

# THE GENERAL STATUTES OF NORTH CAROLINA

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## 1985 CUMULATIVE SUPPLEMENT

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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, Part I

Chapters 137 to 143B

1983 Replacement

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Annotated through 329 S.E.2d 896. For complete scope of  
annotations, see scope of volume page.

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

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# Preface

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This Cumulative Supplement to Replacement Volume 3C, Part 1 contains the general laws of a permanent nature enacted by the General Assembly through the 1985 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

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

Chapter analyses show all affected sections, except sections for which catchlines are carried for the 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 Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.





# Scope of Volume

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## **Statutes:**

Permanent portions of the General Laws enacted by the General Assembly through the 1985 Regular Session affecting Chapters 137 through 143B of the General Statutes.

## **Annotations:**

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

North Carolina Reports through Volume 313, p. 337.  
North Carolina Court of Appeals Reports through Volume 73, p. 335.  
South Eastern Reporter 2nd Series through Volume 329, p. 896.  
Federal Reporter 2nd Series through Volume 761, p. 712.  
Federal Supplement through Volume 607, p. 1490.  
Federal Rules Decisions through Volume 105, p. 250.  
Bankruptcy Reports through Volume 48, p. 873.  
Supreme Court Reporter through Volume 105, p. 2370.  
North Carolina Law Review through Volume 63, p. 809.  
Wake Forest Law Review through Volume 20, p. 540.  
Campbell Law Review through Volume 7, p. 298.  
Duke Law Journal through 1983, p. 1142.  
North Carolina Central Law Journal through Volume 14, p. 680.  
Opinions of the Attorney General.



# The General Statutes of North Carolina 1985 Cumulative Supplement

## VOLUME 3C, PART I

### Chapter 137.

#### Rural Rehabilitation.

##### Article 2.

##### North Carolina Rural Rehabilitation 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.

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

Sec.

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

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

#### § 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 Current Operations Appropriations 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 Current Operations Appropriations 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. The Governor under this paragraph may not increase the salary of any nonelected official above the level set in the Current Operations Appropriations Act for any member of the Council of State. 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; 1983 (Reg. Sess., 1984), c. 1034, ss. 164, 216.)

**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 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** — The 1983 amendment, effective July 11, 1983, rewrote this section.

The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 216, effective July 1, 1984, inserted the next-to-last sentence.

The 1983 (Reg. Sess., 1984) amendment by c. 1034, s. 164, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriation Act in 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-seven dollars (\$47.00) 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.

(f) Members of all State boards, commissions and councils whose salaries or any portion of whose salaries are paid from State funds shall receive no per diem compensation from State funds for their services; provided, however, that members of State boards, commissions and councils who are also members of the General Assembly shall receive, when the General Assembly is not in session, subsistence and travel allowances at the rate set forth in G.S. 120-3.1(a)(2) through (a)(4). (1961, c. 833, s. 5; 1963, c. 1049, s. 1; 1965, c. 169; 1971, c. 1139; 1973, c. 1397; 1979, c. 838, s. 18; 1979, 2nd Sess., c. 1137, s. 29; 1983, c. 761, s. 24; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 185; 1985, c. 757, s. 201(b).)

**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. 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.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Subsection (c) of this section, referred to in subsection (a) of this section, was repealed by Session Laws, 1979, 2nd Session, c. 1137, s. 29.

**Effect of Amendments.** — The 1983 amendment, effective July 1, 1983, substituted "forty-two dollars (.00)" for "thirty-five dollars (\$35.00)" in subdivision (a)(2)b.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "G.S. 120-3.1(a)(2) through (a)(4)" for "G.S. 120-3.1(4)."

The 1985 amendment, effective August 1, 1985, substituted "forty-seven dollars (\$47.00)" for "forty-two dollars (\$42.00)" in paragraph (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-seven dollars (\$47.00) per day when traveling in-state or fifty-nine dollars (\$59.00) 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; 1985, c. 757, s. 201(a).)

**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.** —

For provision that notwithstanding this section, a magistrate may not be reimbursed by the State for travel expenses incurred on official business within the county in which the magistrate resides, see § 7A-171.1(b).

**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 (.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."

The 1985 amendment, effective August 1, 1985, substituted "forty-seven dollars (\$47.00)" for "forty-two dollars (\$42.00)" and "fifty-nine dollars (\$59.00)" for "fifty-four dollars (\$54.00)" in the first sentence of subdivision (a)(3).



## Chapter 139.

### Soil and Water Conservation Districts.

#### ARTICLE 1.

##### *General Provisions.*

#### § 139-2. Legislative determinations, and declaration of policy.

##### CASE NOTES

**Applied** in *Baucom's Nursery Co. v. Mecklenburg County*, 62 N.C. App. 396, 303 S.E.2d 236 (1983).

#### ARTICLE 4.

##### *Grants for Small Watershed Projects.*

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

**Editor's Note.** — Session Laws 1983, c. 757, s. 14, provides: "Of the one million one hundred thousand dollars (\$1,100,000) appropriated for fiscal year 1983-84 in Section 3.1 of this act for a reserve for Water Resources Projects, up to one-third may be used for small wa-

tershed projects. Notwithstanding the provisions of G.S. 139-54, no funds appropriated herein shall be used for State participation in the costs of land rights acquisition for small watershed projects."

## Chapter 140.

### State Art Museum; Symphony and Art Societies.

#### Article 1B.

##### North Carolina Museum of Art.

Sec.

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

#### Article 2.

##### North Carolina Symphony Society.

140-8. Audit.

#### Article 3.

##### North Carolina Art Society.

Sec.

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

140-13. Audit.

## ARTICLE 1B.

### *North Carolina Museum of Art.*

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

(c) The salary of the Director shall be fixed by the General Assembly in the Current Operations Appropriations Act.

(1961, c. 731; 1973, c. 476, s. 38; 1979, 2nd Sess., c. 1306, s. 1; 1985, c. 122, s. 6; c. 479, s. 218.)

**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 1985, c. 122, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1985."

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment by c. 122, s. 6, effective

April 25, 1985, substituted "after consultation with the Advisory Budget Commission" for "with the approval of the Advisory Budget Commission" in subsection (c).

The 1985 amendment by c. 479, s. 218, effective July 1, 1985, rewrote subsection (c), which formerly read "The salary of the director shall be fixed by the Governor with the approval of the Advisory Budget Commission after receiving the recommendation of the Board of Trustees."

Subsection (c) is set out above as rewritten by c. 479, s. 218.

## 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,

substituted "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; Investment of Moneys.

Sec.

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

#### Article 6.

##### Citations to Bond and Note Acts.

[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.

##### Executive Budget Act.

Sec.

- 143-2. Purposes.
- 143-3.2. Issuance of warrants upon State Treasurer.
- 143-3.3. Assignments of claims against State.
- 143-3.4. Warrants for money paid into treasury by mistake.
- 143-4. Advisory Budget Commission.
- 143-4.1. Biennial inspection.
- 143-7. Itemized statements and forms; exemptions from § 147-64.6(c)(10).
- 143-10.1. Budget required to include State cost of local programs.
- 143-11. Survey of departments.
- 143-11.1. [Repealed.]
- 143-12. Bills containing proposed appropriations.
- 143-12.1. Vending facilities.
- 143-13. (Effective until July 1, 1992 and after July 1, 1992 contingent on approval of constitutional amendment) Printing copies of budget report and bills and rules for the introduction of the same.
- 143-13. (Effective July 1, 1992 contingent on approval of constitutional amendment) Printing copies of budget report and bills and rules for the introduction of the same.
- 143-15. Reduction and increase of items by General Assembly.
- 143-16.1. Federal funds.
- 143-18. Unencumbered balances to revert to treasury; capital appropriations excepted.
- 143-18.1. Decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for.
- 143-20. Accounting records.
- 143-20.1. Annual financial statements.
- 143-23. All maintenance funds for itemized purposes; transfers between objects and items.

Sec.

- 143-23.1. [Repealed.]
- 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.
- 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.
- 143-27.2. Discontinued service retirement allowance and severance wages for certain State employees.
- 143-28. All State agencies under provisions of this Article.
- 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.
- 143-31.4. Non-State match restrictions.
- 143-32. Person expending an appropriation wrongfully.
- 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers; payment of required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security; support of hospital and medical insurance programs for retired members of certain associations, organizations, boards, etc.
- 143-34.4. [Recodified.]
- 143-34.5. [Repealed.]
- 143-34.6. Deposit of payroll deductions.
- 143-34.7. Participation by legislative officers.
- 143-34.8, 143-34.9. [Reserved.]

#### Article 1.2.

##### Legislative Committee on Agency Review.

- 143-34.25 to 143-34.27. [Expired.]

#### Article 2D.

##### North Carolina Board for Need-Based Student Loans.

- 143-47.21. Creation of Board.
- 143-47.24. Powers and duties.



**Article 3.**

**Purchases and Contracts.**

Sec.

- 143-48. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose.
- 143-49. Powers and duties of Secretary.
- 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.
- 143-53. Rules and regulations.
- 143-56. Certain purchases excepted from provisions of Article.
- 143-58.1. Unauthorized use of public purchase or contract procedures for private benefit.
- 143-60. Rules and regulations covering certain purposes.
- 143-63. Financial interest of officers in sources of supply; acceptance of bribes.

**Article 5.**

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

- 143-106. [Repealed.]

**Article 6A.**

**Ordinances and Traffic Regulations for Institutions.**

- 143-116.7. (Effective until July 1, 1986) Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Human Resources institutions, traffic regulations; registration and regulation of motor vehicles.
- 143-116.7. (Effective July 1, 1986) Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Human Resources institutions, traffic regulations; registration and regulation of motor vehicles.

**Article 7.**

**Persons Admitted to Department of Human Resources Institutions to Pay Costs.**

- 143-117. Institutions included.

Sec.

- 143-117.1. Definitions.
- 143-118. Secretary of Human Resources to fix cost and charges.
- 143-118.1. Secretary of Human Resources may compromise account.
- 143-119. Payments.
- 143-120. [Repealed.]
- 143-121. Action to recover costs.
- 143-121.1. Ratification of past acts.
- 143-122. No limitation of action.
- 143-123. Power to admit indigent persons.
- 143-124. Suit by Attorney General.
- 143-125. Judgment; never barred.
- 143-126. Death of a person admitted; lien on estate.
- 143-126.1. Lien on property for unpaid balance due institution.
- 143-127. Money paid into State treasury.
- 143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.

**Article 7A.**

**Damage of Personal Property in State Institutions.**

- 143-127.2. Repair or replacement of personal property.
- 143-127.3. Negligence.
- 143-127.4. Other remedies.
- 143-127.5. Limitations.
- 143-127.6. Appeals.

**Article 8.**

**Public Building Contracts.**

- 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.
- 143-129.2. Construction, design and operation of solid waste management facilities.
- 143-134.1. Interest on final payments due to prime contractors; payments to subcontractors.
- 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.
- 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims; appeal to Board.



Sec.

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.

143-143.11. License required; application for license.

143-143.12. (Effective July 1, 1986) Bond required.

143-143.13. Grounds denying, suspending or revoking license.

Sec.

143-143.24. Engaging in business without license a misdemeanor.

**Part 2. Uniform Standards Code for Manufactured Homes.**

143-144. Short title.

143-145. Definitions.

143-146. Statement of policy; rule-making power.

143-147. Approval and licensing of persons and inspection departments.

143-149. Necessity for obtaining label or certificate for purposes of sale.

143-150. No electricity to be furnished units not in compliance.

143-151. Penalties.

143-151.1. Enforcement.

143-151.2. Fees.

143-151.3. Reports.

143-151.4. Notification of defects.

143-151.5. Prohibited acts.

**Article 9B.**

**North Carolina Code Officials Qualification Board.**

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 to 143-166.04. [Repealed.]

**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 12B.**

**Salary Continuation Plan for Certain State Law-Enforcement Officers.**

143-166.21 to 143-166.29. [Reserved.]



**Article 12C.**

**Retirement Benefits for State  
Law-Enforcement  
Officers.**

Sec.

143-166.30. Retirement benefits for State law-enforcement officers.

143-166.31 to 143-166.39. [Reserved.]

**Article 12D.**

**Separation Allowances for  
Law-Enforcement  
Officers.**

143-166.40. Rules for selection and retention of law-enforcement officers; rules exempt from Administrative Procedure Act.

143-166.41. Special separation allowance.

143-166.42 to 143-166.49. [Reserved.]

**Article 12E.**

**Retirement Benefits for  
Local Governmental  
Law-Enforcement  
Officers.**

143-166.50. Retirement benefits for local governmental law-enforcement officers.

143-166.51 to 143-166.59. [Reserved.]

**Article 12F.**

**Separate Insurance Benefits Plan  
for State and Local Govern-  
mental Law-Enforcement  
Officers.**

143-166.60. Separate insurance benefits plan for law-enforcement officers.

143-166.61 to 143-166.69. [Reserved.]

**Article 12G.**

**Transfers of Assets of Law-  
Enforcement Officers' Re-  
tirement System to Other  
Retirement Systems.**

143-166.70. Transfers of assets of Law-Enforcement Officers' Retirement System to other retirement systems.

143-166.71 to 143-166.79. [Reserved.]

**Article 12H.**

**Sheriffs' Supplemental Pension  
Fund Act of 1985.**

143-166.80. Short title and purpose.

143-166.81. Scope.

Sec.

143-166.82. Assets.

143-166.83. Disbursements.

143-166.84. Eligibility.

143-166.85. Benefits.

**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.**

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.**

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

143-215.73. Recommendation and disbursement of grants.



**Article 24.**

**Wildlife Resources Commission.**

Sec.

- 143-243. Organization of the Commission; election of officers; Robert's Rules of Order.
- 143-246. Executive Director; appointment, qualifications and duties.

**Article 25B.**

**State Nature and Historic Preserve Dedication Act.**

- 143-260.10B. Removal of land from the State Nature and Historic Preserve.

**Article 31.**

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

- 143-295. Settlement of claims.
- 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

**Article 33C.**

**Meetings of Public Bodies.**

- 143-318.18. Exceptions.

**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.
- 143-345.6. Land records management program.
- 143-345.7. Repair and reconstruction of the Western Residence of the Governor.
- 143-345.8. North Carolina Purchase Directory.

**Article 37B.**

**Marine Resources Center Administrative Board.**

Sec.

- 143-347.10 to 143-347.14. [Repealed.]

**Article 38.**

**Water Resources.**

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

**Article 52.**

**Pesticide Board.**

**Part 4. Pesticide Applicators and Consultants.**

- 143-453. (Effective January 1, 1987) Qualifications for pesticide applicator's license; examinations.

**Article 53.**

**Commission for Mental Health, Mental Retardation and Substance Abuse Services.**

- 143-475.1. [Repealed.]

**Article 55B.**

**North Carolina Commission on Jobs and Economic Growth.**

- 143-506.15. North Carolina Commission on Jobs and Economic Growth.

**Article 61.**

**Commission on the Bicentennial of the United States Constitution.**

- 143-563. Statement of purpose.
- 143-564. Creation of Commission; membership; quorum.
- 143-565. Officers and staff; compensation.
- 143-566. Transfer of property; offices; power to contract.
- 143-567. Commission may accept gifts.
- 143-568. Logo.
- 143-569. Duties of the Commission.
- 143-570. Termination of Commission.



## 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.

Session Laws 1983 (Reg. Sess., 1984), c. 971, s. 5, and c. 1034, s. 252, both provide 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.

Session Laws 1985, c. 479, s. 228 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.

**§ 143-2. Purposes.**

It is the purpose of this Article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

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

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1; 1983 (Reg. Sess., 1984), c. 1109, s. 10; 1985, c. 290, s. 1.)



**Effect of Amendments. —**

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, inserted "G.S. 7A-113 or in" near the middle of the last paragraph.

The 1985 amendment, effective July 1, 1985, deleted a former last paragraph, which read "Notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor, State Treasurer, and Administrative Officer of the Courts for their respective

departments shall not, except as provided in G.S. 7A-113 or in G.S. 143-25, be subject to the powers of the Director of the Budget or the Office of State Budget and Management, it being intended that the State Auditor, State Treasurer, and Administrative Office of the Courts shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission."

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

Upon the transfer of functions from the Auditor's Office to the Director of the Budget, as provided in G.S. 143-3.1, the Director of the Budget shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer; and to carry out this responsibility the Director shall designate a State Disbursing Officer whose duties shall be performed as a function of the Office of State Budget and Management. All warrants upon the State Treasurer shall be signed by the State Disbursing Officer, who before issuing same shall determine the legality of payment and the correctness of the accounts; provided that when considered expedient, due to its size or location, a State agency may upon approval of the Director of the Budget make expenditures through a disbursing account with the State Treasurer. All deposits in such disbursing accounts shall be by the State Disbursing Officer's warrant, and a copy of each voucher making withdrawals from such disbursing accounts, together with such supporting data as may be required by the Director of the Budget, shall be forwarded to the Office of State Budget and Management monthly or otherwise as may be required by the Director of the Budget; provided, however, that a central payroll unit operating under the Office of State Budget and Management may make deposits and withdrawals directly to and from a disbursing account which shall constitute a revolving fund for servicing payrolls passed through such central payroll unit. The State Disbursing Officer is authorized to use a facsimile signature machine in affixing his signature to warrants. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1961, c. 194; 1969, c. 844, s. 12; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1; c. 884, s. 10; 1985, c. 290, s. 2.)

**Effect of Amendments. —**

The 1985 amendment, effective July 1, 1985, substituted "provided" for "provided that the State Auditor, State Treasurer, and Administrative Officer of the Courts shall have the exclusive author-

ity to issue all warrants for the operation of their respective department and such warrants shall be paid by the State Treasurer from the appropriations provided therefor; and provided further," near the middle of the second sentence.



**§ 143-3.3. Assignments of claims against State.**

(a) 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 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.

(b) Subsection (a) of this section shall not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1. (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; 1983 (Reg. Sess., 1984), c. 1034, s. 147; c. 1036, s. 1.)

**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.

Session Laws 1983 (Reg. Sess., 1984), c. 1036, s. 1, purported to amend § 147-62. In view of the recodification of § 147-62 as this section by Session Laws 1983, c. 913, s. 49, the changes directed by the amendment have been made to this section.

Session Laws 1983 (Reg. Sess., 1984), c. 1036, s. 2, provides: "Nothing herein contained shall be construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** — Session Laws 1983, c. 680, effective July 5, 1983, inserted "uniform rental firms to allow employees of the Department of Trans-

portation 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.

The 1983 (Reg. Sess., 1984) amendment by c. 1034, effective January 1, 1985, deleted a proviso which read "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:" preceding the last proviso in the first sentence of subsection (a).

The 1983 (Reg. Sess., 1984) amendment by c. 1036, effective June 29, 1984, designated the first paragraph as subsection (a) and added subsection (b).

### CASE NOTES

**Policy behind this "anti-assignment" statute** does not require that an unpaid indemnitee be precluded from

bringing its claim. *Ledbetter Bros. v. North Carolina Dep't of Transp.*, 68 N.C. App. 97, 314 S.E.2d 761 (1984).

## § 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.

Five Senators appointed by the President of the Senate, a chairman of the House Appropriations Committee, a chairman of the House Finance Committee, three other Representatives appointed by the Speaker of the House and five 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. If there is more than one House Appropriations Committee Chairman, or more than one House Finance Committee Chairman, the Speaker of the House of Representatives shall designate which shall serve on the Advisory Budget Commission.

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

The members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowance as are provided for members of the General Assembly for services on interim legislative committees. The Governor shall call a meeting of the Commission during the period beginning with the convening of each regular session and ending 30 days later. Otherwise, meetings of the Commission may be called by the Governor or by the chairman.

Members of the Commission shall take the oath of office at or before the first meeting of the Commission they attend.

The Office of State Budget and Management, under the direction of the State Budget Officer, shall serve as staff to the Commission. The State Budget Officer shall designate a secretary to the Commission.

After the agenda for a meeting has been delivered to the members of the Commission, no other item shall be considered at that meeting except upon the approval of a majority of the members present and voting.

Except for the Governor, persons who are not members of the Commission may address the Commission only at the invitation of the Governor, the chairman, or a majority of the members present and voting.

A vacancy in a seat on the Commission filled by the chairman of a House Finance or a House 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.

Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a com-



petent 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; 1983 (Reg. Sess., 1984), c. 1034, s. 148; 1985, c. 3, ss. 1-2.1; c. 290, s. 3.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**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."

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted the present second and third sentences of the third paragraph for a former second sentence, which read "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," and inserted the present fourth through seventh paragraphs.

The 1985 amendment, by c. 3, ss. 1 to 2.1, effective February 15, 1985, substituted "Five Senators appointed by the President of the Senate, a chairman of the House Appropriations Committee, a chairman of the House Finance Commit-

tee" for "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" at the beginning of the first sentence of the first paragraph, added the last sentence of the first paragraph, and in the eighth paragraph substituted "House Finance or a House Appropriations" for "finance or an appropriations" preceding "Committee shall be filled by appointment."

The 1985 amendment by c. 290, s. 3, effective July 1, 1985, deleted the former ninth paragraph, which read "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."



### § 143-4.1. Biennial inspection.

The Commission shall make a biennial inspection of those physical facilities of the State it deems necessary. (1983 (Reg. Sess., 1984), c. 1034, s. 149.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this section effective July 1, 1984. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

### § 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.

#### CASE NOTES

Cited in *Stam v. Hunt*, 66 N.C. App. 116, 310 S.E.2d 623 (1984).

**§ 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."

### § 143-12. Bills containing proposed appropriations.

The Director, by and with the advice of the Commission, shall cause to be prepared and submitted to the General Assembly the following bills:

- (1) A bill containing all proposed current operations appropriations of the budget for each year in the ensuing biennium, which shall be known as the "Current Operations Appropriations Bill", and a bill containing all proposed capital appropriations of the budget for each year in the ensuing biennium, which shall be known as the "Capital Improvement Appropriations Bill".
- (2) If necessary, a bill containing the Director of the Budget's views on revenue for the ensuing biennium, which shall be known as the "Budget Revenue Bill, and shall provide an amount of revenue for the ensuing biennium sufficient, in the opinion of the Director and the Commission, to meet the appropriations contained in the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill.
- (3) Repealed by Session Law 1983 (Regular Session, 1984), c. 1034, s. 153.



To the end that all expenses of the State may be brought and kept within the budget, the Current Operations Appropriations Bill shall contain a specific sum as a contingent or emergency appropriation. The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Director of the Budget, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

If the Director and the Commission shall not agree as to the Appropriations and Revenue Bills in substantial particulars, the Director shall prepare the same, based on his 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 they shall find proper to submit as representing their own views. (1925, c. 89, s. 13; 1929, c. 100, ss. 12, 13, 14; 1957, c. 269, s. 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 150, 151, 153, 154; 1985, c. 290, s. 7.)

**Editor's Note. —**

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments. —** The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, rewrote subdivisions (1) and (2), deleted subdivision (3), relating to the Budget Machinery Bill, substituted "Current Operations Appropriations Bill" for "Budget Appropriations Bill" near the middle of the first sentence of the second unnumbered paragraph, and substituted "Appropriations and Revenue Bills" for "Appropriation,

Revenue and Machinery Bills" near the beginning of the last paragraph.

The 1985 amendment, effective July 1, 1985, 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 they" for "and shall cause to be submitted therewith such statements of disagreement, and the particulars thereof as the Commission or any of its members," in the last paragraph.

## § 143-12.1. Vending facilities.

(a) The receipts from vending facilities operated by State agencies, institutions, departments, boards, and commissions are State funds. The payments received by a State agency, institution, department, board or commission by contract under which another party operates vending facilities and pays a sum to the State, whether computed as a percentage of gross or net receipts or gross or net profits, or as a fixed or variable fee, are State funds.

(b) The receipts or payments described in subsection (a) of this section from vending facilities shall be deposited as provided by law in the appropriate fund to be determined by the Office of State Budget and Management.



(c) The net proceeds from vending facilities are subject to appropriation by the General Assembly.

(d) The Office of State Budget and Management shall submit to the General Assembly along with or as a part of the biennial budget (and along with or as a part of any second-year budget requests) budgets for vending facilities operated by General Fund, Highway Fund, and Wildlife Fund departments' and institutions' operating budgets.

(e) Budgets for vending facilities prepared under subsection (d) of this section shall reflect total receipts from the facilities, and the total costs to staff, stock, and operate the vending facilities, shall set out the total net proceeds, and shall contain, in line-item detail, requests the departments and institutions have submitted to expend the net proceeds. If a State agency or institution receives payments on account of vending facilities but does not actually operate the facilities, the budget shall contain a statement of the payments and shall contain, in line-item detail, requests the departments and institutions have submitted to expend the net proceeds.

(f) The net proceeds that the General Assembly approves for expenditure by the department or institution shall be retained in the appropriate fund budget code for the purposes approved by the General Assembly.

(f1) The net proceeds of the vending operations at North Carolina Memorial Hospital shall be used at the beginning of each fiscal year to cover any deficits incurred by the Hospital's cafeteria operation during the prior fiscal year. The amount transferred from the net proceeds of the vending operations may not be available for expenditure but shall revert to the General Fund at the end of the fiscal year.

(g) For the purposes of this section "vending facilities" has the same meaning as provided in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means.

(h) The provisions of subsections (c) through (f1) of this section shall not supersede or apply to operations under the provisions of Article 3 of Chapter 111 of the General Statutes, G.S. 127A-138(b), or G.S. 116-36.1 through G.S. 116-36.3, or to the operation of any vending facility by a community college, technical institute, technical college, or local school administrative unit, but they shall apply to the operations of North Carolina Memorial Hospital. (1983 (Reg. Sess., 1984), c. 1034, s. 166; 1985, c. 479, s. 77.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 175, makes this section effective Oct. 1, 1984, except that subsection (c) through (f) shall become effective beginning with the 1985-87 biennial State Budget.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 479, s. 1.1 provides the act shall be known as "The

Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, added subsection (f1) and in subsection (h) substituted a reference to subsection (f1) for a reference to subsection (f).



**§ 143-13. (Effective until July 1, 1992 and after July 1, 1992 contingent on approval of constitutional amendment) Printing copies of budget report and bills and rules for the introduction of the same.**

The Director shall cause to be printed one thousand copies each of the budget report, the Current Operations Appropriations Bill, Capital Improvement Appropriations Bill, and the Budget Revenue Bill. The Governor shall present copies thereof to the General Assembly, together with the biennial message, except incoming Governors may, at the first session of the General Assembly in their respective terms, submit the same after the biennial message has been presented to the General Assembly. The Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill shall be introduced by the chairman of the committee on appropriations in each house of the General Assembly, and the Budget Revenue Bill shall be introduced by the chairmen of the finance committees in each branch of the General Assembly: Provided, that for the years in which the Governor is elected, other than when a Governor is elected for a second successive term the Director shall deliver the budget report and the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill and the Budget Revenue Bill to the Governor-elect, on or before the fifteenth day of December, and the said budget report, Appropriations, and Revenue Bills, shall be presented by the Governor to the General Assembly with such recommendations in the way of amendments, or other modifications, together with such criticism as he may determine. The provisions herein contained as to the introduction of the bills mentioned in this section shall be considered and treated as a rule of procedure in the Senate and House of Representatives until otherwise expressly provided for by a rule in either, or both, of said branches of the General Assembly. (1925, c. 89, s. 14; 1929, c. 100, s. 15; 1983 (Reg. Sess., 1984), c. 1034, ss. 152, 155-158.)

**Section Set Out Twice.** — The section above is effective until July 1, 1992 and after July 1, 1992 contingent on approval of the constitutional amendment to Art. III, § 2 proposed by Session Laws 1985, c. 61. For this section as amended effective July 1, 1992, contingent on approval of such constitutional amendment, see the following section, also numbered § 143-13.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** — The 1983

(Reg. Sess., 1984) amendment, effective July 1, 1984, substituted references to the Current Operations Appropriations Bill and Capital Improvement Appropriations Bill for references to the Budget Appropriation Bill throughout the section, deleted references to the Budget Machinery Bill throughout the section, and substituted "the years in which the Governor is elected, other than when a Governor is elected for a second successive term" for "the years in which the Governor is elected" in the proviso at the end of the third sentence.



**§ 143-13. (Effective July 1, 1992 contingent on approval of constitutional amendment) Printing copies of budget report and bills and rules for the introduction of the same.**

The Director shall cause to be printed one thousand copies each of the budget report, the Current Operations Appropriations Bill, Capital Improvement Appropriations Bill, and the Budget Revenue Bill. The Governor shall present copies thereof to the General Assembly, together with the biennial message, except incoming Governors may, at the first session of the General Assembly in their respective terms, submit the same after the biennial message has been presented to the General Assembly. The Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill shall be introduced by the chairman of the committee on appropriations in each house of the General Assembly, and the Budget Revenue Bill shall be introduced by the chairman of the finance committees in each branch of the General Assembly: Provided, that for the years in which the Governor is elected, the Director shall deliver the budget report and the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill and the Budget Revenue Bill to the Governor-elect, on or before the fifteenth day of December, and the said budget report, Appropriations, and Revenue Bills, shall be presented by the Governor to the General Assembly with such recommendations in the way of amendments, or other modifications, together with such criticism as he may determine. The provisions herein contained as to the introduction of the bills mentioned in this section shall be considered and treated as a rule of procedure in the Senate and House of Representatives until otherwise expressly provided for by a rule in either, or both, of said branches of the General Assembly. (1925, c. 89, s. 14; 1929, c. 100, s. 15; 1983 (Reg. Sess., 1984), c. 1034, ss. 152, 155-158; 1985, c. 61, s. 4.)

**Section Set Out Twice.** — The section above is effective July 1, 1992 contingent on approval of the constitutional amendment to Art. III, § 2 proposed by Session Laws 1985, c. 61. For this section as in effect until July 1, 1992 and until approval of such constitutional amendment, see the preceding section, also numbered § 143-13.

**Effect of Amendments.** —

The 1985 amendment, effective July 1, 1992, contingent upon approval of the voters of the constitutional amendment to Art. III, § 2 proposed by Session Laws 1985, c. 61, deletes "other than when a Governor is elected for a second successive term" following "the years in which the Governor is elected" in the proviso to the third sentence.

**§ 143-15. Reduction and increase of items by General Assembly.**

The provisions of this Article shall continue to be the legislative policy with reference to the making of appropriations and shall be treated as rules of both branches of the General Assembly until and unless the same may be changed by the General Assembly either by express enactment or by rules adopted by either branch of the General Assembly.



The General Assembly may reduce or strike out such item in the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill as it may deem to be the interest of the public service, but neither House shall consider further or special appropriations until the Current Operations Appropriations Bill shall have been enacted in whole or part or rejected, unless the Governor shall submit and recommend an emergency appropriation bill or emergency appropriation bills, which may be amended in the manner set out herein, and such emergency appropriation bill, or bills, when enacted, shall continue in force only until the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill shall become effective, unless otherwise provided by the General Assembly. Provided that the Capital Improvement Appropriations Bill may be considered before the Current Operations Appropriations Bill has been adopted in whole or part or rejected.

The General Assembly may also increase any appropriation set out in the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill and may provide additional appropriations for other purposes if additional revenue or revenues, equal to the amount of such additional appropriations and increases, are provided for by corresponding amendment to the Budget Revenue Bill. No bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for an object or objects therein described and shall provide an adequate source of revenue for defraying such appropriation, or unless it appears from the budget report or the Budget Revenue Bill that there is sufficient revenue available therefor. The appropriation, or appropriations, in such bills shall be in accordance with the classification used in the budget. (1925, c. 89, s. 16; 1929, c. 100, s. 17; 1983 (Reg. Sess., 1984), c. 1034, ss. 159-161.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "until the Current Operations Appropriations Bill shall have been enacted in whole or part or rejected" for "until the Budget Appropriations Bill shall have been enacted in whole or in part or rejected" near the

middle of the first sentence of the second paragraph, added the second sentence of the second paragraph, substituted reference to the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill for reference to the Budget Appropriations Bill throughout the section, and substituted "an object or objects" for "a single object" in the first sentence of the last paragraph.

## § 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. Unencumbered balances to revert to treasury; capital appropriations excepted.

All unencumbered balances of maintenance appropriations shall revert to the State treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of each fiscal year; except that capital expenditures for the purchase of land, the erection of buildings, new construction or renovations in progress shall continue in force until the attainment of the object or the completion of the work for which the appropriations are made; except that maintenance appropriations to the General Assembly shall remain available until expended, unless otherwise provided by the Legislative Services Commission.

As used in this section, "unencumbered" means not obligated in the form of purchase orders, contracts, renovations in progress or salary commitments. (1925, c. 18, s. 19; 1929, c. 100, s. 20; 1983 (Reg. Sess., 1984), c. 1034, s. 181; 1985, c. 479, s. 158.)

**Editor's Note. —** Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 140, provides:

"Notwithstanding the provisions of G.S. 143-18, funds received by any State agency within the scope of the Executive Budget Act pursuant to the Federal Emergency Veterans Job Training Act of 1983 shall not revert to the General Fund at the end of the biennial fiscal period."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 180, provides:

"(a) Notwithstanding G.S. 143-18, funds appropriated to the General Assembly by Chapters 859, 1127, and 1282 of the 1981 Session Laws shall not revert to the General Fund but shall remain available to the General Assembly until expended or until reverted under G.S. 120-32(10).

"(b) The funds covered by this section may be encumbered for such purpose as may be approved by the Director of the Budget.

"(c) This section is effective June 30, 1983."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 161, provides:

"Sections 156 through 160 of this act shall become effective July 1, 1985; provided, however, from July 1, 1985, through June 30, 1986, these sections do not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated in these sections.

"The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on any deviations from Sections 156 through 160 of this act and the reasons it was impossible to comply. The Director of the Budget may also report proposed amendments to Sections 156 through 160 of this act."



Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective June 30, 1984, added the language be-

ginning "except that maintenance appropriations" at the end of the section.

The 1985 amendment by c. 479, s. 158, effective July 1, 1985, rewrote this section.

### **§ 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.



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

(a) All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the purposes and/or objects enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, and/or as amended by the General Assembly.

(a1) No transfers may be made between line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for a line item if the overexpenditure is:

- (1) In a program for which funds were appropriated for that fiscal period and the total amount spent for the program is no more than was appropriated for the program for the fiscal period;
- (2) Required to continue a program because of unforeseen events, so long as the scope of the program is not increased;
- (3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;
- (4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
- (5) Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office the reason if the amount expended for a program is more than the amount appropriated for it from all sources.

Funds appropriated for salaries and wages may only be used for salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, contracted personal services, moving expenses, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments: provided, however, funds appropriated for salaries and wages may also be used for purposes for which over expenditures are permitted by subdivisions (3), (4), and (5) of this subsection but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office. Salary funds that become available from vacant positions may not be used for new employee positions or to raise the salary of existing employees.

As used in this subsection, "program" means a group of expenditure and receipt line items for support of a specific budgeted activity outlined in the certified budget for each department, agency, or institution, as designated by the four-digit fund (purpose) number in the Budget Preparation System.

(b) Repealed by Session Laws 1985, c. 290, s. 8, effective July 1, 1985.



(c) Transfers or changes as between objects and items in the budget of the Senate may be made by the President Pro Tempore of the Senate;

(d) Transfers or changes as between objects and items in the budget of the House of Representatives may be made by the Speaker of the House of Representatives;

(e) Transfers or changes as between objects and items in the budget of the General Assembly other than of the Senate and House of Representatives may be made jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. (1929, c. 100, s. 24; 1981, c. 1127, s. 82; 1985, c. 290, s. 8; c. 479, s. 159; c. 757, s. 183.)

**Editor's Note.** — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 14, provides that subdivision (a1) of this section and ss. 156 and 157 of c. 479, amending this section and § 143-27, do not apply to the General Assembly.

Session Laws 1985, c. 479, s. 161, provides:

"Sections 156 through 160 of this act shall become effective July 1, 1985; provided, however, from July 1, 1985, through June 30, 1986, these sections do not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated in these sections.

"The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on any deviations from

Sections 156 through 160 of this act and the reasons it was impossible to comply. The Director of the Budget may also report proposed amendments to Sections 156 through 160 of this act."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** —

The 1985 amendment by c. 290, s. 8, effective July 1, 1985, deleted subsection (b).

The 1985 amendment by c. 479, s. 159, effective July 1, 1985, deleted the second sentence of subsection (a), which read, "Transfers or changes as between objects and items in the budget of any department, institution or other spending agency, may be made at the request in writing of the head of such department, institution or other spending agency by the Director of the Budget," and added subsection (a1).

The 1985 amendment by c. 757, s. 183, effective July 1, 1985, added subsections (c), (d), and (e).

**§ 143-23.1:** Repealed by Session Laws 1985, c. 290, s. 4, effective July 1, 1985.

**§ 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 Direc-



tor 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, after consultation with the Advisory Budget Commission, may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to 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; 1985, c. 290, s. 5.)

**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.

The 1985 amendment, effective July 1, 1985, rewrote the fourth sentence of this section, which formerly read, "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."

## **§ 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 if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund.



The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund. (1929, c. 100, s. 28; 1981 (Reg. Sess., 1982), c. 1282, s. 66; 1983, c. 761, s. 14; 1985, c. 479, ss. 156, 157.)

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

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 14, provides that § 143-23(a1) and ss. 156 and 157 of c. 479, amending this section and § 143-23, do not apply to the General Assembly.

Session Laws 1985, c. 479, s. 161, provides:

"Sections 156 through 160 of this act shall become effective July 1, 1985; provided, however, from July 1, 1985, through June 30, 1986, these sections do not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated in these sections.

"The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on any deviations from

Sections 156 through 160 of this act and the reasons it was impossible to comply. The Director of the Budget may also report proposed amendments to Sections 156 through 160 of this act."

Session Laws 1985, c. 479, s. 230 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.

The 1985 amendment by c. 479, ss. 156 and 157, effective July 1, 1985, rewrote the proviso at the end of the first paragraph, which formerly read "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," and rewrote the second paragraph.

## § 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. (1979, c. 838, s. 22; 1983, c. 761, s. 225; c. 923, s. 217(R); 1983 (Reg. Sess., 1984), c. 1034, s. 251.)

**Editor's Note.** — Session Laws 1983, c. 761, s. 225, rewrote this section effective July 1, 1983. However, Session Laws 1983, c. 923, s. 217, repealed Session Laws 1983, c. 761, s. 225, effective June 1, 1984. Subsequently, Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 251, repealed this repealer.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 251, provides:

"Subsection (R) of Section 217 of Chapter 923 of the 1983 Session Laws is repealed, and G.S. 143-27.2, as rewritten by Section 225 of Chapter 761 of the 1983 Session Laws, is revived. The intent of this section is to provide discon-

tinued service retirement allowances or severance wages to eligible employees and former State employees who have been terminated prior to June 1, 1984, but who have not yet received their severance wages or discontinued service retirement allowances, or who may have been terminated on or after June 1, 1984, but prior to the enactment of this section, as well as to all eligible employees who were terminated on or after the effective date of this section."

The section is set out above as rewritten by Session Laws 1983, c. 761, s. 225.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

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

It is the intent and purpose of this Article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this Article. Any power expressed in this Article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this Article shall be liberally construed. (1925, c. 89, s. 28; 1929, c. 100, s. 29; 1955, c. 578, s. 8; 1957, c. 269, s. 2; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 859, s. 47.1; 1985, c. 290, s. 6.)



**Effect of Amendments. —**

The 1985 amendment, effective July 1, 1985, deleted the last sentence, which formerly read "Provided, that notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor, State Treasurer, and Administrative Officer of the Courts for their respective departments shall not, except as provided in G.S. 143-25, be

subject to the powers of the Director of the Budget or the Office of State Budget and Management, it being intended that the State Auditor, State Treasurer, and Administrative Officer of the Courts shall be independent of any fiscal control exercised by the Director of the Budget, and shall be subject only to such control as may be exercised by the Advisory Budget Commission."

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

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

Notwithstanding G.S. 143-135, the Director of the Budget may authorize the Department of Human Resources and the Department of Correction to use funds necessary for projects that correct deficiencies, improve living conditions, or renovate unneeded patient space for State office space. (1953, c. 1090; 1963, c. 423; 1975, c. 879, s. 46; 1979, 2nd Sess., c. 1137, s. 37; 1981, c. 860, s. 12; 1983 (Reg. Sess., 1984), c. 1116, s. 95.)

**Editor's Note. —** Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

**Effect of Amendments. —**

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added the second paragraph.

### **§ 143-31.4. Non-State match restrictions.**

Whenever money is required to match in appropriation made for a specific purpose by the State of North Carolina, the recipient of the appropriation shall actually receive as a gift, grant, earnings in actual money, or a pledge that can be used as collateral in any prudent loan transaction, the matching amount required. The re-



ipient shall retain the matching amount received in its possession until spent for that purpose and shall spend an equal percentage of the appropriation and of the matching amount each time an expenditure is made, unless the individual appropriation requires otherwise. (1985, c. 479, s. 155.)

**Cross References.** — For provision that notwithstanding this section, appropriations by the State for capital or permanent improvements for community colleges and technical institutes may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes, see § 115D-31(a)(1).

**Editor's Note.** — Session Laws 1985, c. 479, s. 231 makes this section effective July 1, 1985. Session Laws, 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

## § 143-32. Person expending an appropriation wrongfully.

(a) Any trustee, director, manager, building committee or other officer or person connected with any institution, or other State agency as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated and budgeted or who shall consent thereto, shall be liable to the State of North Carolina for such sum so spent and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the Attorney General for the use of the State of North Carolina, which action may be instituted in the Superior Court of Wake County, or any other county, subject to the power of the court to remove such action for trial to any other county, as provided in G.S. 1-83, subdivision (2). Notwithstanding the provisions of Chapters 120, 128, 135, and 143 of the General Statutes, the board of trustees of the State administered retirement system may not pay any retirement benefits or allowances, except for withdrawn contributions, to any person found liable pursuant to this subsection until the person has paid to the State the sum required by this subsection, together with interest and costs. The Attorney General shall notify the retirement system of any member's outstanding liability under this subsection and shall also notify the retirement system when this liability has been removed.

(1925, c. 230, s. 4; 1929, c. 100, s. 34; 1977, c. 930; 1985, c. 479, s. 195.)

**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 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, added the last two sentences to subsection (a).



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

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

Required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for employees whose salaries are paid from general fund or highway fund revenues, or from department, office, institutional or agency receipts, or from nonstate funds, shall be paid from the same source as the source of the employees' salaries. In those instances in which an employee's salary is paid in part from the general fund, or the highway fund, and in part from the department, office, institutional or agency receipts, or from nonstate funds, the required salary-related contributions shall be paid from the general fund, or the highway fund, only to the extent of the proportionate part paid from the general fund, or highway fund, in support of the salary of such employee, and the remainder of the employer's contribution requirements shall be paid from the same source which supplies the remainder of such employee's salary. The requirements of this section as to the source of payment are also applicable to payments on behalf of the employee for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases. The Director of the Budget shall approve the method of payment by State departments, offices, institutions and agencies for employer salary-related requirements of this section, and determine the applicability of the section to an employer's salary-related contribution or payment in behalf of an employee. (1949, c. 718, s. 5; 1957, c. 269, s. 2; 1961, c. 1181, s. 4; 1979, 2nd Sess., c. 1137, s. 44; 1983 (Reg. Sess., 1984), c. 1034, s. 162.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** — The 1983

(Reg. Sess., 1984) amendment, effective July 1, 1984, deleted the former last paragraph of this section, which read "For the support of the hospital and



medical insurance programs made available by G.S. 135-33 to those retired members of the associations and organizations listed in G.S. 135-27(a), the licensing and examining boards under G.S. 135-1.1, the North Carolina Art So-

ciety, Inc., and the North Carolina Symphony Society, Inc., each association or organization shall pay to the Retirement System the full cost of providing these benefits as determined by the Board of Trustees of the Retirement System."

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

**Editor's Note. —**

Session Laws 1985, c. 479, the "Current Operations Appropriations Act of 1985," provides in s. 10, in the second paragraph:

"Pursuant to G.S. 143-34.2, State departments, agencies, institutions, boards, or commissions may make application for, receive, or disburse any form

of non-State aid. All non-State monies received shall be deposited with the State Treasurer unless otherwise provided by State law. These funds shall be expended in accordance with the terms and conditions of the fund award that are not contrary to the laws of North Carolina."

**§ 143-34.4:** Recodified as § 120-36.6 by Session Laws 1983 (Regular Session 1984), c. 1034, s. 177.1, effective July 1, 1984.

**Editor's Note. —** Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**§ 143-34.5:** Repealed by Sessions Laws 1985, c. 479, s. 160, effective July 1, 1985.

**Cross References. —** For provision that no transfers may be made between line items in the budget of any department, etc., but that with the approval of the Director of Budget, a department, etc., may spend more than was appropriated for a line item under certain circumstances, see § 143-23(a1).

**Editor's Note. —** Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 161, provides:

"Sections 156 through 160 of this act shall become effective July 1, 1985; provided, however, from July 1, 1985, through June 30, 1986, these sections do

not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated in these sections.

"The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on any deviations from Sections 156 through 160 of this act and the reasons it was impossible to comply. The Director of the Budget may also report proposed amendments to Sections 156 through 160 of this act."

Session Laws 1985, c. 479, s. 230 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. Participation by Legislative Officers.

The Speaker and Speaker Pro Tempore of the House of Representatives and the President Pro Tempore and Majority Leader of the Senate may attend all meetings of the Advisory Budget Commission. (1983 (Reg. Sess., 1984), c. 1034, s. 163.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this section effective July 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

§§ 143-34.8, 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 or in an accredited program granting a diploma or an approved certificate, 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; 1983 (Reg. Sess., 1984), c. 1116, s. 104.)

**Editor's Note. —**

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

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

**Effect of Amendments. —** The 1983 amendment, effective July 15, 1983, substituted "Student Loans" for "Medi-

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

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, inserted "or in an accredited program granting a diploma or an approved certificate".

## § 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 manners determined by the Board, including discharge by service.

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; 1983 (Reg. Sess., 1984), c. 1034, s. 139.)

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

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 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.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted the present second sentence of the first paragraph for the former second and third sentences thereof, which read "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."



## 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.)

**Editor's Note. —**

Session Laws 1985, c. 24, s. 1, effective March 22, 1985, and applicable only to contracts entered into after that date but before March 1, 1987, as amended by Session Laws 1985, c. 38, s. 1, effective March 28, 1985, provides: "G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to contracts

for equipment, supplies, and services related to the establishment and operation of computer and information processing systems for the General Assembly."

**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 Direc-

tor 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.

#### CASE NOTES

**Applied in** *Sperry Corp. v. Patterson*, — N.C. App. —, 325 S.E.2d 642 (1985).



## § 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; 1985, c. 145, s. 3.)

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

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

**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.

### CASE NOTES

**Applied** in *Sperry Corp. v. Patterson*,  
— N.C. App. —, 325 S.E.2d 642 (1985).

## § 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) or for group purchases made by hospitals through a competitive bidding purchasing program, as defined in G.S. 143-129.

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 pur-

chase 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).

The 1985 amendment, effective May 1, 1985, inserted "or for group purchases made by hospitals through a competitive bidding purchasing program, as defined in G.S. 143-129" at the end of the first paragraph.



### **§ 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 chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications.

(4) Prescribing the manner in which purchases shall be made in emergencies.

(5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.

(6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration, 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, de-

leted "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 6A.

*Ordinances and Traffic Regulations for Institutions.***§ 143-116.7. (Effective until July 1, 1986) Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Human Resources institutions, traffic regulations; registration and regulation of motor vehicles.**

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

(b) The Secretary of Human Resources may promulgate regulations consistent with the provisions of Chapter 20 of the General Statutes, with respect to the use of the streets, alleys, and driveways of institutions of the Department of Human Resources. Based upon a traffic and engineering investigation, the Secretary of Human Resources may also determine and establish speed limits on streets lower than those provided in G.S. 20-141.

(c) The Secretary may, by regulation, regulate parking and establish parking areas on the grounds of institutions of the Department of Human Resources.

(d) The Secretary may, by regulation, provide for the registration and parking of motor vehicles maintained and operated by employees of the institution, and may fix fees, not to exceed ten dollars (\$10.00) per year, for such registration.

(e) Regulations adopted under this section may provide that violation subjects the offender to a civil penalty, not to exceed fifty dollars (\$50.00). Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged but shall not exceed fifty dollars (\$50.00). The Secretary may establish procedures for the collection of penalties, and they may be enforced by civil action in the nature of debt.

(f) A regulation adopted under this section may provide for the removal of illegally parked motor vehicles. Any such removal must be in compliance with Article 7A of Chapter 20 of the General Statutes.

(g) Any person violating a regulation adopted under this section or a provision of Chapter 20 of the General Statutes made applicable to the grounds of State institutions under this section shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars (\$50.00). A regulation may provide that certain acts prohibited thereby shall not be enforced by criminal



sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.

(h) Any fees or civil penalties collected pursuant to this section shall be deposited in the General Fund Budget Code of the institution where the fees or fines are collected and shall only be used to support the cost of administration of this section. (1981, c. 614, s. 5; 1985, c. 672.)

**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered § 143-116.7.

**Effect of Amendments.** — The 1985 amendment, effective July 10, 1985, inserted "Except as otherwise provided in this section" at the beginning of the first sentence of subsection (a), in subsection (b) deleted "additional rules and" preceding "regulations," substituted "Chapter 20 of the General Statutes" for "Chapter 20, General Statutes of North Carolina," deleted "roads" following

"alleys," and deleted "and to establish parking areas on the grounds of the institutions" following "Department of Human Resources", all in the first sentence, substituted "establish speed limits" for "fixed speed limits" and deleted "roads and highways" preceding "lower than those" in the second sentence and deleted former third and fourth sentences, relating to the removal of unattended vehicles and to the filing of regulations and ordinances, rewrote subsections (c) and (d), and added subsections (e) through (h).

### **§ 143-116.7. (Effective July 1, 1986) Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Human Resources institutions, traffic regulations; registration and regulation of motor vehicles.**

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

(b) The Secretary of Human Resources may promulgate regulations consistent with the provisions of Chapter 20 of the General Statutes, with respect to the use of the streets, alleys, and driveways of institutions of the Department of Human Resources. Based upon a traffic and engineering investigation, the Secretary of Human Resources may also determine and establish speed limits on streets lower than those provided in G.S. 20-141.

[(c) (See Editor's Note) The Secretary may, by regulation, regulate parking and establish parking areas on the grounds of institutions of the Department of Human Resources. (Enacted by Session Laws 1985, c. 672, s. 3).]

[(c) (See Editor's Note) A violation of these regulations or ordinances is an infraction punishable by a penalty not to exceed fifty dollars (\$50.00). (Enacted by Session Laws 1985, c. 764, s. 39).]



(d) The Secretary may, by regulation, provide for the registration and parking of motor vehicles maintained and operated by employees of the institution, and may fix fees, not to exceed ten dollars (\$10.00) per year, for such registration.

[(e) Regulations adopted under this section may provide that violation subjects the offender to a civil penalty, not to exceed fifty dollars (\$50.00). Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged but shall not exceed fifty dollars (\$50.00). The Secretary may establish procedures for the collection of penalties, and they may be enforced by civil action in the nature of debt. (Enacted by Session Laws 1985, c. 672, s. 3).]

(f) A regulation adopted under this section may provide for the removal of illegally parked motor vehicles. Any such removal must be in compliance with Article 7A of Chapter 20 of the General Statutes.

[(g) Any person violating a regulation adopted under this section or a provision of Chapter 20 of the General Statutes made applicable to the grounds of State institutions under this section shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars (\$50.00). A regulation may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor. (Enacted by Session Laws 1985, c. 672, s. 3).]

(h) Any fees or civil penalties collected pursuant to this section shall be deposited in the General Fund Budget Code of the institution where the fees or fines are collected and shall only be used to support the cost of administration of this section. (1981, c. 614, s. 5; 1985, c. 672; c. 764, s. 39.)

**Section Set Out Twice.** — The section above is effective July 1, 1986. For this section as in effect until July 1, 1986, see the preceding section, also numbered § 143-116.7.

**Editor's Note.** —

Session Laws 1985, c. 672, s. 3, effective July 10, 1985, among other things, rewrote subsection (c), which contained the penalty provisions for this section, and added new penalty provisions in subsections (e) and (g). However, Session Laws 1985, c. 764, s. 39, effective July 1, 1986, also rewrote subsection (c), but retained the penalty provisions therein. Both versions of subsection (c) are set out above as enacted by the respective session laws.

Session Laws 1985, c. 764, s. 40 provides that offenses committed before the effective date of the act (July 1, 1986) shall be governed by the law in effect at the time of the offense.

**Effect of Amendments.** —

The 1985 amendment by c. 672, s. 3, effective July 10, 1985, inserted "Except

as otherwise provided in this section" at the beginning of the first sentence of subsection (a), in subsection (b) deleted "additional rules and" preceding "regulations," substituted "Chapter 20 of the General Statutes" for "Chapter 20, General Statutes of North Carolina," deleted "roads" following "alleys," and deleted "and to establish parking areas on the grounds of the institutions" following "Department of Human Resources", all in the first sentence, substituted "establish speed limits" for "fixed speed limits" and deleted "roads and highways" preceding "lower than those" in the second sentence and deleted former third and fourth sentences, relating to the removal of unattended vehicles and to the filing of regulations and ordinances, rewrote subsections (c) and (d), and added subsections (e) through (h).

The 1985 amendment by c. 764, s. 39, effective July 1, 1986, and applicable to offenses committed on or after that date, rewrote subsection (c), which read "Any person violating these regulations or or-



dinances shall, upon conviction, be guilty of a misdemeanor, and shall be punishable by a fine, not to exceed fifty

dollars (\$50.00), or imprisonment, not to exceed 30 days."

## ARTICLE 7.

### *Persons Admitted to Department of Human Resources Institutions to Pay Costs.*

#### § 143-117. Institutions included.

All persons admitted to the following institutions operated by the Department of Human Resources are required to pay the actual cost of their care, treatment, training and maintenance at these institutions: Lenox Baker Children's Hospital, regional psychiatric hospitals, special care centers, regional mental retardation centers, schools for emotionally disturbed children, and alcoholic rehabilitation centers. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29; 1959, c. 1028, ss. 1-7; 1967, c. 188, s. 1; c. 834, s. 1; 1969, c. 20; c. 837, s. 4; 1971, c. 469; 1981, c. 562, s. 6; 1985, c. 508, s. 2.)

#### **Effect of Amendments. —**

The 1985 amendment, effective October 1, 1985, rewrote this section, which formerly read "All persons admitted to institutions administered by the Department of Human Resources which are now or hereafter may be authorized, are

hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions." The act also rewrote the heading of Article 7, which formerly read "Inmates of State Institutions to Pay Costs."

#### § 143-117.1. Definitions.

As used in this Article, the following terms have the meaning specified unless the content clearly implies otherwise:

- (1) "Care" means care, treatment, training, maintenance, habilitation and rehabilitation of a person admitted to institutions covered by this Article.
- (2) "Department" means the Department of Human Resources.
- (3) "Persons admitted" means clients of Lenox Baker Children's Hospital, regional psychiatric hospitals, State special care centers, regional mental retardation centers, schools for emotionally disturbed children, and alcoholic rehabilitation centers, including clients who may be treated on an outpatient basis.
- (4) "Secretary" means the Secretary of Human Resources. (1985, c. 508, s. 3.)

**Editor's Note. —** Session Laws 1985, c. 508, s. 12 makes this section effective October 1, 1985.



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

(a) The Secretary shall determine and fix the actual cost of care to be paid by and for each person admitted to an institution. The Secretary is given full and final authority to fix a general rate of charge based on said actual cost of providing care, to be paid by persons admitted able to pay the rate or charge, or, in cases where indigent persons admitted are later found to be nonindigent, then cost for their care shall be paid in one or more payments based on the rate of charge in effect for the period or periods of time during which the persons admitted were receiving care in the institutions.

(b), (c) Repealed by Session Laws 1985, c. 508, s. 5, effective October 1, 1985.

(d) The Secretary shall ascertain which of the persons admitted or persons legally responsible for them are financially able to pay the cost fixed.

(e) The Secretary is empowered to enter into contracts of compromise of accounts owing to the institution for past, present or future care at the 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 the contract. The rates set by the compromise shall be determined in the discretion of the Secretary by the ability to pay of the person admitted or the person legally responsible for his support. This subsection shall not be construed as mandatory and if a contract is not entered into or terminates or if the obligor defaults in the payment of a compromise account or any installment, then the full actual cost of care shall be assessed against the person admitted. (1925, c. 120, s. 2; 1935, c. 186, s. 1; 1981, c. 562, s. 6; 1985, c. 508, ss. 4-6.)

### **Effect of Amendments. —**

The 1985 amendment, effective October 1, 1985, rewrote subsection (a), deleted subsections (b) and (c), regarding the validation of the past acts of board of

directors in fixing a monthly rate and regarding actions by the State's charitable institutions for the recovery of the cost of training, treatments, etc., and added subsections (d) and (e).

## **§ 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.

(a) The cost of care when fixed by the Secretary shall be paid by the person admitted or by the person legally responsible for payment. The payment of the cost of care constitutes a valid expenditure of funds held by a fiduciary of a person admitted, including Clerks of Court, and a receipt for payment of such costs shall be a valid voucher in the fiduciary's settlement of his accounts of his trust.

(b) Immediately upon the determination of the cost, the person admitted or the person legally responsible for paying the cost shall be notified of the amount due and a statement shall be rendered on a monthly basis.

(c) If the person admitted or the person legally responsible for paying the cost is not able to pay the total cost due on a monthly basis, the Secretary may arrange for the payment of a portion of the cost monthly and extend the payments until the costs are paid or may arrange for any other method of payment.

(d) The institutions shall maintain a list of all unpaid accounts for audit by the State auditors.

(e) The Secretary may discharge from the institution persons admitted who have been found able to pay but who refuse to pay costs fixed against them, unless the person was committed by an order of a court of competent jurisdiction. (1925, c. 120, s. 3; 1935, c. 186, s. 2; 1983, c. 23, s. 2; c. 806; 1985, c. 508, s. 7.)

**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 fi-

duciary who may be in the" in the first sentence of the section as amended by Session Laws 1983, c. 23, s. 2.

The 1985 amendment, effective October 1, 1985, rewrote this section.

**§ 143-120:** Repealed by Session Laws 1985, c. 508, s. 8, effective October 1, 1985.

**Editor's Note.** — Repealed § 143-120 was amended by Session Laws 1983, c. 23, s. 3.

**§ 143-121. Action to recover costs.**

(a) Immediately upon the fixing of the amount of actual cost, a cause of action shall accrue for the costs in favor of the State for the use of the institution in which the person admitted received care against the person admitted or person legally responsible for paying the costs.

(b) The State for the use of the institution may sue upon the cause of action in the courts of Wake County, in the courts of the county in which the institution is located, or in the courts of the county where the defendant resides.

(c) In any action to recover the cost of care, a verified and itemized statement of the account signed by the reimbursement director of the institution showing the period of time during which the person admitted was receiving care in the institution, the daily or monthly rate of charge fixed by the Secretary, the total amount due on the account, and the proper credits for any payments which may have been made on the account, shall be filed with the complaint and shall constitute a prima facie case. The State shall be entitled to a judgment in the case in the absence of allegation and proof on the part of the person admitted or person legally responsible for paying the costs that the verified and itemized statement is not correct because of:

- (1) An error in the calculation of the amount due predicated upon the rate of charge fixed by the Secretary;
- (2) An error as to the period of time during which the person admitted received care in the institution; or
- (3) An error in not properly crediting the account with any payment which may have been made.

(d) The provisions of this Article directing the Secretary to determine which of the persons admitted are nonindigent and able to pay for their care, notify the person admitted or person legally responsible for the cost of his care of the amount due, to render a statement of the amount due monthly, to discharge persons admitted found able to pay but who refuse to pay and all of the other provisions relating to the manner in which the Secretary shall assess and collect costs are directory and not mandatory. The failure of the Secretary to perform any of these provisions shall not affect the right of the State to recover in any action brought for the cost of care against the person admitted, a person legally responsible for the cost of his care, or his estate if he has died. (1925, c. 120, s. 5; 1985, c. 508, s. 9.)



**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this section.

### **§ 143-121.1. Ratification of past acts.**

The past acts of the Secretary, boards of directors of the institutions and the North Carolina Hospital Board of Control in fixing the rate to be paid by persons admitted are hereby in every respect ratified and validated, and on all claims and causes of action now pending or which hereafter may be made or begun for the payment of the past indebtedness for care, the rates fixed by the party authorized the fix rates at the time the care was provided shall prevail and collections shall be made in accordance with those rates unless the Secretary enters into a contract compromising the account. (1985, c. 508, s. 10.)

**Editor's Note.** — Session Laws 1985, c. 508, s. 12 makes this section effective October 1, 1985.

### **§ 143-122. No limitation of action.**

No statute of limitation shall apply to or constitute a defense to any cause of action asserted by the State under this Article and all statutes containing limitations which might apply to these actions are hereby repealed as to all such causes of action for costs previously incurred and now remaining unpaid. (1925, c. 120, s. 6; 1985, c. 508, s. 11.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this section.

### **§ 143-123. Power to admit indigent persons.**

(a) This Article shall not be construed to limit the authority of the institutions to provide care to all indigent persons who are otherwise entitled to admission in any of the institutions.

(b) If at any time any person admitted and determined to be indigent shall succeed to or inherit, or acquire, in any manner, property or otherwise be reputed to be solvent, then the State shall have the full right and authority to collect and sue for the entire cost of care without hinderance of any statute of limitations. (1925, c. 120, s. 7; 1985, c. 508, s. 11.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this section.



**§ 143-124. Suit by Attorney General.**

At the request of the institution, all actions and suits shall be prosecuted by the Attorney General. The institution shall have the right to select the venue of the action. (1925, c. 120, s. 8; 1985, c. 508, s. 11.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this section.

**§ 143-125. Judgment; never barred.**

Any judgment obtained by the State under this Article shall never be barred by any statute of limitation but shall to the extent unpaid continue in force; and, at the request of the Attorney General or the director of the institution, the clerk shall issue an execution. (1925, c. 120, s. 9; 1985, c. 508, s. 11.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this section.

**§ 143-126. Death of a person admitted; lien on estate.**

(a) In the event of the death of person admitted, leaving any cost of care unpaid, then the unpaid cost shall constitute a lien on all property, both real and personal of the decedent and shall be payable from the decedent's estate as a fourth class claim after the payment of taxes to the State or its subdivisions.

(b) Upon the death of person admitted, the Department shall file a verified statement of account containing the following:

- (1) The name of the person admitted;
- (2) The date of death of the person admitted;
- (3) The inclusive dates of the provision of care;
- (4) The name of the institution providing care; and
- (5) The amount of the unpaid balance.

The statement shall be filed in the office of the clerk of superior court in the county of residence of the deceased person admitted and in the county or counties in which real property is located in which the decedent owns an interest. The statement shall be docketed and indexed by the clerk.

(c) From the time of docketing, the statement shall be and constitute due notice of a lien against all real property then owned in whole or in part by the decedent and lying in such county to the extent of the total amount of the unpaid balance for the decedent's care as evidenced by the verified statement of account. Payments made by a fiduciary including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(d) No action to enforce such lien may be brought more than three years from the date of death of the person admitted. The failure to bring such action or the failure of the Department to file such statement shall not be a complete bar against recovery but shall only extinguish the lien and priority established by it.



(e) Upon receipt of the unpaid balance by the institution or Department or upon agreement of compromise of such unpaid balance, the Department shall notify the clerks of superior court in the counties where the lien has been recorded that the unpaid balance has been paid, and the clerks shall cancel the lien of record. (1925, c. 120, s. 10; 1967, c. 960; 1973, c. 476, s. 133; 1985, c. 508, s. 11.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this section.

### **§ 143-126.1. Lien on property for unpaid balance due institution.**

(a) There is hereby created a general lien on both the real and personal property of any person admitted who is receiving or who has received care in any of the institutions operated by the Department of Human Resources to the extent of the total amount of the unpaid balance shown on the verified statement of account for charges from and after July 1, 1967.

(b) Such general lien for the unpaid balance for care at the institutions shall apply to the property, both real and personal, of the person admitted whether held by him or his trustee or guardian.

(c) At the time deemed suitable in the discretion of the Department, there may be filed a verified statement of account containing the following:

- (1) The name of the person admitted;
- (2) The inclusive dates of the provision of care and a statement that care is continuing if applicable;
- (3) The name of the institution providing care; and
- (4) The amount of the unpaid balance.

The statement may be filed in the office of the clerk of superior court in the county of residence of the person admitted and in each county or counties where real property in which the patient owns an interest is found. The statement shall be docketed and indexed by the clerk.

(d) From the time of docketing, the statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the patient and lying in such county to the extent of the total amount of the unpaid balance for the person admitted's care as evidenced by the verified statement of account for charges from and after July 1, 1967. Payments made by a fiduciary, including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(e) The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied. No action to enforce such lien may be brought more than three years from the last date of filing of such lien nor more than three years after the death of any person admitted. The failure to bring such action or the failure of the Department to file said statement shall not be a complete bar against recovery but shall only extinguish the lien and priority established by it.

(f) Upon receipt of the full unpaid balance by the institution or Department or upon agreement of compromise of such unpaid balance, the Department shall notify the clerks of superior court in the



counties where the lien has been docketed that the unpaid balance has been paid, and the clerks shall cancel the lien of record.

(g) Notwithstanding the foregoing provisions, no such lien shall be enforceable against any funds paid by the State to a person admitted after judgment or settlement of a claim for damages arising out of the negligent injury of such person at any of the institutions during the life of person admitted. Upon the death of the person admitted, any remaining proceeds of a judgment or settlement under this subsection in the hands of the deceased shall become a general asset of the estate and subject to any lien of the State. (1967, c. 959; 1973, c. 476, s. 133; 1979, c. 978, s. 1; 1985, c. 508, s. 11.)

**Effect of Amendments.** — The 1985 amendment, effective October 1, 1985, rewrote this 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, for the purposes of determining eligibility for medical assistance under Title XIX of the Social Security Act, the income and financial resources of the natural or adoptive parents of a person who is under the age of 19 and who is a patient in a medical institution shall not be counted if the patient's physician certifies that the care and treatment is expected to exceed 12 months. (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; 1983 (Reg. Sess., 1984), c. 1116, s. 82.)

**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.** —

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 provisions as to social services, see Chapter 108A.

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 82(b), provides that the amendment to subsection (d) of this section by s. 82(a) of the act shall expire June 30, 1986.

Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

**Effect of Amendments.** — The 1983 amendment, effective Feb. 14, 1983, sub-



stituted "facilities, skilled nursing facilities, or hospitals" for "or skilled nursing facilities" near the middle of subsection (d).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, rewrote subsection (d). For the expiration date of this amendment, see the Editor's note above.

## ARTICLE 7A.

### *Damage of Personal Property in State Institutions.*

#### **§ 143-127.2. Repair or replacement of personal property.**

The Secretary of Human Resources may adopt rules governing repair or replacement of personal property items excluding private passenger vehicles that belong to employees, volunteers, or clients of State facilities within the Department of Human Resources and that are damaged or stolen by clients of the State facilities provided that the item is determined by the Secretary to be:

- (1) Damaged or stolen on or off facility grounds during the performance of employment or volunteer duty and necessary for the employee or volunteer to have in his possession to perform his assigned duty; or
- (2) Damaged or stolen on or off the facility grounds while the client is under the supervision of the facility and necessary for the client to have in his possession as part of his treatment environment. (1985, c. 393, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 393, ss. 2 and 3, provide:

"Sec. 2. The Secretary of Human Resources shall submit a report to the General Assembly by March 1, 1987, on the implementation of this law. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident and the

types of property damaged or stolen for which reimbursement was granted. This report shall also include incidents related to private passenger vehicles.

"Sec. 3. This act shall become effective October 1, 1985, and shall apply only to acts occurring after that date. This act shall expire July 1, 1987."

#### **§ 143-127.3. Negligence.**

Reimbursement for items damaged or stolen shall not be granted in instances in which the employee, volunteer, or client, if competent, is determined to be negligent or otherwise at fault for the damage or loss of the property. Negligence shall be determined by the director of the facility. (1985, c. 393, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 393, ss. 2 and 3, provide:

"Sec. 2. The Secretary of Human Resources shall submit a report to the General Assembly by March 1, 1987, on the implementation of this law. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident and the

types of property damaged or stolen for which reimbursement was granted. This report shall also include incidents related to private passenger vehicles.

"Sec. 3. This act shall become effective October 1, 1985, and shall apply only to acts occurring after that date. This act shall expire July 1, 1987."



### § 143-127.4. Other remedies.

The director of the facility shall determine if the person seeking reimbursement has made a good faith effort to recover the loss from all other non-State sources and has failed before reimbursement is granted. (1985, c. 393, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 393, ss. 2 and 3, provide:

"Sec. 2. The Secretary of Human Resources shall submit a report to the General Assembly by March 1, 1987, on the implementation of this law. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident and the

types of property damaged or stolen for which reimbursement was granted. This report shall also include incidents related to private passenger vehicles.

"Sec. 3. This act shall become effective October 1, 1985, and shall apply only to acts occurring after that date. This act shall expire July 1, 1987."

### § 143-127.5. Limitations.

Reimbursement shall be limited to the amount specified in the rules and shall not exceed a maximum of two hundred dollars (\$200.00) per incident. No employee shall receive more than five hundred dollars (\$500.00) per year in reimbursement. Reimbursement is subject to the availability of funds. (1985, c. 393, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 393, ss. 2 and 3, provide:

"Sec. 2. The Secretary of Human Resources shall submit a report to the General Assembly by March 1, 1987, on the implementation of this law. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident and the

types of property damaged or stolen for which reimbursement was granted. This report shall also include incidents related to private passenger vehicles.

"Sec. 3. This act shall become effective October 1, 1985, and shall apply only to acts occurring after that date. This act shall expire July 1, 1987."

### § 143-127.6. Appeals.

The Secretary of Human Resources shall establish by rule an appeals process consistent with Chapter 150A of the General Statutes. (1985, c. 393, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 393, ss. 2 and 3, provide:

"Sec. 2. The Secretary of Human Resources shall submit a report to the General Assembly by March 1, 1987, on the implementation of this law. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident and the types of property damaged or stolen for which reimbursement was granted. This

report shall also include incidents related to private passenger vehicles.

"Sec. 3. This act shall become effective October 1, 1985, and shall apply only to acts occurring after that date. This act shall expire July 1, 1987."

Former Chapter 150A, referred to in this section, has been rewritten and recodified by Session Laws 1985, c. 746, effective January 1, 1986, as Chapter 150B.



## ARTICLE 8.

*Public Building Contracts.***§ 143-128. Separate specifications for building contracts; responsible contractors.**

**Local Modification.** — (As to Article 8) New Hanover: 1983, c. 365; Tyrrell: 1985, c. 120; city of Ashville: 1985, c. 721; city of Durham: 1985, c. 714; 1985, c. 727; city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; city of Winston-Salem: 1985, c. 557; Tyrrell County Board of Education: 1983, c. 580.

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1062, s. 3, provides:

"The Council of State is hereby authorized to adopt a bond order providing for the issuance, pursuant to the North Carolina Parking Facilities and Project Revenue Bond Act, Chapter 858, Session Laws of 1975 as amended, of not in excess of ten million dollars (\$10,000,000) aggregate principal amount of revenue bonds of the State for the purpose of constructing a parking deck behind the Ad-

ministration Building. The Capital Building Authority is authorized to award the design and construction contract for such facility on a design/build basis, notwithstanding G.S. Chapter 143, Article 8 and Section 12 of Chapter 858, Session Laws of 1975."

Session Laws 1985, c. 479, the "Current Operations Appropriations Act of 1985," provides in s. 142 that notwithstanding the provisions of this section, the Departments of Correction and Administration, with the approval of the Director of the Budget and within the capital improvement funds available, may enter into combined contracts for design of or combined contracts for construction work on facilities for the Department of Correction.

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

No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than thirty thousand dollars (\$30,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ten thousand dollars (\$10,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

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

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a



board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

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

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

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

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

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the



surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

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

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

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

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

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

The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus,



supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2.)

**Local Modification.** — City of Durham: 1983, c. 458; city of Winston-Salem: 1985, c. 632.

**Editor's Note.** —

Session Laws 1985, c. 24, s. 1, effective March 22, 1985, and applicable only to contracts entered into after that date but before March 1, 1987, as amended by Session Laws 1985, c. 38, s. 1, effective March 28, 1985, provides: "G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to contracts for equipment, supplies, and services related to the establishment and opera-

tion of computer and information processing systems for the General Assembly."

**Effect of Amendments.** —

The 1985 amendment, effective May 1, 1985, inserted "group purchases made by hospitals through a competitive bidding purchasing program or in cases of" preceding "special emergency involving the health and safety" in the first sentence of the first paragraph and inserted the present second sentence of the first paragraph.

## § 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, contains 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).

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

**Local Modification.** — City of Winston-Salem: 1985, c. 632.

## **§ 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.

### CASE NOTES

**Applied in** Davidson & Jones, Inc. v. North Carolina Dep't of Admin., 69 N.C App. 563, 317 S.E.2d 718 (1984).

## § 143-135. Limitation of application of Article.

**Local Modification.** — Duplin: 1983 (Reg. Sess., 1984), c. 959; 1985, c. 124; city of Lumberton: 1983 (Reg. Sess., 1984), c. 950; city of Monroe: 1985, c. 128; County of Macon and Macon County School Administrative Unit: 1983, c. 355.

### § 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.

Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements. Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of Administration, and any and all recommendations made by them shall be given consideration by the Department of Administration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of Administration.

Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina. (1951, c. 1104, s. 4; 1967, c. 860; 1971, c. 563; 1985, c. 757, s. 170(a).)



**Effect of Amendments.** — The 1985 amendment, effective July 15, 1985, added the second paragraph.

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.

Chapter 150A of the General Statutes shall not apply to claims filed in accordance with this section. (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; 1985, c. 746, s. 18.)

**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.

Session Laws 1985, c. 476, s. 12, contains a severability clause.

Session Laws 1985, c. 746, s. 19, provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date, and shall not affect contested cases commenced before Jan. 1, 1986.

Former Chapter 150A, referred to in this section, has been rewritten and recodified by Session Laws 1985, c. 746, effective January 1, 1986, as Chapter 150B.

**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.

The 1985 amendment, effective Jan. 1, 1986, added the last 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*, 307 N.C. 569, 299 S.E.2d 640 (1983), rehearing denied, 310 N.C. 150, 312 S.E.2d 648 (1984).

**Applied in *Middlesex Constr. Corp. v. State ex rel. State Art Museum Bldg. Comm'n*, — N.C. —, 325 S.E.2d 223 (1985).**



**§ 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 Administration and the State Highway Administrator on or after January 1, 1984.

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

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

**§ 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.

In addition, the Code may contain regulations concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine, not to exceed fifty dollars (\$50.00), for each offense. Each 30



days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a misdemeanor subject to a one hundred dollar (\$100.00) fine for a first offense, a two hundred fifty dollar (\$250.00) fine for a second offense, and a five hundred dollar (\$500.00) fine and up to 30 days imprisonment for a third and any subsequent offenses. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties. In case any building or structure is erected, constructed or reconstructed, or its purpose altered, so that it becomes in violation of the North Carolina State Building Code or if the occupancy limits established pursuant to the North Carolina State Building Code are exceeded, either the local enforcement officer or the State Commissioner of Insurance or other State official with responsibility under G.S. 143-139 may, in addition to other remedies, institute any appropriate action or proceedings including the civil remedies set out in G.S. 160A-175 and G.S. 153A-123, (i) to prevent such unlawful erection, construction or reconstruction or alteration of purpose, or overcrowding, (ii) to restrain, correct, or abate such violation, or (iii) to prevent the occupancy or use of said building, structure or land until such violation is corrected.

(I) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code. (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; 1985, c. 576, s. 1; c. 622, s. 2; c. 666, s. 39.)

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

**Local Modification.** — Town of Carrboro: 1983, c. 730; 1985, c. 357, s. 6.

**Editor's Note.** —

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

Session Laws 1985, c. 622, s. 1 makes a legislative finding that the public welfare is served by energy efficiency standards in the North Carolina State Building Code for heating, air conditioning, and plumbing equipment.

**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).

The 1985 amendment by c. 576, s. 1, effective October 1, 1985, in subsection (h) inserted "except for violations of occupancy limits established by either" in the first sentence, added the present third and fourth sentences, and in the present fifth sentence inserted "or if the occupancy limits established pursuant to the North Carolina State Building Code are exceeded," inserted "including the civil remedies set out in G.S. 160A-175 and G.S. 153A-123," and inserted "or overcrowding" in clause (i).

The 1985 amendment by c. 622, s. 2, effective July 5, 1985, added the last paragraph of subsection (b).

The 1985 amendment by c. 666, s. 39, effective July 10, 1985, added subsection (I).



**§ 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 sub-

section (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 ap-



point the manufactured home supplier and set-up contractor. The Commissioner of Insurance shall appoint two representatives of the general public. Except for the representatives from the general public 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).

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

(e) Every registrant under this Chapter shall, on or before the first day of July of each year, obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee; and upon failure to renew, his license shall automatically expire; but such license may be renewed at any time within one year upon payment of the prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, salesman or set-up contractor after expiration of the license and is otherwise eligible for registration under the provisions of this Chapter.

(1981, c. 952, s. 2; 1985, c. 487, 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 1985

amendment, effective June 27, 1985, substituted "after expiration of the license" for "after receipt of notice of expiration" near the end of subsection (e).

### § 143-143.12. (Effective July 1, 1986) Bond required.

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

- (1) For a manufactured, two thousand dollars (\$2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars (\$100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current year;
- (2) For a dealer who buys, sells, or deals in manufactured homes and who has four or less places of business, the amount shall be twenty-five thousand dollars (\$25,000);
- (3) For a dealer who buys, sells, or deals in manufactured homes and who has more than four places of business, the amount shall be fifty thousand dollars (\$50,000);
- (4) For a set-up contractor, the amount shall be five thousand dollars (\$5,000).



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

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

(d) The Board is authorized to promulgate rules in accordance with Chapter 150A of the General Statutes consistent with this Part to assure satisfaction of claims. (1981, c. 952, s. 2; 1985, c. 487, s. 2.)

**For this section as in effect until July 1, 1986, see the main volume.**

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1986, sub-

stituted "one hundred thousand dollars (\$100,000)" for "fifty thousand dollars (\$50,000)" at the end of the first sentence of subdivision (a)(1).

### § 143-143.13. Grounds denying, suspending or revoking license.

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

- (1) Material misstatement in application for license;
- (2) Failure to post an adequate corporate surety bond, cash bond or fixed value equivalent thereof;
- (3) Engaging in the business of manufactured home manufacturer, dealer, salesman or set-up contractor without first obtaining a license from the Board;
- (4) Failure to comply with the warranty service obligations and claims procedure established by this Part;
- (5) Failure to comply with the set-up and tie-down requirements established by this Part;
- (6) Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into licensee's possession arising out of the sale of manufactured homes;
- (7) Use of unfair methods of competition or unfair or deceptive commercial acts or practices;
- (8) Failure to comply with any provision of this Part;
- (9) Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this Part;
- (10) Employing unlicensed retail salesmen;
- (11) Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this Part or selling, to dealers not licensed pursuant to this Part, manufactured homes which are to be sold in this State to buyers as defined in this Part;
- (12) Conviction of a felony or any crime involving moral turpitude;



- (13) Having had a license revoked, suspended or denied by the Board under this Part; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Part.

(b) Repealed by Session Laws 1985, c. 666, s. 38, effective July 10, 1985. (1981, c. 952, s. 2; 1985, c. 487, ss. 3 to 5; c. 666, s. 38.)

**Effect of Amendments.** — The 1985 amendment by c. 487, ss. 3 to 5, effective June 27, 1985, rewrote subdivision (a)(6), which formerly read, "Misappropriation of funds belonging to the buyer of a manufactured home," added subdivisions (a)(9) through (a)(13), and substituted "five hundred dollars (\$500.00)"

for "two hundred fifty dollars (\$250.00)" in the second sentence of subsection (b).

The 1985 amendment by c. 666, s. 38, effective July 10, 1985, deleted "civil penalty" at the end of the catchline and deleted subsection (b), relating to a civil penalty.

## § 143-143.24. Engaging in business without license a misdemeanor.

If any person shall unlawfully act as a manufactured home manufacturer, dealer, salesman, or set-up contractor without first obtaining a license from the North Carolina Manufactured Housing Board, as provided in this Part, he shall be guilty of a misdemeanor. (1985, c. 487, s. 6.)

**Editor's Note.** — Session Laws 1985, c. 487, s. 10 makes this section effective upon ratification. The act was ratified June 27, 1985.

## Part 2. Uniform Standards Code for Manufactured Homes.

### § 143-144. Short title.

This Part shall be known and may be cited as "The Uniform Standards Code for Manufactured Homes Act." (1969, c. 961, s. 1; 1985, c. 487, s. 7.)

**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted "Manufactured Homes" for "Mobile Homes."

### § 143-145. Definitions.

Unless clearly indicated otherwise by context, the following words when used in this Part, for the purpose of this Part, shall have the meanings respectively ascribed to them in this section:

- (1) "Certificate of compliance" means a certificate issued by an inspection department approved and licensed by the Council as being competent which certificate shall be valid only within the jurisdiction of the inspection department and on which certificate shall be recorded:

- a. The inspection department issuing such certificate;
- b. The date of issue;



- c. The serial or other identification number of such manufactured home and the name of the manufacturer;
  - d. A certification that such manufactured home was on the day of inspection so opened that its entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;
  - e. A certification that said manufactured home complies in full with the standards and rules and regulations prescribed in this Part.
- (3) "Competent" shall mean competent to technically evaluate, test, and inspect in accordance with the standards, rules and regulations prescribed in this Part: the structural features, the plumbing, heating, electrical and air-conditioning systems and the materials used in the construction of a manufactured home.
- (6) "Label of compliance" shall mean a permanent label or seal permanently attached to a manufactured home at completion of construction thereof which is issued by any independent, solvent, and trustworthy person approved and licensed by the Council as being competent and as having and utilizing initial and follow-up manufacturing inspection services which provide the highest degree of quality control, and on which seal or label shall be recorded:
- a. The person issuing such label or seal and the serial number of the label or seal;
  - b. The serial or other identification number of said manufactured home;
  - c. A certification that said manufactured home was evaluated, tested, and inspected in accordance with the standards and rules and regulations prescribed in this Part.
- (7) "Manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. As used in this Part, "manufactured home" also means a double-wide manufactured home which is two or more portable manufactured housing units designed for transportation on their own chassis, which connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

(1969, c. 961, s. 2; 1971, c. 1172, s. 1; 1985, c. 487, s. 7.)

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

**Effect of Amendments.** — The 1985

amendment, effective June 27, 1985, substituted references to manufactured homes for references to mobile homes throughout this section.



**§ 143-146. Statement of policy; rule-making power.**

(a) Manufactured homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of manufactured homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new manufactured homes, which are not so constructed as to provide reasonable safety and protection to their owners and users.

(b) The Commissioner shall make and promulgate rules embodying the standards for construction or manufacture of manufactured homes set by the Department of Housing and Urban Development under the provisions of the National Mobile Home Construction and Safety Standards Act of 1974, as these standards may be amended.

(d) In order to insure the highest degree of quality control in the manufacture of manufactured homes, the Council is further authorized and empowered to make and promulgate reasonable rules and regulations governing the initial and follow-up manufacturing inspection practices and procedures to be performed by any person granted a license to issue a label of compliance pursuant to this Part. In order to assure uniformity in standards and enforcement, such rules and regulations may also provide that any such licensee and its operations may be inspected from time to time by any other person or licensee designated by the Council who shall report the results of such examination to the Council. In such case the reasonable expense incurred by the examiner in making such inspection shall be borne by the licensee whose operations were examined.

(e) The Commissioner is authorized to promulgate such rules as are necessary to carry out the provisions of this Part and such rules as are necessary to enable the State of North Carolina to assume responsibility for the enforcement of the Mobile Home Construction and Safety Standards Act of 1974. (1969, c. 961, s. 3; 1971, c. 1172, s. 2; 1979, c. 558, ss. 5, 6; 1985, c. 487, s. 7.)

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

**Effect of Amendments.** — The 1985

amendment, effective June 27, 1985, substituted references to manufactured homes for references to mobile homes throughout this section.

**§ 143-147. Approval and licensing of persons and inspection departments.**

(b) Any such license issued to a person other than an inspection department may be suspended or revoked after notice and hearing if such person:

- (1) Is either insolvent, not competent, not independent, or untrustworthy;



- (2) Has made false statements in his application to the Council for license;
  - (3) Fails or neglects to perform evaluations, testing, or manufacturing inspections in accordance with its proposed plans and procedures submitted to the Council or fails to comply with any applicable rules and regulations promulgated by the Council pursuant to G.S. 143-146(d);
  - (4) Has repeatedly, specifically or by implication authorized the attachment of its label of compliance to manufactured homes and such manufactured homes did not meet the standards and rules and regulations provided by this Part at the time said labels were attached.
- (c) Any such license issued to an inspection department may be suspended or revoked after notice and hearing if such department:
- (1) Is not competent;
  - (2) Has issued a certificate of compliance on a manufactured home when such manufactured home was not opened for inspection so that the entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;
  - (3) Has issued a certificate of compliance on a manufactured home and such manufactured home did not at the time of inspection meet the standards and rules and regulations provided by this Part. (1969, c. 961, s. 4; 1971, c. 1172, s. 3; 1985, c. 487, s. 7.)

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

**Effect of Amendments.** — The 1985

amendment, effective June 27, 1985, substituted references to manufactured homes for references to mobile homes in subsections (b) and (c).

## § 143-149. Necessity for obtaining label or certificate for purposes of sale.

No individual natural person, firm, partnership, association or corporation shall after September 1, 1971, sell or offer for sale any manufactured home in this State, which manufactured home does not bear permanently attached thereto a label of compliance or for which manufactured home the individual natural person, firm, partnership, association, or corporation selling or offering to sell such manufactured home does not have a certificate of compliance; provided it shall be a defense to any prosecution for a violation of the provisions of this section if such individual natural person, firm, partnership, association or corporation shall show that a certificate of title for such manufactured home as required by G.S. 20-52 was obtained prior to September 1, 1971, or produces other satisfactory evidence on file with the North Carolina Department of Motor Vehicles that such manufactured home was manufactured prior to September 1, 1971. (1971, c. 1172, s. 5; 1985, c. 487, s. 7.)

**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted references to manufactured

homes for references to mobile homes throughout this section.



## § 143-150. No electricity to be furnished units not in compliance.

It shall be unlawful for any individual natural person, partnership, firm or corporation to allow any electric current for use in any manufactured home to be turned on or to continue to furnish electricity for use in such manufactured home without having first ascertained that either a label of compliance is permanently attached to said manufactured home or a certificate of compliance has been issued for such manufactured home, provided this section shall not apply if electricity to such manufactured home had been turned on or furnished prior to September 1, 1971, by said firm or corporation or if the owner of said manufactured home shall have obtained a certificate of title for said manufactured home as required by G.S. 20-52 prior to September 1, 1971, or his predecessor in title shall have obtained such certificate prior to September 1, 1971, or the owner furnishes other satisfactory evidence on file with the North Carolina Department of Motor Vehicles that said manufactured home was manufactured prior to September 1, 1971. (1971, c. 1172, s. 6; 1985, c. 487, s. 7.)

**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted references to manufactured

homes for references to mobile homes throughout this section.

## § 143-151. Penalties.

(a) Whoever violates (i) the provisions of this Part; or (ii) any rules promulgated under this Part, shall be liable for civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Each such violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one year from the date of the first violation.

(1971, c. 1172, s. 7; 1979, c. 558, s. 1; 1985, c. 487, s. 7.)

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

**Effect of Amendments.** — The 1985

amendment, effective June 27, 1985, substituted "manufactured home" for "mobile home" in the second sentence of subsection (a).

## § 143-151.1. Enforcement.

The Commissioner of Insurance or any inspection department may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of this Part. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties pursuant to this Part, or the National Mobile Home Construction and Safety Standards Act of 1974, is authorized at reasonable hours and without advance notice to enter and inspect all factories, warehouses, or establishments in the State of North Carolina in which manufactured homes are manufactured. (1971, c. 1172, s. 8; 1979, c. 558, s. 2; 1985, c. 487, s. 7.)



**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted "manufactured homes" for "mobile homes" near the end of the second sentence.

### § 143-151.2. Fees.

(a) The Commissioner may establish a monitoring inspection fee in an amount established by the Secretary of Housing and Urban Development. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in the State for each manufactured home produced by the manufacturer in that state.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of Housing and Urban Development or such Secretary's agent, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally-approved states based on the number of manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state, and the extent of participation of the State in the joint monitoring team program established under the National Mobile Home Construction and Safety Standards Act of 1974. (1979, c. 558, s. 4; 1985, c. 487, s. 7.)

**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted references to manufactured homes for references to mobile homes throughout this section.

### § 143-151.3. Reports.

Each manufacturer, distributor, and dealer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of Housing and Urban Development may reasonably require to be able to determine whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this Part, or the National Mobile Home Construction and Safety Standards Act of 1974 and shall, upon request of a person duly designated by the Commissioner or the Secretary of Housing and Urban Development, permit such person to inspect appropriate books, papers, records and documents relevant to determining whether such manufacturer, distributor, or dealer has acted or is acting in compliance with this Part or the National Mobile Home Construction and Safety Standards Act of 1974. (1979, c. 558, s. 4; 1985, c. 487, s. 7.)

**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted "manufactured homes" for "mobile homes" near the beginning of this section.

### § 143-151.4. Notification of defects.

Every manufacturer of manufactured homes shall furnish notification of any defect in any manufactured home produced by such manufacturer in accordance with procedures specified by the Commissioner. (1979, c. 558, s. 4; 1985, c. 487, s. 7.)



**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted references to manufactured homes for references to mobile homes in two places.

## § 143-151.5. Prohibited acts.

(a) No person shall:

- (1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home which is manufactured on or after the effective date of any applicable manufactured home construction and safety standard under this Part and which does not comply with such standard, except as provided in subsection (b);
- (2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this Part;
- (3) Fail to furnish notification of any defect as required by G.S. 143-151.4;
- (4) Fail to issue a certificate of compliance, or issue a certification to the effect that a manufactured home conforms to all applicable manufactured home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;
- (5) Fail to comply with a rule issued by the Commissioner under this Part; or
- (6) Issue a certification pursuant to G.S. 143-148(c) if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect.

(b) (1) Paragraph (1) of subsection (a) shall not apply to the sale, the offer for sale, or the introduction or delivery of any manufactured home after the first purchase of it in good faith for purposes other than resale.

- (2) Paragraph (1) of subsection (a) shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such manufactured home was not in conformity with applicable manufactured home construction and safety standards, or to any person who, prior to such first purchase, holds a certificate of compliance issued by the manufacturer or importer of such manufactured home to the effect that such mobile home conforms to all applicable manufactured home construction and safety standards, unless such person knows that such manufactured home does not so conform. (1979, c. 558, s. 4; 1985, c. 487, s. 7.)

**Effect of Amendments.** — The 1985 amendment, effective June 27, 1985, substituted references to manufactured homes for references to mobile homes throughout this section.



## ARTICLE 9B.

*North Carolina Code Officials Qualification Board.***§ 143-151.8. Definitions.****Editor's Note. —**

Session Laws 1977, c. 531, s. 7, which is noted in an Editor's note under this

section in the Replacement Volume, was repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 124.

**§ 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 "war-

rants 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 to 143-166.04:** (See Editor's Note) Repealed by Session Laws 1985, c. 479, s. 196(t), effective July 1, 1985.

**Cross References.** — As to retirement benefits for local governmental law-enforcement officers, see now § 143-166.50. As to separate insurance benefits plan for state and local governmental law-enforcement officers, see now § 143-166.60.

**Editor's Note.** —

Repealed section 143-166 was amended by Session Laws 1985, c. 402, s. 1, effective June 17, 1985, by inserting "Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20," at the beginning of subsection (q); by c. 649, s. 5, effective July 8, 1985, by adding the last sentence of subsection (g); by c. 751, ss. 3 and 5, effective July 1, 1985, by adding subsections (x9) and (x10); and by c. 751, s. 7, effective July 1, 1985, by substituting "one and fifty-eight one hundredths percent (1.58%) of his average final compensation" for "one and fifty-seven one hundredths percent (1.57%) of his average final compensation" in the first sentence of the second paragraph of subsection (y).

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 196(u) provides:

"Transfer of Assets of the Law Enforcement Officers' Retirement System to Other Retirement Systems. As of January 1, 1986, assets of the Law Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Em-

ployees' Retirement System provided for under Article 3 of Chapter 128 of the General Statutes, and the Supplemental Retirement Income Plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

"(1) The regular accumulated contributions of members of the Law Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.

"(2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law Enforcement Officers' Retirement System, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.

"(3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the Local Governmental Employees' Retirement System with the amount of such assets to be taken into account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d) (9).

"(4) The special annuity account accumulated contributions shall be trans-



ferred from the special annuity savings fund of the Law Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.

"(5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1)."

Section 8 of Session Laws 1985, c. 751, which amended repealed section 143-166, provides: "In order to fund the provisions of this act, the Board of Trustees of the Local Governmental Employees' Retirement System, and Law Enforcement Officers' Retirement System with the advice of its consulting actuary, shall apply any unencumbered actuarial gain remaining after application of actuarial gains to any cost-of-living increase granted to retired members effective July 1, 1985, and shall adjust

the normal contribution rate of employers, without increase in the total employers' contribution rates and without changes in the amortization periods for liquidation of unfunded accrued liabilities of employers participating in the Retirement System."

Repealed § 143-166 was also amended by Session Laws 1983, c. 468, §§ 1 to 7 and 10; c. 533, s. 3; c. 761, ss. 220, 232 and 241; and c. 913, ss. 37 and 38, and by Session Laws 1983 (Reg. Sess., 1984), c. 1034, ss. 223 and 239 to 245. Repealed § 143-166.01 was amended by Session Laws 1983, c. 468, ss. 1, 2. Repealed § 143-166.02 was former subsection (z) of repealed § 143-166, as recodified and amended pursuant to Session Laws 1983, c. 468, ss. 1, 2 and 7; it was also amended by Session Laws 1983 (Reg. Sess., 1984), c. 1049, ss. 1 to 3. Repealed § 143-166.03 was added by Session Laws 1983, c. 468, s. 8, and amended by Session Laws 1983 (Reg. Sess., 1984), c. 1034, ss. 246 and 247. Repealed § 143-166.04 was added by Session Laws 1983, c. 468, s. 9.

## 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 12B.

### *Salary Continuation Plan for Certain State Law-Enforcement Officers.*

§§ 143-166.21 to 143-166.29: Reserved for future codification purposes.

## ARTICLE 12C.

### *Retirement Benefits for State Law-Enforcement Officers.*

### § 143-166.30. Retirement benefits for State law-enforcement officers.

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

- (1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.
- (2) "Creditable service" means membership service plus prior service plus military service allowable with a Retirement System.
- (3) "Employer" means the State of North Carolina and its departments, agencies and institutions.
- (4) "Law-enforcement officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.



- (5) "Member" means an officer included in the membership of a retirement system including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.
- (6) "Officer" means a "law-enforcement officer".
- (7) "Participant" means an officer with an individual account with the Supplemental Retirement Income Plan.
- (8) "Regular accumulated contributions" means the sum of all contributions of a member made to the Retirement System, together with regular interest thereon, pursuant to G.S. 143-166 as the same appeared prior to January 1, 1985.
- (9) "Retirement allowance" means annual payments for life payable in monthly installments continuing until the death of a beneficiary.
- (10) "Law-Enforcement Officers' Retirement System" means the system provided for under G.S. 143-166.
- (11) "Special annuity account accumulated contributions" means the sum of all contributions of a member or an employer made to the Special Annuity Accounts for Members of the Law-Enforcement Officers' Retirement System, together with regular interest thereon, pursuant to G.S. 143-166.03 as the same appeared prior to January 1, 1985.
- (12) "Special Annuity Accounts" means the supplemental defined contribution provisions of the Law-Enforcement Officers' Retirement System, provided for under G.S. 143-166.03 as the same appeared prior to January 1, 1985.
- (13) "State" means the State of North Carolina.
- (14) "State Retirement System" means the Teachers' and State Employees' Retirement System of North Carolina provided for under Article 1 of Chapter 135 of the General Statutes.
- (15) "Supplemental Retirement Income Plan" means a plan created in conformance with Section 401(a), 401(k), or any other section of the Internal Revenue Code of 1954 as amended.

(b) Basic Retirement System. — On and after January 1, 1985, law-enforcement officers employed by the State shall be members of the Teachers' and State Employees' Retirement System and beneficiaries who were last employed as officers by the State, or who are surviving beneficiaries of officers last employed by the State, shall be beneficiaries of the State Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by the State shall be members of the State Retirement System.

(c) Transfers of Assets and Liabilities to Other Retirement Systems. — As of January 1, 1985, certain assets and liabilities of the Law-Enforcement Officers' Retirement System shall be transferred to the Teachers' and State Employees' Retirement System and the Supplemental Retirement Income Plan in the amounts calculated and in the order of precedence enumerated as follows:

- (1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the State Retirement System to the credit of each individual officer.



- (2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries last employed as officers by the State and the surviving beneficiaries of officers last employed by the State, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the State Retirement System.
- (3) After the transfers provided for above, additional assets in the pension accumulation fund of the Law-Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the State Retirement System, in an amount equal to the ratio of the accrued liabilities on account of members of the Law-Enforcement Officers' Retirement System employed by the State or last employed by the State to the total accrued liabilities on account of all members of the Law-Enforcement Officers' Retirement System.
- (4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan pursuant to subsection (d) of this section to the credit of individual officers.

(d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. — As of January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter called the "Plan", established for the benefit of all law-enforcement officers employed by the State, who shall be participants. The Board of Trustees of the State Retirement System shall administer the Plan and shall, under the terms and conditions otherwise appearing herein, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same benefits for participants. The Plan shall be separate and apart from any retirement systems.

In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System and the contributions otherwise provided for in this Article, participants may make voluntary contributions to the Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year.

All contributions to the Plan shall be credited to the individual accounts of participants, and shall be fully and immediately vested in the name of the participant, and shall be invested according to each participant's election, as provided by the Board of Trustees, including but not limited to time deposits, and both fixed and variable investments. The Plan may provide for loans to participants, at reasonable rates of interest to be charged, from participants' individual accounts, and may provide for withdrawal of contributions on account of hardship.

The benefit to a participant in the Plan shall be either a lump-sum distribution or a distribution in periodic installments of the



participant's account payable under retirement, disability, or termination of employment. Upon the death of a participant there shall be paid the same lump-sum distribution or periodic installments to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose.

(e) **State Contributions to the Supplemental Retirement Income Plan.** — Under all other restrictions as are herein provided, the State shall contribute monthly to the individual accounts of participants who are employed by the State an amount equal to five percent (5%) of the compensation of each participant. The contributions so paid shall be in addition to the contributions on account of court cost assessments as hereinafter provided.

Contributions shall be made to the individual accounts of all participants in the Plan on a per capita basis in equal shares, equal to the sum of the one-half dollar (\$0.50) for each cost of court assessed and collected under G.S. 7A-304.

(f) **Administration.** — The provisions of the State Retirement System pertaining to administration and management of funds under G.S. 135-6 and 7 are made applicable to the Plan.

(g) **Exemption from Taxes, Garnishment and Attachment.** — The right of a participant in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, garnishment, and the benefits payable under this Article are hereby exempt from any State and local government taxes.

(h) Notwithstanding any other provisions of law, any pending or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of their transfer to the State Retirement System on January 1, 1985, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, shall in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System. (1983 (Reg. Sess., 1984), c. 1034, s. 248; 1985, c. 479, s. 196(s).)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 248, makes this Article effective January 1, 1985.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

As enacted by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 248, this section contains no subsection (f).

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Admendments.** — The 1985 amendment by c. 479, s. 196 (s), effective January 1, 1986, designated the former third paragraph of subsection (e) as subsection (f) and added the subsection catchline "Administration" at the beginning of that subsection.



**§§ 143-166.31 to 143-166.39:** Reserved for future codification purposes.

## ARTICLE 12D.

### *Separation Allowances for Law-Enforcement Officers.*

#### **§ 143-166.40. Rules for selection and retention of law-enforcement officers; rules exempt from Administrative Procedure Act.**

(a) Except as otherwise provided by State and federal law, the head of each principal State department may establish rules and procedures for the selection and retention of sworn law-enforcement officers to ensure that they are physically, emotionally, and intellectually qualified to perform their duties. These rules and procedures shall not establish any mandatory age limit for service as a law-enforcement officer that conflicts with a federal statute.

(b) These rules and procedures are exempt from the provisions of Chapter 150A of the General Statutes. (1983 (Reg. Sess., 1984), c. 1034, s. 104.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this Article effective July 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

#### **§ 143-166.41. Special separation allowance.**

(a) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11b) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution who qualifies under this section shall receive, beginning on the last day of the month in which he retires on a basic service retirement under the provisions of G.S. 135-5(a) or G.S. 143-166(y), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to him for each year of creditable service. The allowance shall be paid in 12 equal installments on the last day of each month. To qualify for the allowance the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or, (ii) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least seventy-five percent (75%) of the service is as a law enforcement officer as herein defined.



(c) Payment to a retired officer under the provisions of this section shall cease at the death of the individual or on the last day of the month in which he attains 62 years of age or upon the first day of reemployment by any State department, agency, or institution.

(d) This section does not affect the benefits to which an individual may be entitled from State, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by the General Assembly for employees of the State or retired employees of the State.

(e) The head of each State department, agency, or institution shall determine the eligibility of employees for the benefits provided herein.

(f) The Director of the Budget may authorize from time to time the transfer of funds within the budgets of each State department, agency, or institution necessary to carry out the purposes of this Article. These funds shall be taken from those appropriated to the department, agency, or institution for salaries and related fringe benefits.

(g) The head of each State department, agency, or institution shall make the payments set forth in subsection (a) to those persons certified under subsection (e) from funds available under subsection (f). (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1985, c. 479, s. 143.)

**Editor's Note.** — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment by c. 479, s. 143(a) and (b), effective July 1, 1985, and applicable only for allowances first payable on or after July 1, 1985, inserted "as defined by G.S. 135-1(11b) or G.S. 143-166.30(a)-(4)" in the first sentence of subsection

(a), substituted a semicolon and "and" for a period at the end of subdivision (a)(2), added subdivision (a)(3), and added the proviso at the end of subsection (b).

The 1985 amendment by c. 479, s. 143(c) and (d), effective July 1, 1985, added "or upon the first day of reemployment by any State department, agency, or institution" at the end of subsection (c) and added the second sentence of subsection (d).

**§§ 143-166.42 to 143-166.49:** Reserved for future codification purposes.

## ARTICLE 12E.

### *Retirement Benefits for Local Governmental Law-Enforcement Officers.*

#### **§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.**

(a) Definitions. — The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, have the following meaning:



- (1) "Beneficiary" means any person in receipt of a retirement allowance or other benefit from a Retirement System.
- (2) "Employer" means a county, city, town or other political subdivision of the State.
- (3) "Law enforcement officer" means a full-time paid employee of an employer, who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.
- (4) "Law-Enforcement Officers' Retirement System" means the system provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986.
- (5) "Local Governmental Employees' Retirement System" means the Local Governmental Employees' Retirement System of North Carolina provided for under Article 3 of Chapter 128 of the General Statutes.
- (6) "Member" means an officer included in the membership of a retirement system, including former officers no longer employed who also elected to leave their accumulated contributions on deposit with a Retirement System.
- (7) "Officer" means a "law-enforcement officer."
- (8) "State" means the State of North Carolina.

(b) Basic Retirement System. — On and after January 1, 1986, law-enforcement officers employed by an employer shall be members of the Local Government Employees' Retirement System, and beneficiaries who were last employed as officers by an employer, or who are surviving beneficiaries of officers last employed by an employer, are beneficiaries of the Local Governmental Employees' Retirement System and paid in benefit amounts then in effect. All members of the Law-Enforcement Officers' Retirement System last employed and paid by an employer are members of the Local Retirement System.

(c) Rights. — Notwithstanding any other provisions of law, any accrued or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of his transfer to the Local Governmental Employees' Retirement System on January 1, 1986, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, may in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System after January 1, 1986.

(d) Court Cost Receipts. — Of the sum derived from the cost of court provided for in G.S. 7A-304(a)(3), the amount designated for this Article, except for the amount designated for the provisions of G.S. 143-166.50(e), shall be paid over to the pension accumulation fund of the Local Governmental Employees' Retirement System and shall offset, to the extent of these receipts, the employers' normal contribution rate required in G.S. 128-30(d)(2) as it pertains to law enforcement officers.

(e) Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers. — As of January 1, 1986, all law-enforcement officers employed by a local government employer, are participating members of the Supplemental Retirement Income



Plan as provided by Article 5 of Chapter 135 of the General Statutes. In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System, participants may make voluntary contributions to the Supplemental Retirement Income Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year.

Additional contributions shall also be made to the individual accounts of all participants in the Plan, except for sheriffs, on a per capita equal-share basis from the sum of one dollar and twenty-five cents (\$1.25) for each cost of court collected under G.S. 7A-304. (1985, c. 479, s. 196(t); c. 729, ss. 6, 7.)

**Editor's Note.** — Session Laws 1985, c. 479, s. 196(v) makes this article effective January 1, 1986.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective Jan. 1, 1986, inserted "except for the amount designated for the provisions of G.S. 143-166.50(e)" in the first sentence of subsection (d) and added the last sentence of subsection (e).

**§§ 143-166.51 to 143-166.59:** Reserved for future codification purposes.

## ARTICLE 12F.

### *Separate Insurance Benefits Plan For State And Local Governmental Law-Enforcement Officers.*

#### **§ 143-166.60. Separate insurance benefits plan for law-enforcement officers.**

(a) Of the sum derived from the cost of court provided for in G.S. 7A-304(a)(3), the amount designated for this Article shall be set aside and held in a separate fund to create a Separate Insurance Benefits Plan, hereinafter called the "Plan", to be an employee welfare benefit plan, established for the benefit of (i) all law enforcement officers, as defined in G.S. 135-1(11b) and G.S. 128-21(11b) employed by the State and local governments and (ii) all former law-enforcement officers previously employed by the State and local governments, 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 be participants.

(b) The Boards of Trustees of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall jointly administer the Plan and shall, under the terms and conditions otherwise appearing in this Article, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 501(c)(9) of the Internal Revenue Code of



1954 as amended or, (ii) by causing the Plan to affiliate with a master trust providing the same benefits for participants.

(c) The initial assets of the Plan are the assets of the former Separate Benefit Plan established under G.S. 143-166.04 as it existed prior to January 1, 1986, which shall be transferred to the Plan on January 1, 1986. The Plan shall be separate and apart from any retirement systems or plans.

(d) The Boards of Trustees shall promulgate rules and regulations as are necessary to establish benefits under the Plan, within the availability of funds, to provide:

- (1) An accident and sickness disability insurance benefit;
- (2) A group life insurance benefit for participants employed by an employer at the time of death, not to exceed five thousand dollars (\$5,000);
- (3) A group life insurance benefit for participants who are eligible former officers, not to exceed four thousand dollars (\$4,000); and
- (4) An accidental line-of-duty insurance death benefit not to exceed two thousand one hundred dollars (\$2,100) in total on account of the death of a participant caused by an accident while in the actual performance of duty as an officer.

(e) The insurance benefit of the Plan on account of the death of a participant shall be payable to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose. The life insurance benefits shall be payable only on account of participants in the Plan for six or more months or, if an actively employed officer, at any time after employment if death results from an accident. The accident and sickness disability insurance benefits shall be payable to a participant at any time after becoming a participant in the Plan.

(f) Should amounts in the trust fund of the Plan be insufficient at any time to enable the Boards of Trustees to pay benefits due in full, then an equitable graded percentage of the payment shall be made.

(g) The provisions of the State and Local Retirement Systems pertaining to administration and management of funds under G.S. 128-28, G.S. 128-29, G.S. 135-6 and G.S. 135-7 are made applicable to the Plan.

(h) Exemption from Taxes, Garnishment and Attachment. — The right of a participant in the Separate Insurance Benefits Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment, and the benefits payable under this Article are exempt from any State and local government taxes. (1985, c. 479, s. 196(t).)

**Editor's Note.** — Session Laws 1985, c. 479, s. 196(v) makes this article effective January 1, 1986.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.



§§ 143-166.61 to 143-166.69: Reserved for future codification purposes.

## ARTICLE 12G.

### *Transfers of Assets of Law-Enforcement Officers' Retirement System to Other Retirement Systems.*

#### **§ 143-166.70. Transfers of assets of Law-Enforcement Officers' Retirement System to other retirement systems.**

As of January 1, 1986, assets of the Law-Enforcement Officers' Retirement System, provided for under Article 12 of Chapter 143 of the General Statutes, as it existed prior to January 1, 1986, shall be transferred to the Local Governmental Employees' Retirement System provided for under Article 3 of Chapter 128 of the General Statutes, and the Supplemental Retirement Income Plan of North Carolina, provided for under Article 5 of Chapter 135 of the General Statutes, in the amounts calculated and in the order of precedence enumerated as follows:

- (1) The regular accumulated contributions of members of the Law-Enforcement Officers' Retirement System shall be transferred from the annuity savings fund of the Law-Enforcement Officers' Retirement System to the annuity savings fund of the Local Governmental Employees' Retirement System to the credit of each individual member.
- (2) An amount equal to the present value of the liabilities on account of the retirement allowances payable to beneficiaries of the Law-Enforcement Officers' Retirement System, as calculated by the Retirement System's consulting actuary, shall be transferred from the pension accumulation fund of the Law-Enforcement Officers' Retirement System to the pension accumulation fund of the Local Governmental Employees' Retirement System.
- (3) After the transfer provided for above, the remaining assets in the pension accumulation fund of the Law-Enforcement Officers' Retirement System shall be transferred to the pension accumulation fund of the Local Governmental Employees' Retirement System with the amount of such assets to be taken into account by the Retirement System's consulting actuary in determining the employers' rates of contribution under G.S. 128-30(d)(9).
- (4) The special annuity account accumulated contributions shall be transferred from the special annuity savings fund of the Law-Enforcement Officers' Retirement System to the Supplemental Retirement Income Plan of North Carolina, or some other employer-sponsored trust qualified under Sections 401(a) and 401(k) of the Internal Revenue Code of 1954 as amended.
- (5) The separate trust fund reserves held under the death benefit plan provided for in G.S. 143-166.02, as it existed prior to January 1, 1986, shall be transferred to the separate trust fund for the death benefit plan provided for in G.S. 128-27(1). (1985, c. 479, s. 196(u).)



**Editor's Note.** — Session Laws 1985, c. 479, s. 196(v) makes this Article effective January 1, 1986.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**§§ 143-166.71 to 143-166.79:** Reserved for future codification purposes.

## ARTICLE 12H.

### *Sheriffs' Supplemental Pension Fund Act of 1985.*

#### **§ 143-166.80. Short title and purpose.**

(a) This Article shall be known and may be cited as the "Sheriffs' Supplemental Pension Fund Act of 1985".

(b) The purpose of this Article is to create a pension fund to supplement local government retirement benefits which will attract the most highly qualified talent available within the State to the position of sheriff and to fully recognize that sheriffs are constitutional officials elected by the people and are also officers of the court enforcing the laws of the State of North Carolina. (1985, c. 729, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 729, s. 8, makes this Article effective July 12, 1985.

#### **§ 143-166.81. Scope.**

(a) This Article provides supplemental pension benefits for all county sheriffs who are retired from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan as herein described.

(b) The North Carolina Department of Justice shall administer the provisions of this Article.

(c) The provisions of this Article shall be subject to future legislative change or revision, and no person is deemed to have acquired any vested right to a pension payment provided by this Article. (1985, c. 729, s. 1.)

#### **§ 143-166.82. Assets.**

(a) On and after July 1, 1985, each Clerk of Superior Court shall remit to the Department of Justice the monthly receipts collected pursuant to G.S. 7A-304 (a)(3a) to be deposited to the credit of the Sheriffs' Supplemental Pension Fund, hereinafter referred to as the Fund, to be used in making monthly pension payments to eligible retired sheriffs under the provisions of this Article and to pay the cost of administering the provisions of this Article.

(b) The State Treasurer shall be the custodian of the Sheriffs' Supplemental Pension Fund and shall invest its assets in accor-



dance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. (1985, c. 729, s. 1.)

### **§ 143-166.83. Disbursements.**

(a) Immediately following July 1, 1986, and immediately following the first of July of each fiscal year thereafter, the Department of Justice shall divide an amount equal to ninety percent (90%) of the assets of the Fund at the end of the preceding fiscal year into equal shares and disburse the same as monthly pension payments in accordance with this Article. The remaining ten percent (10%) of the Fund's assets at the end of the preceding fiscal year may be used by the Department of Justice in administering the provisions of this Article.

(b) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(c) If, for any reason, the Fund shall be insufficient to pay any pension benefits or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced. (1985, c. 729, s. 1.)

### **§ 143-166.84. Eligibility.**

(a) Each elected county sheriff who has retired from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan on and before June 30, 1986, and who has attained the age of 55 years and who has completed at least 10 years of eligible service as an elected sheriff is entitled to receive a monthly pension under this Article, beginning July 1, 1986. Eligible service shall only mean service for which a sheriff has been elected and shall not include service as an appointed sheriff or any other appointed or elected service.

(b) Subsequent to June 30, 1986, each eligible retired sheriff as defined in subsection (a) of this section on June 30 of each fiscal year shall be entitled to receive a monthly pension under this Article beginning the first of the following fiscal year. (1985, c. 729, s. 1.)

### **§ 143-166.85. Benefits.**

(a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as an elected sheriff multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired sheriffs on June 30 of each fiscal year into the amount to be disbursed as monthly pension payments in accordance with the provisions of G.S. 143-168.3(a). In no event however shall a monthly pension under this Article exceed an amount, which when added to a retired allowance from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan, is greater than



seventy-five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount of one thousand dollars (\$1,000).

(b) All monthly pensions payable under this Article shall be paid on the last business day of each month.

(c) Monthly pensions payable under this Article will cease at the death of the pensioner and no payment will be made to any beneficiaries or to the decedent's estate.

(d) Monthly pensions payable under this Article will cease upon the full-time reemployment of a pensioner with an employer participating in the Local Governmental Employees' Retirement System for as long as the pensioner is so reemployed.

(e) Pensions paid under the provisions of this Article shall be exempt from North Carolina income tax.

(f) Nothing contained in this Article shall preclude or in any way affect the benefits that a pensioner may be entitled to from any state, federal or private pension, retirement or other deferred compensation plan. (1985, c. 729, s. 1.)

## 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.

**Editor's Note.** — Section 150A-12, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, and has been recodified as § 150B-12.

**Effect of Amendments.** — The 1983

amendment, effective May 11, 1983, substituted "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 Envi-



ronmental 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.

(d1) Each applicant under subsections (c) or (d) for a permit (or the renewal thereof) for the operation of a treatment works for a private multi-family or single family residential development, in which the owners of individual residential units are required to organize as a lawfully constituted and incorporated homeowners' association of a subdivision, condominium, planned unit development, or townhouse complex, shall be required to enter into an operational agreement with the Commission as a condition of any such permit granted. The agreement shall address, as necessary, construction, operation, maintenance, assurance of financial solvency, transfers of ownership and abandonment of the plant, systems, or works, and shall be modified as necessary to reflect any changed condition at the treatment plant or in the development. Where the Commission finds appropriate, it may require any other private residential subdivision, condominium, planned unit development or townhouse complex which is served by a private treatment works and does not have a lawfully constituted and incorporated homeowners' association, and for which an applicant applies for a permit or the renewal thereof under subsections (c) or (d), to incorporate as a lawfully constituted homeowners' association, and



after such incorporation, to enter into an operational agreement with the Commission and the applicant as a condition of any permit granted under subsections (c) or (d). The local government unit or units having jurisdiction over the development shall receive notice of the application within an established comment period and prior to final decision.

(f) Local Permit Programs for Sewer Extension—Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Environment Management Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service is already being provided by the municipality to the permit applicant or connection to the municipal sewer system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Environmental Management Commission shall certify any local program that:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by Part I of Article 21 of this Chapter, and the standards, rules, and regulations adopted pursuant to that Part;
- (2) Provides that the Department of Natural Resources and Community Development receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans;
- (3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this State;
- (4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process;
- (5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program;
- (6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system;
- (7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer system; and
- (8) Is approved by the Environmental Management Commission as adequate to meet the requirements of this Part and any applicable rules and regulations adopted pursuant to this Part.



The Environmental Management Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A local government administering an approval program shall be given notice that there has been a tentative decision to deny, suspend, or revoke certification and that an administrative hearing will be held in accordance with Chapter 150A of the General Statutes where the decision may be challenged. If a violation of the provisions in subsection (f) of this section presents an imminent hazard, certification may be suspended or revoked immediately. The Environmental Management Commission shall give notice of the immediate suspension or revocation and notice that an administrative hearing will be held in accordance with Chapter 150A of the General Statutes where the decision may be challenged.

Notwithstanding any other provision of this subsection, if the Environmental Management Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Environmental Management Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article. (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; 1985, c. 446; c. 697, 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 Notes.** —

Session Laws 1985, c. 697, s. 3 provides that the Health Services Commission and the Environmental Management Commission shall adopt rules, standards, and regulations to implement the act no later than January 1, 1986.

**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 pub-

lication" 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).

The 1985 amendment by c. 446, effective January 1, 1986, added subsection (d1).

The 1985 amendment by c. 697, s. 2, effective July 11, 1985, added subsection (f).

### **§ 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 appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
- (3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article.
  - (4) To delegate such of the powers of the Environmental Management Commission as the Environmental Management Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department of Natural Resources and Community Development; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Environmental Management Commission; and provided further that the Environmental Management Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subsection (a)(12) for the abatement of existing water or air pollution. Any employee of the Department of Natural Resources and Community Development to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Environmental Management Commission.
  - (5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the 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 Environ-



mental 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.

- (15) To develop and adopt standards and regulations necessary to implement programs to prevent pollution from underground tanks containing oil or hazardous substances, in accordance with those requirements made mandatory upon approved State programs by federal agencies administering the Resource Conservation and Recovery Act, as amended, including the Hazardous and Solid Waste Amendments of 1984.

(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; 1985, c. 551, 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.** — Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Section 150A-12, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as § 150B-12.

**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).

The 1985 amendment, effective July 1, 1985, added subdivision (a)(15).

## § 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.

**Editor's Note.** — Section 150A-12, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as § 150B-12.

**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.

**Editor's Note.** — Sections 150A-50 and 150A-51, referred to in this section, were rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as §§ 150B-50 and 150B-51.

**Effect of Amendments.** — The 1983 amendment, effective May 11, 1983, substituted 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.

**Effect of Amendments.** — The 1983

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



## 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.

**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 the Governor consults with the Advisory Budget Commission" for "and the Advisory Budget Commission" in the first sentence of subsection (a).

## Part 6. Floodway Regulation.

### § 143-215.51. Preamble.

**Legal Periodicals.** — For survey of 1983 developments in property law, see 62 N.C.L. Rev. 1346 (1984).



## 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 disbursal of grants.

After review of grant applications, the Secretary shall forward those approved or approved in part to the Advisory Budget Commission, which shall review the recommendations 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,

substituted "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 General Assembly in the Current Operations Appropriations Act, 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; 1985, c. 479, s. 221.)

**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 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**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.

The 1985 amendment, effective July 1, 1985, substituted "General Assembly in the Current Operations Appropriations Act" for "Governor after consultation with the Advisory Budget Commission" in the fifth sentence.

## ARTICLE 25B.

### *State Nature and Historic Preserve Dedication Act.*

## § 143-260.10B. Removal of land from the State Nature and Historic Preserve.

Notwithstanding the provisions of G.S. 143-260.10(2), Tract Number 65, containing 22.93140 acres, as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977, is removed from the State Nature and Historic Preserve.

The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or



sell this land and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land. (1985, c. 450, s.1.)

**Editor's Note.** — Session Laws 1985, c. 450, s. 2 makes this section effective upon ratification. The act was ratified June 24, 1985.

## ARTICLE 31.

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

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

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 31, provides: "The Department of Public Education shall expend funds appropriated to

it to satisfy judgments and settlements under the Tort Claims Act only for that purpose."

## 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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 contemplates 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.*, 307 N.C. 522, 299 S.E.2d 618 (1983).

**As to liability of a college or university for a criminal attack** by a third person upon its students, see *Brown v. North Carolina Wesleyan College, Inc.*, 65 N.C. App. 579, 309 S.E.2d 701 (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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 299 S.E.2d 618 (1983).

### I. IN GENERAL.

#### **Negligent Act of State Employee Must Be Proximate Cause of Injury.**

— In order for a person to recover under the State Tort Claims Act, it must be shown that a negligent act of a state employee, acting in the course of his or her employment, proximately caused the injuries or damages asserted. While it is not required that the state employee's negligence be the sole proximate cause of the injury complained of, it must be a proximate cause. *Register v. Administrative Office of the Courts*, 70 N.C. App. 763, 321 S.E.2d 24 (1984).

**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.*, 307 N.C. 522, 299 S.E.2d 618 (1983).

**Post-judgment interest not authorized.** — Absent a specific statutory provision authorizing the accrual of interest on damage awards under this section, the State Tort Claims Act, no post-judgment interest can accrue to a tort claims award thereunder. *Myers v. Department of Crime Control & Pub. Safety*, No. 83101C455 (N.C. App., April 3, 1984).

Claimant awarded \$60,000 in his action against the Department of Crime

Control and Public Safety under this section, the State Tort Claims Act, was not entitled to post-judgment interest on the award pending appeal. *Myers v. Department of Crime Control & Pub. Safety*, No. 83101C455 (N.C. App., April 3, 1984).

**Stated** in *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

**Cited** in *Riggan v. North Carolina State Hwy. Patrol*, 61 N.C. App. 69, 300 S.E.2d 252 (1983); *Spell v. McDaniel*, 591 F. Supp. 1090 (E.D.N.C. 1984).

### 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 299 S.E.2d 618 (1983).

## § 143-295. Settlement of claims.

(a) Any claims except claims of minors pending or hereafter filed against the various departments, institutions and agencies of the State may be settled upon agreement between the claimant and the Attorney General for an amount not in excess of ten thousand dollars (\$10,000), without the approval of the Industrial Commission. The Attorney General may also make settlements by agreement for claims in excess of ten thousand dollars (\$10,000) and claims of infants or persons non sui juris, provided such claims have been subject to review and approval by the Industrial Commission.



(b) In settlements under ten thousand dollars (\$10,000), agreed upon between the Attorney General and the claimant, the filing of an affidavit as set forth in G.S. 143-297 shall not be required.

(1951, c. 1059, s. 5; 1971, c. 1103, s.1; 1973, c. 699; 1975, c. 756; 1979, c. 877; 1981, c. 166; 1985, c. 693.)

**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 1985 amendment, effective July 11, 1985, substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" in two places in subsection (a) and in subsection (b).

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

(c) In the event that the Industrial Commission shall make award of damages against any county or city board of education pursuant to this section, the Attorney General shall draw a voucher for the amount required to pay such award. The funds necessary to cover vouchers written by the Attorney General for claims against county and city boards of education for accidents involving school buses and school transportation service vehicles shall be made available from funds appropriated to the Department of Public Instruction. Neither the county or city boards of education, or the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295.

(1955, c. 1283; 1961, c. 1102, ss. 1-3; 1967, c. 1032, s. 1; 1975, c. 589, s. 1; c. 916, ss. 1, 2; 1977, c. 935, s. 1; 1979, 2nd Sess., c. 1332, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 30.)

**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 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, inserted the present second sentence of subsection (c).

### CASE NOTES

**Legislative Intent.** — The intent of the legislature in amending this section in 1961 to include service vehicles as well as school buses must have been primarily and simply to include those motor vehicles which are the functional equivalents of a school bus, but are not technically buses, such as vans, and also such service vehicles as are used in their maintenance. *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

#### **Strict Construction of Section.** —

In accord with original. See *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

**Driver education vehicles are not included in the phrase "school transportation service vehicles."** *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

The mere fact that a driver education vehicle is a motor vehicle which ordinarily may serve a "transportation" func-



tion does not bring it within the phrase "school transportation service vehicle" as that phrase is used in this section. *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

**Section 115C-42 does not apply to the type of claims which are covered**

**by this section.** *Smith v. McDowell County Bd. of Educ.*, 68 N.C. App. 541, 316 S.E.2d 108 (1984).

**Cited in** *Guthrie v. North Carolina State Ports Auth.*, 307 N.C. 522, 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.

#### CASE NOTES

**Public body which underwent little more than a change of name through incorporation** continued to be an agency of the county. To hold other-

wise would eviscerate the public policy of this section. *Winfas, Inc. v. Region P Human Dev. Agency*, 64 N.C. App. 724, 308 S.E.2d 99 (1983).

#### § 143-318.10. All official meetings of public bodies open to the public.

#### CASE NOTES

**Applied in** *Winfas, Inc. v. Region P Human Dev. Agency*, 64 N.C. App. 724, 308 S.E.2d 99 (1983).

#### § 143-318.12. Public notice of official meetings.

#### CASE NOTES

**Stated in** *Wright v. County of Macon*, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

#### § 143-318.18. Exceptions.

This Article does not apply to:

- (8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238. (1979, c. 655, s. 1; 1985, c. 757, s. 206(e).)

**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 1985

amendment, effective July 15, 1985, inserted "or G.S. 116-238" in subdivision (8).



## 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).

**OPINIONS OF ATTORNEY GENERAL**

The statute does not provide for participation by retired state employees. See opinion of Attorney Gen-

eral to Jane Smith Patterson, Secretary, 2 Department of Administration, 53 N.C.A.G. 1(1983).



**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

(4) Real Property Control:

- a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.
- b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.
- c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.
- d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so



affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

- d1. To require all State departments, institutions, and agencies to use State-owned office space instead of negotiating or renegotiating leases for rental of office space. Any lease entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and the Council of State.

The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than May 1 of each year on leased office space.

- e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

- f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

- g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State. Provided, that the authority granted in this paragraph shall not apply to the State Legislative Building and grounds.



- h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.
- i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina or grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.
- j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.
- k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.
- l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.
- m. To contract for or approve all contracts for all appraisals and surveys of real property for all State agencies; provided, however, this provision shall not apply to appraisals and surveys obtained in connection with the acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation.
- n. To petition for the annexation of state-owned lands into any municipality.

(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, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to assign suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid



driver's license. The agency shall send a copy of the driver's license of each person operating the motor vehicle to the Department of Administration, Division of Motor Fleet Management. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

As used in this subpart, "suitable transportation" means the standard vehicle in the State motor fleet, unless special towing provisions are required by the employee or agency. The Department may not assign any employee or agency a motor vehicle that is not suitable.

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.

The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall be at least twenty cents (20¢) per mile for each motor vehicle.

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 regard-



less 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 (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose him routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 12,600 miles per year unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. 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 to which the car is assigned is employed or the agency to which the car is assigned 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, pickup truck, or van to drive between his official work station and his home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement 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. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Man-



agement. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) hearses, (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

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; 1983, (Reg. Sess., 1984), c. 1034, s. 122; 1985, c. 479, ss. 168, 170, 174; c. 757, ss. 174, 175, 177; c. 791, s. 51.)

**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.** — For provision that State officers and employees who perform computerized data processing functions pursuant to subdivision (9) of this section for the Department of Revenue are authorized to receive and process for the Department information in reports and returns and are subject to certain criminal provisions, see § 105-259.

**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.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Section 147-58, referred to near the end of subdivision (9) of this section, was repealed by Session Laws 1983, c. 913, s. 1.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Section 143B-269, establishes the Black Mountain Advancement Center for Women and provides in subsection (b) thereof that notwithstanding paragraph (4)g of this section, the grounds now occupied by the Black Mountain Regional Mental Retardation Center and Building 3 are transferred from the Department of Human Resources to the Department of Correction.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

**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.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, rewrote the second paragraph of subparagraph (8) i 7a.

The 1985 amendment by c. 479, s. 168, effective July 1, 1985, rewrote paragraph (8)i.5., which formerly read "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."

The 1985 amendment by c. 479, s. 170, effective July 1, 1985, as amended by c.

757, s. 176, effective October 1, 1985, rewrote the third paragraph of subparagraph (8) i.7a.

The 1985 amendment by c. 479, s. 174, effective July 1, 1985, added paragraph (4)d1.

The 1985 amendment by c. 757, s. 174, effective August 1, 1985, added the second paragraph of subdivision (8)i.6.

The 1985 amendment by c. 757, s. 175, effective July 15, 1985, substituted "subpart" for "section" in the last sentence of the first paragraph of subparagraph (8)i.5, as rewritten by Session Laws 1985, c. 479, s. 168, and added a new paragraph at the end of subparagraph (8)i.5.

The 1985 amendment by c. 757, s. 177, effective October 1, 1985, rewrote the last sentence of the third paragraph of subparagraph (8)i.7a., as amended by Session Laws 1985, c. 479, s. 170.

The 1985 amendment by c. 791, s. 51, effective October 1, 1985, added the last sentence to the third paragraph of subparagraph (8)i.7a., as amended by Session Laws 1985, c. 479, s. 170 and by Session Laws 1985, c. 757, s. 177.

## § 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,

substituted "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.

## § 143-345.6. Land records management program.

(a) The Secretary shall establish a land records management program for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices, and (ii) of establishing greater uniformity in local land records systems. The management program shall consist of the activities provided for in subsections (b), (c), (d), and (e) below, and other related activities essential to the effective conduct of the management program.



## (c) Mapping programs.

- (1) The Secretary shall conduct a program for the preparation of county base maps pursuant to standards prepared by the Department of Natural Resources and Community Development.
- (2) The Secretary shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county property-line maps under the direction of qualified surveyors pursuant to standards prepared by the Department of Revenue and Natural Resources and Community Development.

(1977, c. 771, s. 4; c. 932, s. 1; 1985, c. 479, s. 165(d), (e).)

**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 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 165(a), provides:

"The Land Records Management Program in the Department of Administration is transferred to the Land Resources Division in the Department of Natural Resources and Community Development. The transfer shall include the professional personnel currently working in the program, other budgeted costs, and all equipment purchased for the operation of the program. The Department of Natural Resources and Community De-

velopment shall provide adequate space in close proximity to the Land Resources Division and shall provide clerical assistance. The Department of Natural Resources and Community Development shall use available staff positions formerly associated with assisting the Land Policy Council to enhance implementation of the Land Records Management Program."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective August 1, 1985, deleted "of Administration" following "The Secretary" at the beginning of subsection (a) and deleted "in cooperation with the Secretary of the Department of Natural Resources and Community Development," following "Secretary shall" at the beginning of subdivision (c)(1).

## § 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 (\$.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 37B.***Marine Resources Center Administrative Board.*

**§§ 143-347.10 to 143-347.14:** Repealed by Session Laws 1985, c. 202, s. 4, effective July 1, 1985.

**Cross References.** — As to the North Carolina Marine Science Council, see §§ 143B-389 and 143B-390. As to the Office of Marine Affairs, see §§ 143B-390.1 and 143B-390.2.

**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.

**Legal Periodicals.** —

For article discussing evidentiary standards in employment discrimination suits in light of Department of Cor. v.

Gibson, 308 N.C. 131, 301 S.E.2d 78 (1983), see 6 Campbell L. Rev. 163 (1984).

## 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, 308 N.C. 131, 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, 308 N.C. 131, 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, 308 N.C. 131, 301 S.E.2d 78 (1983).

## § 143-422.3. Investigations; conciliations.

**Legal Periodicals.** — For article discussing evidentiary standards in employment discrimination suits in light of

Department of Cor. v. Gibson, 308 N.C. 131, 301 S.E.2d 78 (1983), see 6 Campbell L. Rev. 163 (1984).

## ARTICLE 52.

*Pesticide Board.*

## Part 4. Pesticide Applicators and Consultants.

## § 143-453. (Effective January 1, 1987) Qualifications for pesticide applicator's license; examinations.

(a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed.

Those qualifications, in the case of a pilot, shall include at least 125 hours and one year's flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 125 hours and one year's experience as a pilot in the field of aerial pesticide application shall be licensed as an apprentice aerial pesticide applicator pilot. All aerial applications of pesticides by a licensed apprentice shall be conducted under the direct supervision of a licensed pesticide applicator pilot. The supervising pilot, while directly supervising an apprentice, shall operate out of the same airstrip as the



apprentice and shall be available periodically throughout each day to provide advice and assistance to the apprentice.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied.

(c) The Board shall by regulation:

- (1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;
- (2) Provide for license renewal examinations at intervals not more frequent than four years, or more frequently if found by the Board to be required to be necessary in order to qualify North Carolina's State pesticide control plan for federal approval. (1971, c. 832, s. 1; 1973, c. 389, s. 4; 1975, c. 425, ss. 5, 9; 1977, c. 1125; 1985, c. 163.)

**For this section as in effect until January 1, 1987, see the main volume.**

**Effect of Amendments.** — The 1985 amendment, effective January 1, 1987, in the third sentence of subsection (a) substituted "at least 125 hours and one year's flying experience" for "at least 100 hours flying experience," in the fourth sentence of subsection (a) substituted "125 hours and one year's experience" for "100 hours experience" and

"shall be licensed" for "may be licensed," at the end of the fourth sentence of subsection (a) deleted a proviso which read, "provided that all aerial applications of pesticide by such licensed aerial pesticide applicator apprentice is conducted under the direction and supervision of a licensed pesticide applicator pilot," and added the last two sentences of subsection (a).

## ARTICLE 53.

### *Commission for Mental Health, Mental Retardation and Substance Abuse Services.*

**§ 143-475.1:** Repealed by Session Laws 1985, c. 589, s. 44, effective January 1, 1986.



## ARTICLE 55B.

*North Carolina Commission on Jobs and Economic Growth.***§ 143-506.15. North Carolina Commission on Jobs and Economic Growth.**

(a) There is created the North Carolina Commission on Jobs and Economic Growth. This Commission shall be an advisory commission and shall work with private and public institutions and with individuals to identify the major economic challenges facing this State and to develop practical proposals for meeting these challenges to be submitted to the executive and legislative branches of State government. The Commission shall report to the 1987 Session of the General Assembly.

(b) The Commission shall consist of no more than 30 members to be appointed by, and to serve at the pleasure of, the President of the Senate. If members of the General Assembly are appointed an equal number from each house shall be appointed.

(c) The Commission may contract for assistance from non-State personnel as it deems necessary.

(d) Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid per diem and allowances at the rates set forth in G.S. 138-5. (1985, c. 757, s. 52.)

## ARTICLE 61.

*Commission on the Bicentennial of the United States Constitution.***§ 143-563. Statement of purpose.**

It is the purpose of this Article to establish a Commission to promote and coordinate activities to commemorate the bicentennial of the Constitution. (1983 (Reg. Sess., 1984), c. 1116, s. 48.)

**Cross References.** — For the termination date of the Commission, see § 143-570. (Reg. Sess., 1984), c. 1116, s. 48, makes this Article effective December 1, 1984. Session Laws 1983 (Reg. Sess., 1984),

**Editor's Note.** — Session Laws 1983 c. 1116, s. 115 is a severability clause.

**§ 143-564. Creation of Commission; membership; quorum.**

(a) There is established the North Carolina Commission on the Bicentennial of the United States Constitution, hereinafter referred to as the "Commission".

(b) The Commission shall be composed of 21 members as follows:



- (1) The Chief Justice of the Supreme Court, or his designee;
- (2) The President of the Senate, or his designee;
- (3) The Speaker of the House of Representatives, or his designee;
- (4) Six persons appointed by the Governor;
- (5) Six persons appointed by the President of the Senate; and
- (6) Six persons appointed by the Speaker.

Each of the individuals making appointments shall seek to achieve a balanced membership representing, to the maximum extent practicable, the State as a whole. The Commission members shall be chosen from among individuals who have demonstrated scholarship, a strong sense of public service, expertise in the learned professions, and abilities likely to contribute to the fulfillment of the duties of the Commission. Members of the Commission shall be appointed for the life of the Commission.

The President of the Senate shall serve as chairman. Eleven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings. A vacancy in the Commission resulting from the death or resignation of a member shall be filled in the same manner in which the original appointment was made. (1983 (Reg. Sess., 1984), c. 1116, s. 48; 1985, c. 396, ss. 1-4.)

**Effect of Amendments.** — The 1985 amendment, effective June 14, 1985, deleted "Pro Tempore" following "The President" in subdivision (b)(2), substituted "Governor" for "Chief Justice" in subdivision (b)(4), substituted "President of the Senate" for "President Pro

Tempore" in subdivision (b)(5), and rewrote the first sentence of the last paragraph of subsection (b), which read "The Chief Justice, President Pro Tempore and Speaker shall serve as cochairmen, and they shall annually designate one of themselves to preside."

## § 143-565. Officers and staff; compensation.

(a) The Commission shall appoint a staff director. The salary of the staff director shall be set by the Commission. The Director with the approval of the cochairmen may appoint and fix the compensation of such additional publicly paid personnel up to five persons.

(b) Subject to the provisions of this subsection, the Director with the approval of the chairman may appoint and fix the compensation of additional personnel to be paid out of private donations. An individual appointed to a position funded in such manner shall be so designated at the time of such individual's appointment.

(c) Each member of the Commission shall serve without being compensated as a member of the Commission, except that each member who is not a State officer or employee shall be reimbursed for travel, and subsistence, as is provided for State employees generally. State officers and employees shall be reimbursed as provided in G.S. 138-6, and members of the General Assembly shall be reimbursed as provided in G.S. 120-3.1(a)(4).

(d) No personnel other than the staff director may be appointed prior to the convening of the 1985 General Assembly.

(e) Repealed by Session Laws 1985, c. 396, s. 7, effective June 14, 1985.

(f) Any expenditures of funds by the Commission, regardless of the source, must be approved by the chairman. (1983 (Reg. Sess., 1984), c. 1116, s. 48; 1985, c. 396, ss. 5-7.)



**Effect of Amendments.** — The 1985 amendment, effective June 14, 1985, substituted the present first and second sentences of subsection (a) for a former first sentence, which read "The cochairmen shall appoint a staff director who shall be paid a salary to be set by the cochairmen," substituted "chair-

man" for "cochairmen" in subsections (b) and (f), and deleted subsection (e), which read "Whenever this Article requires something to be done by the cochairmen or to be approved by the cochairmen, it must be done or approved by a majority of them."

### **§ 143-566. Transfer of property; offices; power to contract.**

(a) Upon request of the Commission, the head of any State agency may assign any property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Article. Assignments under this subsection shall be without reimbursement by the Commission to the agency from which the assignment was made.

(b) The Office of State Property, North Carolina Department of Administration, shall provide office space in Raleigh for use as Commission offices, and the Department of Administration shall receive no reimbursement from the Commission for the use of such property during the life of the Commission.

(c) The Commission is authorized to procure supplies, services, and property, and make contracts, in any fiscal year, only to such extent or in such amounts as are provided in appropriation acts or are donated pursuant to G.S. 143-567. (1983 (Reg. Sess., 1984), c. 1116, s. 48.)

### **§ 143-567. Commission may accept gifts.**

The Commission is authorized to accept, use, solicit, and dispose of donations of money, property, or personal services. The Commission shall prescribe regulations under which the Commission may accept donations of money, property, or personal services. The regulations prescribed under this subsection shall include procedures for determining the value of donations of property or personal services. (1983 (Reg. Sess., 1984), c. 1116, s. 48.)

### **§ 143-568. Logo.**

The Commission shall have the authority to design and use a logo as the official emblem of the bicentennial. The Commission shall issue rules and regulations, regarding the use of such logo, except that under those regulations, the Commission shall be prohibited from selling, leasing, or otherwise granting to any corporation or private person the right to use the logo in connection with the production or manufacture of any commercial goods, as part of an advertisement promoting any commercial goods or services, or as part of an endorsement for any such goods or services. (1983 (Reg. Sess., 1984), c. 1116, s. 48.)



**§ 143-569. Duties of the Commission.**

(a) The Commission shall:

- (1) Plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the State of North Carolina seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education;
- (2) Encourage private organizations and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification, and history of the Constitution and the specific features of the document;
- (3) Coordinate, generally, activities throughout all of the State; and
- (4) Serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

(b) In planning and implementing appropriate activities to commemorate the bicentennial, the Commission shall give due consideration to:

- (1) The historical setting in which the Constitution was developed and ratified, including such antecedents as the Federalist Papers, the Articles of the Confederation, and the ratification debates of this State;
- (2) The contribution of diverse ethnic and racial groups;
- (3) The relationship and historical development of the three branches of the Government;
- (4) The importance of activities concerning the Constitution and citizenship education throughout the State;
- (5) The unique achievements and contributions of the participants in the Constitutional Convention of 1787 and the State ratification proceedings;
- (6) The diverse legal and philosophical views regarding the Constitution;
- (7) The need for reflection upon both academic and scholarly views of the Constitution and the principle that the document must be understood by the general public;
- (8) The substantive provisions of the Constitution itself;
- (9) The impact of the Constitution on American life and government;
- (10) The need to encourage appropriate educational curriculums designed to educate students at all levels of learning on the drafting, ratification, and history of the Constitution and the specific provisions of that document; and
- (11) The significance of the principles and institutions of the Constitution to other nations and their citizens.

(c) The Commission shall seek the cooperation, advice, and assistance from both private and governmental agencies and organizations.

(d) The Commission may, in carrying out the purposes of this Article, be designated as a State Advisory Commission under Section 6(d) of P.L. 98-101.

(e) Within two years after December 1, 1984, the Commission shall submit to each House of the General Assembly and to the Administrative Office of the Courts a comprehensive report incorporating specific recommendations of the Commission for commem-



oration and coordination of the bicentennial and related activities. The report shall include recommendations for publications, scholarly projects, conferences, programs, films, libraries, exhibits, ceremonies, and other projects, competitions and awards, and a calendar of major activities and events planned to commemorate specific historical dates. Each year after submitting the comprehensive report, the Commission shall submit an annual report to each House of the General Assembly, and the Administrative Office of the Courts until such Commission terminates. (1983 (Reg. Sess., 1984), c. 1116, s. 48.)

### **§ 143-570. Termination of Commission.**

The Commission shall terminate on December 31, 1989. (1983 (Reg. Sess., 1984), c. 1116, s. 48.)



## Chapter 143A.

### State Government Reorganization.

#### Article 1.

##### General Provisions.

Sec.

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

#### Article 5.

##### Department of Public Education.

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

143A-43. [Repealed.]

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

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

143A-46. [Repealed.]

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

143A-48. Textbook Commission; transfer.

#### Article 6.

##### Department of Justice.

Sec.

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

143A-55.3. (For effective date see note) Administrative Rules Review Commission established.

143A-55.4. (For effective date see note) Review of rules.

143A-55.5. (For effective date see note) Temporary rules.

143A-55.6. (For effective date see note) Hearings.

143A-55.7. (For effective date see note) Failure to object and delay; inadmissibility into evidence.

#### Article 9.

##### Department of Insurance.

143A-76, 143A-77. [Repealed.]

143A-79.1. Public Officers and Employees Liability Insurance Commission; transfer.

143A-79.2. State Fire Commission; transfer.

## ARTICLE 1.

### General Provisions.

#### § 143A-1. Short title.

##### CASE NOTES

**Stated** in *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

#### § 143A-6. Types of Transfers.

##### CASE NOTES

**Applied** in *Stanley v. Retirement & Health Benefits Div.*, 66 N.C. App. 122, 310 S.E.2d 637 (1984).



## § 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 salary of the head of each of the princi-

pal 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-49. Creation.

##### CASE NOTES

The Governor has the duty to supervise the official conduct of all executive officers. The constitutional independence of the executive offices, and their differing functions and duties, create clear potential for conflict between their respective holders. In the event of such conflict, power in the Attorney General to resolve, without their consent, controversies involving agencies or departments under the supervision of

the Governor, could be abused by exercise in a manner effectively derogative of the Governor's constitutional duties to exercise executive power and to supervise the official conduct of all executive officers. The General Assembly, in the enactment of § 114-2(2), did not intend to create such potential. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

#### § 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.

#### § 143A-55.3. (For effective date see note) Administrative Rules Review Commission established.

The Administrative Rules Review Commission is hereby created in the Department of Justice. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these 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, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission.



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 of two hundred dollars (\$200.00) for each day or part of a day of service plus 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 five members of the Commission. (1985, c. 746, s. 5.)

**Editor's Note.** — Session Laws 1985, c. 746, s. 12, contains a severability clause.

Section 18.2 of Session Laws 1985, c. 746, provides: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provides that sections 5 and 6 of the act, which added §§ 143A-55.3 through

143A-55.7 and amended § 120-123, shall become effective 30 days from the date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective.

In addition, s. 19 of Session Laws 1985, c. 746, provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

Section 19 of Session Laws 1985, c. 746, further provides that the act shall not affect contested cases commenced before Jan. 1, 1986.

## § 143A-55.4. (For effective date see note) Review of rules.

(a) As used in this Article:

"Agency" means an agency subject to the provisions of Article 2 of Chapter 150A of the General Statutes.

"Contested case" has the same meaning as is set out in G.S. 150A-2(2).

"Rule" has the same meaning as is set out in G.S. 150A-2(8a).

(b) Rules adopted by an agency to be effective on or after July 1, 1985, shall be filed in the Office of the Governor prior to the filing made with the chief hearing officer of the Office of Administrative Hearings pursuant to G.S. 150A-59.

(c) 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 to persons it is intended to direct, guide, or assist;
- (3) Is reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.

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

§ 143A-55.3 has a delayed effective date. See notes for date.

§ 143A-55.4 has a delayed effective date. See notes for date.



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 chief hearing officer of the Office of Administrative Hearings. Upon that filing, the effectiveness of the rule is delayed for a 60-day period.

(d) 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 the rule or part of the rule. The Commission shall transmit to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, the chief hearing officer of the Office of Administrative Hearings 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 chief hearing officer of the Office of Administrative Hearings 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).

(e) Within 30 days after receipt of the Commission's written report, the agency shall either (1) revise a rule to remove the cause of the objections of the Commission and return the revised rule to the Commission or (2) return the rule to the Commission without change with the Commission's objections attached.

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

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

(h) 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 disallow 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 chief hearing officer of the Office of Administrative Hearings the written report of the disallowance of the rule. A rule that is disallowed is not "effective", as defined by G.S. 150A-2(2a). (1985, c. 746, s. 5.)

**Editor's Note.** — Session Laws 1985, c. 746, s. 12, contains a severability clause.

Section 18.2 of Session Laws 1985, c. 746, provides: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provides that sections 5 and 6 of the

act, which added §§ 143A-55.3 through 143A-55.7 and amended § 120-123, shall become effective 30 days from the date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective.

Section 19 of Session Laws 1985, c. 746, further provides that the act shall not affect contested cases commenced before Jan. 1, 1986.

In addition, s. 19 of Session Laws 1985, c. 746, provides that the act shall



expire Jan. 1, 1992, and shall not be effective on or after that date.

### § 143A-55.5. (For effective date see note) 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. 143A-55.3. The Commission shall review the reasons given for the adoption of a temporary rule and may disallow the rule due to the agency's failure to make the finding required by G.S. 150A-13. (1985, c. 746, s. 5.)

**Editor's Note.** — Session Laws 1985, c. 746, s. 12, contains a severability clause.

Section 18.2 of Session Laws 1985, c. 746, provides: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provides that sections 5 and 6 of the act, which added §§ 143A-55.3 through

143A-55.7 and amended § 120-123, shall become effective 30 days from the date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective.

Section 19 of Session Laws 1985, c. 746, further provides that the act shall not affect contested cases commenced before Jan. 1, 1986.

In addition, s. 19 of Session Laws 1985, c. 746, provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

### § 143A-55.6. (For effective date see note) Hearings.

(a) Notwithstanding the time limitation on review of rules contained in G.S. 143A-55.3, 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. 143A-55.3.

(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. (1985, c. 746, s. 5.)

**Editor's Note.** — Session Laws 1985, c. 746, s. 12, contains a severability clause.

Section 18.2 of Session Laws 1985, c. 746, provides: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6

of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provides that sections 5 and 6 of the act, which added §§ 143A-55.3 through 143A-55.7 and amended § 120-123, shall become effective 30 days from the

§ 143A-55.5 has a delayed effective date. See notes for date.

§ 143A-55.6 has a delayed effective date. See notes for date.



date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective.

Section 19 of Session Laws 1985, c. 746, further provides that the act shall

not affect contested cases commenced before Jan. 1, 1986.

In addition, s. 19 of Session Laws 1985, c. 746, provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

### **§ 143A-55.7. (For effective date see note) 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 a rule or its part shall be inadmissible in all civil or criminal trials or other proceedings before courts, administrative agencies or other tribunals. (1985, c. 746, s. 5.)

**Editor's Note.** — Session Laws 1985, c. 746, s. 12, contains a severability clause.

Section 18.2 of Session Laws 1985, c. 746, provides: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provides that sections 5 and 6 of the act, which added §§ 143A-55.3 through

143A-55.7 and amended § 120-123, shall become effective 30 days from the date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective.

Section 19 of Session Laws 1985, c. 746, further provides that the act shall not affect contested cases commenced before Jan. 1, 1986.

In addition, s. 19 of Session Laws 1985, c. 746, provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

## **ARTICLE 9.**

### ***Department of Insurance.***

**§ 143A-76:** Repealed by Session Laws 1985, c. 666, s. 11, effective July 10, 1985.

**§ 143A-77:** Repealed by Session Laws 1985, c. 666, s. 12, effective July 10, 1985.

### **§ 143A-79.1. Public Officers and Employees Liability Insurance Commission; transfer.**

The Public Officers and Employees Liability Insurance Commission, as contained in Part 20 of Article 9 of General Statutes Chap-

**§ 143A-55.7** has a delayed effective date. See notes for date.



ter 143B, is transferred by a Type II transfer to the Department of Insurance. (1985, c. 666, s. 78.)

**Editor's Note.** — Session Laws 1985, c. 666, s. 85 makes this section effective

upon ratification. The act was ratified July 10, 1985.

### § 143A-79.2. State Fire Commission; transfer.

The State Fire Commission, described in Part 4 of Article 11 of Chapter 143B of the General Statutes, is transferred from the Department of Crime Control and Public Safety to the Department of Insurance. This transfer shall include all elements of a Type I transfer as defined in G.S. 143A-6. (1985, c. 757, s. 167(a).)

**Editor's Note.** — Session Laws 1985, c. 757, s. 167(k) makes this section effective

upon ratification. The act was ratified July 15, 1985.



## 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-12. Internal organization of departments; allocation and reallocation of duties and functions; limitations.
- 143B-13. Appointment, qualifications, terms, and removal of members of commissions.
- 143B-14. Administrative services to commissions.
- 143B-18. Commission rules and regulations; filing; hearing; copies.
- 143B-27. [Repealed.]
- 143B-29. [Reserved.]

###### Part 2. Governor's Administrative Rules Review Commission.

- 143B-29.1 to 143B-29.5. [Repealed.]
- 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.

###### Part 12. North Carolina Awards Committee.

- 143B-83. North Carolina Awards Committee — creation, powers and duties.

###### Part 15. North Carolina Art Society, Incorporated.

- 143B-89. North Carolina Art Society, Incorporated.

###### Part 27. Roanoke Voyages and Elizabeth II Commission.

Sec.

- 143B-129. Roanoke Voyages and Elizabeth II Commission — creation.
- 143B-130. Roanoke Voyages and Elizabeth II Commission — powers and duties.
- 143B-130.1. Roanoke Voyages and Elizabeth II Commission — additional powers and duties; transfer of assets and liabilities.
- 143B-131. Roanoke Voyages and Elizabeth II Commission — members; terms; vacancies; expenses; officers.

###### Part 28. Andrew Jackson Historic Memorial Committee.

- 143B-132. Andrew Jackson Historic Memorial Committee.
- 143B-133 to 143B-135. [Reserved.]

#### 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.

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

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

- 143B-147. Commission for Mental Health, Mental Retardation, and Substance Abuse Services — creation, powers and duties.

###### Part 6. Social Services Commission.

- 143B-153. (Effective until July 1, 1986) Social Services Commission — creation, powers and duties.



Sec.

143B-153. (Effective July 1, 1986) Social Services Commission — creation, powers and duties.

143B-153.1. [Repealed.]

Part 10. North Carolina Medical Care Commission.

143B-165. North Carolina Medical Care Commission — creation, powers and duties.

Part 10A. Child Day-Care Commission.

143B-168.1. (For schedule of applicability see note) Child Day-Care Licensing Commission — creation; powers and duties.

143B-168.2. Child Day-Care Licensing Commission — members; selection; quorum; compensation.

143B-168.3. Child Day-Care Commission — powers and duties.

143B-168.4. Child Day-Care Commission — members; selection; quorum; compensation.

143B-168.5. Child Day-Care Commission — special unit.

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-216.11. Definitions.

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

143B-216.13. Functions and powers of Board.

143B-216.14. Functions and powers of Department of Human Resources.

143B-216.16 to 143B-216.19. [Reserved.]

Sec.

Part 28. North Carolina Council on the Holocaust.

143B-216.20. North Carolina Council on the Holocaust; creation; purpose.

143B-216.21. Membership; selection; quorum.

143B-216.22. Expenses.

143B-216.23. Assistance.

## 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.

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

143B-268. [Reserved.]

Part 4. Black Mountain Advancement Center for Women.

143B-269. Black Mountain Advancement Center for Women — established; inmates; medical and food services; training; work release.

143B-270 to 143B-274. [Reserved.]

## Article 7.

### Department of Natural Resources and Community Development.

Part 1. General Provisions.

143B-278.1. Biennial State of the Environment Report.

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.



## EXECUTIVE ORGANIZATION ACT

### Part 4. Environmental Management Commission.

Sec.

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

### Part 5. Marine Fisheries Commission.

143B-286. Marine Fisheries 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.]

### Part 14. North Carolina Water Safety Council.

143B-314 to 143B-316. [Repealed.]

### Part 16. Water Quality Council.

143B-320, 143B-321. [Repealed.]

### Part 18. Commercial and Sports Fisheries Advisory Committee.

143B-325 to 143B-327. [Repealed.]

### Part 24. North Carolina Employment and Training Council.

143B-340, 143B-341. [Repealed.]

### Part 25. Triad Park Commission.

143B-342 to 143B-344.2. [Repealed.]

### Part 27. Employment and Training Act of 1985.

143B-344.11. Title.

143B-344.12. Purpose.

143B-344.13. Declaration of the State policy on employment and training.

143B-344.14. Coordinating Council.

143B-344.15. Plan.

## Article 8.

### Department of Transportation.

#### Part 2. Board of Transportation — Secondary Roads Council.

143B-350. Board of Transportation — organization; powers and duties, etc.

### Part 5. Division of Aeronautics — Aeronautics Council.

Sec.

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

## Article 9.

### Department of Administration.

#### Part 4. Child Day-Care Licensing Commission.

143B-375, 143B-376. [Recodified.]

#### Part 8. North Carolina Marine Science Council.

143B-389. North Carolina Marine Science Council — creation; purpose; powers and duties.

143B-390. North Carolina Marine Science Council — membership; terms; rules of procedure; meetings; quorum; expenses.

#### Part 8A. Office of Marine Affairs.

143B-390.1. Office of Marine Affairs — creation.

143B-390.2. Office of Marine Affairs — organization; powers and duties.

#### Part 9. North Carolina Human Relations Council.

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

143B-392. North Carolina Human Relations Council — members; selection; quorum; compensation.

#### Part 12. Standardization Committee.

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

#### Part 14A. Governor's Advocacy Council for Persons with Disabilities.

143B-403.1. Governor's Advocacy Council for Persons with Disabilities — creation; powers and duties.

#### Part 15. North Carolina State Commission of Indian Affairs.

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



Part 15A. North Carolina Advisory Council on the Eastern Band of the Cherokee.

Sec.

- 143B-411.1. North Carolina Advisory Council on the Eastern Band of the Cherokee — creation; membership; terms of office.
- 143B-411.2. North Carolina Advisory Council on the Eastern Band of the Cherokee — purpose or creation; powers and duties.
- 143B-411.3. North Carolina Advisory Council of the Eastern Band of the Cherokee — meetings; quorum; compensation; chairman.
- 143B-411.4. North Carolina Advisory Council on the Eastern Band of the Cherokee — clerical and administrative support.

Part 18. North Carolina Internship Council.

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

Part 19. Jobs for Veterans Committee.

- 143B-420. Governor's Jobs for Veterans Committee — creation; appointment, organization, etc.; duties.

Part 20. Public Officers and Employees Liability Insurance Commission.

- 143B-422 to 143B-426.1. [Recodified.]

Part 22. North Carolina Agency for Public Telecommunications.

- 143B-426.9. North Carolina Agency for Public Telecommunications — creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.

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.

Sec.

- 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.

Part 27. North Carolina Board of Science and Technology.

- 143B-426.30. North Carolina Board of Science and Technology; creation; powers and duties.
- 143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

**Article 10.**

**Department of Commerce.**

Part 1. General Provisions.

- 143B-433. Department of Commerce — organization.

Part 2. Economic Development.

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

Part 5. North Carolina Board of Science and Technology.

- 143B-440, 143B-441. [Recodified.]

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.



## EXECUTIVE ORGANIZATION ACT

Sec.

143B-464. Audit.

Part 11. North Carolina Ports  
Railway Commission.

143B-469.1. Powers of Commission.

Part 11A. North Carolina Hazardous  
Waste Treatment Commission.

143B-470. Declaration of findings.

143B-470.1. Declaration of purposes.

143B-470.2. Definitions.

143B-470.3. Creation of Commission.

143B-470.4. Powers and duties of the  
Treatment Commission.

143B-470.5. Issuance of bonds and  
notes.

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 pro-  
gram.

143B-471.5. North Carolina Innovation  
Research Fund.

143B-472. [Reserved.]

### Article 11.

#### Department of Crime Control and Public Safety.

Part 1. General Provisions.

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

143B-475.1. Deferred prosecution, com-  
munity service restitution,  
and volunteer program.

143B-475.2. (Effective July 1, 1986) De-  
partment of Crime Control  
and Public Safety — safety  
regulation of motor carrier  
transportation services;  
transfer.

Sec.

143B-476. (Effective July 1, 1986) De-  
partment of Crime Control  
and Public Safety — head;  
powers and duties as to  
emergencies and disasters.

Part 3. Governor's Crime  
Commission.

143B-480. Adjunct committees of the  
Governor's Crime Commis-  
sion — creation; purpose;  
powers and duties.

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

143B-480.2. Victim assistance.

143B-480.3. Reduction of benefits; resti-  
tution; actions.

Part 4. State Fire Commission.

143B-481 to 143B-485. [Recodified.]

Part 5. Civil Air Patrol.

143B-493, 143B-494. [Reserved.]

Part 5A. North Carolina Center for  
Missing Children.

143B-495. North Carolina Center for  
Missing Children.

143B-496 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 commu-  
nity penalties program.

143B-504. Requirements for a compre-  
hensive community penal-  
ties program plan.

143B-505. Advisory board.

143B-506. Limitation on use of funds.

143B-507. Evaluation.

## ARTICLE 1.

### General Provisions.

#### Part 1. In General.

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**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-1. Short title.****CASE NOTES**

**Stated** in *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984).

**§ 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 Govern-



mental 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."

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, and has been recodified as Chapter 150B.

**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-12. Internal organization of departments; allocation and reallocation of duties and functions; limitations.

(a) The Governor shall cause the administrative organization of each department to be examined periodically with a view to promoting economy, efficiency, and effectiveness. The Governor may assign and reassign the duties and functions of the executive branch among the principal State departments except as otherwise expressly provided by statute. When the changes affect existing law, they must be submitted to the General Assembly in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina.

(b) The Governor shall report all transfers of departmental functions under this section to the President of the Senate, the Speaker of the House of Representatives, the Chairmen of the Appropriations Committees in the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office, within 30 days after the transfer if the General Assembly is in session, otherwise to the Joint Legislative Committee on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, within 30 days after the transfer. The report shall include the rationale for the transfer and the increased efficiency in operations expected from the transfer. (1973, c. 476, s. 12; 1985, c. 479, s. 164.)



**Editor's Note.** — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, designated the first paragraph as subsection (a) and added subsection (b).

### § 143B-13. Appointment, qualifications, terms, and removal of members of commissions.

(b) A commission membership becomes vacant on the happening of any of the following events before the expiration of the term: (i) the death of the incumbent, (ii) his incompetence as determined by final judgment or final order of a court of competent jurisdiction, (iii) his resignation, (iv) his removal from office, (v) his ceasing to be a resident of the State, (vi) his ceasing to discharge the duties of his office over a period of three consecutive months except when prevented by sickness, (vii) his conviction of a felony or of any offense involving a violation of his official duties, (viii) his refusal or neglect to take an oath within the time prescribed, (ix) the decision of a court of competent jurisdiction declaring void his appointment, and (x) his commitment as a substance abuser under Part 8 of Article 5 of Chapter 122C of the General Statutes; but in that event, the office shall not be considered vacant until the order of commitment has become final.

(1973, c. 476, s. 13; 1975, c. 879, s. 47; 1981, c. 520, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 5; 1985, c. 589, ss. 45, 46.)

**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 1985, c. 589, s. 65 is a severability clause.

**Effect of Amendments.** —

The 1985 amendment, effective January 1, 1986, substituted "incompetence" for "insanity" in clause (ii) of subsection

(b), and substituted "as a substance abuser under Part 8 of Article 5 of Chapter 122C of the General Statutes" for "to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, a dipsomaniac, an inebriate or a stimulant addict" in clause (x) of subsection (b).

### § 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 the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Section 120-30.28, referred to in subsection (b) of this section, was repealed by Session Laws 1983, c. 927, s. 2.

Section 150A-11, referred to in this

section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as § 150B-11.

**Effect of Amendments.** —

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

## § 143B-18. Commission rules and regulations; filing; hearing; copies.

Any rules and regulations adopted by any commission created by the Executive Organization Act of 1973 shall state the effective date and shall be filed as required by law.

A public hearing with at least 30 days' notice advertised in the North Carolina Register shall be required prior to the adoption of any rules other than rules inapplicable to the public at large intended solely as administrative procedures of the Commission.

Sufficient copies of adopted rules and regulations shall be made available to interested citizens upon request.

Certified copies of such rules and regulations and amendments thereto shall be received in evidence in all courts and other official proceedings in the State, when in conformity with the Rules of Civil Procedure in Chapter 1A. (1973, c. 476, s. 18; 1985, c. 746, s. 13.)

**Editor's Note.** — Section 19 of Session Laws 1985, c. 746, provides that the act shall not affect contested cases commenced before Jan. 1, 1986. In addition, s. 19 provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.

Session Laws 1985, c. 746, s. 12, contains a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective Jan. 1, 1986, rewrote the second paragraph.

## § 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 to 143B-29.5: Repealed by Session Laws 1985, c. 746, s. 7, effective July 12, 1985.

**Editor's Note.** — Session Laws 1985, c. 746, s. 7 provides that the Governor's Rules Review Commission, established by Session Laws 1983, c. 927, is abolished and that the terms of the members shall terminate on the effective date of the act (July 12, 1985).

Section 19 of Session Laws 1985, c. 746, provides that the act shall not affect contested cases commenced before Jan. 1, 1986. In addition, s. 19 provides that the act shall expire Jan. 1, 1992, and shall not be effective on or after that date.



Session Laws 1985, c. 746, s. 12, is a severability clause.

Repealed §§ 143B-29.1 to 143B-29.5 were added by Session Laws 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.

## Part 12. North Carolina Awards Committee.

### § 143B-83. North Carolina Awards Committee — creation, powers and duties.

There is hereby created the North Carolina Awards Committee with the duty to advise the Secretary of Cultural Resources on the formulation and administration of the program governing North Carolina awards and on the selection of a committee in each award area to choose the recipients.

The Committee shall advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 71; 1979, c. 504, s. 2; 1983 (Reg. Sess., 1984), c. 995, s. 22.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 995, s. 22, reenacted this section as it existed before it was repealed by Session Laws 1979, c. 504.

## Part 15. North Carolina Art Society, Incorporated.

### § 143B-89. North Carolina Art Society, Incorporated.

The North Carolina Art Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 3 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Art Society, Incorporated, shall be a board of directors consisting of a minimum of 22 members as follows: the Governor, the Superintendent of Public Instruction, the State Treasurer, Secretary of Cultural Resources, and the Director of the North Carolina Museum of Art, who shall be ex officio members; six members who shall be named by the Governor; and a minimum of 12 directors who shall be chosen by members of the North Carolina Art Society, Incorporated, in such manner and for such terms as that body shall determine. The six directors named



by the Governor shall serve for terms of three years each. (1973, c. 476, s. 80; 1975, c. 386; 1977, c. 702, s. 3; 1985, c. 316.)

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, inserted "Secretary of Cultural Resources" in the second sentence.

## Part 17. Roanoke Island Historical Association.

### § 143B-92. Roanoke Island Historical Association — creation, powers and duties.

**Cross References.** — As to the Roanoke Voyages and Elizabeth II Commission, see § 143B-129 et seq., and Session Laws 1981 (Reg. Sess., 1982), c. 1194, as amended by Session Laws 1985, c. 673.

## Part 27. Roanoke Voyages and Elizabeth II Commission.

### § 143B-129. Roanoke Voyages and Elizabeth II Commission — creation.

There is created in the Department of Cultural Resources the Roanoke Voyages and Elizabeth II Commission. (1983 (Reg. Sess., 1984), c. 1115, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1115, s. 5 makes this Article effective upon ratification. The act was ratified July 7, 1984.

Section 4 of the act provides: "Any funds appropriated by the 1983 General Assembly for fiscal year 1984-85 to the

Department of Cultural Resources for operating expenses of the Roanoke Voyages Corridor Commission shall instead be used for operating expenses of the Roanoke Voyages and Elizabeth II Commission."

### § 143B-130. Roanoke Voyages and Elizabeth II Commission — powers and duties.

The Commission may:

- (1) Advise the Secretary of the Department of Cultural Resources on matters pertinent to the operation and maintenance of Ice Plant Island, the Elizabeth II State Historic Site and Visitor Center, and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587;
- (2) Make recommendations to the Secretary of the Department of Cultural Resources for establishing and providing for a proper charge for admission to the ship, and for the maintenance and operation of the ship, the visitor center, and the grounds as a permanent memorial and exhibit;
- (3) Solicit and accept gifts, grants, and donations;
- (4) Identify, preserve, and protect properties located in Dare County having historical significance to the State of North Carolina, Dare County, and the Town of Manteo, with the approval or assistance of the Department of Cultural Resources;



- (5) Cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Natural Resources and Community Development, and other governmental agencies, officials, and entities, and provide them with assistance and advice;
- (6) Adopt and enforce such bylaws, rules, regulations, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties;
- (7) Establish and maintain a "Roanoke Voyages and Elizabeth II Commission Fund" composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may establish a reserve fund to be maintained and used for contingencies and emergencies. (1983 (Reg. Sess., 1984), c. 1115, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 673, s. 3.2, effective July 10, 1985, purported to amend Session Laws 1983 (Reg. Sess., 1984), c. 1115, s. 2 (codified as this section) by "deleting '24 voting members', and substituting '26 voting members', and by inserting immediately before the words 'eight voting', the words 'one member appointed by the Dare County Board of Commissioners to represent the business community, one member appointed by the governing board of the Town of Manteo to represent the business community,'." Session

Laws 1985, c. 673, s. 3.3 also effective July 10, 1985, purported to amend Session Laws 1983 (Reg. Sess., 1984), c. 1115, s. 2, by "adding the following new sentence immediately after the second sentence: 'The members appointed by the Dare County Board of Commissioners and the governing board of the Town of Manteo shall serve for four-year terms'." It would appear that Session Laws 1983 (Reg. Sess., 1984), c. 1115, s. 3 (codified as § 143B-131) was the Code section intended to be amended.

### **§ 143B-130.1. Roanoke Voyages and Elizabeth II Commission — additional powers and duties; transfer of assets and liabilities.**

(a) The Commission shall also have the powers and duties established by Chapter 1194, Session Laws of 1981, as amended.

(b) All lawful standards, rules, regulations, guidelines, contracts, agreements, permits, bylaws, and certificates of appropriateness of or issued by the Roanoke Voyages Corridor Commission shall remain in effect until modified, amended, revoked, repealed or changed (as appropriate) by the Roanoke Voyages and Elizabeth II Commission in accordance with law.

(c) All the assets and liabilities of the Roanoke Voyages Corridor Commission are vested in the Roanoke Voyages and Elizabeth II Commission. (1985, c. 673, s. 2.)

**Editor's Note.** — Session Laws 1985, c. 673, s. 4 makes this section effective

upon ratification. The act was ratified July 10, 1985.



**§ 143B-131. Roanoke Voyages and Elizabeth II Commission — members; terms; vacancies; expenses; officers.**

The Commission shall consist of 24 voting members: 12 appointed by the Governor, six of whom shall be residents of Dare County; eight voting ex officio members who are the Secretary of the Department of Cultural Resources, the Secretary of the Department of Transportation, the Secretary of the Department of Natural Resources and Community Development, the Chairman of the Dare County Board of Commissioners, the Mayor of the Town of Manteo, the Chairman of the Board of Directors of the Friends of Elizabeth II, the Site Manager of the Elizabeth II State Historic Site, and the Chairman of the Roanoke Island Historical Association; and four members appointed by the Commission from time to time according to the procedure it adopts. Members appointed by the Governor shall serve for four-year terms, except that of the initial appointments, six shall be for two-year terms and six for four-year terms. Ex officio members may designate a person to serve as a member of the Commission in their stead. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be made by the Commission and shall be for the balance of the unexpired term. The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Governor shall, after recommendations have been sent to him in writing each year at the time of the annual meeting, designate from among the members of the Commission a chairman, vice-chairman, secretary, and treasurer. (1983 (Reg. Sess., 1984), c. 1115, s. 3.)

**Editor's Note.** — Session Laws 1985, c. 673, s. 3.2, effective July 10, 1985, purported to amend Session Laws 1983 (Reg. Sess., 1984), c. 1115, s. 2 (codified as § 143B-130) by "deleting '24 voting members', and substituting '26 voting members', and by inserting immediately before the words 'eight voting', the words 'one member appointed by the Dare County Board of Commissioners to represent the business community, one member appointed by the governing board of the Town of Manteo to represent the business community,'." Session

Laws 1985, c. 673, s. 3.3 also effective July 10, 1985, purported to amend Session Laws 1983 (Reg. Sess., 1984), c. 1115, s. 2, by "adding the following new sentence immediately after the second sentence: 'The members appointed by the Dare County Board of Commissioners and the governing board of the Town of Manteo shall serve for four-year terms.'" It would appear that Session Laws 1983 (Reg. Sess., 1984), c. 1115, s. 3 (codified as this section) was the Code section intended to be amended.



Part 28. Andrew Jackson Historic Memorial  
Committee.

**§ 143B-132. Andrew Jackson Historic Memorial  
Committee.**

(a) The State of North Carolina and its citizens have long noted and recognized the origins and early life of Andrew Jackson, the nation's seventh president, in the Waxhaw region along the North Carolina-South Carolina border. It is important that this State recognize the origins and early life of this outstanding national leader in Western North Carolina. It is necessary to plan an appropriate memorial in Union County, North Carolina, to commemorate and display for all Americans the origins and early life of Andrew Jackson.

(b) There is created an Andrew Jackson Historic Memorial Committee to consist of 12 members, six appointed by the Speaker of the House of Representatives and six appointed by the President of the Senate. Members shall serve four-year terms. Vacancies shall be filled by the appointing officer for the unexpired term.

(c) The primary duties and responsibilities of the Committee are:

- (1) To assist the Division of Archives and History, Department of Cultural Resources in determining the need for a permanent memorial to honor Andrew Jackson and to commemorate and display the origins and early life of Jackson in the Waxhaw region;
- (2) To assist the Division of Archives and History, Department of Cultural Resources in determining the location, design, content, and form of a memorial, if the Committee determines that one is needed, at one of the sites associated with the early life of Andrew Jackson;
- (3) To assist the Division of Archives and History, Department of Cultural Resources in determining the most appropriate methods for proceeding with the establishment and operation of the memorial, including methods for obtaining the necessary financial resources for property acquisition, capital expenditures, and operational expenses; and
- (4) To select appropriate qualified researchers and research institutions to assist the Committee in undertaking any required studies to complete the Committee's duties and responsibilities.

(d) Members of this Committee may not receive per diem, travel reimbursement, or subsistence allowances.

(e) Administrative and staff services for the Committee shall be provided by the Division of Archives and History, Department of Cultural Resources, which shall also provide the Committee with information in its possession relating to past research concerning the origins and early life of Andrew Jackson. In addition, the Division of Archives and History, Department of Cultural Resources shall assist the Committee in preparing a report for submission to the General Assembly.

(f) Funds for the operation of the Committee shall be provided by the Department of Cultural Resources. (1985, c. 757, s. 180.)



**Editor's Note.** — Session Laws 1985, c. 757, s. 211 makes this Part effective July 1, 1985.

**§§ 143B-133 to 143B-135:** Reserved for future codification purposes.

### ARTICLE 3.

#### *Department of Human Resources.*

##### Part 1. General Provisions.

#### **§ 143B-137. Department of Human Resources — duties.**

Cited in *Thomas S. v. Morrow*, 601 F. Supp. 1055 (W.D.N.C. 1984).

#### **§ 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 amendment, effective Feb. 14, 1983, designated the former language of this sec-

tion as subsection (a) and added subsection (b).



## 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) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
- (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; 1983 (Reg. Sess., 1984), c. 1022, s. 5.)

**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."

Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, makes the act effective from November 1, 1984, through June 30, 1987.

Section 153-53.4, referred to in subdivision (c)(4) of this section, was repealed



by Session Laws 1973, c. 822. As to county law enforcement and confinement facilities, see now § 153A-211 et seq.

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

The 1983 (Reg. Sess., 1984) amendment, effective from November 1, 1984 to June 30, 1987, deleted subdivision (c)(1), relating to home health agencies.

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

### § 143B-147. Commission for Mental Health, Mental Retardation and Substance Abuse Services — creation, powers and duties.

(a) There is hereby created the Commission for Mental Health, Mental Retardation and Substance Abuse Services of the Department of Human Resources with the power and duty to adopt, amend and repeal rules 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 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 adopt rules regarding the
  - a. Admission, including the designation of regions, treatment, and professional care of individuals admitted to any State facility as defined in G.S. 122C-3, that is now or may 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 Part 4 of Article 4 of Chapter 122C of the General Statutes;
  - c. Hearings and appeals of area mental health, mental retardation and substance abuse authorities as provided for in Part 4 of Article 4 of Chapter 122C 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 for the licensing of facilities for the mentally ill, mentally retarded and substance abusers, under Article 2 of Chapter 122C 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 adopt rules relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100.
  - (6) To adopt rules to establish the professional requirements for staff of licensed facilities for the mentally ill, mentally retarded and substance abusers. Such rules may require that one or more, but not all staff of a facility be either licensed or certified. If a facility has only one professional staff, such rules may require that that individual be licensed or certified. Such rules may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the General Statutes provided that the professional certification board evaluates applicants on a basis which protects the public health, safety or welfare.
  - (7) Except where rule making authority is assigned under that Article to the Secretary of Human Resources, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes.
  - (8) To adopt rules specifying procedures for waiver of rules adopted by the Commission.

(b) All rules hereby adopted shall be consistent with the laws of this State and not inconsistent with the management responsibilities of the Secretary of Human Resources provided by this Chapter and the Executive Organization Act of 1973.

(d) All rules adopted by the Commission for Mental Health, Mental Retardation and Substance Abuse Services shall be enforced by the Department of Human Resources. (1973, c. 476, s. 129; 1977, c. 568, ss. 2, 3; c. 679, s. 1; 1981, c. 51, s. 1; 1983, c. 718, s. 5; 1983 (Reg. Sess., 1984), c. 1110, s. 6; 1985, c. 589, ss. 47-54.)

**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. 718, s. 6, is a severability clause.

Session Laws 1983 (Reg. Sess., 1984), c. 1110, s. 15, provides: "The Department of Human Resources is directed to conduct an evaluation of the effects of the provisions of this bill on the availability, utilization, cost and quality of chemical dependency treatment in North Carolina. The Department shall

present an interim report to the 1987 General Assembly and a final report to the 1989 General Assembly."

Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

Session Laws 1985, c. 589, s. 65 is a severability clause.



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

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added subdivision (a)(6).

The 1985 amendment, effective January 1, 1986, deleted "and regulations" following "rules" in the first and second sentences of the introductory language of subsection (a), in the introductory language of subdivision (a)(1), and in subdivision (a)(2), substituted "adopt" for "establish standards and promulgate" near

the beginning of the introductory language of subdivision (a)(1), rewrote paragraph (a)(1)a., substituted "Part 4 of Article 4 of Chapter 122C" for "Article 2F of Chapter 122" in paragraphs (a)(1)b. and (a)(1)c., deleted "inspection, registration and" preceding "licensing of facilities" and substituted "Article 2 of Chapter 122C" for "Article 1A of Chapter 122" in subdivision (a)(2), rewrote subdivision (a)(5), added subdivisions (a)(7) and (a)(8), and deleted "and regulations" following "rules" in subsections (b) and (d).

## Part 6. Social Services Commission.

### § 143B-153. (Effective until July 1, 1986) Social Services Commission — creation, powers and duties.

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

- (1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108A of the General Statutes of the State of North Carolina.
- (2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
  - a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);
  - b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;
  - c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and



- d. For the payment of grants-in-aid and other State funds to private child-caring institutions. The payment and distribution of grants-in-aid funds to private child-caring institutions shall be regulated by the grant-in-aid (GIA) formula. This formula and any modifications of this formula shall be approved by the Advisory Budget Commission prior to its implementation.
- (2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
  - a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;
  - b. For implementation of Title XX of the Social Security Act, 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:

- 1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
  - 2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
  - 3. Contracting for and purchasing services; and
  - 4. Monitoring for effectiveness and compliance with State and federal law and regulations.
- (3) The Social Services Commission shall have the power and duty to establish and adopt standards:
    - a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
    - b. For the inspection and licensing of domiciliary homes for aged or disabled persons as provided by G.S. 131D-2(b).
    - c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
    - d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;



- e. Repealed by Session Laws 1981, c. 562, s. 7.
  - f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.
- (4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.
  - (5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.
  - (6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
  - (7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.
  - (8) The Commission may establish by regulation, 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 non-profit 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; 1985, c. 206; c. 689, s. 29f.)



**Section Set Out Twice.** — The section above is effective until July 1, 1986. For this section as amended effective July 1, 1986, see the following section, also numbered § 143B-153.

**Editor's Note.** — Session Laws 1985, c. 479, s. 97(a), provides:

"The monthly fee schedule for the payment of costs of necessary day care for minor children of needy families set by the Social Services Commission pursuant to G.S. 143B-153(8)a. may not exceed:

"(1) One hundred eighty-five dollars (\$185.00) for children who have not reached their third birthday in Level I care;

"(2) Effective July 1, 1985, through June 30, 1986, two hundred thirty dollars (\$230.00) for children who have not reached their third birthday in Level II care;

Effective July 1, 1986, two hundred ten dollars (\$210.00) for children who have not reached their third birthday in Level II care;

"(3) One hundred fifty dollars (\$150.00) for children who are three years of age and older in Level I care;

"(4) Effective July 1, 1985, through June 30, 1986, one hundred seventy-five dollars (\$175.00) for children who are three years of age and older in Level II care;

Effective July 1, 1986, one hundred sixty-five dollars (\$165.00) for children who are three years of age and older in Level II care;

"(5) One hundred dollars (\$100.00) for individual child care giving arrangements; and

"(6) One hundred fifty dollars (\$150.00) for day care plans."

**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.

The 1985 amendment by c. 206, effective May 17, 1985, rewrote paragraph (3)b, which read "For the inspection and licensing of all boarding homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77."

The 1985 amendment by c. 689, s. 29, effective July 11, 1985, substituted "Chapter 108A" for "Chapter 108" in subdivision (1), substituted "Chapter 108A" for "Chapter 108" and "G.S. 108A-25(b)" for "G.S. 108-23(b)" in paragraph (2)a, substituted "G.S. 108A-48" for "G.S. 108-66" in paragraph (2)c, substituted "G.S. 131D-1" for "G.S. 108-76" in paragraph (3)a, substituted "G.S. 131D-2" for "G.S. 108-77" in paragraph (3)b as it read prior to being rewritten by c. 206, substituted "G.S. 131D-10.5" for "G.S. 108-78" in paragraph (3)c, substituted "G.S. 153A-220" for "G.S. 153-51" and "Article 2 of Chapter 131D" for "Part 2 of Article 3 of Chapter 108" in paragraph (3)d, and substituted "Chapter 131D" for "Article 3 of Chapter 108" in paragraph (3)f.

## § 143B-153. (Effective July 1, 1986) Social Services Commission — creation, powers and duties.

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

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be nec-



essary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108A of the General Statutes of the State of North Carolina.

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

- a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);
- b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;
- c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and
- d. For the payment of grants-in-aid and other State funds to private child-caring institutions. The payment and distribution of grants-in-aid funds to private child-caring institutions shall be regulated by the grant-in-aid (GIA) formula. This formula and any modifications of this formula shall be approved by the Advisory Budget Commission prior to its implementation.

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

- a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;
- b. For implementation of Title XX of the Social Security Act, 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:



1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
  2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
  3. Contracting for and purchasing services; and
  4. Monitoring for effectiveness and compliance with State and federal law and regulations.
- (3) The Social Services Commission shall have the power and duty to establish and adopt standards:
- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
  - b. For the inspection and licensing of domiciliary homes for aged or disabled persons as provided by G.S. 131D-2(b).
  - c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
  - d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
  - e. Repealed by Session Laws 1981, c. 562, s. 7.
  - f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.
- (4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.
- (5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.
- (6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.
- (8) The Commission may establish by regulation, 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 in licensed facilities and registered plans 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 non-profit 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; 1985, c. 206; c. 479, s. 96; c. 689, s. 29f.)

**Section Set Out Twice.** — The section above is effective July 1, 1986. For this section as in effect until July 1, 1986, see the preceding section, also numbered § 143B-153.

**Editor's Note.** —

Session Laws 1985, c. 479, s. 97(a), provides:

"The monthly fee schedule for the payment of costs of necessary day care for minor children of needy families set by the Social Services Commission pursuant to G.S. 143B-153(8)a. may not exceed:

"(1) One hundred eighty-five dollars (\$185.00) for children who have not reached their third birthday in Level I care;

"(2) Effective July 1, 1985, through June 30, 1986, two hundred thirty dollars (\$230.00) for children who have not reached their third birthday in Level II care;

Effective July 1, 1986, two hundred ten dollars (\$210.00) for children who have not reached their third birthday in Level II care;

"(3) One hundred fifty dollars (\$150.00) for children who are three years of age and older in Level I care;

"(4) Effective July 1, 1985, through June 30, 1986, one hundred seventy-five dollars (\$175.00) for children who are three years of age and older in Level II care;

Effective July 1, 1986, one hundred sixty-five dollars (\$165.00) for children who are three years of age and older in Level II care;

"(5) One hundred dollars (\$100.00) for individual child care giving arrangements; and

"(6) One hundred fifty dollars (\$150.00) for day care plans."

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** —

The 1985 amendment by c. 206, effective May 17, 1985, rewrote paragraph (3)b, which read "For the inspection and licensing of all boarding homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77."

The 1985 amendment by c. 479, s. 96, effective July 1, 1986, rewrote paragraph (8)a, which read "A fee schedule for the payment of the costs of necessary day care for minor children of needy families."

The 1985 amendment by c. 689, s. 29, effective July 11, 1985, substituted "Chapter 108A" for "Chapter 108" in subdivision (1), substituted "Chapter 108A" for "Chapter 108" and "G.S. 108A-25(b)" for "G.S. 108-23(b)" in paragraph (2)a, substituted "G.S. 108A-48" for "G.S. 108-66" in paragraph (2)c, substituted "G.S. 131D-1" for "G.S. 108-76" in paragraph (3)a, substituted "G.S. 131D-2" for "G.S. 108-77" in paragraph (3)b as it read prior to being rewritten by c. 206, substituted "G.S. 131D-10.5" for "G.S. 108-78" in paragraph (3)c, substituted "G.S. 153A-220" for "G.S. 153-51" and "Article 2 of Chapter 131D" for "Part 2 of Article 3 of Chapter 108" in paragraph (3)d, and substituted



"Chapter 131D" for "Article 3 of Chapter 108" in paragraph (3)f.

**§ 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.

**§ 143B-155. Social Services Commission — regular and special meetings.**

**CASE NOTES**

**Applied** in Forsyth County Bd. of Social Servs. v. Division of Social Servs., — N.C. App. —, 325 S.E.2d 47 (1985).

**Part 10. North Carolina Medical Care Commission.**

**§ 143B-165. North Carolina Medical Care Commission — creation, powers and duties.**

There is hereby created the North Carolina Medical Care Commission of the Department of Human Resources with the power and duty to promulgate rules and regulations to be followed in the construction and maintenance of public and private hospitals, medical centers, and related facilities with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

- (11) The Commission is authorized to adopt such rules as may be necessary to carry out the provisions of Part C of Article 6, and Article 10, of Chapter 131E of the General Statutes of North Carolina. (1973, c. 476, s. 148; c. 1090, s. 2; c. 1224, s. 3; 1981, c. 614, s. 10; 1981 (Reg. Sess., 1982), c. 1388, s. 3; 1983 (Reg. Sess., 1984), c. 1022, s. 6.)

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

**Editor's Note. —** Session Laws 1983 (Reg. Sess., 1984), c. 1022, s. 8, makes the act effective from November 1, 1984, through June 30, 1987.

**Effect of Amendments. —**

The 1983 (Reg. Sess., 1984) amendment, effective from November 1, 1984 to June 30, 1987, added subdivision (11).



## Part 10A. Child Day-Care Commission.

### § 143B-168.1. (For schedule of applicability see note) Child Day-Care Licensing Commission — creation; powers and duties.

There is hereby created the Child Day-Care Licensing Commission of the Department of Administration with the power and duty to adopt rules and regulations to be followed in the licensing and operation of child day-care facilities and day-care plans as provided by Article 7 of Chapter 110 of the General Statutes of North Carolina.

- (1) The Child Day-Care Licensing Commission shall have the power and duty to adopt rules and regulations:
  - a. For the issuance of licenses to any day-care facility; and
  - b. To register and adopt standards for day-care plans and to adopt rules and regulations as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina, and to establish standards for "AA" license, only, as authorized by G.S. 110-88(7).
- (2) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Child Day-Care Licensing Board shall remain in full force and effect unless and until repealed or superseded by action of the Child Day-Care Licensing Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Administration. (1975, c. 879, s. 13; 1985, c. 757, ss. 155(f), 156(m).)

**Editor's Note.** — Sections 143B-168.1 and 143B-168.2 of this Part are former Part 4 of Article 9 of Chapter 143B, §§ 143B-375 and 143B-376, as recodified by Session Laws 1985, c. 757, s. 155(f), effective July 1, 1985.

**Applicability of Amendment by Session Laws 1985, c. 757, s. 156(m).** — Session Laws 1985, c. 757, s. 156(n) provides:

Subsections (i) through (m) of this section apply to day-care plans in existence or seeking registration according to the following schedule:

- "(1) For day care plans in counties with populations of 100,000 or more, on and after January 1, 1987;
- "(2) For day care plans in counties with populations of 50,000 or more but less than 100,000, on July 1, 1987;
- "(3) For day care plans in counties with populations of 25,000 or more but less than 50,000, on January 1, 1988;

"(4) For day care plans in counties with populations of less than 25,000, on July 1, 1988.

"The 1980 census shall provide the population data.

"Upon ratification of this act, the North Carolina Child Day Care Commission shall adopt regulations and standards to implement this section, which regulations and standards shall be effective on January 1, 1986, and apply to day-care plans according to the schedule set out in this subsection. Those building standards adopted by units of local government shall not be a cause to penalize those day care centers which have been built according to those building standards or regulations which may be imposed pursuant to this Article."

Session Laws 1985, c. 757, s. 155(q) provides:

"The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appro-



priations, allocations or other funds, including the functions of budgeting and purchasing, of the North Carolina Day Care Licensing Commission of the Department of Administration is transferred to the Department of Human Resources. The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the Office of Day Care Licensing of the Department of Administration and of the Office

of Day Care Services of the Department of Human Resources, are transferred to the Division of Facility Services of the Department of Human Resources. Any disputes arising out of this transfer shall be resolved by the Governor pursuant to G.S. 143B-4."

**Effect of Amendments.** — The 1985 amendment by c. 757, s. 156(m), effective January 1, 1986, and applicable according to the schedule set out in the note above, inserted "and adopt standards for" near the beginning of paragraph (1)b.

### **§ 143B-168.2. Child Day-Care Licensing Commission — members; selection; quorum; compensation.**

The Child Day-Care Licensing Commission of the Department of Administration shall consist of 15 members, one of whom shall be the Governor and 14 of whom shall be citizen members appointed by the Governor, Lieutenant Governor and Speaker of the House, as hereinafter provided. The Governor may designate a representative to sit in his place on the Commission. The 14 citizen members shall be appointed by the Governor, Lieutenant Governor and Speaker of the House, as hereinafter provided, with provision that none shall be employees of the State. Seven of said appointees shall be operators of day-care facilities subject to licensing, five of whom are actively engaged in operation for profit and two of whom shall be operators of nonprofit facilities and the Speaker of the House shall appoint one of the operators of a nonprofit facility. Of the five operators who are operating for profit, one shall be from a facility licensed for no more than 29 children, two shall be from a facility licensed for no more than 70 children and the Lieutenant Governor shall appoint one of these two members, and two shall be from a facility licensed for more than 70 children and the Speaker of the House shall appoint one of these two members. Seven appointees shall be citizens not employed by day-care facilities who have no direct or indirect pecuniary interest in such, but four of whom shall be a parent of a child in day-care at the time of their appointment. The Lieutenant Governor shall appoint one of the seven members not employed by day care. The term of the Governor shall end on the day his term of office ends, whether by death, resignation, or expiration of such term. At the end of the respective terms of office of the members of the Commission, their successors shall be appointed for terms of three years. Any member shall serve only so long as that member meets the qualifications for appointment. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

The Governor shall designate a member of the Commission as chairman to serve in such capacity at the pleasure of the Governor.



The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

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

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

All clerical and other services required by the Commission shall be supplied by the Secretary of Administration. (1975, c. 879, s. 14; 1981, c. 498, s. 1; 1985, c. 757, s. 155(f).)

**Editor's Note.** — Sections 143B-168.1 and 143B-168.2 of this Part are former Part 4 of Article 9 of Chapter 143B, § 143B-375 and 143B-376, as recodified by Session Laws 1985, c. 757, s. 155(f), effective July 1, 1985.

### § 143B-168.3. Child Day-Care Commission — powers and duties.

The Child Day-Care Licensing Commission of the Department of Administration is transferred, recodified, and renamed the Child Day-Care Commission of the Department of Human Resources with the power and duty to adopt rules to be followed in the licensing and operation of child day care facilities and day care plans as provided by Article 7 of Chapter 110 of the General Statutes.

(a) The Child Day-Care Commission shall adopt rules:

- (1) For the issuance of licenses to any day care facility; and
- (2) To register day care plans and to adopt rules as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina, and to establish standards for "AA" licenses, as authorized by G.S. 110-88(7).

(b) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Child Day-Care Licensing Commission or the Social Services Commission shall remain in full force and effect unless and until repealed or superseded by action of the Child Day-Care Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1985, c. 757, s. 155(a).)

**Editor's Note.** — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

Session Laws 1985, c. 757, s. 155(q) provides:

"The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the North Carolina Day Care Licensing Commission of the Department of Administration is transferred to the Department of Human Resources. The statutory authority,

powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the Office of Day Care Licensing of the Department of Administration and of the Office of Day Care Services of the Department of Human Resources, are transferred to the Division of Facility Services of the Department of Human Resources. Any disputes arising out of this transfer shall be resolved by the Governor pursuant to G.S. 143B-4."



### **§ 143B-168.4. Child Day-Care Commission — members; selection; quorum; compensation.**

The Child Day-Care Commission of the Department of Human Resources shall consist of 15 members. Seven of the members shall be appointed by the Governor and eight by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, day care and who have no financial interest in a day care facility or plan. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving day care services. Three of the members appointed by the Governor shall be day care providers, two of whom shall be affiliated with a for profit day care plan or facility and one of whom shall be affiliated with a nonprofit plan or facility. Two of the members appointed by the General Assembly on the recommendation of the President of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be day care providers, one affiliated with a for profit day care facility or plan and one affiliated with a nonprofit day care facility or plan. None may be employees of the State. Members shall be appointed as follows:

- (1) Of the Governor's initial appointees, four shall be appointed for terms expiring June 30, 1986, and three shall be appointed for terms expiring June 30, 1987;
- (2) Of the General Assembly's initial appointees appointed upon recommendation of the President of the Senate, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987;
- (3) Of the General Assembly's initial appointees appointed upon recommendation of the Speaker of the House of Representatives, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121. After the initial appointees' terms have expired, all members shall be appointed to serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

A vacancy occurring during a term of office is filled:

- (1) By the Governor, if the Governor made the initial appointment;
- (2) By the General Assembly, if the General Assembly made the initial appointment in accordance with G.S. 120-122.

At its first meeting the Commission members shall elect a chairman to serve a two-year term. Chairmen shall be elected for two-year terms thereafter. The same member may serve as chairman for two consecutive terms.



Commission members may be reappointed and may succeed themselves for a maximum of four consecutive terms.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1985, c. 757, s. 155(a).)

**Editor's Note.** — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

### **§ 143B-168.5. Child Day-Care Commission — special unit.**

There is established within the North Carolina Child Day Care Commission a special unit to deal primarily with day-care licensing and registration violations involving child abuse and neglect. The Commission shall make rules sufficient to define the duties of the special unit and to describe how it is to function as a special unit within the Commission as a whole. (1985, c. 757, s. 156(r).)

**Editor's Note.** — Session Laws 1985, c. 757, s. 156(x) makes this section effective July 1, 1985.

## **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 enforce-

ment, 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).

#### **Legal Periodicals.** —

For comment on North Carolina's 1981 Waste Management Act, see 5 Camp. L. Rev. 337 (1983).



## § 143B-216.11. Definitions.

Unless the context otherwise requires, the following definitions shall apply to this Part:

- (2) "Hazardous waste" has the same meaning as in G.S. 130A-290(4).
  - (3) "Hazardous waste facility" means a facility as defined in G.S. 130A-290(5).
  - (4) "Hazardous waste landfill facility" means a facility as defined in G.S. 130A-290(7).
  - (5) "Hazardous waste management" has the same meaning as defined in G.S. 130A-290(8).
- (1981, c. 704, s. 3; 1985, c. 462, ss. 4-7.)

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

**Effect of Amendments.** — The 1985 amendment, effective June 24, 1985, substituted "G.S. 130A-290(4)" for "G.S. 130-166.16(4)" in subdivision (2), substi-

tuted "G.S. 130A-290(5)" for "G.S. 130-166.16(5)" in subdivision (3), substituted "G.S. 130A-290(7)" for "G.S. 130-166.16(5a)" in subdivision (4), and substituted "G.S. 130A-290(8)" for "G.S. 130-166.16(7)" in subdivision (5).

## § 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).



### § 143B-216.13. Functions and powers of Board.

The Board shall perform the functions and be empowered as follows:

- (7) The Board shall prepare and file jointly with the Governor and the General Assembly an annual report describing the Board's activities and setting forth its recommendations for administrative or regulatory action required to improve the State's comprehensive waste management system or remedy noted defects in the system. A special report shall be filed in January of 1983 which shall include an evaluation on the possible need to organize State agencies more efficiently to improve overall performance of waste management functions. The report should give consideration to the advantages and disadvantages of consolidating or centralizing administration of programs that are now in separate agencies.

The Board shall provide a report to the General Assembly by February 1, 1985, to include:

- a. An analysis of the size, type and number of hazardous waste facilities needed in North Carolina and a plan to meet these needs;
  - b. An analysis of the system of collection of hazardous waste in North Carolina, recommendations as to how that system might be improved and a plan to implement these recommendations; and
  - c. An analysis of the cost incurred by local government because of the presence of a hazardous waste facility, a hazardous waste landfill facility or a comprehensive hazardous waste treatment facility.
- (11) The Board shall, in accordance with the procedures set forth in G.S. 130A-293 and 104E-6.2, make requisite findings and submit its recommendation to the Governor concerning the exercise of the State's preemptive powers.
  - (17) The Board shall certify comprehensive hazardous waste treatment facilities which meet the criteria prescribed in G.S. 130A-290(1). (1981, c. 704, s. 3; 1983 (Reg. Sess., 1984), c. 973, s. 9; 1985, c. 462, s. 8.)

**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 1983 (Reg. Sess., 1984) amendment, effective June 26, 1984, added the second para-

graph of subdivision (7) and added subdivision (17).

The 1985 amendment, effective June 24, 1985, substituted "G.S. 130A-293" for "G.S. 130-166.17B" in subdivision (11).

### § 143B-216.14. Functions and powers of Department of Human Resources.

The Department of Human Resources is authorized:

- (3) To enforce any rules adopted by the Board pursuant to this Part in the manner provided for by G.S. 130A-22(a) and 104E-24. (1981, c. 704, s. 3; 1985, c. 462, 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.

amendment, effective June 24, 1985, substituted "G.S. 130A-22(a)" for "G.S. 130-166.21E" in subdivision (3).

**Effect of Amendments.** — The 1985

**§§ 143B-216.16 to 143B-216.19:** Reserved for future codification purposes.

## Part 28. North Carolina Council on the Holocaust.

### **§ 143B-216.20. North Carolina Council on the Holocaust; creation; purpose.**

There is hereby created the North Carolina Council on the Holocaust. The purpose of the Council is to prevent future atrocities similar to the systematic program of genocide of six million Jews and others by the Nazis. This purpose shall be accomplished by developing a program of education and observance of the Holocaust. (1985, c. 757, s. 81(a).)

**Editor's Note.** — Session Laws 1985, c. 757, s. 211 makes this Part effective July 1, 1985.

### **§ 143B-216.21. Membership; selection; quorum.**

The Council shall consist of 24 members, eight appointed by the Governor, eight appointed by the President of the Senate, and eight appointed by the Speaker of the House of Representatives. Members shall be appointed in 1985 for two-year terms to begin July 1, 1985. In 1987 and biennially thereafter, successors shall be appointed for two-year terms. A majority of the members shall constitute a quorum for the transaction of business. (1985, c. 757, s. 81(a).)

### **§ 143B-216.22. Expenses.**

The members of the Council shall be compensated and reimbursed for their expenses in accordance with G.S. 138-5. (1985, c. 757, s. 81(a).)

### **§ 143B-216.23. Assistance.**

The Secretary may arrange for clerical or other assistance required by the Council. (1985, c. 757, s. 81(a).)



## ARTICLE 4.

*Department of Revenue.*

## Part 2. Property Tax Commission.

**§ 143B-222. Property Tax Commission — creation, powers and duties.**

**Legal Periodicals.** — For survey of 1982 law on taxation, see 61 N.C.L. Rev. 1217 (1983).

## 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 con-

strued 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 Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting commission members and shall designate a third commissioner to serve as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner.



Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work-release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work-release privileges except by majority vote of the full commission.

The full-time members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations 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; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

**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 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**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.

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in the next-to-last paragraph of this section.

**§ 143B-268:** Reserved for future codification purposes.

#### Part 4. Black Mountain Advancement Center for Women.

### **§ 143B-269. Black Mountain Advancement Center for Women — established; inmates; medical and food services; training; work release.**

(a) The Black Mountain Advancement Center for Women to be located at Black Mountain is established. This unit of the North Carolina Department of Correction shall be a satellite of the Correctional Center for Women at Raleigh and shall be governed by such rules and regulations as shall be imposed by the North Carolina Department of Correction.

(b) Notwithstanding G.S. 143-341(4)(g), the grounds now occupied by the Black Mountain Regional Mental Retardation Center as described below and Building 3 are transferred from the Department of Human Resources to the Department of Correction. The legal description of those grounds is:

In Buncombe County, Black Mountain Township:



Beginning on an iron pin in Craigmont Road North 23° 35' East 104.0 from an iron pin, the corner of the Bussman Corp. Property; runs thence, leaving said road, the following courses and distances: North 32° 35' 30" East 100 ft. to an iron pin; North 41° 35' 36" East 50 ft. to an iron pin; North 50° 03' 30" 100 ft. to an iron pin; North 53° 35' 30" East 200 ft. to a pin; South 87° 24' 30" East to a concrete monument, a corner of Bussman Corp. Property; North 33° 45' East 474 ft.; North 13° 30' East to a point in the junction of roads; thence following the road an average course of South 76° 10' West 865 ft. to an iron pin in Craigmont Road; thence South 06° 30' West 235 ft. to a pin in Craigmont Road; thence continuing with the center of said road South 25° 35' West 570 ft. to the beginning; containing 7.54 acres, more or less.

The transfer of these grounds and Building 3 shall occur on or before July 1, 1986.

(c) The women to be housed in the Black Mountain Advancement Center for Women shall be minimum custody inmates. The Secretary of Correction shall, when appropriate, transfer minimum custody inmates to this unit who have relatives in Western North Carolina. However, the population at this facility shall not exceed 50 inmates.

(d) When the population exceeds 40 square feet of living space per inmate in any women's correctional facility, the Secretary may transfer inmates to another facility or implement emergency release options within his authority within 30 days.

(e) The Department of Correction may contract with the Department of Human Resources to provide medical services and food services at cost to the Black Mountain Advancement Center for Women.

(f) The State Board of Community Colleges shall provide appropriate educational and vocational training to the inmates of the Black Mountain Advancement Center for Women. The staff of the Alcoholic Rehabilitation Center may assist in providing high school equivalency programs for the inmates.

(g) The Director of the Black Mountain Mental Retardation Center may allow inmates from the Black Mountain Advancement Center for Women who are qualified for positions in the Center to work in the Center on work release. The Director of the Black Mountain Mental Retardation Center may also allow inmates from the Black Mountain Advancement Center for Women to enroll in the health care programs offered at the Center and may grant certificates of completion to those inmates who satisfactorily finish the program.

(h) Nothing in this act shall obligate the General Assembly to appropriate funds to carry out its provisions. (1985, c. 593, ss. 1-8.)

**Editor's Note.** — Session Laws 1985, c. 593, s. 9 makes this section effective on ratification. The act was ratified July 4, 1985.



§§ 143B-270 to 143B-274: Reserved for future codification purposes.

## ARTICLE 7.

### *Department of Natural Resources and Community Development.*

#### Part 1. General Provisions.

#### § 143B-278.1. Biennial State of the Environment Report.

The Secretary of the Department of Natural Resources and Community Development shall report on the state of the environment to the General Assembly no later than January 1 of each odd-numbered year beginning on January 1, 1987. The report shall include:

- (1) An identification of environmental protection issues and problems related to managing the State's natural resources;
- (2) Trends in the quality and use of North Carolina's air and water resources;
- (3) Areas of the State where air or water pollution is evident or may occur during the upcoming biennium;
- (4) Current efforts and resources allocated by the Department to correct identified pollution problems and an estimate, if necessary, of additional resources needed to study, identify, and implement solutions to solve potential problems;
- (5) Departmental goals and strategies to protect the natural resources of the State;
- (6) Suggested legislation, if necessary; and
- (7) Any other information on the state of the environment the Secretary considers appropriate.

Other State agencies involved in protecting the State's natural resources and environment shall cooperate with the Department of Natural Resources in preparing this report. (1985, c. 479, s. 124.)

**Editor's Note.** — Session Laws 1985, c. 479, s. 231 makes this section effective July 1, 1985.

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as

"The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

#### § 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) Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 12, effective June 27, 1984.
  - (15) The Air Quality Council,
  - (16) Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 14, effective June 27, 1984.
  - (17) The North Carolina Employment and Training Council,
  - (18) Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 11, effective June 27, 1984.
  - (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; 1983 (Reg. Sess., 1984), c. 995, ss. 11, 12, 14; c. 1082, s. 1.)

**Effect of Amendments. —**

The 1983 amendment, effective July 1, 1983, deleted subdivision (9).

The 1983 (Reg. Sess., 1984) amendment by c. 995, effective June 27, 1984, deleted subdivision (14), relating to the Water Safety Council, subdivision (16),

relating to the Water Quality Council, and subdivision (18), relating to the Commercial and Sports Fisheries Committee.

The 1983 (Reg. Sess., 1984) amendment by c. 1082, effective July 5, 1984, also deleted subdivision (14).

## 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.
- h. For governing the registration, construction, installation, monitoring, repair, closure, financial responsibility, and leaks of underground tanks used for the storage of hazardous substances or oil pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes.

(1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222, s. 3; 1985, c. 551, s. 1.)

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

amendment, effective April 25, 1983, deleted paragraph f of subdivision (2).

**Effect of Amendments.** — The 1983

The 1985 amendment, effective July 1, 1985, added paragraph (2)h.

## **§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.**

### **CASE NOTES**

**Cited in** North Carolina State Bar v. Frazier, 62 N.C. App. 172, 302 S.E.2d 648 (1983).

## **Part 5. Marine Fisheries Commission.**

## **§ 143B-286. Marine Fisheries Commission — creation; powers and duties.**

There is hereby created the Marine Fisheries Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations to be followed in the protection, preservation, and enhancement of the commercial and sports fisheries resources of the State.

- (2) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules and regulations:

- a. Implementing the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134 of the General Statutes of the State of North Carolina.
- b. For the disposition of confiscated property as set forth in G.S. 113-137;
- c. Governing all license requirements and taxes prescribed in Chapter 113, Article 14;
- d. Governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina as provided in G.S. 113-160;



- e. Governing the possession, transportation and disposition of seafood as provided in G.S. 113-164;
- f. Regarding the disposition of the young of edible fish taken incidentally and unavoidably as provided by G.S. 113-185;
- g. Regarding the leasing of public grounds for oysters and clam production as provided in G.S. 113-202;
- h. Governing utilization of private fisheries as provided in G.S. 113-205;
- i. Repealed by Session Laws 1979, c. 253, s. 3;
- j. Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters as provided in G.S. 113-265.
- k. Governing the location and utilization of artificial reefs in coastal waters.

(1973, c. 1262, s. 24; 1977, c. 771, s. 4; 1979, c. 253, s. 3; 1985, c. 757, s. 138(a).)

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

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, added paragraph (2)k.

## 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.

subdivision (1) of this section, was repealed by Session Laws 1973, c. 1262, s. 33.

**Editor's Note.** — Subsection (a) of § 74-38, referred to in paragraph a of

Section 74-44, referred to in paragraph b of subdivision (1), was repealed



by Session Laws 1977, c. 712, s. 2, effective July 1, 1979.

amendment, effective May 6, 1983, added paragraph e of subdivision (1).

**Effect of Amendments.** — The 1983

## Part 10. Earth Resources Council.

**§§ 143B-302 to 143B-304:** Repealed by Session Laws 1983, c. 667, s. 1, effective July 1, 1983.

## Part 14. North Carolina Water Safety Council.

**§§ 143B-314 to 143B-316:** Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 12, effective June 27, 1984.

**Editor's Note.** — Repealed §§ 143B-314 to 143B-316 were also repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1082, s. 1, effective July 5, 1984.

## Part 16. Water Quality Council.

**§§ 143B-320, 143B-321:** Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 14, effective June 27, 1984.

## Part 18. Commercial and Sports Fisheries Advisory Committee.

**§§ 143B-325 to 143B-327:** Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 11, effective June 27, 1984.

## Part 24. North Carolina Employment and Training Council.

**§§ 143B-340, 143B-341:** Repealed by Session Laws 1985, c. 543, s. 6, effective July 1, 1985.

**Cross References.** — For the Employment and Training Act of 1985, see § 143B-344.11 et seq.



## Part 25. Triad Park Commission.

**§§ 143B-342 to 143B-344.2:** Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 13, effective June 27, 1984.

## Part 27. Employment and Training Act of 1985.

### § 143B-344.11. Title.

This Part shall be known as the North Carolina Employment and Training Act of 1985. (1985, c. 543, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 543, s. 7 makes this Part effective July 1, 1985.

### § 143B-344.12. Purpose.

The purpose of this Part is to develop a comprehensive State policy to guide the use of employment, training, education and economic development funds, and other resources toward the achievement of State economic and employment goals by:

- (1) Articulating and clarifying the State's policy and goals with regard to employment and training; and
- (2) Providing for legislative review and comment on certain reports, plans and recommendations. (1985, c. 543, s. 2.)

### § 143B-344.13. Declaration of the State policy on employment and training.

(a) It is the policy of this State that all federal, State and local government resources provided for employment and job training programs be coordinated to effect an efficient employment and training service delivery system.

(b) The goals of the State employment and training programs are:

- (1) To assist North Carolinians in obtaining gainful employment;
  - (2) To reduce dependence upon public assistance and unemployment insurance programs;
  - (3) To develop a well trained, productive work force that meets the needs of the State's changing economy; and
  - (4) To make maximum use of existing institutions and organizations with demonstrated effectiveness in employment and training service delivery.
- (c) The State's goals shall be accomplished by:
- (1) Preparing economically disadvantaged unskilled youth and adults for entry into the work force;
  - (2) Retraining people who are structurally unemployed, who are jobless through no fault of their own, or who must upgrade or retrain for job skills in other fields;



- (3) Providing training and services to increase the employment of the handicapped;
- (4) Insuring that timely and accurate statewide labor market data are available;
- (5) Linking employment and training services with economic development efforts;
- (6) Providing employment and training opportunities to meet the needs of industries utilizing advanced technology; and
- (7) Avoiding unnecessary duplication of employment and training services by State agencies. (1985, c. 543, s. 3.)

#### **§ 143B-344.14. Coordinating Council.**

(a) The State Job Training Coordinating Council is established within the Department of Natural Resources and Community Development.

(b) Operating funds and staff for the Council shall be supported with funds from the Job Training Partnership Act.

(c) Adequate office space shall be provided by the Department of Natural Resources and Community Development.

(d) The initial staffing level of the Council and the level of funding support required shall be determined by the Secretary of Natural Resources and Community Development. However, the initial staffing level shall not exceed 10 personnel as may be necessary to carry out its functions under this Part and the Job Training Partnership Act.

(e) Duties and responsibilities of the Council include but shall not be limited to the following:

- (1) Overseeing the meeting of the State's goals for employment and training.
- (2) Continuously reviewing the plans and programs of agencies operating federally funded programs related to employment and training and of other agencies providing employment and training-related services in the State that may be funded with State funds.
- (3) Conducting studies, preparing reports and analyses, including an annual published report to the Governor and General Assembly, and providing such advisory services as may be authorized or directed by the Governor.
- (4) Recommending the allocation of Job Training Partnership Act funds not subject to the seventy-eight percent (78%) that flows directly to service delivery areas.
- (5) Recommending program goals to insure job training for unskilled youth and adults is a matter of the highest priority and encouraging Service Delivery Areas (SDA's) to reflect these goals in their SDA plans.
- (6) Developing a long term tracking system to measure the effectiveness of the Job Training Partnership Act with respect to permanent job placements. Such a tracking system shall not be less than one year and shall be implemented by July 1, 1986.
- (7) Insuring compliance with the provisions of Sections 122(b)(7)A and B and 122(b)(8) of the Job Training Partnership Act no later than May 30 of every year, requiring the following:



- a. Identification of employment and training and vocational education needs throughout the State;
- b. Assessing the extent to which existing programs are meeting these needs.
- c. Repealed by Session Laws 1985, c. 791, s. 26.1(b), effective July 1, 1985.
- (8) Annually measuring the increase in employment and earnings and the reductions in welfare dependency by SDA resulting from participating in the Job Training Partnership Act program and reporting those findings to the Governor and General Assembly.
- (9) Annually reporting to the Governor and General Assembly on funds expended by each SDA for job training services and the reason service providers were chosen.
- (10) Providing management guidance and review of all State administered employment and training programs and encouraging compliance by the SDA's with the goals and purposes outlined by the General Assembly, the Governor, and the State Council.
- (11) Insuring that service delivery area plans are submitted to the General Assembly within 30 days after received by the Council as prescribed in Section 105(a)(1)A and B of Public Law 97-300.
- (12) Obtaining other information from recipients of Job Training Partnership Act funds, as requested by the Governor and General Assembly.
- (f) The State Job Training Coordinating Council:
  - (1) Shall be appointed by the Governor in a manner consistent with Section 122 of Public Law 97-300.
  - (2) Shall meet at the call of the chairman. A majority of the Council shall constitute a quorum for the transaction of business. Members shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, 138-6 or 120-3.1, as the case may be.
  - (3) The Council shall have a standing Committee to be known as the Job Training Interagency Committee. The members of the committee shall be the Secretaries of Natural Resources and Community Development and Commerce, the President of the Department of Community Colleges, the Commissioner of Labor, and the Superintendent of Public Instruction or their designees. This committee shall jointly develop and implement a plan to integrate the Job Training Partnership Act program and participants into the economic development efforts of the State. Such a plan shall make maximum use of customized training and on-the-job training efforts of existing, new, or expanding businesses. This plan shall be developed and implemented no later than February 1, 1986. A copy of the plan shall be submitted to the President of the North Carolina Senate and the Speaker of the North Carolina House of Representatives no later than December 15, 1985. In addition, the Joint Legislative Commission on Governmental Operations shall review the plan prior to implementation and offer suggested changes.



- (4) The Council may create such committees as may be necessary to the proper conduct of its business. The Governor may establish such additional advisory bodies, in accordance with existing law, related to employment and training as may be necessary and appropriate to the conduct of federally-supported employment and training-related programs. (1985, c. 543, s. 4; c. 791, s. 26.1.)

**Effect of Amendments.** — The 1985 amendment by c. 791, s. 26.1, effective July 1, 1985, deleted paragraph (e)(7)c., which read "Commenting on reports re-

quired by Sections 105(d)(3) of the Vocational Education Act of 1963 and making appropriate recommendations to the Governor and General Assembly."

## § 143B-344.15. Plan.

The Governor's Coordination and Special Services Plan shall comply with the provisions of Section 121 of the Job Training Partnership Act and shall mandate the coordination of all federal and State employment and training programs that guide the use of employment training, education, economic development and other resources toward achievement of State economic and employment goals. In addition, the plan shall also include the following:

- (1) Provisions for the design, development, and operation of a statewide uniform labor market information system to effect the timely availability of employment and training information throughout the State;
- (2) Provisions for the coordination and improvement of a statewide management information system capable of producing periodic financial reports and statistics on participants and program performance for use by service delivery areas; and
- (3) Provisions that require the utilization of existing institutions and organizations with clearly demonstrated success rates in employment and training. (1985, c. 543, s. 5.)

## ARTICLE 8.

### *Department of Transportation.*

#### Part 1. General Provisions.

## § 143B-346. Department of Transportation — purpose and functions.

### CASE NOTES

**The Board of Transportation and the Department of Transportation are in essence the sovereign** and have paramount authority over municipal corporations which are subservient to the State in such matters. Town of

Morehead City v. North Carolina Dep't of Transp., — N.C. App. —, 327 S.E.2d 602 (1985).

**Applied** in Tice v. Department of Transp., 67 N.C. App. 48, 312 S.E.2d 241 (1984).



## Part 2. Board of Transportation — Secondary Roads Council.

### § 143B-350. Board of Transportation — organization; powers and duties, etc.

(h) Each member of the Board of Transportation representing a highway engineering division, or residing in that highway engineering division if the member is appointed from the State at large, shall be consulted before the Board makes a decision affecting that division.

(1975, c. 716, s. 1; 1977, c. 464, s. 6; 1981 (Reg. Sess., 1982), c. 1191, ss. 9, 10; 1985, c. 479, s. 185.)

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

**Editor's Note.** — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** —

The 1985 amendment by c. 479, s. 185, effective July 1, 1985, added subsection (h).

### CASE NOTES

**The Board of Transportation and the Department of Transportation are in essence the sovereign** and have paramount authority over municipal corporations which are subservient to

the State in such matters. *Town of Morehead City v. North Carolina Dep't of Transp.*, — N.C. App. —, 327 S.E.2d 602 (1985).

## 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 4. Child Day-Care Licensing Commission.

§§ 143B-375, 143B-376: Recodified as §§ 143B-168.1, 143B-168.2 by Session Laws 1985, c. 757, s. 155(f), effective July 1, 1985.

#### Part 8. North Carolina Marine Science Council.

### § 143B-389. North Carolina Marine Science Council — creation; purpose; powers and duties.

(a) There is created the North Carolina Marine Science Council. The Council shall be administered by the Department of Administration.

(b) The Council shall serve as the central ocean and marine policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated ocean and marine policy.

(c) The Council shall have the following powers and duties:

- (1) To encourage the use and study of the ocean, estuarine and coastal waters of the State of North Carolina by citizens and industries of the State;
- (2) To encourage education and training in ocean science technology in the State of North Carolina, including extension and continuing education;



- (3) To maintain liaison with the corresponding authorities of nearby coastal states;
- (4) To develop and maintain a continuing inventory of the ocean and marine resources of the State of North Carolina;
- (5) To assist in the coordination of efforts toward full development of the State's ocean and marine resources with proper attention being given to the need for wise utilization;
- (6) To coordinate plans for and work with relevant governmental agencies in the implementation of all federal, State and local legislation relating to ocean and marine resources;
- (7) To examine all research, education and management programs relating to ocean and marine resources and to recommend revision when appropriate;
- (8) To secure directly from any executive department, agency, subdivision or independent instrumentality of State or local governments, any information it deems necessary to carry out its functions;
- (9) To administer the North Carolina Marine Resources Centers as follows:
  - a. Adopting goals and objectives for the centers and reviewing and revising these goals and objectives periodically;
  - b. Reviewing and approving requests for use of the center facilities and advising the Secretary of the Department of Administration on the most appropriate utilization consistent with the goals and objectives of the center;
  - c. Continually reviewing and evaluating the types of projects and programs being carried out in the center facilities and determining if the operation of the facilities is in compliance with the established goals and objectives;
  - d. Recommending to the Secretary of Administration any policies and procedures needed to assure effective staff performance and proper liaison among center facilities in carrying out the overall purposes of the center programs;
  - e. Reviewing center budget submissions to the Secretary of the Department of Administration;
  - f. Recruiting and recommending to the Secretary of the Department of Administration, candidates for the positions of directors of the three centers;
  - g. Creating local advisory committees to assist each center in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of the committees shall be appointed by the Secretary of Administration for four-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as its chairman. Members of the local advisory committees shall serve without compensation for services or expenses;
- (10) To advise the Governor and Secretary of Administration upon any matter the Governor or Secretary may refer to the Council and to advise and make recommendations on ocean and marine policy to the Governor; and



- (11) To undertake any other duties assigned to it by the Governor or the Secretary. (1975, c. 879, s. 31; 1985, c. 202, s. 1.)

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, rewrote this section.

**§ 143B-390. North Carolina Marine Science Council — membership; terms; rules of procedure; meetings; quorum; expenses.**

- (a) The Council shall consist of 28 members appointed as follows:

- (1) Eighteen members shall be appointed by the Governor from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the ocean and marine resources. These members shall serve four-year terms. The terms shall be staggered so that nine terms begin July 1 of each odd-numbered year.
- (2) Three at-large members shall be appointed by the Governor. These members shall serve four-year terms. The terms shall be staggered so that one term begins July 1, 1987, and two terms begin July 1, 1989.
- (3) Three members shall be the chairpersons of the North Carolina Marine Resources Centers' local advisory committees. These members shall serve during their tenures as chairmen.
- (4) One member representing the Department of Commerce in the area of ports and waterways shall be appointed by and serve at the pleasure of the Secretary of the Department of Commerce.
- (5) Two members representing the Department of Natural Resources and Community Development in the area of coastal resources and environmental protection shall be appointed by and serve at the pleasure of the Secretary of the Department of Natural Resources and Community Development.
- (6) One member representing the Department of Human Resources in the area of health services shall be appointed by and serve at the pleasure of the Secretary of the Department of Human Resources.

(b) Membership on the Marine Science Council shall become vacant automatically if a member ceases to qualify for his or her seat under the terms of subsection (a). In the event of a vacancy arising otherwise than by expiration of term, the Governor shall appoint a successor of like qualifications in accordance with subsection (a) who shall then serve the remainder of his predecessor's term.

(c) The Governor shall designate a member of the Council to serve as chairperson at the pleasure of the Governor.

(d) Membership on the Marine Science Council is an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) The Governor may 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.



(f) The Council shall adopt rules of procedure which shall be approved by the Secretary of Administration. The Council shall meet four times per year and at other times with the approval of the Secretary of Administration. Regular attendance at Council meetings is a duty of each member. The Council shall develop procedures for declaring any seat on the Council to be vacant upon failure of a member to perform his duty. A majority of the Council shall constitute a quorum for the transaction of business.

(g) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. With the prior approval of the Secretary of the Department of Administration, advisors to the Council may also receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1975, c. 879, s. 32; 1977, c. 464, s. 41; c. 771, s. 4; 1985, c. 202, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 202, s. 2, provides:

"Notwithstanding the provisions of G.S. 143B-390, as amended by Section 1 of this act, all members of the North Carolina Marine Science Council on July 1, 1985, shall serve on the Council for the remainder of the terms for which they were appointed. To achieve the staggered terms required by the provisions of G.S. 143B-390(1) and (2), as amended by Section 1 of this act, new members shall be appointed for 1985, 1987, and 1989 as follows:

"(1) The five vacancies occurring in 1985 shall be filled with five members meeting the requirements of G.S. 143B-390(1), as amended by Section 1 of this act. These members shall serve for two-year terms.

"(2) The nine vacancies occurring in 1987 shall be filled with eight members meeting the requirements of G.S. 143B-390(1), as amended by Section 1 of this

act, and one member meeting the requirements of G.S. 143B-390(2), as amended by Section 1 of this act. These members shall serve for two-year terms.

"(3) The 12 vacancies occurring in 1989 shall be filled with 10 members meeting the requirements of G.S. 143B-390(1), as amended by Section 1 of this act, and two members meeting the requirements of G.S. 143B-390(2), as amended by Section 1 of this act. All of these members shall serve for four-year terms except that one member meeting the requirements of G.S. 143B-390(1), as amended by Section 1 of this act, shall serve for a two-year term."

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, rewrote this section.

## Part 8A. Office of Marine Affairs.

### § 143B-390.1. Office of Marine Affairs — creation.

There is created in the Department of Administration the Office of Marine Affairs. (1985, c. 202, s. 3.)

**Editor's Note.** — Session Laws 1985, c. 202, s. 6, makes this Part effective July 1, 1985.



## § 143B-390.2. Office of Marine Affairs — organization; powers and duties.

(a) The Office shall be organized as prescribed by the Secretary of Administration and exercise the following powers and duties:

- (1) To administer the operations of the three North Carolina Marine Resources Centers;
- (2) To provide staff to the North Carolina Marine Science Council in furtherance of the Council's statutory powers and duties;
- (3) To advise the Secretary of Administration regarding the analysis, planning and implementation of current and future State and federal goals, policies and programs relating to the ocean and marine resources of North Carolina;
- (4) To advise the Secretary of Administration in providing recommendations to other educational, informational and policy-making bodies regarding marine and ocean resource issues;
- (5) To review research proposals submitted for State matching funds for The University of North Carolina Sea Grant College Program;
- (6) To administer the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC § 1801); and
- (7) To assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section. (1985, c. 202, s. 3.)

## 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. 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.)

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

**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 14A. Governor's Advocacy Council for Persons with Disabilities.**

**§ 143B-403.1. Governor's Advocacy Council for Persons with Disabilities — creation; powers and duties.**

There is hereby created the Governor's Advocacy Council for Persons with Disabilities of the Department of Administration. The Council shall have the following functions and duties:

(1) To provide for a statewide protection and advocacy program in accordance with the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6000, et seq. In accordance with this Act, the Council shall, among other things, investigate complaints made by or on behalf of incompetent developmentally disabled persons who reside in facilities for the developmentally disabled who have no legal guardian or whose guardian is the State or a State designee. Where such a complaint is made to the Council, the Council shall have access to the individual who is the subject of the complaint, and to the records of such individual; provided that an allegedly incompetent client who has no guardian who, in the opinion of the facility director, is competent shall have the opportunity prior to disclosure to deny access to his individual records by making a specific objection to disclosure to the Council. The Council shall keep client information confidential in accordance with 42 U.S.C. § 6000 and implementing rules and regulations, including 45 C.F.R. Part 1386. The Council's authority under this subsection shall override any contrary provisions of State law and shall apply as long as the Council is designated by the Governor as the Protection and Advocacy Agency under 42 U.S.C. § 6000.

(10a) To initiate public awareness projects and to make recommendations to the Governor concerning broad policies pertaining to rehabilitation for disabled persons;

(1977, c. 822, s. 1; 1979, c. 575; 1983 (Reg. Sess., 1984), c. 995, s. 20; 1985, c. 307.)

**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 1983 (Reg. Sess., 1984) amendment, effective June 27, 1984, inserted new subdivision (10a).

The 1985 amendment, effective June 3, 1985, rewrote subdivision (1), which read "To provide for a statewide program of protection and advocacy in accordance with section 113 of Public Law 94-103, Developmental Disabilities Services and Facilities Construction Act, as amended."



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 15A. North Carolina Advisory Council on  
the Eastern Band of the Cherokee.

**§ 143B-411.1. North Carolina Advisory Council on  
the Eastern Band of the Cherokee —  
creation; membership; terms of office.**

The North Carolina Advisory Council on the Eastern Band of the Cherokee is created in the Department of Administration. The Council shall consist of 16 members and shall include the following members: eight members shall be appointed by the Chief with the consent of the Tribal Council of the Eastern Band of the Cherokee; the Superintendent of Public Instruction or his designee; the Secretary of Administration or his designee; the Secretary of Human Resources or his designee; the Secretary of Natural Resources and Community Development or his designee; the Attorney General or his designee; one member appointed by the Governor who shall be a representative of local government in Swain, Jackson, or Cherokee Counties; one legislator appointed by the Speaker of the House; and one legislator appointed by the President Pro Tempore of the Senate. Members serving by virtue of their office within State Government shall serve so long as they hold that office, except that the members appointed by the Speaker of the House and the President Pro Tempore of the Senate shall serve for two-year terms. Members appointed by the Chief shall serve at the pleasure of the Chief. Members appointed by the Governor shall serve a term of four years at the pleasure of the Governor. (1983 (Reg. Sess., 1984), c. 1085, s. 1.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1085, s. 2, makes this Part effective upon ratification. It further provides that the members of the

Governor's Cherokee Task Force shall continue to serve until all appointments to the Advisory Council are made. The act was ratified July 5, 1984.



**§ 143B-411.2. North Carolina Advisory Council on the Eastern Band of the Cherokee — purpose or creation; powers and duties.**

The purpose of the Council is to study on a continuing basis the relationship between the Eastern Band of the Cherokee and the State of North Carolina in order to resolve any matters of concern to the State or the Tribe. It shall be the duty of the Council:

- (1) Identify existing and potential conflicts between the State of North Carolina and the Eastern Band of Cherokee Indians;
  - (2) Propose State and federal legislation and agreements between the State of North Carolina and the Cherokee Tribe to resolve existing and potential conflicts;
  - (3) To study and make recommendations concerning any issue referred to the Council by any official of the Eastern Band of the Cherokee, the State of North Carolina, or the government of Haywood, Jackson, Swain, Graham, or Cherokee Counties.
  - (4) Study other issues of mutual concern to the Eastern Band of the Cherokee;
  - (5) Make a report with recommendations as needed, but not less often than biannually to the Governor, the Chief of the Eastern Band of the Cherokee, the General Assembly, and the Tribal Council of the Eastern Band of the Cherokee.
- (1983 (Reg. Sess., 1984), c. 1085, s. 1.)

**§ 143B-411.3. North Carolina Advisory Council of the Eastern Band of the Cherokee — meetings; quorum; compensation; chairman.**

The Council shall meet at least quarterly or at the call of the chairman or a majority of the Council. A quorum shall consist of a majority of the Council. Designees of Council members serving by virtue of office shall be entitled to vote. The Chairman of the Council shall be elected from the membership. The selection of a member as chairman shall have no effect on the member's voting privileges. Council members who are seated by virtue of their office within State government shall be compensated at the rate specified in G.S. 138-6. Council members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-31. Other Council members shall be compensated at the rate specified in G.S. 138-5. (1983 (Reg. Sess., 1984), c. 1085, s. 1.)

**§ 143B-411.4. North Carolina Advisory Council on the Eastern Band of the Cherokee — clerical and administrative support.**

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1983 (Reg. Sess., 1984), c. 1085, s. 1.)



## 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. Repealed by Session Laws 1985, c. 757, s. 162, effective July 1, 1985
  - 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; 1985, c. 757, s. 162.)

**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 1983 amendment, effective July 8, 1983, added paragraph (1)u.

The 1985 amendment, effective July 1, 1985, deleted paragraph (1)p, which read "Department of Justice."

## Part 19. Jobs for Veterans Committee.

### § 143B-420. Governor's Jobs for Veterans Committee — creation; appointment, organization, etc.; duties.

(a) There is hereby created and established in the North Carolina Department of Administration, Division of Veterans Affairs, a committee to be known as the Governor's Jobs for Veterans Com-



mittee, with one member from each Congressional district, appointed by the Governor. Members of the Committee shall serve at the pleasure of the Governor. The Secretary of Administration, with the concurrence of the Governor, shall appoint a chairman to administer this Committee who shall be subject to the direction and supervision of the Secretary. The chairman shall serve at the pleasure of the Secretary. The chairman shall devote full time to his duties of office.

(1977, c. 1032; 1985, c. 479, s. 166.)

**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 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985 amendment by c. 479, s. 166, effective July 1, 1985, substituted "with one member from each Congressional district, appointed by the Governor" for "with such members as the Governor shall appoint" at the end of the first sentence of subsection (a).

## Part 20. Public Officers and Employees Liability Insurance Commission.

**§§ 143B-422 to 143B-426.1:** Recodified as §§ 58-27.20 to 58-27.26 by Session Laws 1985, c. 666, s. 79, effective July 10, 1985.

## Part 22. North Carolina Agency for Public Telecommunications.

### **§ 143B-426.9. North Carolina Agency for Public Telecommunications — creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.**

The North Carolina Agency for Public Telecommunications is created. It is governed by the Board of Public Telecommunications Commissioners, composed of 27 members as follows:

- (1) A Chairman appointed by, and serving at the pleasure of, the Governor;
- (2) Ten at-large members, appointed by the Governor from the general public;
- (3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
- (4) Two members appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121;
- (5) The Secretary of Administration, ex officio;
- (6) The Chairman of the Board of Trustees of The University of North Carolina Center for Public Television (if and when established), ex officio;



- (7) The Chairman of the State Board of Education, ex officio;
- (8) The Chairman of the OPEN/net Committee, ex officio, so long as such person is not a State employee;
- (9) The Chairman of the North Carolina Utilities Commission, ex officio;
- (10) The Director of the Public Staff of the North Carolina Utilities Commission, ex officio;
- (11) The Chairman of the Public Radio Advisory Committee of the North Carolina Agency for Public Telecommunications, ex officio;
- (12) The Superintendent of Public Instruction, ex officio;
- (13) The President of the University of North Carolina, ex officio;
- (14) The President of the Department of Community Colleges, ex officio; and
- (15) Two members ex officio who shall rotate from among the remaining heads of departments enumerated in G.S. 143A-11 or G.S. 143B-6, appointed by the Governor.

The 10 at-large members shall serve for terms staggered as follows: four terms shall expire on June 30, 1980; and three terms shall expire on June 30, 1982; and three terms shall expire on June 30, 1984. Thereafter, the members at large shall be appointed for full four-year terms and until their successors are appointed and qualified. In making appointments of members at large, the Governor shall seek to appoint persons from the various geographic areas of the State including both urban and rural areas; persons from various classifications as to sex, race, age, and handicapped persons; and persons who are representatives of the public broadcast, commercial broadcast, nonbroadcast distributive systems and private education communities of the State.

The terms of the ex officio members are coterminous with their respective terms of office. In the event that any of the offices represented on the Board ceases to exist, the successor officer to the designated member shall become an ex officio member of the Board; if there shall be no successor, then the position on the Board shall be filled by a member to be appointed by the Governor from the general public. The ex officio members shall have the right to vote.

The initial members appointed to the Board 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.

The terms of the rotating ex officio members shall be of one-year duration, and the schedule of rotation is determined by the Governor.

Each State official who serves on the Board may designate a representative of his department, agency or institution to sit in his place on the Board and to exercise fully the official's privileges of membership.

The Secretary of Administration or his designee serves as secretary of the Board.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies shall be filled in the same manner as the original appointment.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.



The Board meets quarterly and at other times at the call of the chairman or upon written request of at least six members.

A majority of the Board members shall constitute a quorum for the transaction of business. (1979, c. 900, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 6-8; 1983 (Reg. Sess., 1984), c. 1116, s. 92.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

**Effect of Amendments.** —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, rewrote

subdivision (8), which formerly read "The Chairman of the North Carolina Privacy and Freedom of Information Commission (if and when established), ex officio."

## § 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) unless the



- Agency has consulted with 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 consultation with 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 Current Operations Appropriations 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 facili-



ties 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; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1985, c. 122, ss. 3, 4.)

**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 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Session Laws 1985, c. 122, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1985."

**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).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in subdivision (9) of this section.

The 1985 amendment, effective April 25, 1985, substituted "unless the Agency has consulted with the Advisory Budget Commission" for "without approval of the Advisory Budget Commission" at the end of subdivision (5) and substituted "Subject to consultation with the Advisory Budget Commission" for "Subject to the approval of the Advisory Budget Commission" at the beginning of subdivision (7).

## § 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.

### **§ 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 expi-



ration 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, upon ratification. The act was ratified c. 559, s. 5, makes this Part effective 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, c. 923, s. 267, makes this Part effective upon ratification. The act was ratified 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.)

## **Part 27. North Carolina Board of Science and Technology.**

### **§ 143B-426.30. North Carolina Board of Science and Technology; creation; powers and duties.**

The North Carolina Board of Science and Technology of the Department of Administration is created. The Board has the following powers and duties:

- (1) To identify, and to support and foster the identification of, important research needs of both public and private agencies, institutions and organizations in North Carolina;
- (2) To make recommendations concerning policies, procedures, organizational structures and financial requirements that will promote effective use of scientific and technological resources in fulfilling the research needs identified;
- (3) To allocate funds available to the Board to support research projects, to purchase research equipment and supplies, to construct or modify research facilities, to employ consultants, and for other purposes necessary or appropriate in



discharging the duties of the Board. (1973, c. 1262, s. 77; 1977, c. 198, ss. 2, 26; 1979, c. 668, s. 1; 1985, c. 757, s. 179(a), (c).)

**Editor's Note.** — This Part is Part 5 of Article 10 of Chapter 143B, §§ 143B-440 and 143B-441, as recodified by Session Laws 1985, c. 757, s. 179(c), effective July 15, 1985.

**Effect of Amendments.** — The 1985 amendment, effective July 15, 1985, substituted "Department of Administration" for "Department of Commerce" in the first sentence.

## § 143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and 13 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; two members from private industry in North Carolina; and two members from public agencies in North Carolina. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

The initial members appointed to the Board 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. The members from public agencies shall serve for terms expiring at the end of the term of the Governor appointing them. Of the remaining nine appointments by the Governor, five shall serve for four years expiring June 30, 1983, and four shall serve for two years expiring June 30, 1981; thereafter terms of all nine of these remaining members appointed by the Governor shall be for four years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall serve as chairman of the Board. The vice chairman of the Board shall be designated by the Governor from among the members of the Board. The Science Advisor to the Governor shall serve as executive director of the Board. The Secretary



of Administration or his designee shall serve as secretary to the Board.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1.

A majority of the Board constitutes a quorum for the transaction of business.

The Secretary of Commerce shall provide all clerical and other services required by the Board. (1979, c. 668, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 44-46; 1985, c. 757, s. 179(b), (c).)

**Effect of Amendments.** — The 1985 amendment, effective July 15, 1985, substituted "Secretary of Administration" for "Secretary of Commerce" in the third paragraph.

## 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., 307 N.C. 522, 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) Repealed by Session Laws 1985, c. 757, s. 179(d), effective July 15, 1985.
- (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; 1985, c. 757, s. 179(d).)

**Effect of Amendments.** — The 1983 amendment, effective July 21, 1983, added subdivision (22).

The 1985 amendment, effective July 15, 1985, deleted subdivision (13), which read "Board of Science and Technology."

## 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 5. North Carolina Board of Science and Technology.

§§ 143B-440, 143B-441: Recodified as §§ 143B-426.30, 143B-426.31 by Session Laws 1985, c. 757, s. 179(c), effective July 15, 1985.



## 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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 General Assembly in the Current Operations Appropriations Act. 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; 1985, c. 479, s. 219.)

**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 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."



Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments. —**

The 1983 amendment, effective July 11, 1983, rewrote the second sentence of subdivision (5), which formerly read "The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission."

The 1985 amendment by c. 479, s. 219, effective July 1, 1985, rewrote the second sentence of subdivision (5), which formerly read "The salary of the Director shall be fixed by the Governor after consultation with 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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.*, 307 N.C. 522, 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:

- (1) To sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;
- (2) To rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of all such property, real or personal, as the Commission may deem necessary;



- (3) To operate, maintain and control all railway equipment and railway operations transferred to it by the State Ports Authority;
- (4) To acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports terminal railroads in addition to those transferred to it by the State Ports Authority with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry goods, wares and merchandise over, along or upon the track of such railway or other conveyance;
- (5) To make agreements as to scale of wages, seniority and working conditions with railroad employees, including but not limited to, locomotive engineers, locomotive firemen, switchmen, switch engine foremen and hostlers engaged in the operation and servicing of the terminal railways and their equipment;
- (6) To connect with or cross any other railway upon payment of just compensation and to receive, deliver to and transport the freight, passengers and the cars of common carrier railroads as though it were an ordinary common carrier;
- (7) To appoint, with the approval of the Governor, a general manager of the Commission who shall serve at the pleasure of the board. The salary for the general manager shall be fixed by the General Assembly in the Current Operations Appropriations 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;
- (8) To establish an office for the transaction of its business at such place or places, as in the opinion of the Commission, shall be advisable or necessary in carrying out the purposes of this Part;
- (9) To pay all necessary costs and expenses involved in and incident to the formation and organization of the Commission, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;
- (10) To apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Commission shall constitute an indebtedness of the



State, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing powers of the State, or any political subdivision thereof;

- (11) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any manner coming within the purposes or powers of the Commission;
- (12) To acquire rights-of-way and the property necessary for the construction of administration buildings, equipment, servicing facilities, terminal railways and structures, railway crossings, bridges and causeways by purchase, by negotiation or by condemnation, and should the Commission elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Commission, and it may proceed in any manner provided for by the general laws of this State;
- (13) To do any and all things necessary to carry out and accomplish the purposes of this Article. (1979, c. 159, s. 1; 1983, c. 717, s. 85; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

**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 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments. —** The 1983 amendment, effective July 11, 1983, substituted "General Assembly in the Budget Appropriation Act" for "Gover-

nor with the approval of the Advisory Budget Commission" at the end of the first sentence of subdivision (7).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in subdivision (7) of this section.

## Part 11A. North Carolina Hazardous Waste Treatment Commission.

### § 143B-470. Declaration of findings.

The General Assembly of North Carolina hereby finds and declares that the safe management of hazardous waste, and particularly the timely establishment of adequate facilities for the disposal and management of hazardous waste, is one of the most urgent problems facing North Carolina. The safe management and disposal of hazardous wastes are essential to continued economic growth and for protection of the public health and safety and the environment. Consequently, cooperation and coordination among the private sector, the general public and State and local agencies to assure the prevention of unnecessary waste and the establishment of a comprehensive and integrated system of adequate treatment and disposal facilities are essential.

The General Assembly of North Carolina 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 or economically feasible, long-term retrievable storage is pref-



erable to other means of disposal until appropriate methods for recycling or detoxification of the stored wastes are found. Hazardous waste shall be treated prior to disposal or long-term storage in North Carolina. Long-term storage or disposal shall be used for the storage or disposal of the residual or ashes of hazardous waste which has been treated so that the toxicity is low enough to present no significant health or safety hazard in the event of leakage from the facility. Hazardous waste that cannot be reduced, stabilized or destroyed to the extent which renders it sufficiently low in toxicity as to present no significant health or safety hazard shall be stored in long-term retrievable storage until such methods are found. Hazardous waste in long-term retrievable storage shall be detoxified as soon as the Commission for Health Services determines, based upon a preponderance of the evidence, that the technology is available at a reasonable cost. Hazardous waste landfill facilities and polychlorinated biphenyl landfill facilities shall be detoxified as soon as economically feasible technology is available and sufficient money is available without additional appropriation. The General Assembly further finds that hazardous wastes shall be treated and disposed of in the most cost-effective manner while protecting public health and safety and the environment. (1983 (Reg. Sess., 1984), c. 973, s. 1.)

**Editor's Note.** — Session Laws 1983 this Article effective upon ratification.  
(Reg. Sess., 1984), c. 973, s. 10, makes The act was ratified June 26, 1984.

### § 143B-470.1. Declaration of purposes.

It is the purpose of this Part to provide for the siting, construction and operation of comprehensive hazardous waste management facilities to the end that hazardous waste may be treated or disposed of in the most cost-effective manner, while protecting public health and safety and the environment. It is also the purpose of the General Assembly to create a Commission to site, finance, build, lease or operate, or oversee a hazardous waste treatment facility if private enterprise fails to do so within a specified time. It is also the purpose of the General Assembly through powers granted to the Governor's Waste Management Board to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special local or private acts or resolutions, ordinances, property restrictions, zoning laws, rules and regulations, fire laws, rules and regulations, civil defense laws, rules and regulations, public health laws, rules and regulations, building codes, and otherwise. (1983 (Reg. Sess., 1984), c. 973, s. 1.)

### § 143B-470.2. Definitions.

Unless the context otherwise requires, the following definitions shall apply to this Part:

- (1) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended; codified in Chapter 82 of Title 42 of the United States Code, as amended.



- (2) "Hazardous waste" means a solid waste, or combination of solid wastes, as solid waste is defined in G.S. 130A-290(18), which because of its quantity, concentration or physical, chemical or infectious characteristics may:
- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
  - b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- (3) "Hazardous waste treatment facility" means a facility which is established, constructed, financed, sited and operated in accordance with this Part for the recovery, recycling, treatment, storage during collection and prior to treatment, short term storage after treatment, collection, processing, volume reduction, source separation, or transportation used exclusively in connection with the facility, of hazardous waste; and which facility includes several of the following equipments and processes: incinerators, rotary kilns, drum handling, washing and crushing facilities, raw waste tank storage, reduction, neutralization, detoxification, wastewater treatment facilities including settling systems, aerobic digesters, anaerobic digesters, clarifiers, neutralization facilities, solidifying facilities, evaporators, reactions to facilitate "reuse" or recycling, analytical capabilities, and other similar appropriate technologies, activities and processes as may now exist or be developed in the future.
- (4) "Hazardous waste generation" means the act or process of producing hazardous waste.
- (5) "Hazardous waste long-term storage facility" means any facility or any portion of a facility constructed pursuant to the rules adopted under this Part for storage of the residuals of the treatment of hazardous waste, on or in land.
- (6) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.
- (7) "Long-term retrievable storage" means storage in closed containers in facilities (either above or below ground) with (i) adequate lights, (ii) impervious cement floors, (iii) strong visible shelves or platforms, (iv) passageways to allow inspection at any time, (v) adequate ventilation if underground or in closed buildings, (vi) protection from the weather, (vii) accessible to monitoring with signs on both individual containers and sections of storage facilities, and (viii) adequate safety and security precautions for facility personnel, inspectors and invited or permitted members of the community.
- (8) "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
- (9) "Notice" shall include any written notice made in accordance with the provisions of G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure, or any notice provision under this Article or the federal act.



- (10) "Operated" includes any phase of the planning, application, siting, financing, construction, operating and maintaining of the hazardous waste treatment facility.
- (11) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity.
- (12) "Recycling" means the process by which recovered resources are transformed into new products so that the original products lose their identity.
- (13) "Reuse" means a process by which resources are reused or rendered usable.
- (14) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of hazardous waste(s) containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.
- (15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character, form or composition of any solid waste so as to neutralize the waste or to render the waste nonhazardous or less hazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of solid waste to render it nonhazardous.
- (16) "Treatment Commission" means the North Carolina Hazardous Waste Treatment Commission created by this Part.
- (17) "Unit of local government" means a county, city, town or incorporated village. (1983 (Reg. Sess., 1984), c. 973, s. 1.)

### § 143B-470.3. Creation of Commission.

Membership, appointment, terms and vacancies, officers, meetings and quorum, compensation.

The North Carolina Hazardous Waste Treatment Commission is created. It shall be governed by a board composed of nine members herein referred to as the Treatment Commission. Members of the General Assembly shall be ineligible for appointment to membership on the Treatment Commission. The Governor shall appoint three members of the Treatment Commission, and the General Assembly shall appoint six members of the Treatment Commission.

The initial appointments by the Governor shall be made on or after January 31, 1985, one term to expire January 31, 1989, and two terms to expire January 31, 1987. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of four years. The members of the Treatment Commission appointed by the Governor shall be selected from the State at large and insofar as practicable shall represent each geographic section of the State and the industrial and environmental interests of the State. Any vacancy occurring in the membership



of the Treatment Commission 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 three persons to serve terms expiring January 31, 1987. The General Assembly shall appoint three persons to serve terms expiring January 31, 1989. Successors shall serve for four-year terms. Of the three persons whose terms are to expire in 1987, two shall be appointed upon the recommendation of the President of the Senate and one shall be appointed upon the recommendation of the Speaker. Of the three persons whose terms are to expire in 1989, two shall be appointed upon the recommendation of the Speaker and one shall be appointed 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 members of the Treatment Commission appointed by the General Assembly shall be selected from the State at large and insofar as practicable shall represent each geographic section of the State and the industrial and environmental interests of the State. The General Assembly shall have the authority to remove any member appointed by the General Assembly. No member shall serve more than two consecutive four-year terms.

The Governor shall appoint from the members of the Treatment Commission the Chairman and Vice-Chairman of the Treatment Commission. The Secretary of Commerce or his designee shall serve as secretary of the Treatment Commission. The members of the Treatment Commission shall appoint a treasurer of the Treatment Commission. The Department of Commerce shall use funds already appropriated to the Department to implement this Part.

Should any one of the appointing authorities fail to make appointments by March 1, 1985, or in the event that the Chairman and Vice-Chairman of the Commission are not appointed by that date, the Treatment Commission shall proceed to elect officers and begin operation.

The Treatment Commission shall meet once in each 60 days at such regular meeting time as the Treatment Commission by rule may provide and at any place within the State as the Treatment Commission 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 Treatment Commission 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. (1983 (Reg. Sess., 1984), c. 973, s. 1.)

#### **§ 143B-470.4. Powers and duties of the Treatment Commission.**

(a) To carry out the purposes of this Part, the Treatment Commission:



- (1) May exercise 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) May make all necessary contracts and arrangements with other authorities of this and other states for any other purposes of the Treatment Commission;
- (3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber, and dispose of real or personal property;
- (4) Shall establish an office for the transaction of its business at such place or places as, in the opinion of the Treatment Commission, shall be advisable or necessary in carrying out the purposes of this Part;
- (5) May create and operate any divisions it deems necessary or useful;
- (6) May pay all costs of the formation and organization of the Treatment Commission, and incident to its administration and operation, and may pay all other costs necessary in carrying out and accomplishing the purposes of this Part;
- (7) May apply for, accept and expend loans and grants of money from any federal agency or the State or any political subdivision thereof or from any public or private sources available for any of the purposes authorized in this Part, and to give any evidences of indebtedness as may be required. No indebtedness of any kind incurred or created by the Treatment Commission shall constitute an indebtedness of the State or any of its political subdivisions, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State or any of its political subdivision. At no time may the total outstanding indebtedness of the Treatment Commission, 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;
- (8) May appoint an Executive Director, who shall report to the Treatment Commission and serve at the pleasure of the Treatment Commission. The Executive Director with the approval of the Treatment Commission shall appoint such management personnel as he deems necessary to serve at his pleasure. They shall report to the Executive Director. The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission. The Executive Director 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 Treatment Commission and two other members elected annually by the Treatment Commission. The executive committee shall be vested with the authority to do all acts which are authorized by the bylaws of the Treatment Commission. Members of the executive committee shall serve until their successors are elected;
- (9) May act as agent for the United States of America, or any of its agencies, departments, corporations, or instrumentalities, in any matter coming within the purposes or powers of the Treatment Commission;



- (10) May, pursuant to Article 2 of Chapter 150A of the General Statutes, 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 any committees, and the functions thereof;
- (11) May do anything necessary to accomplish the purposes of this Part.

The property of the Treatment Commission shall not be subject to any taxes or assessments.

(b) If no permit to operate a hazardous waste treatment facility has been issued to a private operator by January 1, 1986, the Treatment Commission shall actively seek communities interested in hosting hazardous waste treatment facilities and private operators of hazardous waste treatment facilities and shall present appropriate sites, as prescribed in G.S. 130A-294(g), to those operators. If no permit to operate a hazardous waste treatment facility is pending which is likely to be granted to a private operator by July 1, 1986, the Treatment Commission shall, on the basis of the criteria and procedures outlined in G.S. 130A-294(g), select appropriate site(s) and begin proceedings to purchase or if necessary condemn property for such site(s) under the State's power of eminent domain. Condemnation shall be upon the same terms and procedures as set forth in Article 9 of Chapter 136 of the General Statutes of North Carolina, except that the Treatment Commission shall have the same rights, duties, and responsibilities as set forth for the North Carolina Department of Transportation. The purposes for which the power of eminent domain is used in this section are to enable a hazardous waste treatment facility to be built which will manage hazardous waste generated by the public or by private industry in making goods for the benefit of the public, and are, therefore, public purposes for these and related purposes. The Treatment Commission shall then actively seek private operators of hazardous waste treatment facilities and shall contract with at least one operator to purchase the site and construct a hazardous waste treatment facility. If no permit to operate a hazardous waste treatment facility has been issued by January 1, 1987, the Treatment Commission shall submit to the General Assembly plans for construction of a facility on one of the sites and shall proceed to begin construction of a facility within one year and shall seek a private operator to operate the facility. If no private operator can be found, the Treatment Commission shall operate the facility.

(c) The Treatment Commission shall submit to the General Assembly by January 1, 1986, a comprehensive plan for the treatment of hazardous waste in North Carolina, including a plan to provide for a statewide hazardous waste collection system. The Governor's Waste Management Board, the Solid and Hazardous Waste Branch of the Division of Health Services of the Department of Human Resources, and other State agencies and departments shall cooperate with the Treatment Commission in preparation of the plan. If the Treatment Commission, in its report to the General Assembly, indicates that the needs of the State for treatment of hazardous waste are being met, the Treatment Commission shall cease to exist as of January 1, 1986. If not, the Treatment Commission shall report periodically to the General Assembly or, if the General Assembly is not in session, to the Joint Legislative Commission on



Governmental Operations, on progress toward meeting the State's needs. (1983 (Reg. Sess., 1984), c. 973, s. 1; 1985, c. 711.)

**Effect of Amendments.** — The 1985 amendment, effective July 11, 1985, in subsection (b) substituted "January 1, 1986" for "June 1, 1985" in the first sentence, substituted "is pending which is likely to be granted" for "has been issued" and "July 1, 1986" for "January 1,

1986" in the second sentence, and substituted "January 1, 1987" for "June 1, 1986" in the sixth sentence, and in subsection (c) substituted "January 1, 1986" for "May 1, 1985" in the first sentence and substituted "January 1, 1986" for "October 1, 1985" in the third sentence.

## § 143B-470.5. Issuance of bonds and notes.

(a) As a means of raising the funds needed from time to time for the acquisition, construction, equipment, maintenance or operation of any facility, building, structure or any other matter or thing which the Treatment Commission is authorized to acquire, construct, equip, maintain, or operate, all or any of them, including authorized special user projects, the Treatment Commission may borrow money and in evidence thereof may issue bonds, notes and other obligations of the Treatment Commission as provided in the Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes. Bonds, notes and other obligations may also be issued to (i) establish any reserves the Treatment Commission may determine to be desirable including, without limitation, a debt service reserve fund, and (ii) provide for interest during the estimated period of construction and for a reasonable period thereafter and (iii) provide for working capital.

(b) Any obligations issued by the Treatment Commission under the provisions of this Part, their transfer and the income therefrom (including any profit made on the sale of them), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, except inheritance or gift taxes. (1983 (Reg. Sess., 1984), c. 973, s. 1.)

## 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 General Assembly in the Current Operations Appropriations Act. 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; 1985, c. 479, s. 223.)

**Editor's Note.** — Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

**Effect of Amendments.** — The 1985

amendment, effective July 1, 1985, substituted "General Assembly in the Current Operations Appropriations Act" for "Governor and the Authority, after consultation with the Advisory Budget Commission" at the end of the first sentence of subdivision (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.**

(d) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1034, s. 103.

(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; 1983 (Reg. Sess. 1984), c. 1034, s. 103.)

**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.** — For section providing for a deferred prosecution, community service restitution, and volunteer program, see now § 143B-475.1.

**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."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** —

The 1983 amendment added subsection (e).

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, deleted subsection (d), which read "The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution and volunteer program for youthful and adult offenders if funds are available."

**§ 143B-475.1. Deferred prosecution, community service restitution, and volunteer program.**

(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Crime Control and Public Safety may assign one or more coordinators to each judicial district to assure and report to the Court the offender's compliance with the requirements of the program. The appointment of each coordinator is subject to the approval of the chief district court judge. Each county must provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of fifty dollars (\$50.00) shall be paid by all persons who participate in the program or receive services from the program staff. If the person is convicted in a court in this State, the fee must be paid to the clerk of court in the county in which he is convicted. If the person is participating in the program as a result



of a deferred prosecution or similar program, the fee must be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason must pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee must be paid in full within two weeks from the date the person is ordered to perform the community service, and before he begins his community service, except that:

- (1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before he pays the fee by the court in which he is convicted; or
- (2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin his community service before the fee is paid by the official or agency representing the State in the agreement.

Fees collected pursuant to this subsection shall be deposited in the General Fund.

(c) The Secretary is authorized to designate the same person to serve as a coordinator under this section and under G.S. 20-179.4. (1983 (Reg. Sess., 1984), c. 1034, s. 102; 1985, c. 451.)

**Editor's Note.** — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes this section effective July 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

**Effect of Amendments.** — The 1985 amendment, effective July 1, 1985, rewrote subsection (b), which formerly

read "A fee of fifty dollars (\$50.00) shall be paid by all persons required to participate in the program. That fee shall be paid to an official designated for that purpose and at the time and place specified by the Secretary. Fees collected under this subsection shall be deposited in the General Fund."

## **§ 143B-475.2. (Effective July 1, 1986) Department of Crime Control and Public Safety — safety regulation of motor carrier transportation services; transfer.**

The safety regulation of all motor carrier transportation services is transferred from the Division of Motor Vehicles, Department of Transportation to the Department of Crime Control and Public Safety. This transfer includes all of the elements of a type I transfer as defined in G.S. 143A-6. The regulation of rates and market entry for motor carrier transportation services shall remain vested in the Utilities Commission. (1985, c. 757, s. 164(a).)

**Editor's Note.** — Session Laws 1985, c. 757, s. 164(d) makes this section effective July 1, 1986.



**§ 143B-476. (Effective July 1, 1986) Department of Crime Control and Public Safety — head; powers and duties as to emergencies and disasters.**

(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. These powers and duties include:

- (1) Accepting gifts, bequests, devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime Commission;
- (2) Making grants for use in pursuing the objectives of the Governor's Crime Commission;
- (3) Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes;
- (4) Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its duties; and
- (5) Administering the assistance Program for Victims of Rape and Sex Offenses.

The Secretary of the Department of Crime Control and Public Safety may adopt, pursuant to G.S. 62-281, highway safety rules for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers.

(b) The Secretary, through appropriate subunits of the department, shall, at the request of the Governor, provide assistance to State and local law-enforcement agencies, district attorneys, judges, and the Department of Correction, when called upon by them and so directed.

(c) In the event that the Governor, in the exercise of his constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized.

(d) Whenever the Secretary exercises the authority provided in subsection (c) of this section, he shall be authorized to utilize and allocate all available State resources as are reasonably necessary to cope with the emergency or disaster, including directing of personnel and functions of State agencies or units thereof for the purpose of performing or facilitating the initial response to the disaster or emergency. Following the initial response, the Secretary, in consultation with the heads of the State agencies which have or appear to have the responsibility for dealing with the emergency or disaster, shall designate one or more lead agencies to be responsible for sub-



sequent phases of the response to the emergency or disaster. Pending an opportunity to consult with the heads of such agencies, the Secretary may make interim lead agencies designations.

(e) Every department of State government is required to report to the Secretary, by the fastest means practicable, all natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents which appear likely to require the utilization of the services of more than one subunit of State government.

(f) The Secretary is authorized to adopt rules and procedures for the implementation of this section.

(g) Nothing contained in this section shall be construed to supersede or modify those powers granted to the Governor or the Council of State to declare and react to a state of disaster as provided in Chapter 166A of the General Statutes, the Constitution or elsewhere. (1977, c. 70, s. 1; 1979, 2nd Sess., c. 1310, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 17; 1985, c. 757, s. 164(c).)

For this section as in effect until July 1, 1986, see the main volume.

Effect of Amendments. —

The 1985 amendment, effective July 1, 1986, added the last sentence of subsection (a).

### Part 3. Governor's Crime Commission.

#### § 143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties.

(a) There are hereby created by way of extension and not limitation, the following adjunct committees of the Governor's Crime Commission: the Judicial Planning Committee, the Juvenile Justice Planning Committee, the Law Enforcement Planning Committee, the Corrections Planning Committee, and the Juvenile Code Revision Committee.

(c) The adjunct committees created herein shall report directly to the Governor's Crime Commission and shall have the following powers and duties:

(1) Repealed by Session Laws 1983 (Regular Session 1984), c. 995, s. 8, effective June 27, 1984.

(2) The Law Enforcement Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to law enforcement, including detention; shall participate in the development of the law-enforcement component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of law-enforcement services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of law-enforcement services.

The Law Enforcement Planning Committee shall maintain contact with the National Commission on Accreditation for Law Enforcement Agencies, assist the National Commission in the furtherance of its efforts, adapt the



- work of the National Commission by an analysis of law-enforcement agencies in North Carolina, develop standards for the accreditation of law-enforcement agencies in North Carolina, make these standards available to those law-enforcement agencies which desire to participate voluntarily in the accreditation program, and assist participants to achieve voluntary compliance with the standards.
- (3) The Judicial Planning Committee (which shall be appointed by the Supreme Court) shall establish court improvement priorities, define court improvement programs and projects, and develop an annual judicial plan in accordance with the Crime Control Act of 1976 (Public Law 94-503); shall advise the Governor's Crime Commission on all matters which are referred to it relevant to the courts; shall consider and recommend priorities for the improvement of judicial services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of judicial services.
  - (4) The Corrections Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to corrections; shall participate in the development of the adult corrections component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of correction services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of corrections.
  - (5) The Juvenile Justice Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to juvenile justice; shall participate in the development of the juvenile justice component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of juvenile justice services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of juvenile justice.
  - (6) The Juvenile Code Revision Committee shall study problems relating to young people who come within the juvenile jurisdiction of the district court as defined by Article 23 of Chapter 7A of the General Statutes and develop a legislative plan which will best serve the needs of young people and protect the interests of the State; shall study the existing laws, services, agencies and commissions and recommend whether they should be continued, amended, abolished or merged; and shall take steps to insure that all agencies, organizations, and private citizens in the State of North Carolina have an opportunity to lend advice and suggestions to the development of a revised juvenile code. If practical, the Committee shall submit a preliminary report to the General Assembly prior to its adjournment in 1977. It shall make a full and complete report to the General Assembly by March 1, 1979. This adjunct committee shall terminate on February 28, 1979.



(1975, c. 663; 1977, c. 11, s. 3; 1981, c. 605, s. 1; 1983 (Reg. Sess., 1984), c. 995, s. 8.)

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

**Effect of Amendments.** —

The 1983 (Reg. Sess., 1984) amendment, effective June 27, 1984, deleted "the Crime Prevention and Public Infor-

mation Committee" preceding "the Judicial Planning Committee" in subsection (a), and deleted subdivision (c)(1), which set forth the powers and duties of the Crime Prevention and Public Information Committee.

## 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 to 143B-485: Recodified as §§ 58-27.30 to 58-27.34 by Session Laws 1985, c. 757, s. 167(b), effective July 15, 1985.

## Part 5. Civil Air Patrol.

§§ 143B-493, 143B-494: Reserved for future codification purposes.

## Part 5A. North Carolina Center for Missing Children.

### § 143B-495. North Carolina Center for Missing Children.

There is established within the Department of Crime Control and Public Safety the North Carolina Center for Missing Children, which shall be organized and staffed in accordance with applicable laws. The Center shall:

- (1) Assist law enforcement in responding to reports of missing children and work with other State agencies to make State resources available;
- (2) Gather and distribute information and data on missing children;
- (3) Encourage research and study on missing children and on prevention of child abduction and the prevention of the exploitation of missing children;
- (4) Serve as a statewide resource center to assist local communities in programs and initiatives to prevent child abduction and the exploitation of missing children;
- (5) Continue increasing public awareness of the reasons why children are missing and the vulnerability of missing children;
- (6) Achieve maximum cooperation with other agencies of the State, with agencies of other states and the federal government and with the National Center for Missing and Exploited Children in rendering assistance to missing children and their parents, guardians, and legal custodians;



and cooperate with interstate and federal efforts to identify deceased children;

- (7) Forward the appropriate information to the Police Information Network to assist it in maintaining and publishing a directory of currently missing children. The Police Information Network shall issue all information on missing children to appropriate law-enforcement agencies throughout the State and to the Center. The information shall include information on children who have been found;
- (8) Maintain a directory of existing public and private agencies, groups, and individuals that provide effective assistance to families in the areas of prevention of child abduction, location of missing children, and follow-up services to the child and family, as determined by the Secretary of Crime Control and Public Safety;
- (9) Annually compile and publish reports on the actual number of children missing each year, listing the categories and causes, when known, for the disappearances;
- (10) Provide follow-up referrals for services to missing children and their families;
- (11) Maintain a toll-free 1-800 telephone service that will be in service at all times; and
- (12) Perform such other activities that the Secretary of Crime Control and Public Safety considers necessary to carry out the intent of its mandate.

In carrying out its mandate the Center established by this section shall take into consideration the information, publications, and recommendations of the North Carolina Missing Children's Information Center established by 1984 Executive Order No. 112, effective October 25, 1984.

The Secretary of Crime Control and Public Safety shall adopt rules necessary to enable the North Carolina Center for Missing Children to carry out its mandate. (1985, c. 765, s. 1.)

**Editor's Note.** — Session Laws 1985, c. 765, s. 3 makes this Part effective upon ratification. The act was ratified July 15, 1985.

**§§ 143B-496 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

*October 1, 1985*

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1985 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG  
*Attorney General of North Carolina*







