencies are those agencies designated by the Director of the Budget as being primarily funded from sources other than State appropriations. Fees assessed under this section shall be paid to the General Fund. (1977, 2nd Sess., c. 1219, s. 48; 1983, c. 717, ss. 76, 77.)

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 "Director of the Budget" for "Advisory Budget Commission" in the second sentence and substituted "paid to the General Fund" for "paid to the Department" at the end of the last sentence.

§ 143-345.7. Repair and reconstruction of the Western Residence of the Governor.

If the Western Residence of the Governor in Asheville is damaged or destroyed by fire or other disaster, it shall be repaired or reconstructed. Funds from the Contingency and Emergency Fund may be used for this purpose with the approval of the Director of the Budget if insurance coverage on the property should be inadequate. Insurance on the Western Governor's mansion shall be as adequate as possible and used in case of a fire or devastation of the mansion for the purpose of rebuilding or repairing the mansion. (1983, c. 602.)

Editor's Note. — Session Laws 1983, c. 602, s. 2, makes this section effective upon ratification. The act was ratified June 24, 1983.

§ 143-345.8. North Carolina Purchase Directory.

The Division of Purchase and Contract of the Department of Administration shall publish a tabloid size, biweekly publication to be known as the "North Carolina Purchase Directory" which shall contain information on contract and purchase requirements from the Division of Purchase and Contract, the Office of State Construction, the Department of Transportation, and other agencies of State government which make direct purchases from private suppliers. The Division shall mail four free issues of this publication to all persons and businesses on the current bidders roster, to all Chambers of Commerce in North Carolina, to all business associations in North Carolina and to all persons or businesses on a list to be supplied by the Department of Commerce, within 30 days after the effective date of this section; thereafter the Division shall make the publication available on a subscription basis. Said subscription price shall not exceed forty dollars (\$40.00) per year and shall be computed taking into consideration the cost of producing and mailing the publication. The Division shall coordinate with the other departments of State government to ensure that the publication is meeting the goals of disseminating as widely as possible and in a timely manner information on those State contracts which are open for bids. (1983, c. 839.)

Editor's Note. — Session Laws 1983, c. 839, s. 2, makes this section effective October 1, 1983.

ARTICLE 38.

Water Resources.

§§ 143-356, 143-357: Repealed by Session Laws 1983, c. 222, ss. 1, 2, effective April 25, 1983.

ARTICLE 49A.

Equal Employment Practices.§ 143-422.2. **Legislative declaration.**

CASE NOTES

The ultimate purpose of § 126-36, this section, and Title VII (42 U.S.C. 2000e et seq.) is the same; that is, the elimination of discriminatory practices in employment. North Carolina Dep't of Cor. v. Gibson, — N.C. —, 301 S.E.2d 78 (1983).

North Carolina Supreme Court looks to federal decisions for guidance in establishing evidentiary standards and principles of law to be applied in discrimination cases. North Carolina

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

For discussion of standards applicable to Title VII cases (42 U.S.C. 2000e et seq.) as promulgated by United States Supreme Court and adopted by North Carolina Supreme Court (insofar as they do not conflict with State statute and case law), see North Carolina Dep't of Cor. v. Gibson, — N.C. —, 301 S.E.2d 78 (1983).

Chapter 143A.

State Government Reorganization.

Article 1.	Sec.
General Provisions.	
Sec.	143A-45. Interstate Compact for Education; rights, duties and privileges.
143A-9. Appointment of officers and employees; salaries of department heads.	143A-46. [Repealed.]
	143A-47. Interstate Agreement on Qualifications of Educational Personnel; rights, duties and privileges.
Article 5.	
Department of Public Education.	143A-48. Textbook Commission; transfer.
143A-42. Superintendent of Public Instruction; transfer of office and Department of Public Instruction; powers and duties.	Article 6.
	Department of Justice.
143A-43. [Repealed.]	143A-55.2. North Carolina Sheriffs' Education and Training Standards Commission; transfer.
143A-44. North Carolina Vocational Textile School; transfer.	

ARTICLE 1.

General Provisions.

§ 143A-9. Appointment of officers and employees; salaries of department heads.

Any provisions of law to the contrary notwithstanding, and subject to the provisions of the Constitution of the State of North Carolina, the head of a principal department, except those departments headed by elected officials who are constitutional officers, shall be appointed by the Governor and serve at his pleasure.

The head of a principal department shall appoint the chief deputy or chief assistant and such chief deputy or chief assistant shall be subject to the State Personnel Act. Except where appointment by the Governor is prescribed by existing statute, the head of the principal department shall appoint the administrative head of each transferred agency and, subject to the provisions of the State Personnel Act, appoint all employees of each division, section or other unit under a principal department.

In establishing the position of secretary, and the supporting staff for the principal departments, the cost of such staff positions will be met insofar as possible by utilizing existing positions or funds available from vacant positions within agencies assigned to the principal departments. (1971, c. 864, s. 1; 1983, c. 717, s. 50.)

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 the second and third sentences of the first paragraph, which read "The sal-

ary of the head of each of the principal departments, except in those departments headed by elected officials who are constitutional officers, shall be set by the Advisory Budget Commission on the recommendation of the Governor. Salaries for these positions shall be filed with the General Assembly pursuant to G.S.

143-34.3 commencing with the 1973 General Assembly.”

ARTICLE 5.

Department of Public Education.

§ 143A-42. Superintendent of Public Instruction; transfer of office and Department of Public Instruction; powers and duties.

The office of the Superintendent of Public Instruction, as provided for by Article III, Sec. 7, of the Constitution, and the Department of Public Instruction are hereby transferred to the Department of Public Education. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education, and shall have such powers and duties as are conferred by the Constitution, by the State Board of Education, Chapter 115C of the General Statutes, and the laws of this State. (1971, c. 864, s. 7; 1983, c. 768, s. 13.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted “Chapter 115C” for “Chapter 115” in the second sentence.

§ 143A-43: Repealed by Session Laws 1983, c. 768, s. 14, effective July 15, 1983.

§ 143A-44. North Carolina Vocational Textile School; transfer.

The North Carolina Vocational Textile School, and board of trustees, as contained in Article 6 of Chapter 115D of the General Statutes and the laws of this State, are hereby transferred by a Type II transfer to the Department of Public Education. (1971, c. 864, s. 7; 1983, c. 768, s. 15.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted “Chapter 115D” for “Chapter 115A.”

§ 143A-45. Interstate Compact for Education; rights, duties and privileges.

All of the rights, duties and privileges of this State obtained as a party to the Interstate Compact for Education as contained in Part 5 of Article 8 of Chapter 115C of the General Statutes and the laws of this State, shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7; 1983, c. 768, s. 16.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted “Part 5 of Article 8 of Chapter 115C” for “Article 43 of Chapter 115.”

§ **143A-46:** Repealed by Session Laws 1983, c. 768, s. 14, effective July 15, 1983.

§ **143A-47. Interstate Agreement on Qualifications of Educational Personnel; rights, duties and privileges.**

All of the rights, duties and privileges of this State obtained as a party to the Interstate Agreement on Qualifications of Educational Personnel as contained in Article 24 of Chapter 115C of the General Statutes and the laws of this State shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7; 1983, c. 768, s. 17.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted "Article 24 of Chapter 115C" for "Article 17A of Chapter 115."

§ **143A-48. Textbook Commission; transfer.**

Textbook Commission, as created by G.S. 115C-87 and the laws of this State, is hereby transferred by a Type I transfer to the Department of Public Education. (1971, c. 864, s. 7; 1983, c. 768, s. 18.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted "G.S. 115C-87" for "G.S. 115-206.3."

ARTICLE 6.

Department of Justice.

§ **143A-55.2. North Carolina Sheriffs' Education and Training Standards Commission; transfer.**

The North Carolina Sheriffs' Education and Training Standards Commission, as created by Chapter 17E of the General Statutes and laws of this State, is hereby transferred by a Type II transfer as defined in G.S. 143A-6(b) to the Department of Justice. (1983, c. 558, s. 4.)

Editor's Note. — Session Laws 1983, c. 558, s. 7, makes this section effective Sept. 1, 1983.

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

General Provisions.

Part 1. In General.

Sec.

- 143B-9. Appointment of officers and employees.
- 143B-10. Powers and duties of heads of principal departments.
- 143B-14. Administrative services to commissions.
- 143B-27. [Repealed.]
- 143B-29. [Reserved.]

Part 2. Governor's Administrative Rules Review Commission.

- 143B-29.1. Governor's Administrative Rules Review Commission established.
- 143B-29.2. Review of rules.
- 143B-29.3. Temporary rules.
- 143B-29.4. Hearings.
- 143B-29.5. Failure to object and delay; inadmissibility into evidence.
- 143B-30 to 143B-48. [Reserved.]

Article 2.

Department of Cultural Resources.

Part 8. U.S.S. North Carolina Battleship Commission.

- 143B-74.1. U.S.S. North Carolina Battleship Commission — funds.

Part 10. Executive Mansion Fine Arts Committee.

- 143B-79. Executive Mansion Fine Arts Committee — creation, powers and duties.
- 143B-80.1. Regular and special meetings.

Article 3.

Department of Human Resources.

Part 1. General Provisions.

- 143B-139.3. Department of Human Resources — authority to contract with other entities.

Part 2. Board of Human Resources.

- 143B-141. [Repealed.]

Part 3. Commission for Health Services.

Sec.

- 143B-142. Commission for Health Services — creation, powers and duties.

Part 4. Commission for Mental Health, Mental Retardation and Substance Abuse Services.

- 143B-147. (Effective July 1, 1984) Commission for Mental Health, Mental Retardation, and Substance Abuse Services — creation, powers and duties.

Part 6. Social Services Commission.

- 143B-153. Social Services Commission — creation, powers and duties.
- 143B-153.1. [Repealed.]

Part 14. Governor's Advisory Council on Aging; Division of Aging.

- 143B-180. Governor's Advisory Council on Aging — creation, powers and duties.
- 143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation.

Part 22. Human Tissue Advisory Council.

- 143B-209. [Repealed.]

Part 27. Governor's Waste Management Board.

- 143B-216.10. Declaration of findings.
- 143B-216.12. Creation; membership; terms; chairperson; vacancies; removal; compensation; quorum.

Article 6.

Department of Correction.

Part 1. General Provisions.

- 143B-262. Department of Correction — functions.

Part 2. Board of Correction.

- 143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services.

Part 3. Parole Commission.
 Sec.
 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

Article 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.
 143B-279. Department of Natural Resources and Community Development — organization.

Part 2. Board of Natural Resources and Community Development.

143B-280. Board of Natural Resources and Community Development — duties; members; selection; meetings; quorum; compensation; services.

Part 4. Environmental Management Commission.

143B-282. Environmental Management Commission — creation; powers and duties.

Part 6. North Carolina Mining Commission.

143B-290. North Carolina Mining Commission — creation; powers and duties.

Part 10. Earth Resources Council.

143B-302 to 143B-304. [Repealed.]

Article 8.

Department of Transportation.

Part 5. Division of Aeronautics — Aeronautics Council.

143B-357. Aeronautics Council — members; selection; quorum; compensation.

Article 9.

Department of Administration.

Part 9. North Carolina Human Relations Council.

143B-391. North Carolina Human Relations Council — creation; powers and duties.

143B-392. (Effective July 1, 1984) North Carolina Human Relations Council — members; selection; quorum; compensation.

Part 12. Standardization Committee.
 Sec.

143B-397, 143B-398. [Repealed.]

Part 15. North Carolina State Commission of Indian Affairs.

143B-410. North Carolina State Commission of Indian Affairs — fiscal records; clerical staff.

Part 18. North Carolina Internship Council.

143B-417. North Carolina Internship Council — creation; powers and duties.

Part 20. Public Officers and Employees Liability Insurance Commission.

143B-422. Commission created; membership.

143B-424. Powers and duties of Commission.

Part 22. North Carolina Agency for Public Telecommunications.

143B-426.11. Powers of Agency.

143B-426.18. Audit.

Part 23. Computer Commission.

143B-426.21. Computer Commission.

Part 24. Governor's Management Committee.

143B-426.22. Governor's Management Council.

143B-426.23. Meetings; clerical services report.

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Plan.

Part 26. North Carolina Farmworker Council.

143B-426.25. North Carolina Farmworker Council — creation; membership; meetings.

143B-426.26. North Carolina Farmworker Council — duties; annual report.

Article 10.

Department of Commerce.

Part 1. General Provisions.

143B-433. Department of Commerce — organization.

Part 2. Economic Development.

Sec.

143B-434. Economic Development Board — creation, duties, membership.

Part 8. Energy Division.

143B-450.1. Authority to collect data; administration and enforcement; confidentiality.

Part 10. North Carolina State Ports Authority.

143B-452. Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

143B-454. Powers of Authority.

143B-464. Audit.

Part 11. North Carolina Ports Railway Commission.

143B-469.1. Powers of Commission.

143B-470. [Reserved.]

Part 12. North Carolina Technological Development Authority.

143B-471. Creation of Authority.

143B-471.1. Composition of Authority.

143B-471.2. Officers; meetings.

143B-471.3. Compensation.

143B-471.3A. Powers.

143B-471.4. Incubator facilities program.

143B-471.5. North Carolina Innovation Research Fund.

143B-472. [Reserved.]

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

Sec.

143B-475. Department of Crime Control and Public Safety — functions.

Part 3A. Assistance Program for Victims of Rape and Sex Offense.

143B-480.2. Victim assistance.

143B-480.3. Reduction of benefits; restitution; actions.

Part 4. State Fire Commission.

143B-481. State Fire Commission created — membership.

143B-483. State Fire Commission — organization; rules and regulations; meetings.

Part 5. Civil Air Patrol.

143B-493 to 143B-499. [Reserved.]

Part 6. Community Penalties Program.

143B-500. Purpose.

143B-501. Definitions.

143B-502. Allocation of funds.

143B-503. Responsibilities of a community penalties program.

143B-504. Requirements for a comprehensive community penalties program plan.

143B-505. Advisory board.

143B-506. Limitation on use of funds.

143B-507. Evaluation.

ARTICLE 1.

General Provisions.

Part 1. In General.

Editor's Note. — Session Laws 1983, through 143B-29 as Part 1 of Article 1 of c. 927, s. 1, designates §§ 143B-1 Chapter 143B.

§ 143B-9. Appointment of officers and employees.

The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at his pleasure.

The salary of the head of each of the principal State departments and of elected officials shall be as provided by law.

The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the State Personnel Act. The salary of such chief deputy or chief assistant shall, upon the recommendation of the Governor, be set by the General Assembly. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the Personnel Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department. (1973, c. 476, s. 9; 1977, c. 802, s. 42.20; 1983, c. 717, s. 51.)

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, rewrote the second paragraph.

§ 143B-10. Powers and duties of heads of principal departments.

(d) Appointment of Committees or Councils. — The head of each principal department may create and appoint committees or councils to consult with and advise the department. The General Assembly declares its policy that insofar as feasible, such committees or councils shall consist of no more than 11 members, with not more than one from each congressional district. If any department head desires to vary this policy, he must make a request in writing to the Governor, stating the reasons for the request. The Governor may approve the request, but may only do so in writing. Copies of the request and approval shall be transmitted to the Advisory Budget Commission and to the Joint Legislative Commission on Governmental Operations. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved in advance by the Advisory Budget Commission. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made to the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations by March 31 of each year.

(f) Custody of Records. — The head of a principal State department shall have legal custody of all public records as defined in G.S. 132-1.

(j) Departmental Rules and Policies. — The head of each principal State department and the Director of the Office of State Personnel may adopt:

- (1) Rules consistent with law for the custody, use, and preservation of any public records, as defined in G.S. 132-1, which pertain to department business;

- (2) Rules, approved by the Governor, to govern the management of the department, which shall include the functions of planning, organizing, staffing, directing, coordinating, reporting, budgeting, and budget preparation which affect private rights or procedures available to the public;
- (3) Policies, consistent with law and with rules established by the Governor and with rules of the State Personnel Commission, which reflect internal management procedures within the department. These may include policies governing the conduct of employees of the department, the distribution and performance of business and internal management procedures which do not affect private rights or procedures available to the public and which are listed in (e) of this section. Policies establishing qualifications for employment shall be adopted and filed pursuant to Chapter 150A of the General Statutes; all other policies under this subdivision shall not be adopted or filed pursuant to Chapter 150A of the General Statutes.

Rules adopted under (1) and (2) of this subsection shall be subject to the provisions of Chapter 150A of the General Statutes.

This subsection shall not be construed as a legislative grant of authority to an agency to make and promulgate rules concerning any policies and procedures other than as set forth herein. (1973, c. 476, s. 10; c. 1416, ss. 1, 2; 1977, 2nd Sess., c. 1219, s. 46; 1983, c. 76, ss. 1, 2; c. 641, s. 8; c. 717, s. 78.)

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

Editor's Note. — Session Laws 1983, c. 76, s. 3, provides that s. 1, which amended subsection (j), shall become effective upon ratification with regard to any rules or policies made effective on or after that date and shall apply on October 1, 1984, to rules and policies made effective prior to ratification, and that s. 2, which amended subsection (f), is effective upon ratification. The act was ratified March 17, 1983.

Subsection (j) of this section, prior to its amendment by the 1983 act, read as follows: "(j) Departmental Regulations. — The head of each principal State department may adopt regulations, consistent with law and with rules established by the Governor and with the rules and regulations of the State Personnel Board, for

- "(1) The administration of his department;
- "(2) The conduct of employees of his department;
- "(3) The distribution and performance of business; and

- "(4) The custody, use, and preservation of the records, documents, and property pertaining to department business."

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 first 1983 amendment substituted "legal custody of all public records as defined in G.S. 132-1" for "legal custody of all books, papers, documents, and other records of the department" at the end of subsection (f), and rewrote subsection (j). For the effective date of this amendment, see the Editor's note above.

The second 1983 amendment, effective June 29, 1983, rewrote the third sentence of subdivision (j)(3), as contained in S.L. 1983, c. 76, s. 1. As found in Session Laws 1983, c. 76, s. 1, that sentence read "However, such policies shall not be filed as rules pursuant to G.S. 150A-59."

The third 1983 amendment, effective July 11, 1983, rewrote the second sentence of subsection (d) as the present second through fourth sentences thereof.

§ 143B-14. Administrative services to commissions.

(b) Except as otherwise provided in the Executive Organization Act of 1973, in G.S. 120-30.28, or in G.S. 150A-11(4), the powers, duties, and functions of a commission (including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications) shall not be subject to the approval, review, or control of the head of the department or of the Governor. Provided, however, that the provisions of this subsection shall not apply to the review of rules by the Governor's Administrative Rules Review Commission.

(1973, c. 476, s. 14; c. 1416, s. 3; 1979, 2nd Sess., c. 1137, s. 41.2; 1981, c. 688, s. 20; 1983, c. 927, s. 11.)

Only Part of Section Set Out. — As 1983, added the last sentence of subsection (b).
the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1983 amendment, effective Nov. 1,

§ 143B-27: Repealed by Session Laws 1983, c. 717, s. 79, effective July 11, 1983.

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

§ 143B-29: Reserved for future codification purposes.

Part 2. Governor's Administrative Rules Review Commission.

§ 143B-29.1. Governor's Administrative Rules Review Commission established.

The Governor's Administrative Rules Review Commission is hereby created in the Office of the Governor. The Commission shall consist of ten members, four to be appointed by the Governor and six by the General Assembly, three upon the recommendation of the President of the Senate, and three upon the recommendation of the Speaker of the House of Representatives. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies in those appointments shall be filled in accordance with G.S. 120-122. All appointees shall serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be appointed by the Governor.

The Commission shall meet at such times and places as the chairman shall designate but in any event shall meet at least once a month.

Members of the Commission who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State

shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

A quorum of the Commission shall consist of the chairman and four other Commission members, or a majority of the Commission, whichever is fewer. (1983, c. 927, s. 1.)

Editor's Note. — Session Laws 1983, c. 927, s. 14, makes this Part effective Nov. 1, 1983.

§ 143B-29.2. Review of rules.

(a) Rules adopted by an agency to be effective on or after January 1, 1984, shall be filed in the Office of the Governor prior to the filing made with the Attorney General pursuant to G.S. 150A-59.

(b) After a rule is filed with the Governor, he shall submit it to the Commission which shall determine whether the rule:

- (1) Is within the statutory authority of the agency;
- (2) Is clear and unambiguous;
- (3) Is necessary.

The Commission shall review a rule submitted to it by the Governor not later than the last day of the first calendar month following the filing of the rule with the Governor. The Commission, by a majority vote of the members present and voting, may extend the time for review of a rule by 60 days to obtain additional information on a rule. The Commission shall file notice of the extension of time for review of a rule with the agency and the Attorney General. Upon that filing, the effectiveness of the rule is delayed for a 60-day period.

(c) If the Commission finds that an agency did not act within its statutory authority in promulgating a rule or a part of a rule, or that a rule is not clear and unambiguous, or that a rule is unnecessary, the Commission shall object and delay the effectiveness of said rule or part of a rule. The Commission shall transmit to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Attorney General a written report of the objection and delay of the rule or its part and the reasons for the delay. The delay of the effectiveness of the rule or its part is effective when the Attorney General receives the written report transmitted by the Commission. A rule or its part that is delayed is not "effective," as defined by G.S. 150A-2(2a).

(d) Within 30 days after receipt of the Commission's written report, an agency shall either amend or repeal the rule to cure the defects cited as reasons for the Commission's objection or return the rule unamended to the Commission.

(e) While the effectiveness of a rule or its part is delayed, the agency which has promulgated it may not adopt another rule which has substantially identical provisions to those for which the Commission delayed the effectiveness of the original rule or part of a rule.

(f) The filing of an amendment to a rule places the entire rule before the Commission for its review.

(g) If an agency does not amend or repeal a delayed rule to cure the defects cited as reasons for the Commission's objection and delay, the Commission shall veto the rule. The Commission shall transmit to the agency, the Governor, the President of the Senate, the

Speaker of the House of Representatives, and the Attorney General the written report of the veto of the rule. A rule that is vetoed is not "effective," as defined by G.S. 150A-2(2a). (1983, c. 927, s. 1.)

§ 143B-29.3. Temporary rules.

Rules adopted in accordance with the procedures in G.S. 150A-13 shall be reviewed by the Commission and are subject to objection as provided in G.S. 143B-29.2. The Commission shall review the reasons given for the adoption of a temporary rule and may veto the rule due to the agency's failure to make the finding required by G.S. 150A-13. (1983, c. 927, s. 1.)

§ 143B-29.4. Hearings.

(a) Notwithstanding the time limitation on review of rules contained in G.S. 143B-29.2, the chairman of the Commission may at any time call a public hearing before the Commission on any rule or part of a rule upon the recommendation of the Commission or upon motion of any member of the Commission. Within 60 days after the public hearing, the Commission may find that the agency did not act within its statutory authority in promulgating the rule, or that the rule is not clear and unambiguous or that the rule is unnecessary, and object to the rule in accordance with G.S. 143B-29.2.

(b) At least 15 days before the hearing, notice of the hearing shall be given to the rule-making agency and to such other persons that desire to be heard, that the chairman of the Commission considers to be persons that may be affected by the rule or that may request copies of the notice. (1983, c. 927, s. 1.)

§ 143B-29.5. Failure to object and delay; inadmissibility into evidence.

(a) The failure of the Commission to object to and delay the effectiveness of a rule or its part shall not be deemed to be approval of the statutory authority of the rule or its part by the Commission.

(b) Evidence of the Commission's failure to object to and delay the effectiveness of the rule or its part shall be inadmissible in all civil or criminal trials or other proceedings before courts, administrative agencies or other tribunals. (1983, c. 927, s. 1.)

§§ 143B-30 to 143B-48: Reserved for future codification purposes.

ARTICLE 2.

Department of Cultural Resources.

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-74.1. U.S.S. North Carolina Battleship Commission — funds.

The Commission shall establish and maintain a "Battleship Fund" composed of the moneys which may come into its hands from admission or inspection fees, gifts, donations, grants, or bequests,

which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial. The operations of the Commission shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. The Commission shall establish a reserve fund in an amount to be determined by the Secretary of Cultural Resources to be maintained and used for contingencies and emergencies beyond those occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina. (1961, c. 158; 1977, c. 741, ss. 2, 8; 1983, c. 913, s. 40.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted language from the end of the second sentence relating to the annual audit of records and books by the State Auditor, and added the present third sentence.

Part 10. Executive Mansion Fine Arts Committee.

§ 143B-79. Executive Mansion Fine Arts Committee — creation, powers and duties.

There is hereby created the Executive Mansion Fine Arts Committee. The Executive Mansion Fine Arts Committee shall have the following functions and duties:

- (5) No gifts or articles shall be accepted for the Executive Mansion without the approval of the Committee; and (1973, c. 476, s. 65; 1983, c. 632, 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 June 28, 1983, substituted "Committee" for "Art Commission or the Historical Commission" in subdivision (5).

§ 143B-80.1. Regular and special meetings.

The Executive Mansion Fine Arts Committee shall meet at least twice per year and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members.

Whenever a member shall fail, except for ill health or other valid reason, to be present for two successive regular meetings of the Board, his place as a member shall be deemed vacant. (1983, c. 632, s. 2.)

Editor's Note. — Session Laws 1983, c. 632, s. 3, makes this section effective upon ratification. The act was ratified June 28, 1983.

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-139.3. Department of Human Resources — authority to contract with other entities.

(a) The Department of Human Resources is authorized to contract with any governmental agency, person, association, or corporation for the accomplishment of its duties and responsibilities provided that the expenditure of funds pursuant to such contracts shall be for the purposes for which the funds were appropriated and is not otherwise prohibited by law.

(b) The Department is authorized to enter into contracts with and to act as intermediary between any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program; and, as a condition of such assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees. (1979, 2nd Sess., c. 1094, s. 1; 1983, c. 13.)

Effect of Amendments. — The 1983 section as subsection (a) and added subsection (b).
amendment, effective Feb. 14, 1983, designated the former language of this

Part 2. Board of Human Resources.

§ 143B-141: Repealed by Session Laws 1983, c. 494, effective June 10, 1983.

Part 3. Commission for Health Services.

§ 143B-142. Commission for Health Services — creation, powers and duties.

(a) The Commission for Health Services of the Department of Human Resources is created with the authority and duty to adopt rules to protect and promote the public health.

(b) The Commission for Health Services is authorized to adopt rules necessary to implement the public health programs administered by the Department of Human Resources as provided in Chapter 130A of the General Statutes.

(c) The Commission for Health Services shall adopt rules:

- (1) For the operation of home health agencies as provided in Part C of Article 6 of Chapter 131E of the General Statutes;
- (2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o);

- (3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522;
 - (4) Establishing requirements for the sanitation of local confinement facilities as provided in G.S. 153-53.4; and
 - (5) Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provisions of the Clean Water Bond Act.
- (d) The Commission is authorized to create:
- (1) Metropolitan water districts as provided in G.S. 162A-33;
 - (2) Sanitary districts as provided in Part 2 of Article 2 of Chapter 130A of the General Statutes; and
 - (3) Mosquito control districts as provided in Part 2 of Article 12 of Chapter 130A of the General Statutes.
- (e) Rules adopted by the Commission for Health Services shall be enforced by the Department of Human Resources. (1973, c. 476, s. 123; 1975, c. 19, s. 57; c. 694, s. 6; 1979, c. 41, s. 1; 1981, c. 614, s. 9; 1983, c. 891, s. 15.)

Editor's Note. — Session Laws 1983, c. 891, s. 16, provides: "This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or

amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted."

Section 153-53.4, referred to in this section, has been repealed. For present provisions governing the sanitation of local confinement facilities, see now § 153A-221 et seq.

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

Part 4. Commission for Mental Health, Mental Retardation and Substance Abuse Services.

§ 143B-147. (Effective July 1, 1984) Commission for Mental Health, Mental Retardation and Substance Abuse Services — creation, powers and duties.

(a) There is hereby created the Commission for Mental Health, Mental Retardation and Substance Abuse Services of the Department of Human Resources with the power and duty to adopt, amend and repeal rules and regulations to be followed in the conduct of State and local mental health, mental retardation, alcohol and drug abuse programs including education, prevention, intervention, treatment, rehabilitation and other related services. Such rules and regulations shall be designed to promote the amelioration or elimination of the mental health, mental retardation, or alcohol and drug abuse problems of the citizens of this State. The Commission for Mental Health, Mental Retardation and Substance Abuse Services shall have the authority:

- (1) To establish standards and promulgate rules and regulations regarding the

- a. Admission, treatment and professional care of persons admitted to any institution, center or hospital administered by the Department of Human Resources as provided in Chapter 122 of the General Statutes for the mentally ill, mentally retarded, alcohol or drug abusers, which is now or may hereafter be established;
 - b. Operation of education, prevention, intervention, treatment, rehabilitation and other related services as provided by area mental health, mental retardation and substance abuse authorities under Article 2F of Chapter 122 of the General Statutes;
 - c. Hearings and appeals of area mental health, mental retardation and substance abuse authorities as provided for in Article 2F of Chapter 122 of the General Statutes;
 - d. Requirements of the federal government for grants-in-aid for mental health, mental retardation, alcohol or drug abuse programs which may be made available to local programs or the State. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;
- (2) To adopt rules and regulations for the inspection, registration and licensing of facilities for the mentally ill, mentally retarded and substance abusers, under Article 1A of Chapter 122 of the General Statutes.
 - (3) To advise the Secretary of the Department of Human Resources regarding the need for, provision and coordination of education, prevention, intervention, treatment, rehabilitation and other related services in the areas of:
 - a. Mental illness and mental health,
 - b. Mental retardation,
 - c. Alcohol abuse, and
 - d. Drug abuse;
 - (4) To review and advise the Secretary of the Department of Human Resources regarding all State plans required by federal or State law and to recommend to the Secretary any changes it thinks necessary in those plans; provided, however, for the purposes of meeting State plan requirements under federal or State law, the Department of Human Resources is designated as the single State agency responsible for administration of plans involving mental health, mental retardation, alcohol abuse, and drug abuse services;
 - (5) To establish standards and adopt rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100, after consultation regarding these standards with a licensed physician named by the chairman of the Commission for Mental Health, Mental Retardation and Substance Abuse Services.
- (1973, c. 476, s. 129; 1977, c. 568, ss. 2, 3; c. 679, s. 1; 1981, c. 51, s. 1; 1983, c. 718, 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.

For this section as in effect until July 1, 1984, see the main volume.

Editor's Note. — Session Laws 1983, c. 718, s. 6, is a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 1, 1984, rewrote subdivision (a)(2).

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties.

There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

- a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;
- b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Mental Retardation and Substance Abuse Services, by promulgating rules and regulations in the following areas:
 1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
 2. Standards to implement all services established under the Comprehensive Annual Services Plan;
 3. Maximum rates of payment for provision of social services;
 4. Fees for services to be paid by recipients of social services;
 5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
 6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

- a. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
 - b. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
 - c. Contracting for and purchasing services; and
 - d. Monitoring for effectiveness and compliance with State and federal law and regulations.
- (8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Mental Retardation and Substance Abuse Services, rates or fees for:
- a. A fee schedule for the payment of the costs of necessary day care for minor children of needy families;

- b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and
- c. The payment of an administrative fee not to exceed two hundred dollars (\$200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.
- d. Child support enforcement services as defined by G.S. 110-130.1. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7; 1977, 2nd Sess., c. 1219, ss. 26, 27; 1981, c. 275, s. 5; c. 562, s. 7; c. 961, ss. 1-3; 1983, c. 278, ss. 1, 2; c. 527, s. 2.)

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

Effect of Amendments. —

The first 1983 amendment, effective May 6, 1983, inserted "except for Title XX services provided solely through the Division of Mental Health, Mental

Retardation and Substance Abuse Services" in the introductory paragraphs of paragraph (2a)b and of subdivision (8).

The second 1983 amendment, effective 30 days after ratification, added subdivision (8)d. The act was ratified June 15, 1983.

§ 143B-153.1: Repealed by Session Laws 1983, c. 883, s. 2, effective July 20, 1983.

Editor's Note. —

Repealed § 143B-153.1 was amended by Session Laws 1983, c. 655, s. 2.

Part 14. Governor's Advisory Council on Aging;
Division of Aging.

**§ 143B-180. Governor's Advisory Council on Aging
— creation, powers and duties.**

There is hereby created the Governor's Advisory Council on Aging of the Department of Human Resources. The Advisory Council on Aging shall have the following functions and duties:

- (1) To make recommendations to the Governor and the Secretary of Human Resources aimed at improving human services to the elderly;
- (2) To study ways and means of promoting public understanding of the problems of the aging, to consider the need for new State programs in the field of aging, and to make recommendations to and advise the Governor and the Secretary on these matters;
- (4) To study the programs of all State agencies which provide services for elderly persons and to advise the Governor and the Secretary of Human Resources on the coordination of programs to prevent duplication and overlapping of such services;
- (5) To advise the Governor and the Secretary of Human Resources upon any matter which the Governor and the Secretary may refer to it. (1973, c. 476, s. 171; 1977, c. 242, s. 1; 1983, c. 40, 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 March 1, 1983, inserted "the Governor and" preceding "the Secretary" in subdivisions (1), (2), (4) and (5).

§ 143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation.

The Governor's Advisory Council on Aging of the Department of Human Resources shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the Lieutenant Governor, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the Employment Security Commission; one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Education; one representative of the Department of Natural Resources and Community Development; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the Lieutenant Governor and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the Lieutenant Governor and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chairman to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 172; 1975, c. 128, ss. 1, 2; 1977, c. 242, s. 2; c. 771, s. 4; 1983, c. 40, s. 2.)

Effect of Amendments. — The 1983 amendment, effective March 1, 1983, rewrote the first two paragraphs of this section.

Part 22. Human Tissue Advisory Council.

§ 143B-209: Repealed by Session Laws 1983, c. 891, s. 10, effective January 1, 1984.)

Editor's Note. — Session Laws 1983, c. 891, s. 16, provides: "This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to

enforcement, prosecution, conviction and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted."

Part 27. Governor's Waste Management Board.

§ 143B-216.10. Declaration of findings.

(c) The General Assembly of North Carolina hereby finds and declares that prevention, recycling, detoxification, and reduction of hazardous wastes should be encouraged and promoted. These are alternatives which ultimately remove such wastes' hazards to human health and the environment. When these alternatives are not technologically feasible, retrievable above-ground storage is sometimes preferable to other means of disposal of some types of waste until appropriate methods for recycling or detoxification of the stored wastes are found. Landfilling shall be used only when it is clearly appropriate. Hazardous waste landfill facilities and polychlorinated biphenyl landfill facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation. (1981, c. 704, s. 3; 1983, c. 605, 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 24, 1983, added the last sentence of subsection (c).

§ 143B-216.12. Creation; membership; terms; chairperson; vacancies; removal; compensation; quorum.

(a) There is hereby created the Governor's Waste Management Board to be located in the Department of Human Resources. The composition of the Board shall be as follows:

- (1) Five members from State government: the Secretary or Commissioner of Human Resources, Natural Resources and

Community Development, Commerce, Agriculture, and Crime Control and Public Safety. At the request of such Secretary or Commissioner, the Governor may appoint another official from the same department to serve in his stead.

- (2) Nine members appointed by the Governor from the following categories: one from county government, one from municipal government, two from private industry, two from the field of higher education, research or technology, one who shall be a physician licensed to practice medicine, and two from the public at large interested in environmental matters.
- (3) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(1981, c. 704, s. 3; 1981 (Reg. Sess., 1982), c. 1191, ss. 58-62; 1983, c. 859.)

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

20, 1983, substituted "Nine" for "Eight" and inserted "one who shall be a physician licensed to practice medicine" in subdivision (2) of subsection (a).

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-262. Department of Correction — functions.

(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive Probation. This program shall provide intensive supervision for probationers who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. (1973, c. 1262, s. 4; 1983, c. 682, s. 1.)

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

Editor's Note. —

Session Laws 1983, c. 682, s. 2, provides: "Nothing in this act shall be

construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act."

Effect of Amendments. — The 1983 amendment, effective July 5, 1983, added subsection (c).

Part 2. Board of Correction.

§ 143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services.

The Board of Correction shall consider and advise the Secretary of

Correction upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Correction in the development of major programs and recommend priorities for the programs within the Department.

The Board of Correction shall have such other responsibilities and shall perform such other duties as may be specifically given to it by the Secretary of Correction.

The Board of Correction shall consist of one voting member from each of the 11 congressional districts, appointed by the Governor to serve at his pleasure. One member shall be a psychiatrist or a psychologist, one an attorney with experience in the criminal courts, one a judge in the General Court of Justice and eight members appointed at large. The Secretary of Correction shall be an additional nonvoting member and chairman ex officio. The terms of office of the nine members presently serving on the Board shall continue, but any vacancy occurring on or after July 1, 1983, shall be filled by the Governor in compliance with the requirement of membership from the various congressional districts.

Members of the Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Board of Correction shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 7; 1983, c. 709, s. 2.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, rewrote the third paragraph.

Part 3. Parole Commission.

§ 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

The Parole Commission shall consist of five full-time members. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1977. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Gover-

nor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting commission members and shall designate a third commissioner to serve as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner. Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work-release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work-release privileges except by majority vote of the full commission.

The full-time members of the Commission shall receive the salary fixed by the General Assembly in the Budget Appropriation Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2; 1983, c. 709, s. 3; c. 717, s. 80.)

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 first 1983 amendment, effective July 1, 1983, deleted "and the Secretary of Correction who shall serve as an ex officio,

nonvoting member" at the end of the first sentence of the first paragraph.

The second 1983 amendment, effective July 11, 1983, substituted "General Assembly in the Budget Appropriation Act" for "Governor and approved by the Advisory Budget Commission" in the next-to-last paragraph.

ARTICLE 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.

§ 143B-279. Department of Natural Resources and Community Development — organization.

The Department of Natural Resources and Community Development shall be organized initially to include:

- (1) The Board of Natural Resources and Community Development,
- (2) The Wildlife Resources Commission,
- (3) The Environmental Management Commission,
- (4) The Marine Fisheries Commission,
- (5) The North Carolina Mining Commission,

- (6) The State Soil and Water Conservation Commission,
 - (7) The Sedimentation Control Commission,
 - (8) The Wastewater Treatment Plant Operators Certification Commission,
 - (9) Repealed by Session Laws 1983, c. 667, s. 1, effective July 1, 1983,
 - (10) The Community Development Council,
 - (11) The Forestry Council,
 - (12) The Parks and Recreation Council,
 - (13) The North Carolina Zoological Park Council,
 - (14) The Water Safety Council,
 - (15) The Air Quality Council,
 - (16) The Water Quality Council,
 - (17) The North Carolina Employment and Training Council,
 - (18) The Commercial and Sports Fisheries Committee,
 - (19) The John H. Kerr Reservoir Committee,
 - (20) The North Carolina Trails Committee, and
- such divisions as may be established under the provisions of Article 1 of this Chapter. (1973, c. 1262, s. 15; 1977, c. 771, s. 3; 1981, c. 881, s. 4; 1983, c. 667, s. 1.)

Effect of Amendments. —

The 1983 amendment, effective July 1, 1983, deleted subdivision (9).

Part 2. Board of Natural Resources and Community Development.

§ 143B-280. Board of Natural Resources and Community Development — duties; members; selection; meetings; quorum; compensation; services.

The Board of Natural Resources and Community Development shall consider and advise the Secretary of Natural Resources and Community Development upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Natural Resources and Community Development in the development of major programs and recommend priorities for programs within the Department.

The Board of Natural Resources and Community Development shall perform such other duties as may be specifically given to it.

The Board of Natural Resources and Community Development shall consist of the following 20 members. The chairman of each of the following commissions: the Wildlife Resources Commission, the Environmental Management Commission, the Marine Fisheries Commission, the Coastal Resources Commission and the Soil and Water Conservation Commission; the chairman of each of the following councils: the Community Development Council, the Forestry Council, the Parks and Recreation Council and the North Carolina Zoological Park Council; 10 members at large appointed by the Governor to serve at his pleasure; and the Secretary of Natural Resources and Community Development who shall be a member and chairman ex officio. The Board of Natural Resources and Community Development shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

Members of the Board shall receive per diem and necessary travel expenses in accordance with the provisions of G.S. 138-5.

All clerical and other services required by the Board shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 16; 1977, c. 771, ss. 4, 8; 1979, c. 430, s. 1; 1983, c. 667, ss. 2, 3.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted "20 members" for "21 members" at the end of the first sentence of the

third paragraph and deleted "the Earth Resources Council" preceding "the Community Development Council" in the second sentence of the third paragraph.

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission — creation; powers and duties.

There is hereby created the Environmental Management Commission of the Department of Natural Resources and Community Development with the power and duty to promulgate rules and regulations to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(2) The Environmental Management Commission shall have the power and duty to establish standards and adopt rules and regulations:

- a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;
- b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;
- c. To implement water and air quality reporting pursuant to G.S. 143-215.68;
- d. To be applied in capacity use areas pursuant to G.S. 143-215.14;
- e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;
- f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25, 1983;
- g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.

(1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222, 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 April 25, 1983, deleted paragraph f of subdivision (2).

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

CASE NOTES

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

Part 6. North Carolina Mining Commission.

§ 143B-290. North Carolina Mining Commission — creation; powers and duties.

There is hereby created the North Carolina Mining Commission of the Department of Natural Resources and Community Development with the power and duty to promulgate rules and regulations for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:

- a. To act as the advisory body to the Interstate Mining Compact pursuant to G.S. 74-38(a);
- b. To adopt and modify rules and regulations to implement Chapter 74, Article 6, pursuant to G.S. 74-44(b);
- c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61; and
- d. To promulgate rules and regulations necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63;
- e. To promulgate rules and regulations necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

(1973, c. 1262, s. 29; 1977, c. 771, s. 4; 1983, c. 279, s. 2.)

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

Editor's Note. — Subsection (a) of § 74-38, referred to in paragraph a of subdivision (1) of this section, was

repealed by Session Laws 1973, c. 1262, s. 33.

Effect of Amendments. — The 1983 amendment, effective May 6, 1983, added paragraph e of subdivision (1).

Part 10. Earth Resources Council.

§§ 143B-302 to 143B-304: Repealed by Session Laws 1983, c. 667, s. 1, effective July 1, 1983.

ARTICLE 8.

Department of Transportation.

Part 5. Division of Aeronautics—Aeronautics Council.

§ 143B-357. Aeronautics Council — members; selection; quorum; compensation.

The Aeronautics Council of the Department of Transportation shall consist of 13 members appointed by the Governor, who, in making such appointments, shall designate one person from each of the congressional districts of the State and two members selected at large. At least four of the appointed members shall possess a broad knowledge of aviation and airport development.

Five of the initial members of the Council shall be the five members of the Governor's Aviation Committee whose terms expire on June 30, 1977, who shall serve on the Council until June 30, 1977. Thereafter, their successors shall be appointed for a term of office of four years. Six members of the Council shall be appointed for a term of four years beginning July 1, 1975. Thereafter, after the expiration of their respective terms of office, the successors shall be appointed for terms of four years. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Transportation. (1975, c. 716, s. 1; 1983, c. 325, s. 1.)

Editor's Note. — Session Laws 1983, c. 325, s. 2, provides: "This amendment shall not affect the validity or tenure of the current members of the Aeronautics Council."

Session Laws 1983, c. 325, s. 3, provides: "One of the new at-large members of the Aeronautics Council shall be appointed by the Governor to a term which shall expire on June 30, 1985. Thereafter, the successor shall be appointed for a term of office of four years. The second new at-large member

of the Aeronautics Council shall be appointed by the Governor for a term to expire on June 30, 1983. Thereafter, after the expiration of this term of office, the successor shall be appointed for a term of four years."

Effect of Amendments. — The 1983 amendment, effective May 18, 1983, substituted "13 members" for "11 members" and inserted "and two members selected at large" in the first sentence of the first paragraph.

ARTICLE 9.

Department of Administration.

Part 9. North Carolina Human Relations Council.

§ 143B-391. North Carolina Human Relations Council — creation; powers and duties.

There is hereby created the North Carolina Human Relations Council of the Department of Administration. The North Carolina Human Relations Council shall have the following functions and duties:

- (9) To assist local good neighborhood councils and biracial human relations committees in promoting activities related to the functions of the Council enumerated above;
- (10) To advise the Secretary of Administration upon any matter the Secretary may refer to it; and
- (11) To administer the provisions of the State Fair Housing Act as outlined in Chapter 41A of the General Statutes. (1975, c. 879, s. 34; 1983, c. 522, 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 Oct. 1, 1983, deleted "and" at the end of subdivision (9), inserted "and" at the end of subdivision (10), and added subdivision (11).

§ 143B-392. (Effective July 1, 1984) North Carolina Human Relations Council — members; selection; quorum; compensation.

(a) The Human Relations Council of the Department of Administration shall consist of 20 members. The Governor shall appoint one member from each of the 11 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the council. The Lieutenant Governor shall appoint two members to the council. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. At the end of the respective terms of office of the initial members of the council, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the council created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

(b) Members of the council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(c) A majority of the council shall constitute a quorum for the transaction of business.

(d) All clerical and support services required by the council shall be supplied by the Secretary of the Department of Administration. (1975, c. 879, s. 35; 1983, c. 461.)

For this section as in effect until July 1, 1984, see the main volume. amendment, effective July 1, 1984, rewrote this section.
Effect of Amendments. — The 1983

Part 12. Standardization Committee.

§§ 143B-397, 143B-398: Repealed by Session Laws 1983, c. 717, s. 81, effective July 11, 1983.

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

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-410. **North Carolina State Commission of Indian Affairs — fiscal records; clerical staff.**

Fiscal records shall be kept by the Secretary of Administration. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report. (1977, c. 849, s. 1; 1977, 2nd Sess., c. 1189; 1983, c. 913, s. 41.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, deleted "and will be subject to annual audit by a certified public accountant" at the end of the first sentence.

Part 18. North Carolina Internship Council.

§ 143B-417. **North Carolina Internship Council — creation; powers and duties.**

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

- (1) To determine the number of student interns to be allocated to each of the following offices or departments:
 - a. Office of the Governor
 - b. Department of Administration
 - c. Department of Correction
 - d. Department of Cultural Resources

- e. Department of Revenue
- f. Department of Transportation
- g. Department of Natural Resources and Community Development
- h. Department of Commerce
- i. Department of Crime Control and Public Safety
- j. Department of Human Resources
- k. Office of the Lieutenant Governor
- l. Office of the Secretary of State
- m. Office of the State Auditor
- n. Office of the State Treasurer
- o. Department of Public Education
- p. Department of Justice
- q. Department of Agriculture
- r. Department of Labor
- s. Department of Insurance
- t. Office of the Speaker of the House of Representatives
- u. Justices of the Supreme Court and Judges of the Court of Appeals;

(1977, c. 771, s. 4; c. 967; 1979, c. 783; 1983, c. 710.)

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 8, 1983, added paragraph u to subdivision (1).

Part 20. Public Officers and Employees Liability Insurance Commission.

§ 143B-422. Commission created; membership.

There is hereby created within the Department of Administration a Public Officers and Employees Liability Insurance Commission. The Commission shall consist of 11 members who shall be appointed as follows: the Governor shall appoint six members as follows: two members who are members of the insurance industry who may be chosen from a list of three nominees submitted to the Governor by the Independent Insurance Agents of North Carolina, Inc., and a list of three nominees submitted by the Carolinas Association of Professional Insurance Agents, North Carolina Division; one member who is employed by a police department who may be chosen from a list of three nominees submitted to the Governor jointly by the North Carolina Police Chiefs Association and North Carolina Police Executives Association, and one member who is employed by a sheriff's department who may be chosen from a list of three nominees submitted to the Governor by the North Carolina Sheriff's Association; one member representing city government who may be chosen from a list of three nominees submitted to the Governor by the North Carolina League of Municipalities; and one member representing county government who may be chosen from a list of three nominees submitted to the Governor by the North Carolina Association of County Commissioners; and the General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate. The Commissioner of Insurance or his designate shall be an ex officio member. Appointments by the General Assembly shall be made in accordance with G.S. 120-121,

and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The Secretary of the Department of Crime Control and Public Safety or his designate shall be an ex officio member. The Attorney General or his designate shall be an ex officio member. One insurance industry member appointed by the Governor shall be appointed to a term of two years and one insurance industry member shall be appointed to a term of four years. The police department member shall be appointed to a term of two years and the sheriff's department member shall be appointed to a term of four years. The representative of county government shall be appointed to a term of two years and the representative of city government to a term of four years. Beginning July 1, 1983, the appointment made by the General Assembly upon the recommendation of the Speaker shall be for two years, and the appointment made by the General Assembly upon the recommendation of the President of the Senate shall be for four years. Except as provided in this section, if any vacancy occurs in the membership of the Commission, the appointing authority shall appoint another person to fill the unexpired term of the vacating member. After the initial terms established herein have expired, all appointees to the Commission shall be appointed to terms of four years.

The Commission members shall elect the chairman and vice-chairman of the Commission. The Commission may, by majority vote, remove any member of the Commission for chronic absenteeism, misfeasance, malfeasance or other good cause. (1979, c. 325, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 24-26; 1983, c. 543, ss. 1, 2.)

Effect of Amendments. —

The 1983 amendment, effective June 16, 1983, substituted "11 members" for

"10 members" in the second sentence and added the present third sentence.

§ 143B-424. Powers and duties of Commission.

The Commission may acquire from an insurance company or insurance companies a group plan of professional liability insurance covering the law enforcement officers and/or public officers and employees of any county or municipality of the State. The Commission shall have full authority to negotiate with insurance companies submitting bids or proposals and shall award its group plan master contract on the basis of the company or companies found by it to offer maximum coverage at the most reasonable premium. The Commission is authorized to enter into a master policy contract of such term as it finds to be in the best interests of the law-enforcement officers and/or public officers and employees of the counties and municipalities of the State, not to exceed five years. The Commission, in negotiating for such contract, is not authorized to pledge or offer the credit of the State of North Carolina. The insurance premiums shall be paid by the counties or municipalities whose employees are covered by the professional liability insurance. Any municipality or county may elect coverage for any or all of its employees on a departmental basis; provided all employees in a department must be covered if coverage is elected for that department. Nothing contained herein shall be construed to require any county or municipality to participate in any group plan of professional liability insurance.

The Commission may, in its discretion, employ professional and clerical staff whose salaries shall be as established by the State Personnel Commission.

Should the Commission determine that reasonable coverage is not available at a reasonable cost, the Commission may undertake such studies and inquiries into the situation and alternatives, including self insurance and State administered funds, as the Commission deems appropriate. The Commission shall then bring before the General Assembly such recommendations as it deems appropriate.

The Commission may acquire information regarding loss ratios, loss factors, loss experience and other such facts and figures from any agency or company issuing professional liability insurance covering public officers, employees or law-enforcement officers in the State of North Carolina. Such information shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes where it names the company divulging such information, but the Commission may make public such information to show aggregate statistics in respect to the experience of the State as a whole. The information shall be provided to the Commission upon its written demand and shall be submitted to the Commission by such company or companies upon sworn affidavit. If any agency or company shall fail or refuse to supply such information to the Commission within a reasonable time following receipt of the demand, the Commission may apply to the Superior Court sitting in Wake County for appropriate orders to enforce the demand. (1979, c. 325, s. 1; 1983, c. 543, s. 3.)

Effect of Amendments. — The 1983 amendment, effective June 16, 1983, substituted "any agency or company" for "any company" in the fourth paragraph.

Part 22. North Carolina Agency for Public Telecommunications.

§ 143B-426.11. Powers of Agency.

In order to enable it to carry out the purposes of this Part, the Agency:

- (1) Has the powers of a body corporate, including the power to sue and be sued, to make contracts, to hold and own copyrights and to adopt and use a common seal and to alter the same as may be deemed expedient;
- (2) May make all necessary contracts and arrangements with any parties which will serve the purposes and facilitate the business of the North Carolina Agency for Public Telecommunications; except that, the Agency may not contract or enter into any agreement for the production by the Agency of programs or programming materials with any person, group, or organization other than government agencies; principal State departments; public and noncommercial broadcast licensees;
- (3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber and dispose of such property, real or personal; and construct, maintain, equip and operate any facilities, buildings, studios, equipment, materials, supplies and systems as said Board may deem proper to carry out the purposes and provisions of this Part;

- (4) May establish an office for the transaction of its business at such place or places as the Board deems advisable or necessary in carrying out the purposes of this Part;
- (5) May apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources for any and all of the purposes authorized in this Part; may extend or distribute the funds in accordance with directions and requirements attached thereto or imposed thereon by the federal agency, the State of North Carolina or any political subdivision thereof, or any public or private lender or donor; and may give such evidences of indebtedness as shall be required, but no indebtedness of any kind incurred or created by the Agency shall constitute an indebtedness of the State of North Carolina or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina or any political subdivision thereof. At no time may the total outstanding indebtedness of the Agency, excluding bond indebtedness, exceed five hundred thousand dollars (\$500,000) without approval of the Advisory Budget Commission;
- (6) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Agency and incident to the administration and operation thereof, and may pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;
- (7) Subject to the approval of the Advisory Budget Commission and under such conditions as the Board may deem appropriate to the accomplishment of the purposes of this Part, may distribute in the form of grants, gifts, or loans any of the revenues and earnings received by the Agency from its operations;
- (8) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be exercised, and may provide for the creation of such divisions and for the appointment of such committees, and the functions thereof, as the Board deems necessary or expedient in facilitating the business and purposes of the Agency;
- (9) The Board shall be responsible for all management functions of the Agency. The chairman shall serve as the chief executive officer, and shall have the responsibility of executing the policies of the Board. The Executive Director shall be the chief operating and administrative officer and shall be responsible for carrying out the decisions made by the Board and its chairman. The Executive Director shall be appointed by the Governor upon the recommendation of the Board and shall serve at the pleasure of the Governor. The salary of the Executive Director shall be fixed by the General Assembly in the Budget Appropriation Act. Subject to the provisions of the State Personnel Act and with the approval of the Board, the Executive Director may appoint, employ, dismiss and fix the compensation of such professional, administrative, clerical and other employees

as the Board deems necessary to carry out the purposes of this Part; but any employee who serves as the director of any division of the agency which may be established by the Board shall be appointed with the additional approval of the Secretary of Administration. There shall be an executive committee consisting of three of the appointed members and three of the ex officio members elected by the Board and the chairman of the Board, who shall serve as chairman of the executive committee. The executive committee may do all acts which are authorized by the bylaws of the Agency. Members of the executive committee shall serve until their successors are elected;

- (10) May do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section; and
- (11) May do any and all things necessary to accomplish the purposes of this Part.

Nothing herein authorizes the Agency to exercise any control over any public noncommercial broadcast licensee, its staff or facilities or over any community antenna television system (Cable TV; CATV), its staff, employees or facilities operating in North Carolina, or the Police Information Network (PIN), its staff, employees or facilities or the Judicial Department.

The property of the Agency shall not be subject to any taxes or assessments. (1979, c. 900, s. 1; 1983, c. 666; c. 717, s. 82.)

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 first 1983 amendment, effective July 1, 1983, inserted "the provisions of the State Personnel Act and with" following "Subject to," inserted "professional," preceding "administrative," deleted "but the salaries of all employees designated by the Board as professional personnel shall be fixed by the Governor" following

"necessary to carry out the purposes of this Part," and substituted "but" for "and" preceding "any employee who serves as the director," all in the sixth sentence of subdivision (9).

The second 1983 amendment, effective July 11, 1983, substituted "General Assembly in the Budget Appropriation Act" for "Governor subject to the approval of the Advisory Budget Commission" at the end of the fifth sentence of subdivision (9).

§ 143B-426.18. Audit.

The operations of the North Carolina Agency for Public Telecommunications shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1979, c. 900, s. 1; 1983, c. 913, s. 42.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, rewrote this section, which formerly pro-

vided for periodic audits by the State Auditor and the furnishing of copies of such audits.

Part 23. Computer Commission.

§ 143B-426.21. Computer Commission.

(a) **Creation; Membership.** — The Computer Commission is created in the Department of Administration. The Commission consists of the following ex officio members: the Governor, Lieutenant Governor, Secretary of the Department of Administration, State Budget Officer, State Auditor, State Treasurer, Secretary of State, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor, Commissioner of Insurance, State President of the Department of Community Colleges and the Legislative Services Officer or his designee. The Governor shall chair the Commission and the Secretary of Administration shall be secretary to the Commission. The Commission shall meet at the call of the chairman or at the request of a majority of its members. The Department of Administration shall provide clerical and other services required by the Commission.

(b) **Powers and Duties.** — The Commission has the following powers and duties:

- (1) To approve or disapprove proposals by the Department of Administration under G.S. 143-341(9);
- (2) To obtain information relevant to the decisions required of the Commission under G.S. 143-341(9) from the affected departments; and
- (3) To develop a comprehensive five-year plan for the acquisition and use of information processing resources in the affected departments, which shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session. (1983, c. 267, s. 2.)

Editor's Note. — Session Laws 1983, c. 267, s. 3, makes this Part effective upon ratification. The act was ratified May 6, 1983.

Part 24. Governor's Management Committee.

§ 143B-426.22. Governor's Management Council.

(a) **Creation; Membership.** — The Governor's Management Council is created in the Department of Administration. The Council shall contain the following members: The Secretary of Administration, who shall serve as chairman, a senior staff officer responsible for productivity and management programs from the Departments of Commerce, Revenue, Natural Resources and Community Development, Transportation, Crime Control and Public Safety, Cultural Resources, Correction, Human Resources, and Administration; and an equivalent officer from the Offices of State Personnel, State Budget and Management, and the Governor's Program for Executive and Organizational Development. The following persons may also serve on the Council if the entity represented chooses to participate: a senior staff officer responsible for productivity and management programs from any State department not previously specified in this section, and a representative from The University of North Carolina.

(b) **Powers.** — The Council may:

- (1) Coordinate efforts to make State government more efficient and productive;
- (2) Review plans and policies submitted by participating agencies to improve agency management and productivity;
- (3) Recommend to the Governor the issuance of specific Management Directive and Executive Orders that will establish management policies and procedures to be implemented by the agencies to improve agency management and productivity;
- (4) Provide a clearinghouse for productivity initiatives and communicate these initiatives to all agencies;
- (5) Authorize special projects on specific management and productivity improvement issues;
- (6) Review plans and policies of statewide management programs such as the Incentive Pay Program, the North Carolina Employee Suggestion System, the Work Options Program, and similar productivity improvement programs; and
- (7) Develop criteria for annual recognition for outstanding Government Executives. (1983, c. 540, s. 1; c. 907, s. 3.)

Editor's Note. — Session Laws 1983, c. 540, s. 2, as amended by Session Laws 1983, c. 907, s. 3, makes this Part effective upon ratification. The act was ratified June 16, 1983.

tive upon ratification. The act was ratified June 16, 1983.

§ 143B-426.23. Meetings; clerical services report.

The Council shall meet monthly or at the call of the chairman. The Department of Administration is responsible for providing clerical and other services required by the Council. The Council shall make an annual report of its work to the Governor and to the Joint Appropriations Committee of the General Assembly. (1983, c. 540, s. 1.)

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of Administration. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for State employees. Until so established, the Board heretofore established pursuant to Executive Order XII dated 12 November 1974 shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

- (b) The Board shall consist of seven voting members, as follows:
- (1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, and one of whom shall be a State employee;

- (2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (3) One member shall be appointed by the General Assembly upon recommendation of the President of the Senate under G.S. 120-121;
- (4) The State Treasurer, ex officio; and
- (5) The Secretary of Administration, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for State employees, which shall include a reasonable number of options to the employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of public employees generally.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. Any assets of such investment vehicles or trusts

shall remain solely the property and rights of the State subject only to the claims of the State's general creditors.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(l) All clerical and other services and personnel required by the Board shall be supplied by the Secretary of Administration, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The Secretary of Administration is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1.)

Editor's Note. — Session Laws 1983, c. 559, s. 5, makes this Part effective upon ratification. The act was ratified June 17, 1983.

Part 26. North Carolina Farmworker Council.

§ 143B-426.25. North Carolina Farmworker Council — creation; membership; meetings.

(a) There is established within the Department of Administration the North Carolina Farmworker Council.

(b) The North Carolina Farmworker Council shall consist of 11 members as follows:

- (1) Four shall be appointed by the Governor.
- (2) Two shall be appointed by the Speaker of the House of Representatives.
- (3) Two shall be appointed by the Lieutenant Governor.
- (4) The Secretary of the Department of Human Resources or the Deputy Secretary of the Department if designated by the Secretary shall serve ex officio.
- (5) The Commissioner of Labor or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
- (6) The Commissioner of Agriculture or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.

(c) Vacancies in membership of the Council shall be filled by the original appointing authority for the remainder of the unexpired term.

(d) The Governor shall appoint the chairman of the Council. At its first meeting the Council shall select a vice-chairman from its membership and a secretary. The chairman shall preside at all meetings and in his absence the vice-chairman shall act as chairman.

(e) A majority of the membership shall constitute a quorum.

(f) The initial meeting of the Council shall be called by the Governor. Subsequent meetings shall be held upon the call of the chairman or upon the written request of four members. The Council shall meet at least four times per year.

(g) Council members who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Council members and ex officio members who are employees of the State of North Carolina shall receive travel allowances at the rate set forth in G.S. 138-6. All other Council members shall receive per diem, subsistence and travel expenses at the rate set forth in G.S. 138-5.

(h) The Department of Administration shall provide necessary clerical equipment and administrative services to the Council, provided the Council may hire and discharge its own staff if it so desires. (1983, c. 923, s. 205.)

Editor's Note. — Session Laws 1983, upon ratification. The act was ratified c. 923, s. 267, makes this Part effective July 22, 1983.

§ 143B-426.26. North Carolina Farmworker Council — duties; annual report.

(a) The Council shall have the following duties:

- (1) Study and evaluate the existing system of delivery of services to farmworkers.
- (2) Seek effective methods for the improvement of living, working, and related problems affecting farmworkers.
- (3) Recommend a mechanism for coordinating all farmworkers' activities in the State.
- (4) Identify and make recommendations to alleviate gaps and duplication of services or programs.
- (5) Propose and review legislation relating to farmworkers.

(b) By February 1 of each year, the Council shall make a report describing its activities for the preceding calendar year to the Governor and General Assembly. (1983, c. 923, s. 205.)

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-431. Department of Commerce — functions.

CASE NOTES

Cited in *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

§ 143B-433. Department of Commerce — organization.

The Department of Commerce shall be organized to include:

- (1) The North Carolina Alcoholic Beverage Control Commission,
- (2) The North Carolina Utilities Commission,
- (3) The Employment Security Commission,
- (4) The North Carolina Industrial Commission,
- (5) State Banking Commission,
- (6) Savings and Loan Association Division,
- (7) The State Savings and Loan Commission,
- (8) Credit Union Commission,
- (9) The North Carolina Milk Commission,
- (10) The North Carolina Mutual Burial Association Commission,
- (11) North Carolina Cemetery Commission,
- (12) The North Carolina Rural Electrification Authority,
- (13) Board of Science and Technology,
- (14) North Carolina Science and Technology Research Center,
- (15) The North Carolina State Ports Authority,
- (16) North Carolina National Park, Parkway and Forests Development Council,
- (17) Economic Development Board,
- (18) Labor Force Development Council,
- (19) Energy Policy Council,
- (20) Energy Division,
- (21) Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes,
- (22) The North Carolina Technological Development Authority,

and such divisions as may be established pursuant to Article 1 of this Chapter. (1977, c. 198, s. 1; 1979, c. 668, s. 2; 1981, c. 412, ss. 4, 5; 1983, c. 899, s. 1.)

Effect of Amendments. — The 1983 amendment, effective July 21, 1983, added subdivision (22).

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

(c) It shall be the duty of the chairman of the Economic Development Board:

- (1) To organize the work of the Economic Development Board into committees with respect to the divisions of the Department of Commerce concerned with the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries and
- (2) To assign responsibilities to each committee. (1977, c. 198, s. 1; 1981, c. 47, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 18; 1983, c. 717, s. 83.)

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, deleted the last sentence of subsection (c), which read "The salary of the chairman of the Economic Development Board" shall be set by the Governor with the approval of the Advisory Budget Commission."

Part 8. Energy Division.

§ 143B-450.1. Authority to collect data; administration and enforcement; confidentiality.

(a) The Energy Division shall have the authority to obtain from prime suppliers of petroleum products specific petroleum supply data concerning State-level sales and projected sales by month for North Carolina that is currently reported on the federal form EIA-782C, "Monthly Report of Petroleum Products Sold in States for Consumption" or its successor, at such time that these data requirements are not being met through any federal reporting procedure. The petroleum products subject to this reporting requirement are: finished gasoline (all grades), #1 distillate, kerosene, #2 fuel oil, #2 diesel fuel, aviation gasoline (finished), kerosene-type jet fuel, naphtha-type jet fuel, #4 fuel, residual fuel oil (less than or equal to one percent sulfur), residual fuel oil (greater than one percent sulfur), propane (consumer grade). The authority to collect energy data from suppliers of petroleum products into North Carolina, that is granted to the North Carolina Energy Division in this section, shall be limited to the petroleum volume data that is reported on the Form EIA-782C or its successor.

(b) "Prime suppliers" shall be defined as those suppliers which make the first sale of the named product into North Carolina, excluding jobbers, distributors and retail dealers.

(c) The Energy Division shall adopt rules and regulations for the administration of this data collection program and the Attorney General and the law enforcement authorities of the State and its political subdivisions shall enforce the provisions of this section and all orders, rules and regulations promulgated thereunder. Any such enforcement action may be brought upon the relation of the Energy Division, Department of Commerce, or in his discretion, upon the direction of the Attorney General.

(d) Any person or corporation who willfully refuses to provide the petroleum supply data in accordance with the conditions described herein, or who knowingly or willfully submits false information in any reports required herein or refuses to file any such reports shall be guilty of a misdemeanor punishable as provided in G.S. 14-3.

(e) Any civil action brought to enforce the provisions of this section shall be brought in the Superior Court of Wake County or in the superior court of the county in which the acts or practices constituting a violation occurred or are occurring.

(f) The Energy Division shall keep confidential any individually identifiable energy information to the extent necessary to comply with the confidentiality requirements of the reporting agency, and any such information shall not be subject to the public disclosure requirements of G.S. 132-6. "Individually identifiable energy information" shall be defined as any individual record or portion of a

record or aggregated data containing energy information about a person or persons obtained from any source, the disclosure of which could reasonably be expected to reveal information about a specific person. (1981, c. 701, s. 6; 1983, c. 575.)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, designated the original single paragraph of this section as subsection (f) and added subsections (a) through (e).

Part 10. North Carolina State Ports Authority.

§ 143B-452. **Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.**

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years. The members of the Authority appointed by the Governor shall be selected from the state-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Commerce or his designee shall serve as secretary of the Authority. The members of the Authority shall appoint a treasurer of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242; 1975, c. 716, s. 2; 1977, c. 65, s. 1; c. 198, s. 9; 1981 (Reg. Sess., 1982), c. 1191, ss. 69-71; 1983, c. 717, s. 2.1.)

Editor's Note. —

Session Laws 1983, c. 577, the Separation of Powers Bond Act of 1983, provides in s. 19:

"Validation. All actions, appropriations, regulations or bonds taken, made or issued under the provisions of Chapter 909, Session Laws of 1971, Chapter 677, Session Laws of 1977, Part 4 of Article 1 of Chapter 116 of the General Statutes, Articles 19 or 21 of Chapter 116 of the General Statutes, Article 23C of Chapter 113 of the General Statutes or Part 10 of

Article 10 of Chapter 143B of the General Statutes are valid notwithstanding the fact that certain powers were granted to and exercised by the Advisory Budget Commission."

Effect of Amendments. —

The 1983 amendment, effective July 11, 1983, deleted the former fourth sentence of the first paragraph, which read "Members of the General Assembly shall be eligible for appointment to the membership on the Authority."

CASE NOTES

The State Ports Authority is an agency of the State, and, as such, is entitled to claim the defense of sovereign immunity. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

The State Ports Authority was created

by former Article 22 of Chapter 143 of the General Statutes, and is an instrumentality and agency of the State, created and empowered to accomplish a public purpose. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

§ 143B-453. Purposes of Authority.

CASE NOTES

The Authority was created and empowered, etc. —

The State Ports Authority was created by former Article 22 of Chapter 143 of the General Statutes, and is an instrumentality and agency of the State, created and empowered to accomplish a public purpose. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

And Is an Instrumentality and Agency, etc. —

The State Ports Authority is an agency of the State, and, as such, is entitled to claim the defense of sovereign immunity. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

§ 143B-454. Powers of Authority.

In order to enable it to carry out the purposes of this Part, the said Authority shall:

- (1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;
- (2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;
- (3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;
- (4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt-line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, excluding terminal railroads;
- (5) The Secretary of Commerce with the approval of the Authority shall appoint such management personnel as he deems necessary to serve at his pleasure. The salary of the Director shall be fixed by the Governor after consultation with the Advisory Budget Commission. The Secretary of Commerce or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected.
- (6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;
- (7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;
- (8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and

expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

- (9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give vision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof: Provided, however, at no time may the total outstanding indebtedness of the Authority, excluding bond indebtedness exceed a total of five hundred thousand dollars (\$500,000) without approval of the Governor, after receiving the advice of the Advisory Budget Commission;
- (10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;
- (11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business;
- (12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and
- (13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon. (1945, c. 1097, s. 3; 1949, c. 892, s. 2; 1953, c. 191, s. 5; 1959, c. 523, ss. 3-5; 1975, c. 716, s. 2; 1977, c. 65, s. 2; c. 198, ss. 7, 9; c. 802, s. 50.45; 1979, c. 159, s. 3; 1981 (Reg. Sess., 1982), c. 1181, s. 2; 1983, c. 717, s. 84.)

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, rewrote the second sentence of subdivision (5), which read "The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission."

CASE NOTES

The State Ports Authority is an agency of the State, and, as such, is entitled to claim the defense of sovereign immunity. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

The State Ports Authority was created by former Article 22 of Chapter 143 of the General Statutes, and is an instrumentality and agency of the State, created and empowered to accomplish a public purpose. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

The legislature did not waive the sovereign immunity of the State by enacting subdivision (1) permitting the Ports Authority to "sue or be sued" and has consented that tort claims against the Authority may be prosecuted in the civil courts. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

Waiver of sovereign immunity may not be lightly inferred and State statutes waiving this immunity, being in derogation of the sovereign right to immunity, must be strictly construed. *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

Tort Claims to Be Pursued Under Tort Claims Act. — The language of the State Tort Claims Act and subdivision (1) of this section, vesting the Ports Authority with authority to sue or be sued, when read together, evidence a legislative intent that the Authority be authorized to sue as plaintiff in its own name in the courts of the State but contemplates that all tort claims against the Authority for money damages will be pursued under the State Tort Claims Act (§ 143-291). *Guthrie v. North Carolina State Ports Auth.*, — N.C. —, 299 S.E.2d 618 (1983).

§ 143B-464. Audit.

The operations of the State Ports Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1945, c. 1097, s. 12; 1951, c. 1088, s. 2; 1957, c. 269, s. 1; 1977, c. 198, s. 9; 1983, c. 913, s. 43.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, rewrote this section, which formerly pro-

vided for periodic audits by the State Auditor and the furnishing of copies of such audits.

Part 11. North Carolina Ports Railway Commission.

§ 143B-469.1. Powers of Commission.

The Commission shall be an agency of the State with all the powers of a body corporate including the following:

- (7) To appoint, with the approval of the Governor, a general manager of the Commission who shall serve at the pleasure of the board. The salary for the general manager shall be fixed by the General Assembly in the Budget Appropriation Act. The general manager shall have the authority to appoint, employ and dismiss such number of employees as may be deemed necessary by the board to accomplish the purposes of this Article. The compensation of such employees shall be fixed by the board; (1979, c. 159, s. 1; 1983, c. 717, s. 85.)

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, pro-

vides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, substituted "General Assembly in the

Budget Appropriation Act" for "Governor with the approval of the Advisory Budget Commission" at the end of the first sentence of subdivision (7).

§ 143B-470: Reserved for future codification purposes.

Part 12. North Carolina Technological Development Authority.

§ 143B-471. Creation of Authority.

There is hereby created the North Carolina Technological Development Authority, to increase the rate at which new jobs are created in all regions of the State, by stimulating the development of existing and new small businesses. The Authority shall be administratively located within the Department of Commerce, but shall exercise its powers independently of the head of that department, as if it had been transferred to the Department of Commerce by a Type II transfer as defined in G.S. 143A-6(b). (1983, c. 899, s. 2.)

Editor's Note. — Session Laws 1983, c. 899, s. 7, makes this Part effective upon ratification. The act was ratified July 21, 1983.

§ 143B-471.1. Composition of Authority.

(a) The Authority shall be governed by a board composed of 12 members, eight of whom shall be appointed by the Governor, two of whom shall be appointed by the General Assembly upon the recommendation of the President of the Senate under G.S. 120-121, and two of whom 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. Consideration should be given to the appointment of persons, including minorities and females, with technical expertise as well as experience in entrepreneurial business development and capital formation.

(b) Members shall serve four-year terms effective July 1, 1983, and quadrennially thereafter, except that the two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall serve for two-year terms effective July 1, 1983, and biennially thereafter. No person appointed to a four-year term shall serve more than two consecutive terms.

(c) Vacancies shall be filled by the Governor to serve the remainder of the unexpired term, except that vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. (1983, c. 899, s. 2.)

§ 143B-471.2. Officers; meetings.

(a) The Governor shall appoint from the members of the Authority a chairman. The Authority shall elect from among its members a vice-chairman and shall elect a secretary.

(b) The Authority shall meet at the call of the chairman, upon the written call of the majority of its members or upon resolution of the Authority.

(c) A quorum shall consist of seven members of the Authority. (1983, c. 899, s. 2.)

§ 143B-471.3. Compensation.

Members of the Authority shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. (1983, c. 899, s. 2.)

§ 143B-471.3A. Powers.

In order to enable it to carry out the purposes of this Part, the Authority may:

- (1) Exercise the powers granted corporations under G.S. 55-17;
- (2) Employ an executive director, whose salary shall be set by the Governor and the Authority, after consultation with the Advisory Budget Commission. The Authority may employ such other professional staff and clerical and secretarial staff as it deems necessary within the funds available to it. The salaries of such other personnel shall be set under the State Personnel Act;
- (3) Establish an office for the transaction of its business at Raleigh;
- (4) Apply for and accept grants of money from the State of North Carolina, or any political subdivision thereof, from the United States, or from any person, corporation, foundation, trust, or business or from any foreign government for any of the purposes authorized by this Part;
- (5) Establish and administer the incubator facilities program;
- (6) Administer the North Carolina Innovation Research Fund; and
- (7) Adopt reasonable rules to effectuate the purposes of this Part. (1983, c. 899, s. 2.)

§ 143B-471.4. Incubator facilities program.

(a) The Authority shall establish one or more incubator facilities within the State. An incubator facility is a building or buildings that provides space and support services for small businesses concerns which are beginning. "Small business concern" has the same meaning as that contained in Chapter 14A of Title 15, United States Code, and regulations promulgated under it.

(b) The Authority shall select sites for incubator facilities. The Authority in selecting sites shall evaluate areas for potential sites using the following criteria but is not limited to them:

- (1) The unemployment rate,
- (2) The need for industrial and economic diversification and development,
- (3) The interest by the locality in the establishment of an incubator facility in the area as manifested by grants from public and private sources and cooperation agreements between local government, business, labor and educational institutions demonstrating the probability of the success of the incubator facility.

(c) The Authority may make one-time grants to establish incubator facilities. A grant may not exceed two hundred thousand dollars (\$200,000). Local government and interests must at least

equal in cash or real estate value any grant made by the Authority; Provided, however, that contributions by State agencies may not be included in the matching grant.

(d) Only nonprofit corporations which are affiliated with local universities, colleges, community colleges or technical institutes or combinations thereof to advance the educational and research programs of these institutions shall be eligible to receive a grant from the Authority. Pursuant to rules adopted by the Authority, the corporation shall:

- (1) Manage and maintain the incubator facility,
- (2) Develop a mechanism to provide technical, management and entrepreneurial expertise to resident small business concerns and to small business concerns throughout the area, and
- (3) Abide by rules adopted by the Authority.

(e) The incubator facility and any improvements shall be owned by the State but may be leased to the corporation. Small business concern residents of the facility may be provided secretarial and other support facilities and utilities for which the corporation may charge them a part or all of the cost. No small business concern may remain in the facility for more than two years. Notwithstanding any other provision of law, the State shall not be liable for any act or failure to act of any organization granted funds under this Part, or any small business concern benefiting from the incubator facilities program. (1983, c. 899, s. 2.)

§ 143B-471.5. North Carolina Innovation Research Fund.

(a) The North Carolina Innovation Research Fund is hereby created to provide equity financing for the research activities of new and existing small business concerns in various regions of the State, including agriculture, aquaculture and forestry enterprises. This financing is designed to enable small business concerns to acquire technical and management assistance and otherwise to conduct research leading to new or improved product or service development.

(b) The fund will take an equity position in contracting concerns through the purchase of stock, the receipt of royalties, or other equity instruments.

(c) The fund will consist of appropriations from the State; moneys derived from federal, local governments and private grants; receipt of royalties and sale of equities.

(d) Awards per research project shall not exceed fifty thousand dollars (\$50,000) per fiscal year. Awards will be limited to concerns physically located in North Carolina, but the awards shall not be limited to incubator-affiliated projects.

(e) To protect its investments, the Authority shall make development agreements with contracting concerns, to ensure proper use of fund awards and the receipt of royalties, where appropriate. Development agreements shall assign all rights to abandoned projects to the Authority.

(f) Any funds received through the receipt of royalties, dividends, or the sale of equity instruments shall be deposited in the fund and are available to the Authority for use under this Part. (1983, c. 899, s. 2.)

§ **143B-472:** Reserved for future codification purposes.

ARTICLE 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ **143B-475. Department of Crime Control and Public Safety — functions.**

(e) The Crime Victims Compensation Commission established by Chapter 15B is vested in the Department of Crime Control and Public Safety. The Commission shall be administered as provided in Chapter 15B. (1977, c. 70, s. 1; 1981, c. 929; 1983, c. 832, 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.

Editor's Note. —

Session Laws 1983, c. 832, s. 6, provides: "This act shall become effective when funds are appropriated by the General Assembly to the Department of Crime Control and Public Safety to implement the provisions of this act. No claims may be filed under this act for any

criminally injurious conduct occurring before the effective date of this act or after December 31, 1991. Moneys remaining after payment of claims under this Chapter shall revert to the General Fund on July 1, 1993. This act is repealed effective July 1, 1993."

Effect of Amendments. —

The 1983 amendment added subsection (e).

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

§ **143B-480.2. Victim assistance.**

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed five hundred dollars (\$500.00) incurred by the victim for the medical examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided.

(b) Assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms.

(1981, c. 931, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 16; 1983, c. 715, ss. 1, 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 11, 1983, in the second sentence of subsection (a) inserted "ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services," substituted "for the medical examination, medical procedures to correct evidence, or counseling treatment" for "during the medical examination and treatment and

medical procedures to collect evidence," and added "or ambulance services from the place of the attack to a place where medical treatment is provided," and rewrote subsection (b), which read "Assistance for medical expenses authorized under this section is to be paid directly to the attending hospital and physicians upon the filing of the proper forms in the manner prescribed in the guidelines promulgated by the Secretary together with a certified copy of the police report."

§ 143B-480.3. Reduction of benefits; restitution; actions.

(d) Funds appropriated to the Department of Crime Control and Public Safety for this program may be used to purchase and distribute rape evidence collection kits approved by the State Bureau of Investigation. (1981, c. 931, s. 2; 1983, c. 715, 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 July 11, 1983, added subsection (d).

Part 4. State Fire Commission.

§ 143B-481. State Fire Commission created — membership.

There is hereby created the State Fire Commission of the Department of Crime Control and Public Safety which shall be composed of 13 voting members as follows: the Executive Secretary and the Legislative Chairman of the North Carolina State Firemen's Association, the Executive Secretary of the North Carolina Association of Fire Chiefs, the Director of the North Carolina Fire College and Pump School, the President of the North Carolina Society of Fire Instructors, a county fire marshal to be elected by the County Fire Marshal Administrative Association, one mayor or other elected city official appointed by the Governor after consulting with the President of the League of Municipalities, one county commissioner appointed by the Governor after consulting with the President of the Association of County Commissioners, the Director of Fire and Rescue Training for the North Carolina Department of Insurance, the Director of Fire Training for the North Carolina Department of Community Colleges, and one member appointed by the Governor from the public at large, not employed by government and not directly involved in fire fighting. The General Assembly shall appoint two members, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.

The following State officials, or their designees, shall serve by virtue of their offices as nonvoting members of the Commission: the

Commissioner of Insurance, the Commissioner of Labor, the State Auditor, the Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Natural Resources and Community Development, and the President of the Department of Community Colleges.

Of the members initially appointed by the Governor, the representative of the public at large shall serve for three years, the representative of the League of Municipalities shall serve for two years and the representative of the Association of County Commissioners shall serve for one year. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Governor may make appointments to fill the unexpired portions of the appointed members of any term vacated by reason of the death, resignation or removal from office. In making such appointment he shall preserve the composition of the Commission required above. Vacancies caused by reason of the death or resignation of ex officio members shall be filled by their respective successors in office.

The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. Thereafter, these appointees shall serve two-year terms.

Members of the State Fire Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as the case may be. (1977, c. 1064, s. 1; 1981, c. 791, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1191, ss. 21, 22; 1983, c. 840, ss. 1, 2.)

Effect of Amendments. —

The 1983 amendment, effective July 20, 1983, substituted "13 voting members" for "12 voting members" and

inserted "the President of the North Carolina Society of Fire Instructors" in the first sentence of the first paragraph.

§ 143B-483. State Fire Commission — organization; rules and regulations; meetings.

(c) Meetings. — The State Fire Commission shall meet quarterly. Six members shall constitute a quorum. All meetings shall be open to the public. (1977, c. 1064, s. 1; 1981, c. 791, s. 5; 1983, c. 840, 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.

The 1983 amendment, effective July 20, 1983, substituted "Six" for "Five" in the second sentence of subsection (c).

Effect of Amendments. —

Part 5. Civil Air Patrol.

§§ 143B-493 to 143B-499: Reserved for future codification purposes.

Part 6. Community Penalties Program.

§ 143B-500. Purpose.

This Part shall be known and may be cited as the "Community Penalties Act of 1983." The purpose of this Part is to reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment. In furtherance of this purpose, this Part provides for the following:

- (1) Establishment of local sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.
- (2) Increased opportunities for nonviolent felons to make restitution to victims of crime through financial reimbursement or community service.
- (3) Local involvement in the development of community penalties to assure that they are specifically designed to meet local needs.
- (4) Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added. (1983, c. 909, s. 1.)

Editor's Note. — Session Laws 1983, c. 909, s. 3, makes this Part effective upon ratification. The act was ratified July 21, 1983.

§ 143B-501. Definitions.

As used in this Part:

- (1) "Community penalties program" means an agency within the judicial district which shall (i) prepare community penalty plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) monitor the progress of offenders placed on community penalty plans.
- (2) "Community penalty plan" means a plan presented in writing to the sentencing judge which provides a detailed description of the targeted offender's proposed community penalty.
- (3) "Judicial district" means the districts prescribed in G.S. 7A-41.
- (4) "Secretary" means the Secretary of the Department of Crime Control and Public Safety.
- (5) "Targeted offenders" means persons convicted of nonviolent misdemeanors or nonviolent Class H, I, or J felonies who are facing an imminent and substantial threat of imprisonment. (1983, c. 909, s. 1.)

§ 143B-502. Allocation of funds.

The Secretary may award grants in accordance with the policies established by this Part and within the limits of any appropriation made for that purpose, and adopt regulations for the implementation, operation, and monitoring of community penalties programs. Community penalties programs that are grantees shall use such funds to develop, implement, and monitor community penalty plans. Grants shall be awarded by the Secretary to agencies whose

comprehensive program plans promise best to meet the goals set forth herein. (1983, c. 909, s. 1.)

§ 143B-503. Responsibilities of a community penalties program.

A community penalties program shall be responsible for:

- (1) Targeting offenders who face an imminent and substantial threat of imprisonment.
- (2) Preparing detailed community penalty plans for presentation to the sentencing judge by the offender's attorney.
- (3) Contracting or arranging with public or private agencies for services described in the community penalty plan.
- (4) Monitoring the progress of offenders under community penalty plans. (1983, c. 909, s. 1.)

§ 143B-504. Requirements for a comprehensive community penalties program plan.

Agencies applying for grants shall prepare a comprehensive community penalties program plan for the development, implementation, operation, and improvement of a community penalties program for the judicial district, as prescribed by the Secretary. Such plan shall include:

- (1) Objectives of the community penalties program.
- (2) Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.
- (3) Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.
- (4) Procedures for preparing and presenting community penalty plans to the court.
- (5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.
- (6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.
- (7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.
- (8) Procedures for evaluating the program's effect on numbers of prison commitments. (1983, c. 909, s. 1.)

§ 143B-505. Advisory board.

Each community penalties program shall establish a community penalties advisory board to provide advice and assistance to the community penalties program in the implementation and evaluation of the plan. The advisory board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The advisory board shall meet on a regular basis and advise the community penalties program. (1983, c. 909, s. 1.)

§ 143B-506. Limitation on use of funds.

Funds provided for use under the provisions of this Part shall not be used for the operating costs, construction, or any other costs associated with local jail confinement. (1983, c. 909, s. 1.)

§ 143B-507. Evaluation.

The Secretary shall evaluate each community penalties program on an annual basis to determine the degree to which the prison commitments have been reduced or have kept from increasing as a result of the community penalties program. The Secretary shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions. (1983, c. 909, s. 1.)

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

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