THE GENERAL STATUTES OF NORTH CAROLINA

1985 CUMULATIVE SUPPLEMENT

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

Under the Direction of
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Volume 3C, Part II

Chapters 144 to 156

1983 Replacement

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

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

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Preface

This Cumulative Supplement to Replacement Volume 3C, Part II 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 the Replacement Index Volumes.

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

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

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

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1985 Regular Session affecting Chapters 144 through 156 of the General Statutes.

Annotations:

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

North Carolina Reports through Volume 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 II

Chapter 146.
State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.

CASE NOTES

Stated in West v. Slick, — N.C. —, 326 S.E.2d 601 (1985).

ARTICLE 2.

Dispositions.

§ 146-3. What lands may be sold.

CASE NOTES

Littoral rights do not include ownership of the foreshore. The littoral owner may, however, in exercise of his right of access, construct a pier in order to provide passage from the upland to the sea. But the passage under the pier must be free and substantially unobstructed over the entire width of the foreshore. This means that from low to high water mark it must be at such a height that the public will have no difficulty in walking under it when the tide is low or in going under it in boats when the tide is high. West v. Slick, — N.C. —, 326 S.E.2d 601 (1985).

Ownership of the foreshore remains in the state. West v. Slick, — N.C. —, 326 S.E.2d 601 (1985).

The foreshore is reserved for the use of the public. West v. Slick, — N.C. —, 326 S.E.2d 601 (1985).

Applied in State v. Forehand, 67 N.C. App. 148, 312 S.E.2d 247 (1984).

§ 146-6. Title to land raised from navigable water.

(b) If any land is, by act of man, raised above the high water-mark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the commission of the act which caused the raising of the land in question shall have been previously approved in the manner provided in subsection (c) of this section. Title to land so raised, however, does not vest in the State if the land was raised within the bounds of a conveyance made by the State Board of Education, which included regularly flooded estuarine marshlands or lands beneath navigable waters, or if the land was raised under permits issued to private individuals pursuant to G.S. 113-229, G.S. 113A-100 through -128, or both.

(f) Notwithstanding the other provisions of this section, the title to land in or immediately along the Atlantic Ocean raised above the mean high water mark by publicly financed projects which involve hydraulic dredging or other deposition of spoil materials or sand vests in the State. Title to such lands raised through projects that received no public funding vests in the adjacent littoral proprietor. All such raised lands shall remain open to the free use and enjoyment of the people of the State, consistent with the public trust rights in ocean beaches, which rights are part of the common heritage of the people of this State. (1959, c. 683, s. 1; 1979, c. 414; 1985, c. 276.)

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 May 30, 1985, added the last sentence subsection (b), and added new subsection (f).

CASE NOTES

"Any Other Provision of This Section" Construed. — Although the language of subsection (e) is rather awkward, the reference in subsection (e) to "any other provision of this section" encompasses subsection (d) as well as subsection (a). Lackey v. Tripp, 63 N.C. App. 765, 306 S.E.2d 464, cert. denied, 309 N.C. 821, 310 S.E.2d 350 (1983).

Extension of Property Lines under Subsection (e). — Since subsection (e) is silent on how property lines are to be extended, the lines may be drawn as the Governor and Council of State in their discretion deem proper in a case controlled by subsection (e) and not by subsection (a). Lackey v. Tripp, 63 N.C. App. 765, 306 S.E.2d 464, cert. denied, 309 N.C. 821, 310 S.E.2d 350 (1983).

§ 146-12. Easements in lands covered by water.

CASE NOTES

Applied in State v. Forehand, 67 N.C. App. 148, 312 S.E.2d 247 (1984).

ARTICLE 3.

Discovery and Reclamation.

§ 146-17. Mapping and discovery agreements.

CASE NOTES

Stated in West v. Slick, — N.C. —, 326 S.E.2d 601 (1985).

ARTICLE 4.

Miscellaneous Provisions.

§ 146-20.1. Conveyance of certain marshlands validated; public trust rights reserved.

(a) Validation. — All conveyances of swamplands, including regularly flooded estuarine marshlands, that have previously been made by the Literary Fund, the North Carolina Literary Board, or the State Board of Education are declared valid, and the person to whom the conveyance was made or his successor in title is declared to have title to the marshland.

(b) Reservation. — Areas of regularly flooded estuarine marshlands within conveyances validated by subsection (a) remain subject to all public trust rights. (1985, c. 278, s. 1.)

Editor's Note. — Session Laws 1985, c. 278, s. 3 makes this section effective upon ratification. The act was ratified May 30, 1985.

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration.

Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State; provided that if the proposed acquisition is a purchase of land with an appraised value of at least twenty-five thousand dollars ($25,000), and the acquisition is for other than a transportation purpose, the acquisition may only be made after consultation with the Joint Legislative Commission on Governmental Operations. In determining whether the appraised value is at least twenty-five thousand dollars ($25,000), the value of the property in fee simple shall be used. The State may not purchase land as a tenant-in-common without consultation with the Joint Legislative Commission on Governmental Operations if the appraised value of the property in fee simple is at least twenty-five thousand dollars ($25,000). (1957, c. 584, s. 6; G.S., s. 146-103; 1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97.)

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 proviso at the end of the first sentence and added the second and third sentences.

§ 146-24. Procedure for purchase or condemnation.

CASE NOTES

Stated in State v. Forehand, 67 N.C. App. 148, 312 S.E.2d 247 (1984).

§ 146-25.1. Proposals to be secured for leases.

(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed twelve thousand dollars ($12,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall pro-

vide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies.

(1973, c. 1448; 1975, c. 523; 1977, c. 485; 1979, c. 43, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97.)

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. 1116, s. 115, is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, substituted "twelve thousand dollars ($12,000)" for "seven thousand five hundred dollars ($7,500)" in the first sentence of subsection (a).

ARTICLE 7.

Dispositions.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals.

CASE NOTES

An agreement to lease should be governed by the same statutory provisions as a lease itself. To hold otherwise would defeat the legislative intent to protect the State and taxpayers from liability for the unauthorized and invalid agreements of the State's numerous agents. Stewart v. Graham, — N.C. App. —, 325 S.E.2d 53 (1985).

§ 146-29.1. Lease or sale must not be for less than fair market value.

No land owned by the State or by any State agency may be sold, leased, or rented at less than fair market value. This section applies to sales, leases, and rentals to any person, except that it does not apply to sales, leases, or rentals to the United States or any of its agencies, to municipal corporations, special districts, political subdivisions of the State, or local school administrative units, and does not apply to transfers between State agencies. Any sale, lease, or rental of land owned by the State or by any State agency to the United States or any of its agencies, to municipal corporations, special districts, political subdivisions of the State, or local school administrative units shall be reported to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division, with the details of such transaction. (1985, c. 479, s. 172(a).)

Editor's Note. — Session Laws 1985, c. 479, s. 172(b) makes this section effective August 1, 1985, but provides that the section does not apply to contracts entered into prior to the effective date thereof.

Session Laws 1985, c. 757, s. 173 provides that this section, as enacted by Session Laws 1985, c. 479, s. 172, does not apply to the lease of property for the Ronald McDonald House that was approved by the Board of Governors of the University of North Carolina on June 28, 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.

§ 146-30. Application of net proceeds.

The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G.S. 105-296.1, if any; and
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in the Current Operations Appropriations Act. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Natural Resources and Community Development shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Current Operations Appropriations Act. In the Current Operations Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is sub-

ject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land in or around the unincorporated area known as Butner on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Hospital to provide water and sewers and to bring those streets in the unincorporated area known as Butner not on the State highway system up to standards adequate for acceptance on the system, according to a plan adopted by the Department of Administration, and the Office of State Budget and Management, with the approval of the Board of County Commissioners of Granville County and to build industrial access roads to industries on the Butner lands. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, c. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1; 1981, c. 859, s. 23.4; c. 1127, s. 33; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1983, c. 717, ss. 86, 86.1, 86.2, 87; c. 761, s. 166; 1983 (Reg. Sess., 1984), c. 1034, s. 164; c. 1116, s. 97.)

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, Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 and c. 1116, s. 115 are severability clauses.

Effect of Amendments. —

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

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

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

The 1983 (Reg. Sess., 1984) amendment by c. 1034, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

The 1983 (Reg. Sess., 1984) amendment by c. 1116, effective July 1, 1984, added the language beginning "but if the appraised value in fee simple" at the end of the last sentence of the first paragraph.

ARTICLE 8.

Miscellaneous Provisions.

§ 146-32. Exemptions as to leases, etc.

The Governor, acting with the approval of the Council of State, may adopt rules and regulations.

(3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease

or rental which has a duration of more than 21 days, unless the class of lease or rental:

a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property; or

b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental exempted under this subparagraph may not be for a period of more than six months.

(1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97; 1985, c. 479, s. 173.)

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 (Reg. Sess., 1984), c. 1116, s. 115 and Session Laws 1985, c. 479, s. 230 are severability clauses.

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

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added subdivision (3).

The 1985 amendment, effective July 1, 1985, added "unless the class of lease or rental" at the end of the introductory language of subdivision (3) and inserted paragraphs (3)a and (3)b.

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-64. Definitions.

CASE NOTES

Ownership of the foreshore remains in the state. West v. Slick, — N.C. —, 326 S.E.2d 601 (1985).

Littoral rights do not include ownership of the foreshore. The littoral owner may, however, in exercise of his right of access, construct a pier in order to provide passage from the upland to the sea. But the passage under the pier must be free and substantially unobstructed over the entire width of the foreshore. This means that from low to high water mark it must be at such a height that the public will have no difficulty in walking under it when the tide is low or in going under it in boats when the tide is high. West v. Slick, — N.C. —, 326 S.E.2d 601 (1985).

§ 146-66. Voidability of transactions contrary to Chapter.

CASE NOTES

An agreement to lease should be governed by the same statutory provisions as a lease itself. To hold otherwise would defeat the legislative intent to protect the State and taxpayers from liability for the unauthorized and invalid agreements of the State's numerous agents. Stewart v. Graham, — N.C. App. —, 325 S.E.2d 53 (1985).

ARTICLE 16.

Form of Conveyances.

§ 146-74. Approval of conveyances.

Every proposed conveyance in fee of State lands shall be submitted to the Governor and Council of State for their approval. If the proposed conveyance is of State lands with an appraised value of at least twenty-five thousand dollars ($25,000), and it is for other than a transportation purpose, the Council of State shall consult with the Joint Legislative Commission on Governmental Operations before making a final decision on the proposed conveyance. Upon approval of the proposed conveyance in fee by the Governor and Council of State, a deed for the land being conveyed shall be executed in the manner prescribed in this Article. (1957, c. 584, s. 7; G.S., ss. 143-147; 1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97.)

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, inserted the present second sentence.

ARTICLE 17.

Title in State.

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

CASE NOTES

The operation of this section does not effect an uncompensated taking. State v. Taylor, 63 N.C. App. 364, 304 S.E.2d 767 (1983), cert. denied and appeal dismissed, 310 N.C. 311, 312 S.E.2d 655 (1984).

The statutory presumption created by this section is not unconstitutional. State v. Taylor, 60 N.C. App. 673, 300 S.E.2d 42 (1983), cert. denied and appeal dismissed, 308 N.C. 547, 303 S.E.2d 823 (1983), appeal dismissed, — U.S. —, 104 S. Ct. 1432, 79 L. Ed. 2d 756 (1984).

The presumption created by this section is reasonable since title to all lands in North Carolina, except those previously granted by the Crown, originated from the State, and the State has ultimate title to the soil. In addition, the statute does not authorize a "taking" of property. The presumption of title in the State lasts only until the rival claimant establishes valid title in himself. State v. Taylor, 60 N.C. App. 673, 300 S.E.2d 42 (1983), cert. denied and appeal dismissed, 308 N.C. 547, 303 S.E.2d 823 (1983), appeal dismissed, — U.S. —, 104 S. Ct. 1432, 79 L. Ed. 2d 756 (1984).

The State has the ultimate title to the soil. Since title to land is originally acquired from the State, it is reasonable to assume that, absent proof otherwise, title to any parcel within its boundaries reposes there. Therefore the presumption of title in the State created under this section passes constitutional muster. State v. Taylor, 63 N.C. App. 364, 304 S.E.2d 767 (1983), cert. denied and appeal dismissed, 310 N.C. 311, 312 S.E.2d 655 (1984).

Chapter 147.

State Officers.

Article 1

Classification and General Provisions.

Article 2.

Expenses of State Officers and State Departments.

Article 2A.

Annuities for State Employees.

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Article 5A.

Auditor.

ARTICLE 1.

Classification and General Provisions.

§ 147-4. Executive officers — election; term; induction into office.

The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor, who shall be elected for a term of four years, by the qualified electors of the State, at the same time and places, and in the same manner, as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the General Assembly. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law. (Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; Rev., s. 5326; C.S., s. 7627; 1931, c. 312, s. 5; 1953, c. 2; 1981, c. 504, s. 7; 1985, c. 563, s. 12.)

Effect of Amendments. — The 1985 amendment, effective July 2, 1985, deleted the former last three sentences of this section, which read: "On the first Thursday after the convening of the General Assembly, the person duly elected Governor shall, in the presence of a joint session of the two houses of the

General Assembly, take the oath of office prescribed by law and be immediately inducted into the office of Governor. Should the Governor elected not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some justice of the Supreme Court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in Article III, Sec. 1, of the Constitution shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected."

ARTICLE 2.

Expenses of State Officers and State Departments.

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

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

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

ARTICLE 2A.

Annuities for State Employees.

§ 147-9.2. Definitions.

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

(1) "Board" shall mean the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan established pursuant to Chapter 433 of the 1971 Session Laws and G.S. 143B-426.24.

(1a) "Chief executive officer" shall mean the person or group of persons responsible for the administration of any department or agency of the State of North Carolina, or of a wholly owned institution or instrumentality thereof, or an agent of such chief executive officer duly authorized to enter into the contracts with State employees referred to in G.S. 147-9.3 and 147-9.4.

(4) "Plan" shall mean the North Carolina Public Employee Deferred Compensation Plan. (1971, c. 433, s. 1; 1983, c. 559, s. 2.)

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

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

§ 147-9.4. Deferred Compensation Plan.

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

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

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, the right of an employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this section, and exempt from all State and local taxation. (1971, c. 433, s. 3; 1983, c. 559, s. 3; 1985, c. 660, s. 4.)

Editor's Note. — Section 147-62, referred to in this section, was recodified as § 143-3.3 by Session Laws 1983, c. 913, s. 49.

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

The 1985 amendment, effective July 9, 1985, added the last paragraph.

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

The salary of the Governor shall be ninety-eight thousand one hundred ninety-six dollars ($98,196) [per annum], payable monthly. He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215.)

Editor's Note. — It would appear that the words "per annum" were inadvertently omitted from the first sentence of this section when it was amended by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 217, and again when it was amended by Session Laws 1985, c. 479, s. 215.

Session Laws 1983, c. 761, s. 259, and Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, and Session Laws 1985, c. 479, s. 230 are severability clauses.

Effect of Amendments. —

Session Laws 1983, c. 761, s. 194, effective July 1, 1983, substituted "sixty thousand, seven hundred sixty-eight dollars ($60,768)" for "fifty-seven thousand, eight hundred sixty-four dollars ($57,864)".

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

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

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, rewrote the first sentence, which as amended by Session Laws 1983, c. 761, s. 194, effective July 1, 1983, read "The salary of the Governor shall be sixty thousand seven hundred sixty-eight dollars ($60,768)

per annum, payable monthly," and as amended by Session Laws 1983, c. 761, s. 195 to be effective January 1, 1985, read "The salary of the Governor shall be eighty-five thousand dollars ($85,000) per annum, payable monthly."

The 1985 amendment, effective July 1, 1985, substituted "ninety-eight thousand one hundred ninety-six dollars ($98,196)" for "ninety-three thousand five hundred sixteen dollars ($93,516)" in the first sentence.

§ 147-12. Powers and duties of Governor.

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

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

(3) He is to make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, he may also appoint to fill any vacancy occurring in that office, and the person he appoints shall serve for the unexpired term of the office and until his successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
b. During the continued absence of the regular holder of the office, or
c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead he acts,
b. Upon the return of the officer in whose stead he acts, or
c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as he deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of his office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor after consultation with the Advisory Budget Commission.

(3c) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an

office subject to confirmation by the General Assembly, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives by May 15 of the year in which the appointment is to be made of the name of the person he is submitting to the General Assembly for confirmation.

(3d) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the Senate, the Governor shall notify the President of the Senate by May 15 of the year in which the appointment is to be made of the name of the person he is submitting to the General Assembly for confirmation.

(1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C.S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148; 1981 (Reg. Sess., 1982), c. 1191, ss. 3, 4, 68; 1983, c. 913, s. 46; 1985, c. 122, s. 5; c. 757, s. 181(a).)

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

Effect of Amendments. —

The 1983 amendment, effective July 22, 1983, deleted "and for the purpose of paying the expenses of such visitation the Auditor is hereby directed to draw an order on the Treasurer in favor of the Governor to pay his expenses for each visitation" at the end of subdivision (1).

The 1985 amendment by c. 122, s. 5, effective April 25, 1985, substituted "after consultation with the Advisory Budget Commission" for "with the approval of the Advisory Budget Commission" at the end of subdivision (3).

The 1985 amendment by c. 757, s. 181(a), effective January 1, 1986, added subdivisions (3c) and (3d).

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).

§ 147-15. Salary of private secretary.

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

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

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

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

The Governor shall cause to be kept the following records:

(1) A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

(2) An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals.

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

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

§ 147-16.1. (See note) Publication of executive orders.

Executive orders of the Governor shall be filed and published as provided by Article 5 of Chapter 150B of the General Statutes. The Governor's office shall also send a copy of each executive order to the President of the Senate, to the Speaker of the House of Representatives, to the Principal Clerk of the House of Representatives and to the Principal Clerk of the Senate. (1971, c. 1196; 1985, c. 479, ss. 150-152; c. 746, s. 8.)

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."

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

Session Laws 1985, c. 479, s. 230, and Session Laws 1985, c. 746, s. 12, are severability clauses.

Effect of Amendments. — The 1985 amendment by c. 479, ss. 150 and 151, effective July 1, 1985, substituted "shall" for "may" in the first and second sentences of this section and inserted "on the day of issuance" in the second sentence, making the first two sentences as amended read: "Executive orders of the Governor which have the force of law shall be printed as an appendix to the Session Laws of North Carolina. The Governor's office shall transmit any such executive orders on the day of issuance to the Legislative Services Officer who shall cause them to be printed with the Session Laws."

The 1985 amendment by c. 479, s. 152(a), effective July 1, 1985, added the last sentence.

The 1985 amendment by c. 746, s. 8, effective Jan. 1, 1986, substituted the first sentence of the section as set out

above for the former first and second sentences.

§ 147-16.2. Duration of boards and councils created by executive officials; extensions.

(a) Any executive order of the Governor that creates a board, committee, council, or commission expires two years after the effective date of the executive order, unless the Governor specifies an expiration date in the order; provided, however, that any such executive order that was in effect on July 1, 1983, expires on June 30, 1985, unless the Governor specified a different expiration date in any such order. The Governor may extend any such executive order before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the Governor with the Secretary of State and the State Legislative Library.

(b) Any other State board, committee, council, or commission created by the Governor or by any other State elective officer specified in Article III of the North Carolina Constitution expires two years after it was created; provided, however, that any such board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The elective officer creating any such board, committee, council, or commission may extend the board, committee, council, or commission before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the elective officer with the Secretary of State and the State Legislative Library.

(c) Any State board, committee, council, or commission created by any official in the exective branch of State government, other than by those officials specified in subsections (a) and (b), expires two years after it was created; provided, however, that any board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on as earlier date. The Governor may extend any such board, committee, council, or commission before it expires for additional periods of up to two years by executive order; copies of the executive order shall be filed by the Governor with the Secretary of State and the State Legislative Library.

The words, "official in the executive branch of State government," as used in this section, do not include officials of counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivision, or local boards of education, other local public districts, units or bodies of any kind, or community colleges as defined in G.S. 115D-2(2), or private corporations created by act of the General Assembly.

(d) Any elective officer specified in subsection (b) and any other official in the executive branch of State government who creates a board, committee, council, or commission shall do so in writing and shall file copies of the writing with the Secretary of State and the State Legislative Library. (1983, c. 733, s. 1; 1983 (Reg. Sess., 1984), c. 1053.)

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

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 2, 1984, rewrote this section, which formerly related to executive orders of the Governor creating a board, committee, council, or commission.

§ 147-17. May employ counsel in cases wherein State is interested.

(a) No department, officer, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except with the approval of the Governor. The Governor shall give his approval only if the Attorney General has advised him, as provided in subsection (b) of this section, that it is impracticable for the Attorney General to render the legal services. In any case or proceeding, civil or criminal, in or before any court or agency of this State or any other state or the United States, or in any other matter in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and may fix the compensation for their services.

(b) The Attorney General shall be counsel for all departments, officers, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. Whenever the Attorney General shall advise the Governor that it is impracticable for him to render legal services to any State agency, officer, institution, commission, bureau or other organized activity, or to defend a State employee or former employee as authorized by Article 31A of Chapter 143 of the General Statutes, the Governor may authorize the employment of such counsel, as in his judgment, should be employed to render such services, and may fix the conpensation for their services.

(c) The Governor may direct that the compensation fixed under this section for special counsel shall be paid out of appropriations or other funds credited to the appropriate department, agency, institution, commission, bureau, or other organized activity of the State or out of the Contingency and Emergency Fund. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C.S., s. 7640; 1925, c. 207, s. 3; 1961, c. 1007; 1963, c. 1009; 1967, c. 1092, s. 2; 1985, c. 479, s. 136.)

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 June 27, 1985, inserted "officer" near the beginning of the first sentence of subsection (a), inserted the present second sentence of subsection (a), inserted "officers" in the first sentence of subsection (b), and inserted "officer" in the second sentence of subsection (b).

CASE NOTES

Applied in Tice v. Department of Transp., 67 N.C. App. 48, 312 S.E.2d 241 (1984).

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

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

The background on the seal shall contain a depiction of mountains running from left to right to the middle of the seal and an ocean running from right to left to the middle of the seal. A side view of a three-masted ship shall be located on the ocean and to the right of Plenty. The date "May 20, 1775" shall appear within the seal and across the top of the seal. The date "April 12, 1776" shall appear within the seal and across the bottom of the seal. The words "esse quam videri" shall appear at the bottom around the perimeter. The words "THE GREAT SEAL of the STATE of NORTH CAROLINA" shall appear around the perimeter. No other words, figures or other embellishments shall appear on the seal.

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

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

Effect of Amendments. — The 1983 amendment, effective Jan. 1, 1984, divided the former third sentence of the second paragraph into the present first through third sentences, inserting the language regarding the date April 12, 1776.

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

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

The salary of the Lieutenant Governor shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of eleven thousand five hundred dollars ($11,500). (1911, c. 103; C.S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1; 1971, c. 913; 1977, c. 802, s. 42.6; 1977, 2nd Sess., c. 1136, s. 40; 1979, 2nd Sess., c. 1137, s. 32; 1983, c. 761, s. 211; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Editor's Note. — Session Laws 1983, c. 761, s. 259 and Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 are severability clauses.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, rewrote the first sentence, which read: "The salary of the Lieutenant Governor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act."

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 this section.

ARTICLE 3A.

Emergency War Powers of Governor.

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

ARTICLE 3B.

North Carolina Housing Commission.

§ 147-33.12. Commission established.

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

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

Session Laws 1985, c. 778, s. 3, originally provided that the expenses of the Commission should be paid from nontax revenues in the Housing Finance Agency. However, Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 132 repealed this section 3. Session Laws 1985, c. 479, s. 149, effective July 1, 1985, amends Session Laws 1983, c. 778, as amended by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 132, by adding a new section 3, to read: "The expenses of the Commission shall be paid from nontax revenues in the Housing Finance Agency."

§ 147-33.13. Membership.

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

(1) Five shall be appointed by the Governor, two of whom shall be members of a governing board of a municipality or a county.

(2) Three shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
(3) Three shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121;
(4) The Secretary of Natural Resources and Community Development or a deputy secretary of the department designated by him shall serve ex officio;
(5) The Secretary of Commerce or a deputy secretary of the department designated by him shall serve ex officio;
(6) The State Treasurer or a deputy State treasurer designated by him shall serve ex officio;
(7) The Chairman of the Board of Directors of the Housing Finance Agency or the executive director of the agency, if designated by him, shall serve ex officio. (1983, c. 778, s. 1; 1985, c. 383.)

Effect of Amendments. — The 1985 amendment, effective June 13, 1985, added "two of whom shall be members of a governing board of a municipality or a county" at the end of subdivision (1).

§ 147-33.14. Terms.

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

§ 147-33.15. Vacancies.

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

§ 147-33.16. Expenses.

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

§ 147-33.17. Officers.

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

§ 147-33.18. Quorum; voting.

(a) Eight members of the Commission shall constitute a quorum.

(b) All members of the Commission have the right to vote on all issues before the Commission. (1983, c. 778, s. 1.)

§ 147-33.19. Meetings.

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

§ 147-33.20. Staff.

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

§ 147-33.21. Powers and duties.

The Commission shall have the following powers and duties:

(1) To oversee and update State housing policy, and develop and implement a State housing action plan.

(2) To encourage communication, cooperation and consultation between State agencies in housing policy, and be available to mediate such conflict between State agencies.

(3) To foster allocation of resources by State agencies with housing responsibilities that are consistent with the State housing policy and action plan.

(4) To obtain necessary information from other State agencies concerning housing.

(5) To submit to the Governor and the General Assembly a biennial report on the state of housing in North Carolina.

(6) To promote cost efficiency and lower construction costs in housing while retaining quality construction.

(7) To propose and review legislation relating to housing.

(8) To adopt necessary rules and regulations to implement this Article. (1983, c. 778, s. 1.)

ARTICLE 4.

Secretary of State.

§ 147-35. Salary of Secretary of State.

The salary of the Secretary of State shall be set by the General Assembly in the Current Operations Appropriations Act. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C.S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 14; 1977, c. 802, s. 42.7; 1983, c. 761, s. 212; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

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 1, 1983, rewrote this section.

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 this section.

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

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

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
Public Education, Department of	1	0
Superintendent of Public Instruction	3	1
Controller	1	0
Division of Community Colleges	3	1
Regional Service Centers	1 ea.	0
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1

Agency or Institution	Session Laws	Assembly Journals
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Natural Resources and Community Development, Department of	1	0
Division of Environmental Management	2	0
Board of Natural Resources and Community Development	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Human Resources, Department of	3	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health, Mental Retardation, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1

Agency or Institution	Session Laws	Assembly Journals
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk — Senate	1	1
Principal Clerk — House	1	1
Reading Clerk — Senate	1	1
Reading Clerk — House	1	1
Sergeant at Arms — House	1	1
Sergeant at Arms — Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University North Carolina System Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1

Agency or Institution	Session Laws	Assembly Journals
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell College	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Atlantic Christian College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J. C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0

Agency or Institution	Session Laws	Assembly Journals
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

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

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, c. 269, s. 1; cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38; 1975, c. 19, s. 59; c. 879, s. 46; 1975, 2nd Sess., c. 983, s. 115; 1977, c. 379, s. 1; c. 679, s. 8; c. 771, s. 4; 1979, c. 358, s. 27; 1981, c. 412, ss. 4, 5; 1981 (Reg. Sess., 1982), c. 1348, s. 2; 1983, c. 842.)

Effect of Amendments. — The 1983 amendment, effective July 20, 1983, added to the table of agencies and institutions receiving copies of Session Laws and Senate and House Journals the following institutions, together with the number of copies each is to receive: Belmont Abbey College, Bennett College, Catawba College, Gardner-Webb College, Greensboro College, High Point College, Livingstone College, Mars Hill College, Meredith College, Methodist College, North Carolina Wesleyan College, Queens College, Sacred Heart College, St. Andrews Presbyterian College, Salem College, and Warren Wilson College.

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

ARTICLE 4A.

Constitutional Amendments Publication Commission.

§ 147-54.8. Constitutional Amendments Publication Commission.

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

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

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

Session Laws 1983, c. 844, s. 2, provides: "Nothing contained in this act shall affect the validity of the voting on any proposed constitutional amendment, including the exercise of any powers by the Constitutional Amendments Publication Commission."

§ 147-54.9. Officers; meetings; quorum.

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

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

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

§ 147-54.10. Powers.

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

The summary prepared by the Commission shall be printed by the Secretary of State, in a quantity determined by the Secretary of State. A copy shall be sent along with a news release to each county board of elections, and a copy shall be available to any registered voter or representative of the print or broadcast media making request to the Secretary of State. The Secretary of State may make copies available in such additional manner as he may determine. (1983, c. 844, s. 1.)

ARTICLE 5.

Auditor.

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

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

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

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

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

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

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

ARTICLE 5A.

Auditor.

§ 147-64.1. Salary of State Auditor.

(a) The salary of the State Auditor shall be set by the General Assembly in the Current Operations Appropriations Act.

[(b) This section is effective only if G.S. 147-64.1 is enacted by the General Assembly in House Bill 517, 1983 Session.] (1983, c. 761, s. 214; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

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

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

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

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

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

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 this section.

§ 147-64.2. Legislative policy and intent.

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

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

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

§ 147-64.3. Legislative and management control system.

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

§ 147-64.4. Definitions.

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

(1) "Audit". — An independent review or examination of government organizations, programs, activities, and functions. The purpose of an audit is to help ensure full accountability and assist government officials and employees in carrying out their responsibilities. The elements of such an audit are:

a. Financial and compliance: to determine whether financial operations are properly conducted, whether the financial reports of an audited entity are presented fairly, and whether the entity has complied with applicable laws and regulations; and,

b. Economy and efficiency: to determine whether the entity is managing or utilizing its resources (such as personnel and property) in an economical and efficient manner and the causes of any inefficiencies or

uneconomical practices, including inadequacies in laws and regulations, management information systems, administrative policies and procedures, or organizational structures; and,

c. Program results: to determine whether the desired results or benefits are being achieved, whether the objectives established by the General Assembly or other authorizing body are being met, and whether the agency has considered alternatives which might yield desired results at lower costs.

d. An audit may include all three elements or only one or two. It is not intended or desirable that every audit include all three. Economy and efficiency and program result audits should be selected when their use will meet the needs of expected users of audit results.

(2) "Accounting system". — The total structure of records and procedures which discover, record, classify, and report information on the financial position and operating results of a governmental unit or any of its funds, balanced account groups, and organizational components.

(3) "Federal agency". — Any department, agency, or instrumentality of the federal government and any federally owned or controlled corporation.

(4) "State agency". — Any department, institution, board, commission, committee, division, bureau, officer, official or any other entity for which the State has oversight responsibility, including but not limited to, any university, mental or specialty hospital, community or technical college, technical institute, clerk of court. (1983, c. 913, s. 2.)

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

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

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

(c) Cooperation with Other Governmental Bodies. — The Auditor shall cooperate, act, and function with other audit or evaluation

organizations in the State, with appropriate councils or committees of other states, with governing bodies of the political subdivisions of the State, and with federal agencies in an effort to maximize the extent of intergovernmental audit coordination and thereby avoid unnecessary duplication and expense of audit effort. Nothing in this Article is intended nor shall it be construed as giving the Auditor control over the internal auditors of any agency. (1983, c. 913, s. 2.)

§ 147-64.6. Duties and responsibilities.

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

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

(1) Have established adequate operating and administrative procedures and practices; systems of accounting, reporting and auditing; and other necessary elements of legislative or management control.

(2) Are providing financial and other reports which disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of such programs and operations.

(3) Are promptly collecting, depositing, and properly accounting for all revenues and receipts arising from their activities.

(4) Are conducting programs and activities and expending funds made available in a faithful, efficient, and economical manner in compliance with and in furtherance of applicable laws and regulations of the State, and, if applicable, federal law and regulation.

(5) Are determining that the authorized activities or programs effectively serve the intent and purpose of the General Assembly and, if applicable, federal law and regulation.

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

(1) Audits made or caused to be made by the Auditor shall be conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the United States General Accounting Office, or other professionally recognized accounting standards-setting bodies.

(2) Financial and compliance audits may be made at the discretion of the Auditor without advance notice to the organization being audited. Audits of economy and efficiency and program results shall be discussed in advance with the prospective auditee unless an unannounced visit is essential to the audit.

(3) The Auditor, on his own initiative and as often as he deems necessary, or as requested by the Governor or the General Assembly, shall, to the extent deemed practicable and consistent with his overall responsibility as contained in this act, make or cause to be made audits of all or any part of the activities of the State agencies.

(4) The Auditor, at his own discretion, may, in selecting audit areas and in evaluating current audit activity, consider and utilize, in whole or in part, the relevant audit coverage and applicable reports of the audit staffs of the various State agencies, independent contractors, and federal agencies. He shall coordinate, to the extent deemed practicable, the auditing conducted within the State to meet the needs of all governmental bodies.

(5) The Auditor is authorized to contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the Auditor to perform audits of federal grants and programs administered by the State departments and institutions in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency shall subgrant these federal funds to local governments, regional councils of government and other local groups or private or semiprivate institutions or agencies, the Auditor shall have the authority to examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance with State and federal laws and regulations.

The Auditor shall charge and collect from the contracting federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants and programs contracted by him to do. Amounts collected under these arrangements shall be deposited in the State Treasury and be budgeted in the Department of State Auditor and shall be available to hire sufficient personnel to perform these contracted audits and to pay for related travel, supplies and other necessary expenses.

(6) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions, or recommendations he deems appropriate concerning any aspect of such agency's activities and operations.

(7) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited into the general fund as nontax revenue.

(8) The Auditor shall examine as often as may be deemed necessary the accounts kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the General Assembly, with copy of such report to the Governor and Attorney General. In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

(9) The Auditor may examine the accounts and records of any bank or financial institution relating to transactions with the State Treasurer, or with any State agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

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

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

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

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

(12) The Auditor shall provide in a written statement to the Governor and Attorney General, and other appropriate officials, such facts as are in his possession which pertain to the apparent violation of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

(13) At the conclusion of an audit, the Auditor or his designated representative shall discuss the audit with the official whose office is subject to audit and submit necessary underlying facts developed for all findings and recommendations which may be included in the audit report. On audits of economy and efficiency and program results, the auditee's written response shall be included in the final report if received within 30 days from receipt of the draft report.

(14) The Auditor shall provide copies of each audit report to the General Assembly, the Governor, the Chief Executive Officer of each agency audited, and other persons as the Auditor deems appropriate. He shall also file a copy of the audit report in the Auditor's office, which will be a permanent public record; Provided, nothing in this subsection shall be construed as authorizing or permitting the publication of information whose disclosure is otherwise prohibited by law.

(15) It is not the intent of the audit function, nor shall it be so construed, to infringe upon or deprive the General Assembly and the executive or judicial branches of State government of any rights, powers, or duties vested in or imposed upon them by statute or the Constitution.

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

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

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

§ 147-64.7. Authority.

(a) Access to Persons and Records. —

(1) The Auditor and his authorized representatives shall have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, investments, and any other documentation of any State agency. The review of State tax returns shall be limited to matters of official business and the Auditor's report shall not violate the confidentiality provisions of tax laws.

(2) The Auditor and his duly authorized representatives shall have such access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation which is in the possession of any individual, private corporation, institution, association, board, or other organization which pertain to:

a. Amounts received pursuant to a grant or contract from the federal government, the State, or its political subdivisions.

b. Amounts received, disbursed, or otherwise handled on behalf of the federal government or the State. In order to determine that payments to providers of social and medical services are legal and proper, the providers of such services will give the Auditor, or his authorized representatives, access to the records of recipients who receive such services.

(3) The Auditor shall, for the purpose of examination and audit authorized by this act, have the authority, and will be provided ready access, to examine and inspect all property, equipment, and facilities in the possession of any State agency or any individual, private corporation, institution, association, board, or other organization which were furnished or otherwise provided through grant, contract, or any other type of funding by the State of North Carolina, or the federal government.

(4) All contracts or grants entered into by State agencies or political subdivisions shall include, as a necessary part, a clause providing access as intended by this section.

(5) The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as they relate to transactions with any agency of the State.

(b) Experts; Contracted Audits. —

(1) The Auditor may obtain the services of independent public accountants, qualified management consultants, or other professional persons and experts as he deems necessary or desirable to carry out the duties and functions assigned under the act.

(2) No State agency may enter into any contract for auditing services which may impact on the State's comprehensive annual financial report without consultation with, and the prior written approval of, the Auditor, except in instances where audits are called for by the Governor under G.S. 143-3 and he shall so notify the Auditor. The Auditor shall prescribe policy and establish guidelines containing appropriate criteria for selection and use of independent public accountants, qualified management consultants, or other

professional persons by State agencies and governing bodies to perform all or part of the audit function.

(c) Authority to Administer Oaths, Subpoena Witnesses and Records, and Take Depositions. —

(1) For the purposes of this Article the Auditor or his authorized representative shall have the power to subpoena witnesses, to take testimony under oath, to cause the deposition of witnesses (residing within or without the State) to be taken in a manner prescribed by law, and to assemble records and documents, by subpoena or otherwise. The subpoena power granted by this section may be exercised only at the specific written direction of the Auditor or his chief deputy.

(2) In case any person shall refuse to obey a subpoena, the Auditor shall invoke the aid of any North Carolina court within the jurisdiction of which the investigation is carried on or where such person may be, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Auditor or officers designated by the Auditor, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. (1983, c. 913, s. 2.)

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

§ 147-64.8. Independence.

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

§ 147-64.9. Rules and regulations.

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

§ 147-64.10. Powers of appointment.

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

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

§ 147-64.11. Review of office.

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

§ 147-64.12. Conflict of interest.

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

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

§ 147-64.13. Construction.

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

§ 147-64.14. Severability.

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

ARTICLE 6.

Treasurer.

§ 147-65. Salary of State Treasurer.

The salary of the State Treasurer shall be as established in the Current Operations Appropriations Act. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C.S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 16; 1977, c. 802, s. 42.9; 1983, c. 761, s. 215; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

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 1, 1983, rewrote this section.

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 this section.

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

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

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

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

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

Effect of Amendments. —

The 1983 amendment, effective July 22, 1983, deleted "by the State Disbursing Officer or the State Auditor or the State Treasurer in the lawful exercise of their duties and responsibilities" from the end of subsection (a) and deleted "of the State Disbursing Officer or the State Auditor or the State Treasurer, and" following "except on warrant" in subsection (b).

§ 147-68.1. Banking operations.

The cost of administration, management, and operations of the banking operations of the Department of State Treasurer shall be apportioned equitably among the funds and programs using these services, and the costs so apportioned shall be deposited with the State Treasurer as a general fund nontax revenue. The cost of administration, management and operations of the banking operations of the Department of State Treasurer shall be covered by an appropriation to the State Treasurer for this purpose in the Current Operations Appropriations Act. (1983 (Reg. Sess., 1984), c. 1034, s. 118.)

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.

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

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which he may deposit or cause to be deposited any of the public funds, and such accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing his official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing his signature to warrants, checks or any other instrument he is required by law to sign. No bank or savings and loan association shall make any charge for exchange or for the collection of any warrant drawn on the Treasurer or for the transmission of any funds which may come into the hands of the State Treasurer, or any other State department, agency, bureau or commission; provided, that banks and savings and loan associations organized under the laws of the State of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the Commissioner of Revenue the proceeds of collections of revenue, not over twenty cents (20¢) for each check in the amount of not over one thousand dollars ($1,000), and for each check for an amount in excess of one thousand dollars ($1,000), such banks and savings and loan associations may charge not over twenty cents (20¢) plus one-tenth of one percent (1/10 of 1%) of the amount of such check in excess of one thousand dollars ($1,000). The Commissioner of Banks and the bank examiners, and the Administrator of the Savings and Loan Division, and savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for such deposit. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917,

c. 159; C.S., s. 7684; 1931, c. 127, s. 1; c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2; 1977, c. 401, s. 1; 1983, c. 158, s. 4.)

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

§ 147-69.1. Investments authorized for General Fund and Highway Fund assets.

(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.

(3) Obligations of the State of North Carolina;

(4) a. Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the Department of Commerce of the State of North Carolina, be fully collateralized;

b. Certificates of deposit issued by banks organized under the laws of the State of North Carolina, or by any national bank having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, be fully collateralized;

c. With respect to savings certificates and certificates of deposit, the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity;

d. Shares of or deposits in any savings and loan association organized under the laws of the State of North Carolina, or any federal savings and loan association

having its principal office in North Carolina; provided that any moneys invested in such shares or deposits in excess of the amount insured by the federal government or an agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the Department of Commerce of the State of North Carolina, be fully secured by surety bonds, or be fully collateralized.

e. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

f. Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

(1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1; 1969, c. 125; 1975, c. 482; 1979, c. 467, s. 1; c. 717, s. 1; 1981, c. 801, ss. 1, 2; 1985, c. 313, 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 1985 amendment, effective June 3, 1985, substituted "the Asian Development Bank, and the African Development Bank" for "and the Asian Development Bank" at the end of subdivision (c)(2).

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of:

(1) The Teachers' and State Employees' Retirement System,
(2) The Uniform Judicial Retirement System,
(3) The Uniform Solicitorial Retirement System,
(4) The Uniform Clerks of Superior Court Retirement System,
(5) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(6) The General Assembly Medical and Hospital Care Plan,
(7) The Disability Salary Continuation Plan,
(8) The Firemen's and Rescue Workers' Pension Fund,
(9) The Local Governmental Employees' Retirement System,
(10) The Law-Enforcement Officers' Benefit and Retirement Fund,
(11) The Escheat Fund,
(12) The Legislative Retirement Fund,
(13) The State Education Assistance Authority,
(14) The State Property Fire Insurance Fund,

(15) The Stock Workmen's Compensation Fund,
(16) The Mutual Workmen's Compensation Fund,
(17) The Public School Insurance Fund,
(18) The Liability Insurance Trust Fund,
(19) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, and
(20) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c);
(2) General obligations of other states of the United States;
(3) General obligations of cities, counties and special districts in North Carolina;
(4) Obligations of any company incorporated within the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;
(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;
(5a) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(6), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems.
(6) With respect to assets of the Teachers' and State Employees' Retirement System, the Uniform Judicial Retirement System, the Uniform Solicitorial Retirement System, the Uniform Clerks of Superior Court Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Law-Enforcement Officers' Benefit and Retirement Fund (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated within the United States, provided:
a. That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation, as disclosed by its published fiscal annual statements, shall have had

an average annual net income plus its average annual fixed charges (as herein used, fixed charges shall mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations, shall include all fixed charges and preferred dividend requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend requirement for preferred stock and its average annual fixed charges for the same period; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend requirements for preferred stock and its fixed charges for the same period;

b. That such corporation shall have no arrears of dividends on its preferred stock;

c. That such common stock is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system, but such registration shall not be required of the following stocks:

1. The common stock of a bank or bank holding company which is a member of the Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus and undivided profits, of at least twenty million dollars ($20,000,000);
2. The common stock of a life insurance company which has capital funds represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars ($50,000,000);
3. The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus and voluntary reserves, of at least fifty million dollars ($50,000,000);

d. That the preferred stock of such corporation, if any be outstanding, shall qualify for investment under this section;

e. That such corporation, having no preferred stock outstanding, shall have had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence;

f. That such corporation shall have paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

g. That in applying the earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges and preferred dividends of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

h. That the total value of common and preferred stocks including securities convertible into common stocks shall not exceed twenty-five per centum (25%) of the total value of all invested assets of the Retirement Systems; provided, further:

1. Not more than one and one-half per centum (1½%) of the total value of such assets shall be invested in the stock of a single corporation, and provided further;
2. The total number of shares in a single corporation shall not exceed eight per centum (8%) of the issued and outstanding stock of such corporation, and provided further;
3. As used in this subdivision h., value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments;
4. Up to five per cent (5%) of the limits authorized in subdivision h. may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars ($50,000,000).

i. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

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

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

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

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

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

(b) Any official, board, commission, other public authority, local government, school administrative unit, local ABC board, or community college of the State having custody of any funds not required by law to be deposited with and invested by the State Treasurer may deposit all or any portion of such funds with the State Treasurer for investment in one of the investment programs established pursuant to this section, subject to any provisions of law with respect to eligible investments, provided that any occupational licensing board as defined in G.S. 93B-1 may participate in one of the investment programs established pursuant to this section regardless of whether or not the funds were required by law to be deposited with and invested by the State Treasurer. In the absence of specific statutory provisions to the contrary, any such funds may be invested in accordance with the provisions of G.S. 147-69.2 and 147-69.3. Upon request from any depositor eligible under this subsection, the State Treasurer may authorize moneys invested pursuant to this subsection to be withdrawn by warrant on the State Treasurer.

(f) The cost of administration, management, and operation of investment programs established pursuant to this section shall be apportioned equitably among the programs in such manner as may be prescribed by the State Treasurer, and the costs so apportioned shall be paid from each program and deposited with the State Treasurer as a General Fund nontax revenue. The cost of administration, management, and operation of investment programs established pursuant to this section shall be covered by an appropriation to the State Treasurer for this purpose in the Current Operations Appropriations Act. (1979, c. 467, s. 3; 1981, c. 445, ss. 4, 5; 1983, c. 515, s. 1; c. 702, s. 10; 1983 (Reg. Sess., 1984), c. 1034, ss. 116, 117.)

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

Effect of Amendments. —

The first 1983 amendment, effective from and after July 1, 1983, added the proviso at the end of the first sentence of subsection (b).

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

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, added "and the costs so apportioned shall be paid from each program and deposited with the State Treasurer as a General Fund nontax revenue" at the end of the first sentence of subsection (f) and added the second sentence of subsection (f).

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

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

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

§ 147-77. Daily deposit of funds to credit of Treasurer.

All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State or any agency, department, division or commission thereof, except officers and the clerks of the Supreme Court and Court of Appeals, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided that the State Treasurer may authorize exemptions from the provisions of this section so long as funds are deposited and reported pursuant to the provisions of this section at least once a week and, in addition, so long as funds are deposited and reported pursuant to the provisions of this section whenever as much as two hundred fifty dollars ($250.00) has been collected and received: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after 30 days' trial. (1925, c. 128, s. 1; 1945, c. 159; 1969, c. 44, s. 77; 1985, c. 708.)

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, inserted the present first proviso.

§ 147-78. Treasurer to select depositories.

The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks, savings and loan association or associations, or trust company as an official depository of the State. (1925, c. 128, s. 2; 1979, c. 637, s. 4; 1983, c. 158, s. 5.)

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

§ 147-78.1. Good faith deposits; use of master trust.

Notwithstanding any other provision of law, the State Treasurer is authorized to select a bank or trust company as master trustee to hold cash or securities to be pledged to the State when deposited with him pursuant to statute or at the request of another State agency. Securities may be held by the master trustee in any form that, in fact, perfects the security interest of the State in the securities. The State Treasurer shall by rule or regulation establish the manner in which the master trust shall operate. The master trustee may charge reasonable fees for services rendered to each person who deposits the cash or securities with the State. (1985, c. 496, s. 1.)

Editor's Note. — Session Laws 1985, c. 496, s. 2 makes this section effective upon ratification. The act was ratified June 28, 1985.

§ 147-84. Refund of excess payments.

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

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

§ 147-85. Fiscal year.

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

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

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

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

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

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

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

ARTICLE 6A.

Cash Management.

§ 147-86.10. Statement of policy.

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, commissions and officers of the State, whether or not subject to the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. (1985, c. 709, s. 1.)

Editor's Note. — Session Laws 1985, c. 709, s. 2 makes this Article effective upon ratification. The act was ratified July 11, 1985.

§ 147-86.11. Cash management for the State.

(a) The Director of the Budget, with the advice and assistance of the State Treasurer and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the Advisory Budget Commission and the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, "State agency" means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, and 147-86.14, this Article shall not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units, community colleges, and technical institutes and their officers and employees.

(b) The State Auditor pursuant to his authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations he deems advisable to the agencies.

(c) The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) The cash management plan adopted and implemented pursuant to this section shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. "Net earnings" are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) The receipt section of the uniform statewide plan promulgated by the Director of the Budget shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:
   a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.
   b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.
(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by statute;
(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited;
(4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing; and
(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

(f) The disbursement section of the statewide plan adopted by the Director of the Budget shall provide at a minimum that:

(1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate payee;
(2) The order in which appropriations and other available resources are expended shall be subject to the provisions of G.S. 143-27 regardless of whether the State agency disbursing or expending the moneys is subject to the Executive Budget Act.
(3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State funds.
(4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent practicable; and
(5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

(1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest allocations;

(2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) The cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

(i) A willful or continued failure of an employee paid from State funds or employed by a State agency to follow this cash management policy and the statewide cash management plan adopted by the Director of the Budget is sufficient cause for immediate dismissal of the employee. (1985, c. 709, s. 1.)

§ 147-86.12. Cash management for school administration units.

All school administrative units and their officers and employees are subject to the provision of G.S. 147-86.11 with respect to moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to the school administrative unit for expenditure by warrants drawn on the State Treasurer. (1985, c. 709, s. 1.)

§ 147-86.13. Cash management for community colleges.

All community colleges and technical institutes and their officers and employees are subject to the provisions of G.S. 147-86.11 with respect to moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. (1985, c. 709, s. 1.)

§ 147-86.14. Cash management for the General Court of Justice.

All agencies, institutions, bureaus, boards, commissions, and officers of the General Court of Justice as defined in Article IV of the Constitution are subject to the provisions of G.S. 147-86.11 with

respect to moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer; provided, that the provisions of G.S. 147-86.11 shall not apply to any funds deposited with a clerk of superior court unless the beneficial owner of the funds is either the State or a local governmental unit of the State. (1985, c. 709, s. 1.)

ARTICLE 7.

Secretary of Revenue.

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

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

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 this section.

Chapter 148.
State Prison System.

Article 1.

Organization and Management.

§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.

The Secretary of Correction shall have control and custody of all

prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

(1) Contact prospective employers; or
(2) Secure a suitable residence for use when released on parole or upon discharge; or
(3) Obtain medical services not otherwise available; or
(4) Participate in a training program in the community; or
(5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister; or
(6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, pre-release and aftercare programs as may be provided for and administered by the Secretary of Correction and other programs determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society; or

(7) Be on maternity leave, for a period of time not to exceed 60 days. The county departments of social services are expected to cooperate with officials at the North Carolina Correctional Center for Women to coordinate prenatal care, financial services, and placement of the child.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45. (1901, c. 472, s. 4; Rev., s. 5390; C.S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109; 1965, c. 1042; 1967, c. 996, ss. 13, 15; 1973, c. 902; c. 1262, s. 10; 1977, c. 704, s. 5; 1985, c. 483.)

Effect of Amendments. — The 1985 amendment, effective June 27, 1985, substituted a semicolon and "or" for a period at the end of subdivision (6) and added subdivision (7).

CASE NOTES

Cited in Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984).

§ 148-4.1. Release of inmates.

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

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

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

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

OPINIONS OF ATTORNEY GENERAL

The Parole Commission has the authority to select fair-sentence inmates to be paroled pursuant to subsection (c) of this section. See opinion of Attorney General to Mr. Ben G. Irons, II, Senior Administrative Assistant, North Carolina Department of Correction, 53 N.C.A.G. 106 (1984).

ARTICLE 2.

Prison Regulations.

§ 148-11. Authority to make regulations.

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

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.

Effect of Amendments. — The 1983 amendment, effective 60 days after ratification, substituted the present first and second sentences for the former first sentence of this section, which read "The Secretary shall propose rules and regulations for the government of the State prison system, which shall become effective when approved by the Department of Correction." The act was ratified April 7, 1983.

CASE NOTES

Fair Sentencing Act. — Although the principal provisions of the Fair Sentencing Act are codified in Chapter 15A, Article 81A of the General Statutes, the act resulted in revisions to other portions of the General Statutes. See, e.g., Chapter 14, Articles 1, 2, 2A, 33; Chapter 15A, Articles 58, 81A, 82, 83, 85, 85A, 89, 91; Chapter 148, Article 2, and Chapter 162, Article 4. State v. Ahearn, 307 N.C. 584, 300 S.E.2d 689 (1983).

For discussion of the historical background, policies, purposes, and implementation of the new Fair Sentencing Act, see State v. Ahearn, 307 N.C. 584, 300 S.E.2d 689 (1983).

Cited in Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984).

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

(d) With respect to prisoners serving prison or jail terms for felonies that occurred on or after the effective date of Article 81A of Chapter 15A, the Secretary of Correction shall issue regulations authorizing gain time credit to be deducted from the terms of such prisoners, in addition to the good behavior credit authorized by G.S. 15A-1340.7. Gain time credit may be granted for meritorious conduct and shall be granted for performance of regular work and regular participation in study, training, work release, and other rehabilitative programs inside or outside the prison or jail. Gain time credit earned pursuant to regulations issued under this subsection shall not be subject to forfeiture for misconduct. Gain time shall be administered to qualified prisoners as follows:

(1) Gain Time I. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform work assignments requiring at least four hours of actual work per day, and prisoners who participate in study, training, or other rehabilitative programs requiring at least four hours of productive activity per day, shall receive gain time credit at the rate of two days per month.

(2) Gain Time II. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform work assignments requiring at least six hours of actual work per day, prisoners who perform in part-time work release programs, and prisoners who participate in study, training, or other rehabilitative programs requiring at least six hours of productive activity per day, shall receive gain time credit at the rate of four days per month.

(3) Gain Time III. In addition to the good behavior credit authorized by G.S. 15A-1340.7, prisoners who perform work assignments requiring special skills or special responsibilities and requiring at least six hours of actual work per day, prisoners who perform in full-time work release programs, and prisoners who participate in full-time study, training, or other rehabilitative programs shall receive gain time credit at the rate of six days per month.

The Secretary of Correction may, in his discretion, grant gain time credit at a rate greater than the rates specified in this subsection for meritorious conduct or emergency work performed, provided, however, that gain time granted for emergency work performed shall not exceed 30 days per month, nor shall gain time granted for meritorious conduct exceed 30 days for each act of meritorious conduct.

(f) The provisions of this section do not apply to persons sentenced to a term of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a). (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409; 1955, c. 238, s. 6; 1979, c. 760, s. 4; 1979, 2nd Sess., c. 1316, ss. 43-46; 1981, c. 662, ss. 8, 9; 1983, c. 560, s. 3; 1985, c. 310, ss. 1-4.)

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

Effect of Amendments. —

The 1983 amendment, effective June 17, 1983, added subsection (f).

The 1985 amendment, effective June 3, 1985, substituted "regular work and regular participation in study, training, work release, and other rehabilitative programs inside or outside the prison or jail" for "work inside or outside the prison or jail" at the end of the second sentence of the introductory paragraph of subsection (d), in subdivision (d)(1) substituted the language beginning "work assignments requiring" and ending "shall receive gain time credit" for "short-term work assignments (requiring a minimum of four hours of actual work per day) shall receive credit for work performed," in subdivision (d)(2) substituted the language beginning "work assignments requiring" and ending "shall receive gain time credit" for "job assignments requiring a minimum of six hours work per day or who perform in part-time work release programs shall receive credit," and in subdivision (d)(3) substituted the language beginning "work assignments requiring" and ending "shall receive gain time credit" for "job assignments requiring a minimum of six hours per day with requirements for specialized skills or specialized responsibilities, as well as inmates participating in full-time work release shall receive credit."

CASE NOTES

Judges still have discretion to increase or reduce sentences from the presumptive term upon findings of aggravating or mitigating factors, the weighing of which is a matter within their sound discretion. The balance struck by the trial judge will not be disturbed if there is support in the record for his determination. State v. Stone, 71 N.C. App. 417, 322 S.E.2d 413 (1984).

§ 148-18.1. Confiscation of unauthorized articles.

Any item of personal property which a prisoner in any correctional facility is prohibited from possessing by State law or which is not authorized by rules adopted by the Secretary of Correction shall, when found in the possession of a prisoner, be confiscated and destroyed or otherwise disposed of as the Secretary may direct. Any unauthorized funds confiscated under this section or funds from the sale of confiscated property shall be deposited to Inmate Welfare Fund maintained by the Department of Correction. (1983, c. 289, s. 1.)

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

§ 148-19. Health services.

(d) The Commission for Mental Health, Mental Retardation and Substance Abuse Services shall prescribe standards for the delivery of mental health, mental retardation, and substance abuse services to inmates in the custody of the Department of Correction. The Commission for Mental Health, Mental Retardation and Substance Abuse Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Human Resources shall designate an agency or agencies within the Department of Human Resources to monitor the implementation of such standards by the Department of Correction. The Secretary of Human Resources shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978. (1917, c. 286, s. 22; C.S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 332; c. 679, s. 7; 1981, c. 51, s. 6; c. 707, ss. 1, 2; 1985, c. 589, s. 55.1.)

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 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 1985 amendment, effective January 1, 1986, inserted "mental retardation, and substance abuse" in the first sentence of subsection (d).

§ 148-20. Corporal punishment of prisoners prohibited.

CASE NOTES

Cited in Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984).

§ 148-22. Treatment programs.

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

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State or local government and with private agencies to promote the most effective use of available resources.

Specifically the Secretary of Correction may enter into contracts or agreements with appropriate public or private agencies offering needed services including health, mental health, mental retardation, substance abuse, rehabilitative or training services for such inmates of the Department of Correction as the Secretary may deem eligible. These agencies shall be reimbursed from applicable appropriations to the Department of Correction for services rendered at a rate not to exceed that which such agencies normally receive for serving their regular clients.

The Secretary may contract for the housing of work-release inmates at county jails and local confinement facilities. Inmates may be placed in the care of such agencies but shall remain the responsibility of the Department and shall be subject to the complete supervision of the Department. The Department may reimburse such agencies for the support of such inmates at a rate not in excess of the average daily cost of inmate care in the corrections unit to which the inmate would otherwise be assigned. (1917, c. 286, s. 15; C.S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5; 1975, c. 679, ss. 1, 2; 1977, c. 297; 1983, c. 376; 1985, c. 589, s. 55.)

Editor's Note. — 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 May 23, 1983, substituted the present last two sentences of subsection (a) for a former final sentence, which read, "Programs for the treatment and training of mentally retarded prisoners and other special groups shall be established in segregated sections of facilities housing other prisoners or in separate facilities when this is practicable."

The 1985 amendment, effective January 1, 1986, inserted "mental retardation, substance abuse," in the first sentence of the second paragraph of subsection (b).

§ 148-22.1. Educational facilities and programs for selected inmates.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational education, the State Department of Correction shall give priority to meeting the needs of inmates who are less than 21 years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a parole or unconditional release. These inmates shall be given appropriate tests to determine their educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them. (1959, c. 431; 1967, c. 996, s. 13; 1985, c. 226, 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 May 23, 1985, substituted "parole or unconditional release" for "regular parole" at the end of the first sentence of subsection (b).

§ 148-23. Prison employees not to use intoxicants, narcotic drugs or profanity.

No one addicted to the use of alcoholic beverages, or narcotic drugs, shall be employed as superintendent, warden, guard, or in any other position connected with the State Department of Correction, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of alcoholic beverages during hours of employment, or reports for duty under the effect of intoxicants, or narcotic drugs, or who shall become intoxicated, or uses narcotic drugs, under circumstances that bring discredit on the State Department of Correction, shall be subject to immediate dismissal from employment by any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the State Department of Correction who curses a prisoner under his charge shall be subject to immediate

dismissal from employment and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; C.S., s. 7733; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1969, c. 382; 1981, c. 412, s. 4(4); c. 747, s. 66.)

Editor's Note. — The section above is set out to substitute "alcoholic beverages" for "intoxicating liquors," pursuant to Session Laws 1981, c. 412, s. 4(4), as amended by Session Laws 1981, c. 747, s. 66.

ARTICLE 3.

Labor of Prisoners.

§ 148-26.1. Definitions.

The following definitions apply:

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

(4) to (7) Repealed by Session Laws 1985, c. 226, s. 2, effective May 23, 1985.

(9) Repealed by Session Laws 1985, c. 226, s. 2, effective May 23, 1985.

(1975, c. 682, s. 3; 1983, c. 709, s. 1; 1985, c. 226, s. 2.)

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

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, deleted subdivisions (1), (2), and (3), which defined "area administrator," "area commission," and "area command," respectively.

The 1985 amendment, effective May 23, 1985, deleted subdivisions (4), (5), (6), (7), and (9), defining, respectively, the terms "Department head," "Local public work project" or "local public work," "Principal department" or "department," "Secretary," and "Unit superintendent."

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

§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.

(c) When a prisoner is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Parole Commission so that the prisoner will be eligible for parole pursuant to G.S. 15A-1371.

(e) Upon entry of a prisoner into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Parole Commission information pertaining to the prisoner so as to make him eligible for parole consideration pursuant to G.S. 15A-1371. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Parole Commission. The Parole Commission shall approve a form upon which the custodian shall furnish this infor-

mation, which form will be provided to the custodian by the Department of Correction. (1977, c. 450, s. 3; c. 925, s. 2; 1981, c. 859, s. 25; 1985, c. 226, s. 3(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 1985 amendment, effective May 23, 1985, substituted "parole pursuant to G.S. 15A-1371" for "misdemeanant parole pursuant to G.S. 148-60.3" at the end of subdivision (c) and substituted "G.S. 15A-1371" for "G.S. 148-60.3" at the end of the first sentence of subsection (e).

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Department of Correction their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Department of Correction shall retain to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him when he is paroled or discharged from prison, and shall make such disbursements from any balance of his earnings as may be found necessary by the Department for the following purposes, considered in a priority order as stated:

(1) To pay travel and other expenses of the prisoner made necessary by his employment;

(2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;

(3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of social services in the county of North Carolina in which such dependents reside;

(3a) To make restitution or reparation as provided in G.S. 148-33.2.

(4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any judgment rendered by the court.

In addition, the Department of Correction in its discretion may grant a request made in writing by the prisoners for a withdrawal for any other purpose.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The Social Services Commission is authorized to promulgate uniform rules and regulations governing the duties of county social services departments under this section.

(1957, c. 540; 1959, c. 126; 1961, c. 420; 1963, c. 469, ss. 1, 2; 1967, c. 684; c. 996, s. 13; 1969, c. 982; 1973, c. 476, s. 138; c. 1262, s. 10; 1975, c. 22, ss. 1-3; c. 679, s. 3; 1977, c. 450, ss. 4, 5; c. 614, s. 6; c. 623, ss. 1, 2; c. 711, s. 29; 1981, c. 541, ss. 1-3; 1985, c. 474, 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 1985 amendment, effective 14 days after ratification, rewrote subdivision (f)(3a), which formerly read: "To make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is imposed as a condition of work-release privileges pursuant to the provisions of G.S. 148-33.2, and substituted "judgment rendered by the court" for "case before such court" at the end of subdivision (f)(4). The act was ratified June 26, 1985.

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

(a) Repealed by Session Laws 1985, c. 474, s. 4.

(b) As a rehabilitative measure, the Secretary of the Department of Correction is authorized to require any prisoner granted work-release privileges to make restitution or reparation to an aggrieved party from any earnings gained by the defendant while on work release when the sentencing court recommends that restitution or reparation be paid by the defendant out of any earnings gained by the defendant if he is granted work-release privileges. The Secretary shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Secretary of Correction that restitution or reparation be made by the defendant out of any earnings gained by the defendant if he is granted work-release privileges. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

(d) The Secretary of the Department of Correction shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation from any earnings gained by the prisoner while on work release is being considered as a condition of any work-release privileges granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. (1977, c. 614, s. 7; 1977, 2nd Sess., c. 1147, s. 33; 1981, c. 541, ss. 4-9; 1985, c. 474, s. 4.)

Effect of Amendments. — The 1985 amendment, effective 14 days after ratification, deleted subsection (a), relating to restitution or reparation as a condition of attaining work-release privileges, in subsection (b) substituted the language beginning "authorized to require any prisoner granted work-release privileges" for "further authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining work-release privileges" at the end of the first sentence, and in subsection (c) rewrote the first three sentences, deleted "order or" following "The" at the beginning of the fourth sentence, and deleted "orders or" preceding "recommendations incident to" and "order or" following "enable the sentencing court to makes its" in the last sentence, and in subsection (d) substituted "the payment of restitution or reparation from any earnings gained by the prisoner while on work release is being considered as a condition of any work-release privileges granted the prisoner" for "restitution or reparation as being considered as a condition of work-release" in the first sentence and deleted "order or" preceding "recommendation of the sentencing court" in the second sentence. The act was ratified June 26, 1985.

CASE NOTES

State as "Aggrieved Party." — Although the North Carolina Supreme Court has never definitively decided the issue, there is persuasive authority in North Carolina law supporting the State's right to claim the status of an "aggrieved party" for the expenses associated with providing court-appointed counsel. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Applied in State v. Simpson, 61 N.C. App. 151, 300 S.E.2d 412 (1983).

Cited in State v. Bunn, 66 N.C. App. 187, 310 S.E.2d 792 (1984).

§ 148-36. Secretary of Correction to control classification and operation of prison facilities.

CASE NOTES

Cited in Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984).

§ 148-44. Separation as to sex.

The Department shall provide quarters for female prisoners separate from those for male prisoners. (1933, c. 172, s. 25; 1947, c. 262, s. 2; 1957, c. 349, s. 10; 1963, c. 1174, s. 2; 1985, c. 226, s. 3(3).)

Effect of Amendments. — The 1985 amendment, effective May 23, 1985, deleted "and shall provide for separate facilities for youthful offenders as required by G.S. 15-210 to 15-215" at the end of the section.

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.

(a) Any person in the custody of the Department of Correction in

any of the classifications hereinafter set forth who shall escape or attempt to escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year:

(1) A prisoner serving a sentence imposed upon conviction of a misdemeanor;

(2) A person who has been charged with a misdemeanor and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) Repealed by Session Laws 1985, c. 226, s. 4, effective May 23, 1985.

(4) A person who shall have been convicted of a misdemeanor and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c).

(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape or attempt to escape from the State prison system, shall, except as provided in subsection (g) of this section, be punished as a Class J felon.

(1) A prisoner serving a sentence imposed upon conviction of a felony;

(2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) Repealed by Session Laws 1985, c. 226, s. 5, effective May 23, 1985.

(4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c); or

(5) Any person previously convicted of escaping or attempting to escape from the State prison system.

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

(g) (1) Any person convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any convicted person in the custody of the North Carolina Department of Correction and temporarily allowed to leave a place of confinement by the Secretary of Correction or his designee or other authority of law, who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the applicable provisions of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, willful failure to return to an appointed place and at an appointed time as ordered.

(2) If a person, who would otherwise be guilty of a first violation of G.S. 148-45(g)(1), voluntarily returns to his place of confinement within 24 hours of the time at which he was ordered to return, such person shall not be charged with an

escape as provided in this section but shall be subject to such administrative action as may be deemed appropriate for an escapee by the Department of Correction; said escapee shall not be allowed to be placed on work release for a four-month period or for the balance of his term if less than four months; provided, however, that if such person commits a subsequent violation of this section then such person shall be charged with that offense and, if convicted, punished under the provisions of this section. (1933, c. 172, s. 26; 1955, c. 279, s. 2; 1963, c. 681; 1965, c. 283; 1967, c. 996, s. 13; 1973, c. 1120; c. 1262, s. 10; 1975, cc. 170, 241, 705; c. 770, ss. 1, 2; 1977, c. 732, ss. 3, 4; c. 745; 1979, c. 760, s. 5; 1983, c. 465, ss. 1-5; 1985, c. 226, ss. 3(4)-6.)

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 Oct. 1, 1983, in subsection (b) deleted "or" at the end of subdivision (3), inserted "or" at the end of subdivision (4), and added subdivision (5); deleted subsection (e), which read "Any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the person is held at the time an offense defined by this section is committed by such person. Persons charged with the offense of escape or attempt to escape under the provisions of this section shall not be entitled to plea conference consideration as provided in G.S. 15A-1021"; and in the first sentence of subdivision (g)(1) deleted "or any youthful offender granted relief under G.S. 148-49.1 et seq." preceding "who shall fail to return."

The 1985 amendment, effective May 23, 1985, deleted subdivision (a)(3), which read: "A person who shall have been convicted of a misdemeanor and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or," substituted "G.S. 15A-1332(c)" for "G.S. 148-12(b)" at the end of subdivision (a)(4), deleted subdivision (b)(3), which read: "A person who shall have been convicted of a felony and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183," substituted "G.S. 15A-1332(c)" for "G.S. 148-12(b)" near the end of subdivision (b)(4), and substituted "temporarily allowed to leave a place of confinement by the Secretary of Correction or his designee" for "on temporary parole by permission of the State Parole Commission" near the middle of the first sentence of subdivision (g)(1).

CASE NOTES

The elements of felonious escape are (1) lawful custody, (2) while serving a sentence imposed upon a plea of guilty, a plea of nolo contendere, or a conviction for a felony, and (3) escape from such custody. State v. Malone, — N.C. App. —, 326 S.E.2d 302 (1985).

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

When a defendant is charged with escape from the State prison system under this section the State is entitled to introduce evidence of any and all convictions for which defendant was in custody at the time of escape. State v. Hammond, 307 N.C. 662, 300 S.E.2d 361 (1983).

Before a defendant can be convicted of felonious escape, the State must prove beyond a reasonable doubt that at the time of his escape defendant was serving a sentence of incarceration imposed for the conviction of a felony. State v. Hammond, 307 N.C. 662, 300 S.E.2d 361 (1983).

When a defendant is charged with escape under this statute, the State has the burden of proving that defendant was in the legal custody of the Department of Correction at the time of the escape. Testimony concerning the kind of crimes for which defendant was sentenced to prison is relevant and competent evidence which the State may introduce in order to meet its burden of proof on this issue. State v. Hammond, 307 N.C. 662, 300 S.E.2d 361 (1983).

When a defendant is charged with felonious escape from the state prison system under this section, the State has the burden of proving that defendant was in the legal custody of the Department of Correction at the time of the escape, serving a sentence imposed upon conviction of a felony. Accordingly, the State is entitled to introduce evidence of any and all convictions for which defendant was in custody at the time of escape. State v. Parrish, — N.C. App. —, 327 S.E.2d 613 (1985).

To sustain a conviction for escape the state must prove that the defendant was in lawful custody and was serving a sentence imposed upon a plea of guilty, a plea of nolo contendere, or a conviction for a felony. State v. Malone, — N.C. App. —, 326 S.E.2d 302 (1985).

The legislature, in setting the presumptive sentence for escape, presumably took into account that evidence of an underlying plea or conviction would be necessary to prove the offense. State v. Malone, — N.C. App. —, 326 S.E.2d 302 (1985).

The defense of duress or escaping against his will will not be available to a prisoner charged with escape except where such defendant meets all of the following five requirements: (1) The prisoner is faced with a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future; (2) there is no time for a complaint to the authorities or there exists a history of futile complaints which make any result from such complaints illusory; (3) there is no time or opportunity to resort to courts; (4) there is no evidence of force or violence used towards prison personnel or other "innocent" persons in the escape; and (5) the prisoner immediately reports to the proper authorities when he has attained a position of safety from the immediate threat. State v. Watts, 60 N.C. App. 191, 298 S.E.2d 436 (1982).

§ 148-46. Degree of protection against violence allowed.

CASE NOTES

Stated in Bailey v. Turner, 736 F.2d 963 (4th Cir. 1984).

ARTICLE 3B.

Facilities and Programs for Youthful Offenders.

§ 148-49.10. Purposes of Article.

CASE NOTES

Applied in State v. Watson, 65 N.C. App. 411, 309 S.E.2d 2 (1983).

§ 148-49.11. Definitions.

As used in this Article, a "youthful offender" is a person under twenty-one (21) years of age in the custody of the Secretary of Correction or a person under twenty-five (25) years of age who is in the custody of the Secretary of Correction but who has not been convicted of a violent or a Class A, B, C, D, E, F, or G felony. A "committed youthful offender" is a youthful offender who may have the benefit of early release under the provisions of G.S. 148-49.15. All rights accrued by persons prior to October 1, 1977, shall not be affected. (1949, c. 297, s. 2; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2; 1983, c. 531, s. 1; 1985, c. 226, s. 7.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to persons convicted of crimes committed on or after that date, inserted "or a person under twenty-five (25) years of age who is in the custody of the Secretary of Correction but who has not been convicted of a violent or a Class A, B, C, D, E, F, or G felony" at the end of the first sentence.

The 1985 amendment, effective May 23, 1985, substituted "may" for "shall" in the second sentence.

§ 148-49.12. Treatment of youthful offenders.

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

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

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

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to persons convicted of crimes committed on or after that date, inserted "under twenty-one (21) years of age" and substituted "more than twenty-one (21) years" for "over 21 years" in the first sentence of subsection (a) and inserted the second sentence of that subdivision.

§ 148-49.14. Sentencing committed youthful offenders.

As an alternative to a sentence of imprisonment as is otherwise provided by law, when a person under 21 years of age is convicted of an offense punishable by imprisonment and the court does not suspend the imposition or execution of sentence and place him on probation, the court may sentence such person to the custody of the Secretary of Correction for treatment and supervision as a committed youthful offender. When a person under twenty-five (25) years of age is convicted of a crime punishable by imprisonment but which is not a Class A, B, C, D, E, F, or G felony, or a violent crime, and the court does not suspend the imposition or execution of sentence and place him on probation, the court may sentence such a person to the custody of the Secretary of Correction as a committed youthful offender. At the time of commitment the court shall fix a maximum term not to exceed the limit otherwise prescribed by law for the offense of which the person is convicted or 20 years, whichever is less. When the maximum permitted penalty for the offense is imprisonment for one year or longer, the maximum term imposed

shall not be for less than one year. If the court shall find that a person under 21 years of age should not obtain the benefit of release under G.S. 148-49.15, it shall make such "no benefit" finding on the record. Whenever the court shall suspend the imposition or execution of sentence and place a person on probation, the court shall not order commitment as a committed youthful offender; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time commit the person, if he is still under 25 years of age, to the custody of the Secretary of Correction as a committed youthful offender. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2; 1983, c. 531, s. 3.)

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, and applicable to persons convicted of crimes committed on or after that date, inserted the present second sentence and in the last sentence substituted "twenty-five (25)" for "twenty-one (21)."

CASE NOTES

Section Requires Determination, etc. —

This section does not say how a judge should exercise his discretion or what factors he must consider when imposing a sentence. Therefore the Appeals Court cannot hold that because a judge has a policy of not sentencing those convicted of armed robbery as committed youthful offenders that he has committed error under the statute. State v. Harris, 67 N.C. App. 97, 312 S.E.2d 541, appeal dismissed and cert. denied, 311 N.C. 307, 317 S.E.2d 905 (1984).

The court is required to make a determination as to whether a defendant shall be committed as a youthful offender in all cases where the defendant was less than 21 years of age when convicted and is less than 25 years of age when their probation is revoked. State v. Coffey, — N.C. App. —, 327 S.E.2d 606 (1985).

But No Specific Language, etc. — In accord with 1st paragraph in bound volume. See State v. Abee, 60 N.C. App. 99, 298 S.E.2d 184 (1982), modified and aff'd, 308 N.C. 379, 302 S.E.2d 230 (1983).

Age at Time of Conviction Determinative. — The intent of the Legislature to use age at the time of conviction as the determinative factor for eligibility for committed youthful offender status is clear. State v. McRae, 70 N.C. App. 779, 320 S.E.2d 914 (1984), cert. denied, — N.C. —, 325 S.E.2d 631 (1985).

Unambiguous No Benefit Finding. — Where although the trial judge used the phrase "regular committed youthful offender" instead of "regular youthful offender," he immediately found that defendant would not benefit as a committed youthful offender, this was a clear and plain no benefit finding manifesting that defendant was not sentenced as a committed youthful offender. State v. Riddle, 311 N.C. 734, 319 S.E.2d 250 (1984).

Applied in State v. Ziglar, 308 N.C. 747, 304 S.E.2d 206 (1983).

Cited in State v. Michael, 311 N.C. 214, 316 S.E.2d 276 (1984).

§ 148-49.15. Parole of committed youthful offenders.

(a) The Parole Commission may at any time after reasonable notice to the Secretary of Correction parole under supervision a committed youthful offender pursuant to the provisions of Article 85 of Chapter 15A of the General Statutes. Parole of a committed youthful offender shall be subject to G.S. 15A-1372 through 15A-1376. When, in the judgment of the Secretary of Correction, a committed youthful offender is ready for parole under supervision,

the Secretary may also recommend such action to the Parole Commission. It shall not be necessary for a committed youthful offender to have served one quarter of his sentence before becoming eligible for parole.

(1967, c. 996, s. 10; 1973, c. 1153; c. 1262, s. 10; 1975, c. 720, s. 2; 1977, c. 732, s. 2; 1981, c. 662, s. 6; 1985, c. 226, 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 1985 amendment, effective May 23, 1985, substituted "Article 85 of Chapter 15A of the General Statutes" for "Article 4 of this Chapter" at the end of the first sentence of subsection (a).

CASE NOTES

Applied in State v. Reid, 66 N.C. App. 698, 311 S.E.2d 675 (1984).

ARTICLE 4.

Paroles.

§ 148-51.1: Repealed by Session Laws 1985, c. 226, s. 9, effective May 23, 1985.

§ 148-57. Rules and regulations for parole consideration.

CASE NOTES

Quoted in Glenn v. Johnson, 761 F.2d 192 (4th Cir. 1985).

§ 148-57.1. Restitution as a condition of parole.

(a) Repealed by Session Laws 1985, c. 474, s. 5.

(b) As a rehabilitative measure, the Parole Commission is authorized to require a prisoner to whom parole is granted to make restitution or reparation to an aggrieved party as a condition of parole when the sentencing court recommends that restitution or reparation to an aggrieved party be made a condition of any parole granted the defendant. The Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Parole Commission that restitution or reparation by the defendant be made a condition of any parole granted the defendant. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation

shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

(d) The Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that the payment of restitution or reparation by the prisoner is being considered as a condition of any parole granted the prisoner, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the recommendation of the sentencing court. (1977, c. 614, s. 8; 1977, 2nd Sess., c. 1147, s. 36; 1985, c. 474, s. 5.)

Effect of Amendments. — The 1985 amendment, effective 14 days after ratification, deleted subsection (a), relating to the imposition as a condition of attaining the parole that the prisioner make restitution or reparation, substituted the language beginning "authorized to require a prisoner to whom parole is granted" for "further authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining parole" at the end of the first sentence of subsection (b), rewrote the first three sentences of subsection (c), deleted "order or" following "The" at the beginning of the fourth sentence of subsection (c), deleted "orders or" preceding "recommendations incident to" and "order or" preceding "recommendation" in the fifth sentence of subsection (c), and substituted "the payment of restitution or reparation by the prisoner is being considered as a condition of any parole granted the prisoner" for "restitution or reparation is being considered as a condition of his parole" in the first sentence of subsection (d), and deleted "order or" preceding "recommendation of the sentencing court" at the end of the second sentence of subsection (d). The act was ratified June 26, 1985.

CASE NOTES

Constitutionality of Requiring Restitution. — A requirement that a defendant pay restitution as a condition of parole or work release is not inherently unconstitutional. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

The constitutionality of a reparation requirement may only be considered if and when restitution is ordered. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

The constitutionality of a reparation requirement may only be determined by considering defendant's financial status at the time when restitution may be paid. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

There is no statutory requirement for a sentencing judge to inquire into a defendant's ability to pay restitution when the judge merely recommends restitution as a condition of parole or work release. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

Constitutionality of Requiring Repayment of Attorney's Fees. — The interlocking statutes and court decisions that regulate North Carolina's ability to recover the costs of court-appointed counsel meet constitutional requirements. The indigent defendant's fundamental right to counsel is preserved under the system; he is given ample opportunity to challenge the decision to require repayment at all critical stages; and he is protected against heightened civil or criminal penalties based solely on his inability to pay. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Though far from a paragon of clarity and detail as a complete program, the North Carolina statutes relating to the repayment of attorney's fees by restitution embody all the required features of a constitutionally acceptable approach. The indigent defendant's fundamental right to counsel is preserved under the

North Carolina statute and no preconditions are placed on the exercise of that right beyond a reasonable and minimally intrusive procedure designed to establish the fact of indigency. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Like its civil recoupment statute, North Carolina's procedures for imposing the reimbursement of court-appointed counsel fees as a condition of parole are narrowly drawn to avoid unfairness and discriminatory effects. Alexander v. Johnson 742 F.2d 117 (4th Cir. 1984).

Claim of parolee under 42 U.S.C. § 1983 that North Carolina had placed an unconstitutional restraint on her freedom by conditioning her parole upon repayment of attorney's fees would be dismissed for failure to exhaust state remedies. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

State as "Aggrieved Party". — Although the North Carolina Supreme Court has never definitively decided the issue, there is persuasive authority in North Carolina law supporting the State's right to claim the status of an "aggrieved party" for the expenses associated with providing court-appointed counsel. Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Parole Commission, etc., Not Bound by Recommendation of Restitution. — Neither the Parole Commission nor the Department of Correction is bound by the judge's recommendation of restitution as a condition of parole or work release. State v. Arnette, 67 N.C. App. 194, 312 S.E.2d 547 (1984).

Article 4A.

Out-of-State Parolee Supervision.

§ 148-65.1. Governor to execute compact; form of compact.

CASE NOTES

Phrase "at all times" in subdivision (3) of this section clearly implies a right of the sending state to retake the probationer prior to a revocation hearing in the receiving state, and to hold the hearing in the sending state. State v. Coleman, 64 N.C. App. 384, 307 S.E.2d 207 (1983).

§ 148-65.1A. Interstate parole and probation hearing procedures.

CASE NOTES

Applied in State v. Coleman, 64 N.C. App. 384, 307 S.E.2d 207 (1983).

Article 5.

Farming Out Convicts.

§ 148-66. Cities and towns and Department of Agriculture may contract for prison labor.

The corporate authorities of any city or town may contract in writing with the State Department of Correction for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable

against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Department of Agriculture of the State of North Carolina is hereby authorized and empowered to contract, in writing, with the State Department of Correction for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations. (1881, c. 127, s. 1; Code, s. 3449; Rev., s. 5410; C.S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1985, c. 226, s. 10(1).)

Effect of Amendments. — The 1985 amendment, effective May 23, 1985, substituted "Department" for "Board" in the second paragraph.

§ 148-67. Hiring to cities and towns and State Department of Agriculture.

The State Department of Correction shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in G.S. 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Department of Correction, in its discretion, to hire to the Department of Agriculture of the State of North Carolina for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Department of Correction. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C.S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1985, c. 226, s. 10(2).)

Effect of Amendments. — The 1985 amendment, effective May 23, 1985, substituted "Department" for "Board" in the second paragraph.

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

The State Department of Correction in all contracts for labor shall provide for feeding and clothing the inmates and shall maintain, control and guard the quarters in which the inmates live during the time of the contracts; and the Department shall provide for the guarding and working of such inmates under its sole supervision and control. The Department may make such contracts for the hire of the inmates confined in the State prison as may in its discretion be proper. In accordance with the provisions of Article 11 of Chapter 66 of the General Statutes, the Department may use the

labor of inmates confined in the State prison in work on farms and manufacturing, either within or without the State prison. The Department may dispose of the products of the labor of the inmates, either in farming or in manufacturing or in other industry at the State Prison System to any public institution owned, managed, or controlled by the State, or to any county, city or town in this State, or to any federal, state, or local public institution in any other state of the union. Provided however, no manufacturing or other industry shall be established, supervised or controlled by the Department unless specifically approved by the Governor pursuant to G.S. 66-58(f).

All departments, institutions and agencies of this State which are supported in whole or in part by the State shall give preference to Department of Correction products in purchasing articles and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction, and no article or commodity available from the Department of Correction shall be purchased by any such State department, institution, or agency from any other source unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the Secretary of Administration, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of Article 3 of Chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Department of Correction, but the Department of Correction shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the Secretary by reference to competitive bidding as required by law. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C.S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2; 1967, c. 996, s. 13; 1975, c. 730, s. 1; 1983, c. 717, s. 14; 1985, c. 118; c. 226, s. 11.)

Editor's Note. —

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

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

The 1985 amendment by c. 118, effective April 24, 1985, substituted "to any public institution owned, managed, or controlled by the State, or to any county, city or town in this State, or to any federal, state, or local public institution in any other state of the union" for "to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State" at the end of the fourth sentence of the first paragraph.

The 1985 amendment by c. 226, s. 11, effective May 23, 1985, in the first sentence of the second paragraph, deleted "without permission of the board of award provided for in G.S. 143-52" preceding "unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined" and substituted "by the Secretary of Administration" for "by the board of award" thereafter, and at the end of the last sentence of the second

paragraph and substituted "as determined by the Secretary by reference to competitive bidding as required by law" for "as determined by the board of award or with competitive bids which the board of award may in its discretion require, taking into consideration the best interest of the State as a whole."

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section.

Case records and related materials compiled for the use of the Secretary of Correction and the Parole Commission shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period on probation, the probation files on that individual shall be made a part of the combined files used by the Department of Correction and the Parole Commission. The administration of the Records Section shall be under the control and direction of the Secretary of Correction. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10; 1985, c. 226, s. 12.)

Effect of Amendments. —
The 1985 amendment, effective May 23, 1985, deleted the former third sentence, which read: "The Secretary of Correction shall cooperate with the Secretary of Correction and the Secretary of Correction in joint efforts aimed at developing accurate and comprehensive case records on individual offenders."

ARTICLE 12.

Interstate Corrections Compact.

§ 148-121. Proceedings to be open; all documents public records; exception.

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

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

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

(c) If, in the discretion of the Secretary, such notice or disclosure requirements provided for in this section would jeopardize the

safety of persons or property, the provisions of this section do not apply. (1983, c. 874, s. 1.)

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

Chapter 150A.

Administrative Procedure Act.

§§ 150A-1 to 150A-64: Recodified as §§ 150B-1 to 150B-64, effective January 1, 1986.

Editor's Note. — This Chapter was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

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

Session Laws 1985, c. 746, s. 12, is a severability clause.

Session Laws 1983, c. 923, s. 52 provided for the repeal of Chapter 150A, with the exception of §§ 150A-9 and 150A-11 through 150A-17, effective July 1, 1985. Session Laws 1985, c. 504, s. 1 extended the date of the repeal to July 11, 1985, and Session Laws 1985, c. 684, s. 1 further extended the date of the repeal to July 14, 1985. Subsequently, Session Laws 1985, c. 746, s. 10, effective July 12, 1985, repealed the repealing language of Session Laws 1983, c. 923, s. 52. Thus, the repeal never went into effect.

Session Laws 1983, c. 883, s. 1, provided for repeal, effective July 1, 1985, of all rules adopted under the provisions of Article 2 of Chapter 150A which were in effect on January 1, 1985, unless they were approved by the 1985 Session of the General Assembly. Session Laws 1985, c. 504, s. 2 extended the repeal date provided for in Session Laws 1983, c. 883 to July 11, 1985, and Session Laws 1985, c. 684, s. 2, further extended this date to July 14, 1985. Subsequently, Session Laws 1985, c. 746, s. 11, effective July 12, 1985, repealed Session Laws 1983, c. 883, s. 1. Thus, the repeal of rules by Session Laws 1983, c. 883, s. 1 never went into effect.

Former § 150A-10 was repealed by Session Laws 1983, c. 641, s. 2, effective January 1, 1984. Former § 150A-46.1, relating to review de novo, was enacted by Session Laws 1983, c. 919, s. 1.

Chapter 150B.

Administrative Procedure Act.

ARTICLE 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) The purpose of this Chapter is to establish as nearly as possible a uniform system of administrative rule making and adjudicatory procedures for State agencies.

(c) This Chapter shall apply to every agency, as defined in G.S. 150B-2(1), except to the extent and in the particulars that any statute, including subsection (d) of this section, makes specific provisions to the contrary.

(d) The following are specifically exempted from the provisions of this Chapter: the Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board, and the Utilities Commission.

The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court-martial jurisdiction.

The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which shall apply.

Articles 2, 3, and 3A of this Chapter shall not apply to the Department of Transportation in rule making or administrative hearings as provided for by Chapter 20 of the General Statutes or to the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce.

Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a). (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, s. 1.)

Editor's Note. — This Chapter is former Chapter 150B, as rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to the corresponding sections in the Chapter as rewritten and recodified.

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

Session Laws 1985, c. 746, s. 12, is a severability clause.

Legal Periodicals. —

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

The State, by enactment of the Administrative Procedure Act, has consented to supervisory jurisdiction by the General Court of Justice over appeals from administrative agencies. Poret v. State Personnel Comm'n, — N.C. App. —, 328 S.E.2d 880 (1985).

Judicial Notice of Regulations. — Where promulgating agency is not subject to the North Carolina Administrative Procedure Act, the court is only required to take judicial notice of its regulations if submitted in accordance with certain procedures designed to insure their accuracy. Southern Ry. v. O'Boyle Tank Lines, 70 N.C. App. 1, 318 S.E.2d 872 (1984).

Zoning Decisions. — The Administrative Procedure Act is expressly not applicable to municipalities or their boards. However, the principles that the act embodies are highly pertinent to municipal zoning decisions. Because the act is the precursor of current procedure for review of zoning decisions, and because recent case law tends to indicate that the court should look to the act for guidance in this area of the law, it is reasonable to expect a time limit for filing for review which is the same as that provided within the act. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

Boards of aldermen act in a quasi-judicial capacity when they decide whether to issue a conditional use permit, and judicial review is available from their decisions by proceedings in the nature of certiorari as provided for in the Administrative Procedure Act. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Applied in Dailey v. North Carolina State Bd. of Dental Exmrs., 309 N.C. 710, 309 S.E.2d 219 (1983); House of Raeford Farms, Inc. v. Brooks, 63 N.C. App. 106, 304 S.E.2d 619 (1983); Pearce v. North Carolina State Hwy. Patrol Voluntary Pledge Comm., 310 N.C. 445, 312 S.E.2d 421 (1984).

Cited in Bennett v. Hertford County Bd. of Educ., 69 N.C. App. 615, 317 S.E.2d 912 (1984); In re Jonas, 70 N.C. App. 116, 318 S.E.2d 869 (1984); Yow v. Alexander County Dep't of Social Servs., 70 N.C. App. 174, 319 S.E.2d 626 (1984); Correll v. Boulware, — N.C. App. —, 329 S.E.2d 695 (1985).

§ 150B-2. Definitions.

As used in this Chapter,

(1) "Agency" means any agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government of the State of North Carolina but does not include any agency in the legislative or judicial branch of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or local boards of education, other local public districts, units or bodies of

any kind, or private corporations created by act of the General Assembly.

(2) "Contested case" means any administrative proceeding, by whatever name called, in which the legal rights, duties, or privileges of a party are required by law to be determined after an opportunity for an adjudicatory hearing. "Contested case" includes licensing and any administrative proceeding to levy a monetary penalty regardless of whether the statute authorizing such a penalty requires an adjudicatory hearing. "Contested case" does not include rule making, declaratory rulings, or the award or denial of a scholarship or grant.

(2a) "Effective" means that a valid rule has been filed as required by G.S. 150B-59 and either has not been delayed by or has been returned to the Administrative Rules Review Commission as required by G.S. 143A-55.3. A rule that is effective is enforceable to the extent permitted by law.

(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right of privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate; provided this subdivision shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.

(6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(8a) "Rule" means any agency regulation, standard or statement of general applicability that implements or interprets laws enacted by the General Assembly or Congress or regulations promulgated by a federal agency or describes the procedure or practice requirements of any agency not inconsistent with laws enacted by the General Assembly. The term includes the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies, including policies and procedures manuals, if such a statement does not directly or substantially affect the procedural or substantive rights or duties of persons not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of the agency that merely define, interpret or explain the meaning of a statute or other provision of law or precedent.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute or the instructions for the execution or use of the form.

e. Statements of agency policy made in the context of another proceeding, including:
   1. Declaratory rulings under G.S. 150B-17;
   2. Orders establishing or fixing rates or tariffs.

f. Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly, communicated to the public by use of signs or symbols, concerning:
   1. The use or creation of public roads or bridges;
   2. The boundaries of public facilities and times when public facilities are open to the public; or
   3. Safety in use of public facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases;

h. Scientific, architectural, or engineering standards, forms, or procedures.

(9) "Valid" means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it is made effective. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Zoning Decisions. — The Administrative Procedure Act is expressly not applicable to municipalities or their boards. However, the principles that the act embodies are highly pertinent to municipal zoning decisions. Because the act is the precursor of current procedure for review of zoning decisions, and because recent case law tends to indicate that the court should look to the act for guidance in this area of the law, it is reasonable to expect a time limit for filing for review which is the same as that provided within the act. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

Boards of aldermen act in a quasi-judicial capacity when they decide whether to issue a conditional use permit, and judicial review is available from their decisions by proceedings in the nature of certiorari as provided for in the Administrative Procedure Act. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

Standard on Review of City's Special Zoning Request Decisions. — Although the North Carolina Administrative Procedure Act provides judicial review only for agency decisions and exempts cities and other local municipalities, a similar standard of review is appropriate to review city council special zoning request decisions. Jennewein v. City Council, 62 N.C. App. 89, 302 S.E.2d 7, cert. denied, 309 N.C. 461, 307 S.E.2d 365 (1983).

Applied in Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§§ 150B-4 to 150B-8: Reserved for future codification purposes.

ARTICLE 2.

Rule Making.

§ 150B-9. Minimum procedural requirements; limitations on rule-making authority; no criminal sanctions authorized.

(a) It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for temporary rules which are provided for in G.S. 150B-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any State agency. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article.

(b) Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in this Article and pursuant to authority delegated by law and in full compliance with its duties and obligations. No agency may adopt any rule that implements or interprets any statute or other legislative enactment unless the power, duty, or authority to carry out the provisions of the statute or enactment is specifically conferred on the agency in the enactment, nor may any agency make any rule enlarging the scope of any trade or profession subject to licensing.

(c) The power to declare what shall constitute a crime and how it shall be punished and the power to establish standards for public conduct are vested exclusively in the General Assembly. No agency may adopt any rule imposing a criminal penalty for any act or failure to act, including the violation of any rule, unless the General Assembly authorizes a criminal sanction and specifies a criminal penalty for violation of the rule.

(d) No agency may adopt as a rule the verbatim text of any federal or North Carolina statute or any federal regulation, but an agency may adopt all or any part of such text by reference under G.S. 150B-14. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

Editor's Note. — Session Laws 1985, c. 746, s. 3, effective July 12, 1985, provides: "Each agency subject to Articles 2 and 5 of Chapter 150A [recodified as Chapter 150B] of the General Statutes shall, not later than November 1, 1985, review its rules and report to the General Assembly in the form prescribed by the chief hearing officer of the Office of Administrative Hearings which rules it recommends should continue to be in effect after July 1, 1986. The report shall be in writing on an individual rule basis and, as to each rule, the agency shall state:

(1) The purpose of the rule;
(2) Whether the rule must be filed under the definition of a rule in G.S. 150A2(8a) [G.S. 150B-2 (8a)];
(3) Whether the power to adopt the rule is specifically conferred on the agency by statute or other legislative enactment;
(4) Whether the rule imposes a criminal penalty;

(5) Whether the rule minimizes the duplicating of statutory language;
(6) Whether any documents incorporated in the rule by reference are conveniently available to the public; and
(7) Whether the rule, to the extent practicable, uses plain language."

§ 150B-10. Statements of organization and means of access to be published.

To assist interested persons dealing with it, each agency shall, in a manner prescribed by the Administrative Rules Review Commission, prepare a description of its organization, stating the process whereby the public may obtain information or make submissions or requests. The chief hearing officer of the Office of Administrative Hearings shall publish these descriptions annually. (1985, c. 746, s. 1.)

§ 150B-11. Special requirements.

In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt rules setting forth the nature and requirements of all formal and informal procedures available, including a listing of all forms that are required by the agency. Procedures concerning only internal management which do not directly affect the rights of or procedures available to the public shall not be adopted as rules.
(2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the disharge of its functions, except those used only for internal management of the agency.
(3) Submit to the Director of the Budget a summary of any proposed rule requiring the expenditure or distribution of State funds and obtain approval of such expenditure or distribution of State funds prior to publishing the notice of public hearing required by G.S. 150B-12(2). For purposes of this subdivision the term "State funds" shall have the same meaning as is set out in G.S. 143-1 and shall also apply to the funds of all occupational licensing boards included under G.S. 150B-1. The agency shall include a fiscal note with any proposed rule, other than a temporary rule, so submitted. The fiscal note shall state what effect, if any, the proposed rule will have on the revenues, expenditures, or fiscal liability of the State or its agencies or subdivisions. The fiscal note shall include an explanation of how such effect, if any, was computed. (1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185; 1985, c. 746, s. 1.)

Editor's Note. — The reference in subdivision (3) of this section to § 150B-12(2) was apparently intended to refer to § 150B-12(a)(2).

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

(a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 30 days before the public hearing and at least 60 days before the adoption, amendment, or repeal of the rule. The notice shall include:

(1) A reference to the statutory authority under which the action is proposed;

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

(3) The text of the proposed rule, or amendment in the form required by G.S. 150B-63(d2) and the proposed effective date of the rule or amendment.

(b) The agency shall transmit copies of the notice to the chief hearing officer of the Office of Administrative Hearings, the Attorney General, and the Governor.

(c) The agency shall publish the notice in the North Carolina Register and as prescribed in any applicable statute.

The agency may also publish the notice or a synopsis of the notice in other ways selected by the agency to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications.

(d) The public hearing shall not be conducted as a contested case unless a specific statute requires that the proposed rule be adopted by adjudicatory procedures.

(e) The proposed rule shall not be changed or modified after the notice required by this section is published and before the rule-making hearing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption. The record in every rule-making proceeding under this Article shall remain open at least 30 days either before or after the hearing for the purposes of receiving written comments, and any such comments shall be included in the hearing records. All comments received, as well as any statement of reasons issued to an interested person under this section, shall be included in the rule-making record.

(f) No rule-making hearing is required for the adoption, amendment, or repeal of a rule which solely describes forms or instructions used by the agency.

(g) No rule-making hearing is required if the Administrative Rules Review Commission certifies that the amendment to a rule does not change the substance of the rule and that the amendment is:

(1) A relettering or renumbering instruction; or,

(2) The substitution of one name for another when an organization or position is renamed; or,
(3) The correction of a citation to rules or laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or
(4) The correction of a similar formal defect; or
(5) A change in information that is readily available to the public such as addresses and telephone numbers.

(h) No rule-making hearing is required to repeal a rule if the repeal of the rule is specifically provided for by the Constitution of the United States, the Constitution of North Carolina, any federal or North Carolina statute, any federal regulation, or a court order. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1.)

Editor's Note. — Session Laws 1985, c. 746, s. 14, effective Jan. 1, 1986, provides that the notice publication requirement of subsection (c) of this section shall be deemed to be met if an agency publishes notice in three newspapers with general circulation prior to the first publication of the North Carolina Register.

§ 150B-13. Temporary rules.

(a) Except as provided in subsection (b) of this section, if an agency which is not exempted from the notice and hearing requirements of this Article by G.S. 150B-1 determines in writing that:
(1) Adherence to the notice and hearing requirements of this Article would be contrary to the public interest; and that
(2) The immediate adoption, amendment, or repeal of a rule is necessitated by and related to:
a. A threat to public health, safety, or welfare resulting from any natural or man-made disaster or other events that constitute a life threatening emergency;
b. The effective date of a recent act of the General Assembly or the United States Congress;
c. A federal regulation; or
d. A court order,

the agency may adopt, amend, or repeal the rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practicable. The agency must accompany its rules filing with the chief hearing officer of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule, together with the reasons for that finding and a copy of the notice of hearing on the proposed permanent rule.

The written certification of the finding of need for the temporary rule shall be signed by:
(1) The member of the Council of State in the case of the Departments of Justice, Insurance, Public Education, Labor, Agriculture, Treasurer, State Auditor, or Secretary of State.
(2) The chairman of the board in the case of an occupational licensing board.
(3) The Governor in the case of all other agencies.

(b) If the Department of Crime Control and Public Safety, Transportation, Revenue, or Correction determines in writing that the

immediate adoption, amendment, or repeal of a rule is necessitated by:

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

the agency may adopt, amend, or repeal the rule. The agency must accompany its rule filing with the chief hearing officer of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule signed by the Governor together with the reasons for that finding. In the case of the Department of Correction, in addition to the reasons set forth in subdivisions (1) through (4) of this subsection, the Department may file a temporary rule when necessary for the management and control of persons under the custody or supervision of the Department in extraordinary circumstances as certified by the Secretary. The Department shall file any temporary rule within two working days of its adoption by the Secretary under G.S. 148-11.

(c) Rules filed under subsections (a) and (b) of this section shall be effective for a period of not longer than 120 days. An agency adopting a temporary rule shall begin normal rule-making procedures on the permanent rule under this Article at the same time the temporary rule is adopted. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1.)

§ 150B-14. Adoption by reference.

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

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

The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and the amount of any charge for the copy as of the time the rule is adopted. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19; 1985, c. 746, s. 1.)

§ 150B-15. Continuation of rules.

When a law authorizing or directing an agency to promulgate rules is repealed, and (i) substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law, or (ii) the function of the agency to which the rules are related is transferred to another agency by law or executive order, the existing rules of the original agency shall continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the transferred duty or function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and (i) substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and (ii) the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the law repealing the agency's rule-making power or abolishing the agency. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-16. Petition for adoption of rules.

Any person may petition an agency to promulgate, amend, or repeal a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with G.S. 150B-12 and G.S. 150B-13; provided, however, commissions and boards shall act on a petition at their next regularly scheduled meeting, but in any case no later than 120 days after submission of a petition. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-17. Declaratory rulings.

On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§§ 150B-18 to 150B-22: Reserved for future codification purposes.

ARTICLE 3.

Administrative Hearings.

§ 150B-23. Commencement; assignment of hearing officer; hearing required; notice; intervention.

(a) Except as provided in subsection (a1), all contested cases other than those conducted under Article 3A of this Chapter shall be commenced by the filing of a petition with the Office of Administrative Hearings. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay.

All contested cases under Chapter 126 of the General Statutes shall be conducted in the Office of Administrative Hearings. Except in contested cases under Chapter 126 of the General Statutes, a party may waive the right to have a contested case conducted by a hearing officer in the Office of Administrative Hearings in the petition filed to commence the case, in which case the contested case shall be conducted by the agency. In the absence of a waiver, a contested case under this Article shall be presided over by the chief hearing officer of the Office of Administrative Hearings or a hearing officer assigned by him. In assigning hearing officers, the chief hearing officer shall attempt to use personnel having expertise in the subject to be dealt with in the hearing.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the hearing officer shall be advisory only and not binding on the local appointing authority, unless (1) the hearing officer decides that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the hearing officer's decision shall be final.

(a1) The parties in a contested case in the Department of Human Resources shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given notice not less than 15 days before the hearing by the Office of Administrative Hearings or the agency, which notice shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved;

(3) A short and plain statement of the factual allegations; and

(4) If the agency is the Department of Human Resources, a statement of who will conduct the hearing and that the party may request a hearing officer in the Office of Administrative Hearings as provided in G.S. 150B-32.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the hearing officer.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The case below was decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Cited in Frieson v. North Carolina Real Estate Licensing Bd., — N.C. App. —, 325 S.E.2d 293 (1985).

§ 150B-24. Venue of hearing.

(a) The hearing of a contested case shall be conducted:

(1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;

(2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or

(3) In any county determined by the agency or hearing officer in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-25. Conduct of hearing; answer.

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the agency or hearing officer may proceed with the hearing in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written response, and a copy must be mailed to all other parties not less than 10 days before the date set for hearing. If the agency is the Department of Human Resources, the response may include a request for a hearing officer in the Office of Administrative Hearings as provided in G.S. 150B-32.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The case below was decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

This provision is permissive, not mandatory. Frieson v. North Carolina Real Estate Licensing Bd., — N.C. App. —, 325 S.E.2d 293 (1985).

§ 150B-26. Consolidation.

When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the chief hearing officer of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings. If one or more, but not all parties in a consolidated contested case in the Department of Human Resources involving multiple aggrieved persons requests a hearing officer in the Office of Administrative Hearings as provided in G.S. 150B-32, the chief hearing officer in the Office of Administrative Hearings shall decide whether to grant the request after consulting with the parties in all the contested cases involved. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-27. Subpoena.

After the commencement of a contested case, the agency or hearing officer may issue subpoenas upon his own motion or upon a written request. When a written request for a subpoena has been made, the agency or hearing officer shall issue the requested subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency or hearing officer shall revoke a subpoena if, upon a hearing, he finds that the evidence the

production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 66; 1985, c. 746, s. 1.)

§ 150B-28. Depositions and discovery.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-29. Rules of evidence.

(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency or hearing officer in reaching his decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

The standard of review, known as the "whole record test", presents to

the trial judge a task which must be distinguished from both de novo review and the any competent evidence standard of review. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The whole record test is not a tool of judicial intrusion; instead it merely gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence. Thus, the task before the trial court is to consider all the evidence, both that which supports the decision of the board and that which detracts from it. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The whole record test does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. On the other hand, the whole record rule requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the board's result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

§ 150B-30. Official notice.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Applied in Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892 (1984).

§ 150B-31. Stipulations.

(a) The parties in a contested case may, by a stipulation in writing filed with the agency or hearing officer, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The case below was decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Stated in North Carolina Dep't of Cor. v. Hill, — N.C. —, 329 S.E.2d 377 (1985).

§ 150B-32. Designation of hearing officer.

(a) The chief hearing officer of the Office of Administrative Hearings shall assign himself or a hearing officer in the Office of Administrative Hearings to preside as hearing officer in each contested case. If a party waives the right to have a case conducted in the Office of Administrative Hearings in the petition to commence the case, an agency, one or more members of the agency, a person or group of persons designated by statute, or one or more hearing officers designated and authorized by the agency to conduct contested cases.

(a1) A party in a contested case in the Department of Human Resources who has been served with a notice of hearing may request in a response filed pursuant to G.S. 150B-25(b) that the contested case be conducted by a hearing officer in the Office of Administrative Hearings. The agency shall forthwith request the chief hearing officer in the Office of Administrative Hearings to assign himself or another hearing officer to conduct the case, and the chief hearing officer shall make the assignment. In assigning hearing officers, the chief hearing officer shall attempt to use personnel having expertise in the subject to be dealt with in the hearing.

A party waives the right to request a hearing officer in the Office of Administrative Hearings if the response is not filed at least 10 days before the date set for hearing.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

A hearing officer is a creature of statute. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

The commissioner and hearing officer may act only as the legislature has prescribed. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

Although the office of Commissioner of Insurance is one created by N.C. Const., Art. III, § 7(1), his power and authority emanate from the General Assembly and are limited by legislative prescription. The only power he has to fix rates is such power as the General Assembly has delegated to and vested in him. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

For discussion of the respective powers and duties of the Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

§ 150B-33. Powers of hearing officer.

(a) A hearing officer shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) A hearing officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency or the Office of Administrative Hearings, as applicable, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Apply to any judge of the Superior Court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not 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. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Powers Generally. — When an agency of State government determines to use the services of a hearing officer, it is this section that prescribes his powers. The powers are limited to six categories: administering oaths, signing and issuing subpoenas, taking depositions, regulating the course of hearings, providing for pretrial conferences of parties to simplify issues, and making application to the court for a contempt order. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

Proposal for Decision Required of Hearing Officer. — Under the Administrative Procedure Act, when the services of a hearing officer are used, there must be a "proposal for decision" by the hearing officer. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

§ 150B-34. Proposal for decision; recommended decision.

(a) In a contested case conducted by a hearing officer other than the agency officials who will make the final decision, the hearing officer shall:

(1) Make a proposal for decision that contains his findings of fact and conclusions of law and proposed decision, opinion, order, or report;

(2) Deliver a copy of the proposal for decision to each party; and

(3) Give each party an opportunity to file exceptions and proposed findings of fact and to present written arguments to him.

(b) After considering any exceptions, proposed findings of fact, and written arguments of the parties, the hearing officer shall make a recommended decision that contains findings of fact and conclusions of law and a recommended decision, opinion, order, or report. He shall include the recommended decision in the official record prepared pursuant to G.S. 150B-37(a) and shall forward a copy of the official record to the agency. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Powers of Hearing Officer Generally. — When an agency of State government determines to use the services of a hearing officer, it is § 150A-33 (see now § 150B-33) that prescribes his powers. The powers are limited to six categories: administering oaths, signing and issuing subpoenas, taking depositions, regulating the course of hearings, providing for pretrial conferences of parties to simplify issues, and making application to the court for a contempt or-

der. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

Proposal for Decision Required. — Under the Administrative Procedure Act, when the services of a hearing officer are used, there must be a "proposal for decision" by the hearing officer. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

For discussion of respective powers and duties of Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

§ 150B-35. No ex parte communication; exceptions.

Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case or a hearing officer shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-36. Final decision.

A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the hearing officer's recommended decision as its final decision in a contested case conducted by a hearing officer, the agency shall include in its decision or order the specific reasons why the hearing officer's recommended decision is not adopted. A decision or order shall not be made except upon consideration of the record as a whole or such portion as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 67; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The case below was decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Applied in Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

§ 150B-37. Official record.

(a) The agency or hearing officer who conducts the hearing in a contested case shall prepare an official record of the hearing which shall include:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
(5) The hearing officer's proposal for decision and exceptions and proposed findings of fact; and
(6) The hearing officer's recommended decision, opinion, order, or report.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

ARTICLE 3A.

Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

(a) The provisions of this Article shall apply to the following agencies:
(1) Occupational licensing agencies;
(2) The State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and
(3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:
(1) A statement of the date, hour, place, and nature of the hearing;
(2) A reference to the particular sections of the statutes and rules involved; and
(3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by a hearing officer requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing re-

sides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the hearing officer may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article. (1985, c. 746, s. 1.)

§ 150B-39. Depositions; discovery; subpoenas.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) An agency may issue subpoenas in preparation for, or in the conduct of, a contested case upon its own motion. If a written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency shall revoke a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1985, c. 746, s. 1.)

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and

(6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of

the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the chief hearing officer of the Office of Administrative Hearings for the designation of a hearing officer to preside at the hearing of a contested case under this Article. Upon receipt of the application, the chief hearing officer shall, without undue delay, assign a hearing officer to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests a hearing officer from the Office of Administrative Hearings.

The hearing officer assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The hearing officer shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

A hearing officer shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the hearing officer's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. (1985, c. 746, s. 1.)

§ 150B-41. Evidence; stipulations; official notice.

(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be

incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. (1985, c. 746, s. 1.)

§ 150B-42. Final agency decision; official record.

(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
(5) Proposed findings and exceptions; and
(6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests. (1985, c. 746, s. 1.)

ARTICLE 4.

Judicial Review.

§ 150B-43. Right to judicial review.

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

Legal Periodicals. — For comment discussing life insurance, divorce, and inheritance tax in light of In re Kapoor, 303 N.C. 102, 277 S.E.2d 403 (1981), see 13 N.C. Cent. L.J. 253 (1982).

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Whether the jurisdictional prerequisites of the Administrative Procedure Act have been met is not a question of personal jurisdiction, but one of the ripeness, on a case by case basis, of the subject matter of administrative decisions for judicial review. Poret v. State Personnel Comm'n, — N.C. App. —, 328 S.E.2d 880 (1985).

Record Must Indicate Basis for Exercise of Discretion. — While it is true that the determination whether by common judgment certain conduct is disqualifying is left to the sound discretion of the board, the record must include an indication of the basis upon which the board or other agency exercised its expert discretion. Dailey v. North Carolina State Bd. of Dental Exmrs., 309 N.C. 710, 309 S.E.2d 219 (1983).

Applied in Unigard Mut. Ins. Co. v. Ingram, — N.C. App. —, 323 S.E.2d 442 (1984); White Oak Properties, Inc. v. Town of Carrboro, — N.C. —, 327 S.E.2d 882 (1985).

Stated in State ex rel. Grimsley v. Buchanan, 64 N.C. App. 367, 307 S.E.2d 385 (1983).

Cited in Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984); American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or hearing officer in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or hearing officer. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

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

In order to obtain judicial review of a final decision under this Chapter, the party seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the petitioner resides. The petition may be filed at any time after final decision but must be filed not later than 30 days after a written copy of the decision is served upon the party seeking the review by personal service or by certified mail. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review under this Chapter, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county where venue is proper may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

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

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Zoning Decisions. — The current Administrative Procedure Act is expressly not applicable to municipalities or their boards. However, the principles that the act embodies are highly pertinent to municipal zoning decisions. Because the act is the precursor of current procedure for review of zoning decisions, and because recent case law tends to indicate that the court should look to the act for guidance in this area of the law, it is reasonable to expect a time limit for filing for review which is the same as that provided within the act. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

Boards of aldermen act in a quasi-judicial capacity when they decide whether to issue a conditional use permit, and judicial review is available from their decisions by proceedings in the nature of certiorari as provided for in the Administrative Procedure Act. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

Applied in White Oak Properties, Inc. v. Town of Carrboro, — N.C. —, 327 S.E.2d 882 (1985).

Cited in Poret v. State Personnel Comm'n, — N.C. App. —, 328 S.E.2d 880 (1985).

Stated in State ex rel. Grimsley v. Buchanan, 64 N.C. App. 367, 307 S.E.2d 385 (1983).

§ 150B-46. Contents of petition; copies served on all parties; intervention.

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the hearing in the contested case under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1; 1983, c. 919, s. 3; 1985, c. 746, s. 1.)

§ 150B-48. Stay of decision.

At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The case below was decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Applied in Unigard Mut. Ins. Co. v. Ingram, — N.C. App. —, 323 S.E.2d 442 (1984).

§ 150B-49. New evidence.

In a review proceeding under this Article, any party may present evidence not contained in the record that is not repetitive. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-50. Review by court without jury.

The review of agency decisions under this Chapter shall be conducted by the court without a jury. (1973, c. 1331, s. 1; 1983, c. 919, s. 2; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

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

empts cities and other local municipalities, a similar standard of review is appropriate to review city council special zoning request decisions. Jennewein v. City Council, 62 N.C. App. 89, 302 S.E.2d 7, cert. denied, 309 N.C. 461, 307 S.E.2d 365 (1983).

Applied in In re McCarroll, — N.C. —, 327 S.E.2d 880 (1985).

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

Based on the record and the evidence presented to the court, the court may affirm, reverse, or modify the decision or remand the case to the agency for further proceedings. (1973, c. 1331, s. 1; 1983, c. 919, s. 4; 1985, c. 746, s. 1.)

CASE NOTES

I. In General.
II. "Whole Record" Test.

I. IN GENERAL.

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Unlawful Delegation of Power To Make Final Decision. — Where the Commissioner of Insurance delegated to his appointed hearing officer the power to make the final agency decision, the Commissioner made an unlawful delegation of his powers. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 262, 300 S.E.2d 586, cert. denied, 308 N.C. 548, 304 S.E.2d 242 (1983).

For discussion of the respective powers and duties of the Commissioner of Insurance and his designated hearing officer in the review of filed rates and entry of a final agency decision in a contested insurance rate case, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 61 N.C. App. 506, 300 S.E.2d 845 (1983).

Review of Decisions of Boards of Education. — The appropriate standard of judicial review for reviewing administrative decisions of boards of education is set forth in this section. Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983).

The applicable standard of judicial review for an appeal of a school board decision is set forth in this section. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

The standards for judicial review set forth in this section are applicable to appeals from school boards to the courts, since no other statute provides guidance for judicial review of school board decisions and in the interest of uniformity in reviewing administrative board decisions. Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

Authority of Judge on Review. — It is unnecessary for a trial judge who reviews administrative action under this section to explain the reasons for his decision to affirm such action. Area Mental Health v. Speed, 69 N.C. App. 247, 317 S.E.2d 22, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

Applied in North Carolina State Bar v. Frazier, 62 N.C. App. 172, 302 S.E.2d 648 (1983); Davidson v. Winston-Salem/Forsyth County Bd. of Educ., 62 N.C. App. 489, 303 S.E.2d 202 (1983); American Nat'l Ins. Co. v. Ingram, 63 N.C. App. 38, 303 S.E.2d 649 (1983); House of Raeford Farms, Inc. v. Brooks, 63 N.C. App. 106, 304 S.E.2d 619 (1983); Little v. North Carolina State Bd. of Dental Exmrs., 64 N.C. App. 67, 306 S.E.2d 534 (1983); American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984); Unigard Mut. Ins. Co. v. Ingram, — N.C. App. —, 323 S.E.2d 442 (1984); In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985); Daniel Constr. Co. v. Brooks, — N.C. App. —, 326 S.E.2d 339 (1985).

Quoted in North Carolina Dep't of Cor. v. Gibson, 308 N.C. 131, 301 S.E.2d 78 (1983).

Stated in In re DeLancy, 67 N.C. App. 647, 313 S.E.2d 880 (1984); Lowe v. North Carolina Dep't of Human Resources, — N.C. App. —, 323 S.E.2d 454 (1984).

Cited in In re Jonas, 70 N.C. 116, 318 S.E.2d 869 (1984).

II. "WHOLE RECORD" TEST.

The standard of judicial review set forth in subdivision (5) is known as the "whole record" test and must be distinguished from both de novo review and the "any competent evidence" standard of review. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977); North Carolina A & T Univ. V. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980); Overton v. Goldsboro City Bd. of Educ., 51 N.C. App. 303, 276 S.E.2d 458, aff'd, 304 N.C. 312, 283 S.E.2d 495 (1981); Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983); Burrow v. Randolph County Bd. of Educ., 61 N.C. App. 619, 301 S.E.2d 704 (1983); Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983), rev'd on other grounds, 311 N.C. 42, 316 S.E.2d 281 (1984); Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892 (1984).

As distinguished from the "any competent evidence" test and a de novo review, the "whole record" test "gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence." Bennett v. Hertford County Bd. of Educ., 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

The whole record test is not a tool of judicial intrusion; instead it merely gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence. Thus, the task before the trial court is to consider all the evidence, both that which supports the decision of the board and that which detracts from it. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

Court May Not Replace Agency's Judgment with Its Own. — The "whole record" test set forth in subdivision (5) does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977); Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980); North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980); Overton v. Goldsboro City Bd. of Educ., 51 N.C. App. 303, 276 S.E.2d 458, aff'd, 304 N.C. 312, 283 S.E.2d 495 (1981); Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983), rev'd on other grounds, 311 N.C. 42, 316 S.E.2d 281 (1984).

The whole record test does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been heard before it de novo. Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983).

The mere existence of conflicting evidence does not permit the reviewing court to weigh the evidence and substitute its determination for that of the administrative agency. The credibility of the witnesses and the resolution of conflicts in their testimony is a matter for the agency, not a reviewing court. Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983).

The whole record test does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. On the other hand, the whole record rule requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892, cert. denied, 311 N.C. 304, 317 S.E.2d 680 (1984).

Including Contradictory and Conflicting Evidence. — The "whole record" rule set forth in subdivision (5) requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the board's result, without taking into account contradictory evidence or evidence from which

conflicting inferences could be drawn. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977); Chesnutt v. Peters, 306, 233 S.E.2d 538 (1977); Chesnutt v. Peters, 300 N.C. 359, 266 S.E.2d 623 (1980); McCormick v. Peters, 48 N.C. App. 365, 269 S.E.2d 168 (1980); North Carolina A & T Univ. v. Kimber, 49 N.C. App. 46, 270 S.E.2d 492 (1980); In re Land & Mineral Co., 49 N.C. App. 605, 272 S.E.2d 878 (1980), cert. denied, 302 N.C. 397, 279 S.E.2d 351 (1981); Overton v. Goldsboro City Bd. of Educ., 51 N.C. App. 303, 276 S.E.2d 458, aff'd, 304 N.C. 312, 283 S.E.2d 495 (1981); North Carolina Dep't of Cor. v. Gibson, — N.C. App. —, 293 S.E.2d 664 (1982); Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983), rev'd on other grounds, 311 N.C. 42, 316 S.E.2d 281 (1984).

Agency's Findings of Fact Supported by Competent Evidence Are Conclusive. — The law of this State regarding the respective roles of the administrative agency and the reviewing court concerning conflicting evidence is premised on the notion that the credibility of the witnesses and the resolution of conflicts in their testimony is for the agency, not a reviewing court, and the findings of the agency supported by competent evidence, are conclusive upon judicial review of the agency's order. Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983).

Agency's Judgment Must Be Affirmed If Supported by Competent Evidence. — The reviewing court, while obligated to consider evidence of record that detracts from the administrative ruling, is not free to weigh all of the evidence and reach its own conclusions on the merits. If, after all the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand. Substantial evidence in this context has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Dailey v. North Carolina State Bd. of Dental Exmrs., 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983).

§ 150B-52. Appeal to appellate division; obtaining stay of court's decision.

Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The case below was decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Scope of Appellate Review. — The scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. That is, it must be determined whether the trial court committed any errors of law. American Nat'l Ins. Co. v. Ingram, 63 N.C. App. 38, 303 S.E.2d 649, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983).

§§ 150B-53 to 150B-57: Reserved for future codification purposes.

ARTICLE 5.

Publication of Administrative Rules.

§ 150B-58. Short title.

This Article may be cited as "The Registration of State Administrative Rules Act". (1973, c. 1331, s. 1; 1977, c. 915, s. 7; 1979, c. 541, s. 1; 1983, c. 147, s. 3; c. 641, s. 4; 1985, c. 746, s. 1.)

Editor's Note. — Session Laws 1985, c. 746, s. 3, effective July 12, 1985, provides: "Each agency subject to Articles 2 and 5 of Chapter 150A [recodified as Chapter 150B] of the General Statutes shall, not later than November 1, 1985, review its rules and report to the General Assembly in the form prescribed by the chief hearing officer of the Office of Administrative Hearings which rules it recommends should continue to be in effect after July 1, 1986. The report shall be in writing on an individual rule basis and, as to each rule, the agency shall state:

(1) The purpose of the rule;
(2) Whether the rule must be filed under the definition of a rule in G.S. 150A-2(8a) [G.S. 150B-2(8a)];
(3) Whether the power to adopt the rule is specifically conferred on the agency by statute or other legislative enactment;
(4) Whether the rule imposes a criminal penalty;
(5) Whether the rule minimizes the duplicating of statutory language;
(6) Whether any documents incorporated in the rule by reference are conveniently available to the public; and
(7) Whether the rule, to the extent practicable, uses plain language."

Session Laws 1985, c. 746, s. 4, effective Jan. 1, 1986, provides: "All personnel and equipment presently assigned to the Department of Justice for the purpose of carrying out the provisions of Article 5, Chapter 150A [recodified as this Article] of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a)."

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

(a) Rules adopted by an agency and executive orders of the Governor shall be filed with the chief hearing officer of the Office of Administrative Hearings. No rule, except temporary rules adopted under the provisions of G.S. 150B-13 or curative rules adopted pursuant to G.S. 143B-29.2(d), shall become effective earlier than the first day of the second calendar month after that filing.

(b) The acceptance for filing of a rule by the chief hearing officer, by his notation on its face, shall constitute prima facie evidence of compliance with this Article.

(c) Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that conflict with or violate the provisions of G.S. 150B-9(c) are repealed. Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until June 30, 1986. These rules are repealed effective July 1, 1986, unless approved by the General Assembly on or before June 30, 1986. The approval of rules by the General Assembly shall not be deemed to enact the approved rules or to prohibit their subsequent amendment, repeal or recodification under the provisions of this Chapter. Rules adopted on or after January 1, 1986, shall become effective as provided in this Chapter. (1973, c. 1331, s. 1; 1975, c. 69,

ss. 1, 2, 5, 6; 1979, c. 571, s. 1; 1981, c. 688, s. 13; 1981 (Reg. Sess., 1982), c. 1233, s. 6; 1983, c. 641, s. 5; c. 927, s. 5; 1985, c. 746, s. 1.)

§ 150B-60. Form of rules; responsibilities of agencies; assistance to agencies.

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

(1) Cite the statute or other authority pursuant to which the rule is adopted;

(2) Bear a certification by the agency of its adoption;

(3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements;

(4) Be in the physical form specified by the chief hearing officer of the Office of Administrative Hearings; and

(5) Bear a notation by the Governor that the rule has been submitted in accordance with G.S. 143A-55.3(c). This subdivision does not apply to rules adopted by the Industrial Commission, or by the Utilities Commission, or to rules adopted by the Department of Transportation relating to traffic sign ordinances or road and bridge weight limits.

(b) Each agency shall designate one or more administrative procedure coordinators whose duties shall be to oversee all departmental functions required by this Chapter. The coordinator's duties shall include providing notice of public hearings; serving as liaison between the agency and the Office of Administrative Hearings, the Administrative Rules Review Commission and the public; and coordinating access to agency rules.

(c) The chief hearing officer of the Office of Administrative Hearings shall:

(1) Maintain an agency rule-drafting section in the Office of Administrative Hearings to draft or aid in the drafting of rules or amendments to rules for any agency; and

(2) Prepare and publish an agency rule-drafting guide which sets out the form and method for drafting rules and amendments to rules, and to which all rules shall comply. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14; 1983, c. 927, ss. 6, 9; 1985, c. 746, s. 1.)

§ 150B-61. Authority to revise form.

(a) The chief hearing officer of the Office of Administrative Hearings shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

(1) To rearrange the order of rules, Chapters, Subchapters, Articles, sections, paragraphs, and other divisions or subdivisions;

(2) To provide or revise titles or catchlines;

(3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;

(4) To rearrange definitions and lists; and

(5) To make other changes in arrangement or in form that do not alter the substance of the rule and that are necessary or desirable for an accurate, clear, and orderly arrangement of the rules.

Revision of form by the chief hearing officer shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule. No later than the close of the fifth working day after the filing of a rule by an agency, the chief hearing officer shall return to the agency that filed the rule a copy of the rule in any revised form made by the chief hearing officer, together with his certification of the date of the rule's filing.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

(b) In determining the drafting form of rules the chief hearing officer shall:

(1) Minimize duplication of statutory language;

(2) Not permit incorporations into the rules by reference to publications or other documents which are not conveniently available to the public; and

(3) To the extent practicable, use plain language in rules and avoid technical language. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-62. Public inspection and notification of current and replaced rules.

(a) Immediately upon notation of a filing as specified in G.S. 150B-59(b), the chief hearing officer of the Office of Administrative Hearings shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150B-61(a).

(b) The chief hearing officer shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 50 days of the acceptance by the chief hearing officer of a rule for filing, the agency filing the rule:

(1) Shall publish the rule as prescribed in any applicable statute; and

(2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule.

The rule so published or distributed shall contain the legend: "The form of this rule may be revised by the chief hearing officer pursuant to the provisions of G.S. 150B-61." (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-63. Publication of executive orders and rules; the North Carolina Register.

(a) The chief hearing officer of the Office of Administrative Hearings shall compile, index and publish executive orders of the Governor and all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the chief hearing officer determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1985, the chief hearing officer shall publish, in print or other form, a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually or more frequently in the discretion of the chief hearing officer. Recompilations shall be made in the chief hearing officer's discretion.

(d1) The chief hearing officer shall also publish at periodic intervals, but not less often than once each month, the North Carolina Register which shall contain information relating to agency, executive, legislative or judicial actions that are performed under the authority of, or are required by, or are issued to interpret, or that otherwise affect, this Chapter.

(d2) In publishing proposed amendments to rules, the chief hearing officer shall show the portion of the rule being amended as it is to the degree necessary to provide adequate notice of the nature of the proposed amendment, with changes shown by striking through portions to be deleted and underlining portions to be added.

(e) Reference copies of the compilation, supplements, and recompilations of the rules, and the North Carolina Register shall be distributed by the chief hearing officer as soon after publication as practicable, without charge, to the following officials and departments:

(1) One copy to each county of the State, which copy may be maintained for public inspection in the county in a place determined by the county commissioners; one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals; one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals; one copy to the office of the Governor; and five copies to the Legislative Services Commission for the use of the General Assembly;

(2) One copy to each State official and department to which copies of the appellate division reports are furnished under G.S. 7A-343.1;

(3) Five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1; and

(4) One copy of the North Carolina Register to each member of the General Assembly.

(f) The chief hearing officer shall make available copies of the compilation, supplements and recomputations of the rules and the North Carolina Register to other persons at a price determined by him to cover publication and mailing costs. All moneys received by the Office of Administrative Hearings pursuant to this section from the sale of copies of said publications shall be deposited in the State treasury in a special funds account to be held in trust for the Office of Administrative Hearings to defray the expense of future recompilation, publication, and distribution of such documents. All moneys involved shall be subject to audit by the State Auditor.

(g) Notwithstanding any other provision of law, the Employment Security Commission shall, within 15 days of adoption, file all rules

adopted by it with the chief hearing officer for public inspection and publication purposes only. The chief hearing officer shall compile, make available for inspection, and publish the rules filed under this subsection in the same manner as is provided for other rules. (1973, c. 1331, s. 1; c. 69, ss. 3, 7; c. 688, s. 1; 1979, c. 541, s. 2; 1979, 2nd Sess., c. 1266, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1359, s. 6; 1983, c. 641, s. 6; 1985, c. 746, s. 1.)

§ 150B-63.1. Administrative Rules Review Commission reports.

The chief hearing officer of the Office of Administrative Hearings shall retain any reports of the Administrative Rules Review Commission's objection to a rule. He shall append to any compilation, publication, or summation of that rule a notation that it has been objected to pursuant to G.S. 143A-55.3 or 143A-55.4 and, where applicable, that the objection has been removed. (1981, c. 688, s. 15; 1981 (Reg. Sess., 1982), c. 1233, s. 7; 1983, c. 927, s. 10; 1985, c. 746, s. 1.)

§ 150B-64. Judicial and official notice.

Judicial or official notice shall be taken of any rule effective under this Article. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under Chapter 150A, which was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

Judicial Notice of Regulations. — Where promulgating agency is not subject to the Administrative Procedure Act, the court is only required to take judicial notice of its regulations if submitted in accordance with certain procedures designed to insure their accuracy. Southern Ry. v. O'Boyle Tank Lines, 70 N.C. App. 1, 318 S.E.2d 872 (1984).

Cited in Yow v. Alexander County Dep't of Social Servs., 70 N.C. App. 174, 319 S.E.2d 626 (1984).

Chapter 152.

Coroners.

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

Local Modification. — Greene (office of coroner abolished): 1985, c. 165; New Hanover (office of coroner abolished, effective December 1, 1986): 1985, c. 236; Rowan (office of coroner abolished): 1985, c. 40.

Editor's Note. —

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

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

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

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

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

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

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

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

The act was ratified February 25, 1983.

Chapter 153A.

Counties.

ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-1. Definitions.

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

CASE NOTES

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985).

§ 153A-4. Broad construction.

CASE NOTES

Legislative Intent. — This legislative mandate requires broad construction of those statutes granting power and restrictive readings of those purporting to limit the power. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983).

ARTICLE 2.

Corporate Powers.

§ 153A-11. Corporate powers.

CASE NOTES

Applied in Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

§ 153A-13. Continuing contracts.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

ARTICLE 3.

Boundaries.

§ 153A-18. Uncertain or disputed boundary.

Local Modification. — Chatham: 1985, c. 357, ss. 4, 5; Orange: 1985, c. 357, ss. 4, 5.

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-27. Vacancies on the board of commissioners.

If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any five registered voters of the county. If for any other reason the remaining members of the board do not fill a vacancy within 60 days after the day the vacancy occurs, the clerk shall immediately report the vacancy to the clerk of superior court of the county. The clerk of superior court shall, within 10 days after the day the vacancy is reported to him, fill the vacancy.

If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated, either to the remainder of the unexpired term or, if the term has expired, to a full term.

To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts. The board of commissioners or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling a vacancy, but neither the board nor the clerk of the superior court is bound by the committee's recommendation. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C.S., s. 1294; 1959, c. 1325; 1965, cc. 239, 382; 1967, cc. 7, 424, 439, 1022; 1969, cc. 82, 222; 1971, c. 743, s. 1; 1973, c. 822, s. 1; 1985, c. 563, ss. 7.3, 7.4.)

Effect of Amendments. — The 1985 amendment, effective September 1, 1985, substituted "or if the member was serving a four-year term and the vacancy occurs less than 60 days before the general election held after the first two years of the term," for "or was in the last two years of a four- or six-year term" in the first sentence of the second paragraph and substituted "60 days" for "30 days" in the second sentence of the second paragraph.

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

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 6, 14; c. 830; 1983, c. 418; 1985, c. 563, s. 7.2.)

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

Effect of Amendments. —

The 1983 amendment, effective June 2, 1983, deleted "New Hanover" from the list of counties in subsection (h).

The 1985 amendment, effective September 1, 1985, substituted "60 days" for "30 days" in two places in subsection (b).

Part 2. Structure of the Board of Commissioners.

§ 153A-34. Structure of boards of commissioners.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-40. Regular and special meetings.

(c) The board of commissioners shall hold all its meetings within the county except:

(1) In connection with a joint meeting of two or more public bodies; provided, however, that such a meeting shall be held within the boundaries of the political subdivision represented by the members of one of the public bodies participating;

(2) In connection with a retreat, forum, or similar gathering held solely for the purpose of providing members of the board with general information relating to the performance of their public duties; provided, however, that members of the board of commissioners shall not vote upon or otherwise transact public business while in attendance at such a gathering;

(3) In connection with a meeting between the board of commissioners and its local legislative delegation during a session of the General Assembly; provided, however, that at any such meeting the members of the board of commissioners may not vote upon or otherwise transact public business except with regard to matters directly relating to legislation proposed to or pending before the General Assembly;

(4) While in attendance at a convention, association meeting or similar gathering; provided, however, that any such meeting may be held solely to discuss or deliberate the board's position concerning convention resolutions, elections of association officers and similar issues that are not legally binding upon the board of commissioners or its constituents.

All meetings held outside the county shall be deemed "official meetings" within the meaning of G.S. 143-318.10(d). (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1; 1977, 2nd Sess., c. 1191, s. 6; 1985, c. 745.)

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, rewrote subsection (c).

CASE NOTES

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

§ 153A-47. Technical ordinances.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-49. Code of ordinances.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-58. Optional structures.

CASE NOTES

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985).

ARTICLE 5.

Administration.

Part 1. Organization and Reorganization of County Government.

§ 153A-76. Board of commissioners to organize county government.

OPINIONS OF ATTORNEY GENERAL

Division of County Health Department. — Although a board of commissioners may organize county government pursuant to this section, the section expressly prohibits the board from abolishing a department, such as the county health department, and assigning elsewhere its functions and duties. Therefore, a county health department may not be divided into two or more agencies. See opinion of Attorney General to Dr. Ronald H. Levine, State Health Director, 52 N.C.A.G. 44 (1982).

§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This section shall apply to the board of health, the social services board, area mental health, mental retardation, and substance abuse board and any other commission, board or agency appointed by the board of county commissioners and/or acting under and pursuant to authority of the board of county commissioners of said county. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

This section applies to counties with a population in excess of 400,000. (1973, c. 454, ss. 1-2½; 1985, c. 589, s. 56; c. 754, s. 1.)

Editor's Note. — 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.

Session Laws 1985, c. 754, which substituted "400,000" for "325,000" in the last paragraph, provides, in s. 2, that the act is effective upon ratification, but shall expire on June 30, 1987, at which time this section shall revert to its status prior to the ratification date of the act (July 15, 1985), except that the amendments made to this section by Session Laws 1985, c. 589, s. 56 shall not expire.

Effect of Amendments. — The 1985 amendment by c. 589, s. 56, effective January 1, 1986, in the first paragraph substituted "may assume" for "is hereby authorized to assume" in the first sentence, substituted "area mental health, mental retardation, and substance abuse board" for "board of mental health (area)" in the second sentence, and substituted "The board" for "It is provided, however, that the board" at the beginning of the last sentence, and in the second paragraph substituted "may also appoint" for "is further authorized and empowered, in the exercise of its discretion, to appoint."

The 1985 amendment by c. 754, s. 1, effective July 15, 1985, substituted "400,000" for "325,000" in the last paragraph. For the expiration date of this amendment, see the Editor's note above.

OPINIONS OF ATTORNEY GENERAL

County Board of Health. — Pursuant to this section, a board of commissioners, in a county with a population in excess of 325,000, may assume all powers, responsibilities and duties of a county board of health. The board may exercise the power and authority after conducting a public hearing pursuant to

30 days' notice. Although the board may appoint advisory groups, the statute does not authorize the delegation of the former power and authority of the county board of health to another agency. See opinion of Attorney General to Dr. Ronald H. Levine, State Health Director, 52 N.C.A.G. 44 (1982).

Local Health Director. — The authority conferred by this section is limited to commissions, boards and agencies appointed by the board of commissioners or acting pursuant to its authority. The local health director is appointed by the county board of health and his authority is conferred by statute. Furthermore, the authority of the board of commissioners to assume the power and responsibilities of agencies is limited by the statute to boards, such as health and social services, and similar agencies. The office of local health director is unaffected by this section and must be filled by the board of commissioners. See opinion of Attorney General to Dr. Ronald H. Levine, State Health Director, 52 N.C.A.G. 44 (1982).

Part 2. Administration in Counties Having Managers.

§ 153A-81. Adoption of county-manager plan; appointment or designation of manager.

CASE NOTES

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985).

§ 153A-84. Interim county manager.

CASE NOTES

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985).

Part 4. Personnel.

§ 153A-92. Compensation.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-93. Retirement benefits.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-97. Defense of officers, employees and others.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-101. Board of commissioners to direct fiscal policy of the county.

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-103. Number of employees in offices of sheriff and register of deeds.

CASE NOTES

Government Employees Cannot Impose Unconstitutional Conditions on Public Employment. — Deputies work at the pleasure of the sheriff. However, government employees including sheriffs can neither impose unconstitutional conditions upon public employment such as requiring employees to relinquish their rights of free speech and association nor discharge employees for a constitutionally infirm reason. Joyner v. Lancaster, 553 F. Supp. 809 (M.D.N.C. 1982).

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

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

CASE NOTES

Authority for County Ordinance Concerning Collection and Disposal of Solid Waste. — County governments are delegated by the state with a general police power. Additionally, counties are specifically vested by statute with authority to regulate by ordinance the collection and disposal of solid waste within their jurisdictions. In order to effect this regulatory power and meet their police power responsibilities, counties are specifically authorized by stat-

ute to enact ordinances granting exclusive franchises to commercially collect or dispose of solid waste within all or a defined portion of the county. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

§ 153A-122. Territorial jurisdiction of county ordinances.

Local Modification. — Rowan: 1985, ss. 2 and 4.

CASE NOTES

Power to Enact Ordinances Giving Franchise Rights. — In general, a state legislature has the power to delegate to the state or inferior agency the authority to make ordinances, such as those giving rise to franchise rights, as it deems appropriate in the lawful exercise of the police power. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Authority of counties to issue exclusive solid waste collection franchises is derived from this section and § 153A-136. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Effect of Annexation on Franchises. — Given the limited territorial jurisdiction of a county ordinance granting exclusive solid waste collection franchises, such franchises were not protected from the city's actions in annexing some areas of the county served by the franchisees and providing free solid waste collection services in the newly annexed areas, and therefore did not survive annexation as to those areas which became part of the city. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

§ 153A-123. (Effective July 1, 1986) Enforcement of ordinances.

(a) A county may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances, as provided by this section.

(b) Unless the board of commissioners has provided otherwise, violation of a county ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such a case, the General Court of Justice has jurisdiction to issue any order that may be appropriate, and it is not a defense to the county's application for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may provide that it may be enforced by injunction and order of abatement, and the General Court of Justice

§ 153A-123 has a delayed effective date. See notes for date.

has jurisdiction to issue such an order. When a violation of such an ordinance occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's and materialman's lien, for the costs of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section.

(g) A county ordinance may provide, when appropriate, that each day's continuing violation is a separate and distinct offense. (1973, c. 822, s. 1; 1985, c. 764, s. 34.)

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

Editor's Note. — 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, effective July 1, 1986, and applicable to offenses committed on or after that date, inserted "or infraction" in the first sentence of subsection (b), and in the second sentence of subsection (b) substituted "fine, term of imprisonment, or infraction penalty" for "fine or term of imprisonment", substituted "for a violation" for "for its violation," and substituted "less than the maximum" for "less than the maximum fine or term."

CASE NOTES

Cited in Bostic v. Wall, 588 F. Supp. 994 (W.D.N.C. 1984).

§ 153A-123 has a delayed effective date. See notes for date.

§ 153A-132. Removal and disposal of abandoned and junked motor vehicles.

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

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

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

(1) If the county operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the county operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,

d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and

e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the county may destroy it.

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

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

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

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, rewrote the second paragraph of subsection (c), rewrote subsection (d), and deleted subsections (e) and (f), relating to

the disposal of junked motor vehicles and vehicles without plates or identification numbers, respectively.

§ 153A-132.1. To provide for the removal and disposal of trash, garbage, etc.

Local Modification. — Rowan: 1985, ss. 1 and 4.

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

A county may by ordinance regulate places of amusement and entertainment, and may regulate, restrict, or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or itinerant shows or exhibitions of any kind. Places of amusement and entertainment include coffeehouses, cocktail lounges, nightclubs, beer halls, and similar establishments, but any regulation of such places shall be consistent with any permit or license issued by the North Carolina Alcoholic Beverage Control Commission. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1; 1981, c. 412, ss. 4, 5.)

Editor's Note. — The section above is set out to substitute "North Carolina Alcoholic Beverage Control Commission" for "State Board of Alcoholic Control" pursuant to Session Laws 1981, c. 412, ss. 4 and 5.

§ 153A-136. Regulation of solid wastes.

CASE NOTES

Power to Enact Ordinances Giving Franchise Rights. — In general, a state legislature has the power to delegate to the state or inferior agency the authority to make ordinances, such as those giving rise to franchise rights, as it deems appropriate in the lawful exercise of the police power. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Authority of County Ordinance Concerning Collection and Disposal of Solid Waste. — County governments are delegated by the state with a general police power. Additionally, counties are specifically vested by statute with authority to regulate by ordinance the collection and disposal of solid waste within their jurisdictions. In order to effect this regulatory power and meet their police power responsibilities, counties are specifically authorized by statute to enact ordinances granting exclusive franchises to commercially collect or dispose of solid waste within all or a defined portion of the county. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

Authority of counties to issue exclusive solid waste collection franchises is derived from § 153A-122 and this section. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

County was without power to impose its own fee schedule on city for landfill operated by the city but located in the county. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

A county ordinance providing that no fees could be charged residents of the county or franchise haulers by the owners or operators of a sanitary landfill located within the county was improper, because it based fees upon the wrong criteria (residence rather than kind and degree of service) in violation of § 160A-314. Therefore, the county could

not enforce the ordinance against a city which operated a sanitary landfill in the county. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

Effect of Annexation on Franchises. — Given the limited territorial jurisdiction of a county ordinance granting exclusive solid waste collection franchises, such franchises were not protected from the city's actions in annexing some areas of the county served by the franchisees and providing free solid waste collection services in the newly annexed areas, and therefore did not survive annexation as to those areas which became part of the city. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Competing Government Service. — The word "commercially," as used in this section, leads to the conclusion that a commercial service franchise does not provide protection to the holder against government service which would compete with it. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

§ 153A-140. Abatement of public health nuisances.

Editor's Note. — The reference in the next-to-last sentence of this section to § 106A-174 should be to § 160A-174.

ARTICLE 7.

Taxation.

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

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

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county tax supervisor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.

(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.

(3) Air Pollution. — To maintain and administer air pollution control programs.

(4) Airports. — To establish and maintain airports and related aeronautical facilities.

(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(6) Animal Protection and Control. — To provide animal protection and control programs.

(6a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.

(6b) Auditoriums, coliseums, and convention and civic centers. — To provide public auditoriums, coliseums, and convention and civic centers.

(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.

(8) Cemeteries. — To provide for cemeteries.

(9) Civil Preparedness. — To provide for civil preparedness programs.

(10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-12.

(11) Fire Protection. — To provide fire protection services and fire prevention programs.

(12) Forest Protection. — To provide forest management and protection programs.

(13) Health. — To provide for the county's share of maintaining and administering services offered by or through the county or district health department.

(14) Historic Preservation. — To undertake historic preservation programs and projects.

(15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facility, or to aid any private, nonprofit hospital, clinic, related facilities, or other health program or facility.

(16) Human Relations. — To undertake human relations programs.

(16a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.

(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

(19) Libraries. — To establish and maintain public libraries.

(20) Mapping. — To provide for mapping the lands of the county.

(21) Medical Examiner. — To provide for the county medical examiner or coroner.

(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, mental retardation, and substance abuse authority.

(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.

(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.

(25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.

(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.

(27) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.

(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.

(29) Sewage. — To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.

(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

(36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3; 1979, c. 619, s. 4; 1981, c. 66, s. 2; c. 562, s. 11; c. 692, s. 1; 1983, c. 511, ss. 1, 2; 1985, c. 589, s. 57.)

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 1985, c. 589, s. 65 is a severability clause.

Effect of Amendments. —

The 1983 amendment, effective June 13, 1983, added subdivisions (c)(10b) and (c)(16a).

The 1985 amendment, effective January 1, 1986, substituted "area mental health, mental retardation, and substance abuse authority" for "county or area mental health department" at the end of subdivision (c)(22).

§ 153A-152. Privilege license taxes.

CASE NOTES

Applied in Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

§ 153A-152.1. Privilege license tax on low-level radioactive and hazardous wastes facilities.

(a) Counties in which hazardous waste facilities as defined in G.S. 130A-290(5) or low-level radioactive waste facilities as defined in 104E-7(9b) [104E-5(9b)] are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section.

(1981, c. 704, s. 16; 1985, c. 462, 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.

Effect of Amendments. — The 1985 amendment, effective June 24, 1985, substituted "G.S. 130A-290(5)" for "G.S. 130-166.16(5)" in subsection (a).

Article 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-158. Power to acquire property.

Local Modification. —

Union: 1983, c. 150; Cabarrus: 1985, c. 194, s. 3; Wake: 1985, c. 337.

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property.

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

Local Modification. — Lincoln: 1983 (Reg. Sess., 1984), c. 944; Pamlico: 1985, c. 386.

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

CASE NOTES

Applied in National Medical Enters., Inc. v. Sandrock, — N.C. App. —, 324 S.E.2d 268 (1985).

ARTICLE 9.

Special Assessments.

§ 153A-185. Authority to make special assessments.

A county may make special assessments against benefited property within the county for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;

(2) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(3) Acquiring, constructing, reconstructing, extending, renovating, enlarging, maintaining, operating, or otherwise building or improving

a. Beach erosion control or flood and hurricane protection works; and

b. Watershed improvement projects, drainage projects and water resources development projects (as those projects are defined in G.S. 153A-301).

(4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205.

A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project. (1963, c. 985, s. 1; 1965, c. 714; 1969, c. 474, s. 1; 1973, c. 822, s. 1; 1975, c. 487, s. 1; 1979, c. 619, s. 11; 1983, c. 321, s. 1.)

Local Modification. — Mecklenburg: 1983, c. 189.

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, rewrote subdivision (3).

§ 153A-186. Bases for making assessments.

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

(1) The frontage abutting on the project, at an equal rate per foot of frontage; or

(2) The frontage abutting on a beach or shoreline or watercourse protected or benefited by the project, at an equal rate per foot of frontage; or

(3) The area of land benefited by the project, at an equal rate per unit of area; or

(4) The valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or

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

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

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

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

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, inserted "watershed improvement projects, drainage projects and water resources development projects," in the introductory language of subsection (b), inserted "or watercourse" in subdivision (b)(2), and inserted "watershed improvement projects, drainage projects and water resources development projects" and "or watercourse" in item (ii) of the first sentence of subsection (c).

§ 153A-193.1. Discounts authorized.

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

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

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

When the total cost of a project has been determined, the board of commissioners shall cause a preliminary assessment roll to be prepared. The roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount

assessed against each, the terms of payment, including the schedule of discounts, if such a schedule is to be established and the name of the owner of each lot, parcel, or tract as far as this can be ascertained from the county tax records. A map of the project on which is shown each lot, parcel, or tract assessed, the basis of its assessment, the amount assessed against it, and the name of its owner as far as this can be ascertained from the county tax records is a sufficient assessment roll.

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

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

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

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

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

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

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

§ 153A-204.1. Maintenance assessments.

(a) In order to pay for the costs of maintaining and operating a project, the board of commissioners may annually or at less frequent intervals levy maintenance and operating assessments for any project purpose set forth in G.S. 153A-185(3) on the same basis as the original assessment. The amount of these assessments shall be determined by the board of commissioners on the basis of the board's estimate of the cost of maintaining and operating a project during the ensuing budget period, and the board's decision as to the amount of the assessment is conclusive. In determining the total cost to be included in the assessment the board may include estimated costs of maintaining and operating the project, of necessary legal services, of interest payments, of rights-of-way, and of publishing and mailing notices and resolutions. References to "total costs" in provisions of this Article that apply to maintenance and operating assessments shall be construed to mean "total estimated costs." Within the meaning of this section a "budget period" may be one year or such other budget period as the board determines.

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

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

Article 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-216. Legislative policy.

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

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

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

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

§ 153A-220. Jail and detention services.

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

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

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

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

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

§ 153A-221. Minimum standards.

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

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

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

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

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

§ 153A-221.1. Standards and inspections.

The legal responsibility of the Secretary of Human Resources and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assis-

tance; and training. Further, the legal responsibility of the Department of Human Resources is hereby expanded to give said Department the same legal responsibility as to the State-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134A-37.

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

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

Editor's Note. — Chapter 134 was rewritten by Session Laws 1975, c. 742, and recodified as Chapter 134A. For definitions in Chapter 134A, see § 134A-2.

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

§ 153A-222. Inspections of local confinement facilities.

Department personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement, the treatment of prisoners, the maintenance of entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities as provided for in G.S. 153A-216(4), and to determine whether the facilities meet the minimum standards published pursuant to G.S. 153A-221. The inspector shall make a written report of each inspection and submit it within 30 days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility does not meet the minimum standards. The governing body shall consider the report at its first regular meeting after receipt of the report and shall promptly initiate any action necessary to bring the facility into conformity with the standards. Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Human Resources who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been inmates of the facility being inspected. Physicians, psychologists, psychiatrists,

nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the inmate or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 822, s. 1; 1981, c. 586, s. 6; 1983, c. 745, s. 7.)

Effect of Amendments. — The 1983 amendment, effective Sept. 1, 1983, in the second sentence substituted "the" for "and" preceding "treatment of prisoners," inserted the language beginning "the maintenance of" and ending "G.S. 153A-216(4)," and substituted "facilities meet" for "facility meets."

§ 153A-223. Enforcement of minimum standards.

If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and supervisory and administrative personnel of a local confinement facility do not meet the entry level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

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

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

Effect of Amendments. — The 1983 amendment, effective Sept. 1, 1983, in the introductory language inserted the language beginning "the jailers" and ending "Chapter 17E or that".

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

ARTICLE 11.

Fire Protection.

§ 153A-233. Fire-fighting and prevention services.

Local Modification. — Graham: 1985, c. 272; Macon: 1985, c. 272.

ARTICLE 12.

Roads and Bridges.

§ 153A-239. Public road defined.

Local Modification. — Avery: 1983, c. 98; Brunswick: 1983, c. 98; Cabarrus: 1983, c. 98; New Hanover: 1983, c. 98; Stokes: 1983, c. 299; Surry: 1983, c. 299.

§ 153A-240. Naming roads and assigning street numbers in unincorporated areas.

Local Modification. — Avery: 1983, c. 98; Brunswick: 1983, c. 98; Cabarrus: 1983, c. 98; New Hanover: 1983, c. 98; Stokes: 1983, c. 299; Surry: 1983, c. 299.

ARTICLE 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-247. Provision for public health and mental health.

A county may provide for and regulate the public health pursuant to Chapter 130A of the General Statutes and any other law authorizing local public health activities and may provide mental health[,] mental retardation, and substance abuse programs pursuant to Chapter 122C of the General Statutes. (1973, c. 822, s. 1; 1985, c. 589, s. 58.)

Editor's Note. — Session Laws 1985, c. 589, s. 65 is a severability clause.

A comma, which was apparently inadvertently omitted from the 1985 amendatory act, has been placed in brackets preceding "mental retardation."

Effect of Amendments. — The 1985 amendment, effective January 1, 1986, substituted "Chapter 130A of the General Statutes" for "Chapter 130" and substituted "mental retardation, and substance abuse programs pursuant to Chapter 122C of the General Statutes" for "programs pursuant to Chapter 122."

§ 153A-249. Hospital services.

A county may provide and support hospital services pursuant to Chapters 122C, 131 and 131E of the General Statutes. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1923, c. 81; 1973, c. 822, s. 1; 1985, c. 589, s. 59.)

Editor's Note. — Session Laws 1985, c. 589, s. 65 is a severability clause.

Effect of Amendments. — The 1985 amendment, effective January 1, 1985, substituted "Chapters 122C, 131 and 131E of the General Statutes" for "Chapter 131".

CASE NOTES

Applied in National Medical Enters., Inc. v. Sandrock, — N.C. App. —, 324 S.E.2d 268 (1985).

ARTICLE 14.

Libraries.

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

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

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

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

Local Modification. — Stanly: 1985, c. 433, s. 1.

Part 4. Long Term Contracts for Disposal of Solid Waste.

§ 153A-299.6. Applicability.

This Part shall apply only to Beaufort County, Craven County,

Edgecombe County, Hyde County, Lenoir County, Martin County, New Hanover County, Pamlico County, Pitt County, Rowan County Washington County, Wilson County, and to any and all incorporated cities and towns situated within the foregoing counties. (1979, 2nd Sess., c. 1135, s. 6; 1981, c. 458, s. 4; 1985, c. 63, s. 3.)

Effect of Amendments. — The 1985 amendment, effective April 5, 1985, inserted the reference to Rowan County.

ARTICLE 16.

County Service Districts; County Research and Production Service Districts.

Part 1. County Service Districts.

§ 153A-300. Title; effective date.

Editor's Note. —
Session Laws 1985, c. 435, s. 1 designates existing Article 16 as Part 1 of Article 16, entitled "County Service Districts," and adds new Part 2 of Article 16.

§ 153A-301. Purposes for which districts may be established.

The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21;

(9) Cemeteries. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375; 1979, c. 595, s. 1; c. 619, s. 6; 1983 (Reg. Sess., 1984), c. 1078, 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 1985, c. 430, s. 2 provides: "Notwithstanding G.S. 153A-302(d), if a service district is created under G.S. 153A-301(7) with the rate limitation provided by G.S. 153A-310, by passage on or before August 1, 1985, of a resolution defining it, taxes may be levied in that district for fiscal year 1985-86."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 3, 1984, substituted a semicolon for a comma at the end of subdivision (8) and added subdivision (9).

§ 153A-302. Definition of service districts.

Editor's Note. — Session Laws 1985, c. 430, s. 2 provides: "Notwithstanding G.S. 153A-302(d), if a service district is created under G.S. 153A-301(7) with the rate limitation provided by G.S. 153A-310, by passage on or before August 1, 1985, of a resolution defining it, taxes may be levied in that district for fiscal year 1985-86."

§ 153A-309. EMS services in fire protection districts.

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

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

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

§ 153A-309.2. Rate limitation in certain districts.

(a) In connection with the establishment of a service district for fire protection as provided by G.S. 153A-301(2), if the board of commissioners adopts a resolution within 90 days prior to the public hearing required by G.S. 153A-302(c) but prior to the first publication of notice required by subsection (b) of this section, which resolution states that property taxes within a district may not be levied in excess of a rate of fifteen cents (15¢) on each one hundred dollars ($100.00) of property subject to taxation, then property taxes may not be levied in that service district in excess of that rate.

(b) Whenever a service district is established under this section, instead of the procedures for hearing and notice under G.S. 153A-302(c), the board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by G.S. 153A-302(b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least twice, with one publication not less than two weeks before the hearing, and the other publication on some other day not less than two weeks before the hearing. (1985, c. 724.)

Editor's Note. — Session Laws 1985, c. 724, s. 2 makes this section effective upon ratification. The act was ratified July 12, 1985.

§ 153A-310. Rate limitation in certain districts.

(a) In connection with the establishment of a service district for ambulance and rescue as provided by G.S. 153A-301(7), if the board of commissioners adopts a resolution within 90 days prior to the public hearing required by G.S. 153A-302(c) but prior to the first publication of notice required by subsection (b) of this section, which resolution states that property taxes within a district may not be levied in excess of a rate of five cents (5¢) on each one hundred dollars ($100.00) of property subject to taxation, then property taxes may not be levied in that service district in excess of that rate.

(b) Whenever a service district is established under this section, instead of the procedures for hearing and notice under G.S. 153A-302(c), the board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by G.S. 153A-302(b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least twice, with one publication not less than two weeks before the hearing, and the other publication on some other day not less than two weeks before the hearing. (1985, c. 430, s. 1.)

Editor's Note. — Session Laws 1985, c. 430, s. 3 makes this section effective upon ratification. The act was ratified June 20, 1985.

Session Laws 1985, c. 430, s. 2 provides: "Notwithstanding G.S. 153A-302(d), if a service district is created under G.S. 153A-301(7) with the rate limitation provided by G.S. 153A-310, by passage on or before August 1, 1985, of a resolution defining it, taxes may be levied in that district for fiscal year 1985-86."

Part 2. County Research and Production Service Districts.

§ 153A-311. Purposes for which districts may be established.

The board of commissioners of any county may define a county research and production service district in order to finance, provide, and maintain for the district any service, facility, or function that a county or a city is authorized by general law to provide, finance, or maintain. Such a service, facility, or function shall be financed, provided, or maintained in the district either in addition to or to a greater extent than services, facilities, or functions are financed, provided, or maintained for the entire county. (1985, c. 435, s. 1.)

Editor's Note. — Session Laws 1985, c. 435, s. 3 makes this Part effective on ratification. The act was ratified June 24, 1985.

§ 153A-312. Definition of research and production service district.

(a) Standards. — The board of commissioners may by resolution establish a research and production service district for any area of the county that, at the time the resolution is adopted, meets the following standards:

(1) All real property in the district is being used for or is subject to covenants that limit its use to research or scientifically-oriented production or for associated commercial or institutional purposes.

(2) The district contains at least 4,000 acres.

(3) The district includes research and production facilities that in combination employ at least 5,000 persons.

(4) All real property located in the district was at one time or is currently owned by a nonprofit corporation, which developed or is developing the property as a research and production park.

(5) A petition requesting creation of the district signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of total area of the real property in the district has been presented to the board of commissioners. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property.

(6) The district has no more than 25 permanent residents.

(7) There exists in the district an association of owners and tenants, to which at least seventy-five percent (75%) of the owners of real property belong, which association can make the recommendations provided for in G.S. 153A-313.

(8) There exist deed-imposed conditions, covenants, restrictions, and reservations that apply to all real property in the district other than property owned by the federal government.

(9) No part of the district lies within the boundaries of any incorporated city or town.

The Board of Commissioners may establish a research and production service district if, upon the information and evidence it receives, the Board finds that:

(1) The proposed district meets the standards set forth in this subsection; and

(2) It is impossible or impracticable to provide on a countywide basis the additional or higher levels of services, facilities, or functions proposed for the district; and

(3) It is economically feasible to provide the proposed services, facilities, or functions to the district without unreasonable or burdensome tax levies.

(b) Multi-County Districts. — If an area that meets the standards for creation of a research and production service district lies in more than one county, the boards of commissioners of those counties may adopt concurrent resolutions establishing a service district, even if that portion of the district lying in any one of the counties does not by itself meet the standards. Each of the county

boards of commissioners shall follow the procedure set out in this section for creation of a service district.

If a multi-county service district is established, as provided in this subsection, the boards of commissioners of the counties involved shall jointly determine whether the same appraisal and assessment standards apply uniformly throughout the district. This determination shall be set out in concurrent resolutions of the boards. If the same appraisal and assessment standards apply uniformly throughout the district, the boards of commissioners of all the counties shall levy the same rate of tax for the district, so that a uniform rate of tax is levied for district purposes throughout the district. If the boards determine that the same standards do not apply uniformly throughout the district, the boards shall agree on the extent of divergence between the counties and on the resulting adjustments of tax rates that will be necessary in order that an effectively uniform rate of tax is levied for district purposes throughout the district.

The boards of commissioners of the counties establishing a multi-county service district pursuant to this subsection may, by concurrent resolution, provide for the administration of services within the district by one county on behalf of all the establishing counties.

(c) Report. — Before the public hearing required by subsection (d), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;

(2) A statement showing that the proposed district meets the standards set out in subsection (a); and

(3) A plan for providing one or more services, facilities, or functions to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(d) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution defining a service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (c) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(e) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners. (1985, c. 435, s. 1.)

§ 153A-313. Advisory committee.

The board or boards of commissioners, in the resolution establishing a research and production service district, shall also provide for an advisory committee for the district. Such a committee shall have at least 10 members, serving terms as set forth in the resolution; one member shall be the representative of the developer of the research and production park. The resolution shall provide for the appointment or designation of a chairman. The board of commissioners or, in the case of a multi-county service district, the boards of commissioners shall appoint the members of the advisory committee. If a multi-county service district is established, the concurrent resolutions establishing the district shall provide how many members of the advisory committee are to be appointed by each board of commissioners. Before making the appointments, the appropriate board shall request the association of owners and tenants, required by G.S. 153A-312(a), to submit a list of persons to be considered for appointment to the committee; the association shall submit at least two names for each appointment to be made. Except as provided in the next two sentences, the board of commissioners shall make the appointments to the committee from the list of persons submitted. In addition, the developer of the research and production park shall appoint one person to the advisory committee as the developer's representative on the committee. In addition, in a single county service district, the board of commissioners may make two additional appointments of such other persons as the board of commissioners deems appropriate, and in a multi-county service district, each board of county commissioners may make one additional appointment of such other person as that board of commissioners deems appropriate. Whenever a vacancy occurs on the committee in a position filled by appointment by a board of commissioners, the appropriate board, before filling the vacancy, shall request the association to submit the names of at least two persons to be considered for the vacancy; and the board shall fill the vacancy by appointing one of the persons so submitted, except that if the vacancy is in a position appointed by the board of commissioners under the preceding sentence of this section, the board of commissioners making that appointment shall fill the vacancy with such person as that board of commissioners deems appropriate.

Each year, before adopting the budget for the service district and levying the tax for the district, the board or boards of commissioners shall request recommendations from the advisory committee as to the level of services, facilities, or functions to be provided for the district for the ensuing year. The board or boards of commissioners shall, to the extent permitted by law, expend the proceeds of any tax levied for the district in the manner recommended by the advisory board. (1985, c. 435, s. 1.)

§ 153A-314. Extension of service districts.

(a) Standards. — A board of commissioners may by resolution annex territory to a research and production service district upon finding that:

(1) The conditions, covenants, restrictions, and reservations required by G.S. 153A-312(a)(8) that apply to all real property in the research district, other than property owned by the federal government, also apply or will apply to the property, other than property owned by the federal government, to be annexed.

(2) One hundred percent (100%) of the owners of real property in the area to be annexed have petitioned for annexation.

(3) The district, following the annexation, will continue to meet the standards set out in G.S. 153A-312(a).

(4) The area to be annexed requires the services, facilities, or functions financed, provided, or maintained for the district.

(5) The area to be annexed is contiguous to the district.

(b) Report. — Before the public hearing required by subsection (c), the board shall cause to be prepared a report containing:

(1) A map of the district and the adjacent territory proposed to be annexed, showing the present and proposed boundaries of the district; and

(2) A statement showing that the area to be annexed meets the standards and requirements of subsection (a) of this section.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The board shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) of this section is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than four weeks before the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the area to be annexed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and the certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (1985, c. 435, s. 1.)

§ 153A-315. Required provision or maintenance of services.

(a) New District. — When a county or counties define a research and production service district, it or they shall provide, maintain, or let contracts for the services for which the district is being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a territory is annexed to a research and production service district, the county or counties shall

provide, maintain, or let contracts for the services provided or maintained throughout the district to property in the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation. (1985, c. 435, s. 1.)

§ 153A-316. Abolition of service districts.

A board or boards of county commissioners may by resolution abolish a research and production service district upon finding that (i) a petition requesting abolition, signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of the total area of real property in the district, has been submitted to the board or boards; and (ii) there is no longer a need for such service district. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property. The board or boards shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board or boards. If a multi-county service district is established, it may be abolished only by concurrent resolution of the board of commissioners of each county in which the district is located. (1985, c. 435, s. 1.)

§ 153A-317. Taxes authorized; rate limitation.

A county may levy property taxes within a research and production service district in addition to those levied throughout the county, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes only within a service district may be expended only for services provided for the district.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred dollars ($100.00) value of property subject to taxation. (1985, c. 435, s. 1.)

ARTICLE 17.

§§ 153A-318, 153A-319: Reserved for future codification purposes.

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-322. Supplemental powers.

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

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

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

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

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

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

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

Editor's Note. — Session Laws 1983, c. 614, s. 6, makes this section effective upon ratification. The act was ratified June 24, 1983.

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

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

Part 2. Subdivision Regulation.

§ 153A-331. Contents and requirements of ordinance.

CASE NOTES

Cited in Coastland Corp. v. County of Currituck, 734 F.2d 175 (4th Cir. 1984).

§ 153A-335. "Subdivision" defined.

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

Part 3. Zoning.

§ 153A-340. Grant of power.

For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict

(1) The height, number of stories, and size of buildings and other structures,
(2) The percentage of lot that may be occupied,
(3) The size of yards, courts, and other open spaces,
(4) The density of population, and
(5) The location and use of buildings, structures, and land for trade, industry, residence, or other purposes, except farming.

These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules

therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

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

For the purpose of this section, the term "structures" shall include floating homes. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6; 1983, c. 441; 1985, c. 442, s. 2.)

Editor's Note. — Session Laws 1985, c. 442, s. 3 makes the act effective upon ratification, but provides that it does not affect pending litigation. The act was ratified June 21, 1985.

Effect of Amendments. —

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

The 1985 amendment, effective June 21, 1985, added the last two sentences.

Legal Periodicals. —

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

§ 153A-342. Districts; zoning less than entire jurisdiction.

A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit. Prop-

erty may be placed in a special use district or conditional use district only in response to a petition by the owners of all the property to be included. Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated. (1959, c. 1006, s. 1; 1965, c. 194, s. 2; 1973, c. 822, s. 1; 1985, c. 607, s. 3.)

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, inserted the present third and fourth sentences of the first paragraph, and inserted "Except as authorized by the foregoing" at the beginning of the last sentence of the first paragraph.

§ 153A-343. Method of procedure.

The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud. (1973, c. 822, s. 1; 1985, c. 595, s. 1.)

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, and applicable only when tax maps are available for the areas to be zoned, added the last two sentences.

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments.

(a) To exercise the powers conferred by this Part, a county shall create or designate a planning agency under the provisions of this Article or of a local act. The planning agency shall prepare a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the ordinance. Upon completion, the planning agency shall certify

the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a certified ordinance from the planning agency. Following its required public hearing, the board of commissioners may refer the ordinance back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation. The board of commissioners is not bound by the recommendations, if any, of the planning agency.

(b) Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to lots for which building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362. (1959, c. 1006, s. 1; 1965, c. 194, s. 3; 1973, c. 822, s. 1; 1979, c. 611, s. 3; 1985, c. 540, s. 1.)

Local Modification. — Guilford: 1985, c. 485.

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, designated the first two paragraphs of this section as subsection (a) and added subsection (b).

§ 153A-345. Board of adjustment.

(a) The board of commissioners may provide for the appointment and compensation, if any, of a board of adjustment consisting of at least five members, each to be appointed for three years. In appointing the original members of the board, or in filling vacancies caused by the expiration of the terms of existing members, the board of commissioners may appoint some members for less than three years to the end that thereafter the terms of all members do not expire at the same time. The board of commissioners may provide for the appointment and compensation, if any, of alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of a regular member, has and may exercise all the powers and duties of a regular member. If the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have at least one resident as a member of the board of adjustment.

A county may designate a planning agency to perform any or all of the duties of a board of adjustment in addition to its other duties.

(1959, c. 1006, s. 1; 1965, c. 194, s. 4; 1967, c. 1208, ss. 5-7; 1973, c. 822, s. 1; 1979, c. 611, s. 4; c. 635; 1981, c. 891, s. 8; 1985, c. 397, 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 14, 1985, inserted "any or all of" preceding "the duties" in the last sentence of subsection (a).

CASE NOTES

Applied in Lathan v. Zoning Bd. of Adj., 69 N.C. App. 686, 317 S.E.2d 733 (1984); In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

§ 153A-347. Part applicable to buildings constructed by the State and its subdivisions; exception.

Each provision of this Part is applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions.

Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the Council of State. (1959, c. 1006, s. 1; 1973, c. 822, s. 1; 1985, c. 607, s. 4.)

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, added the second paragraph.

Part 4. Building Inspection.

§ 153A-351. Inspection department; certification of electrical inspectors.

Editor's Note. —

Session Laws 1977, c. 531, s. 7, which is noted under this section in the Replacement Volume, was repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 124.

§ 153A-351.1. Qualifications of inspectors.

Editor's Note. —

Session Laws 1977, c. 531, s. 7, which is noted under this section in the Replacement Volume, was repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 124.

§ 153A-357. Permits.

No person may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;

(2) The installation, extension, or general repair of any plumbing system;

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2; 1983, c. 377, s. 2; c. 614, s. 2.)

Cross References. —

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

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

Effect of Amendments. —

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

The second 1983 amendment, effective June 24, 1983, substituted "five thousand dollars ($5,000)" for "twenty-five hundred dollars ($2500)" in the next-to-last sentence.

§ 153A-361. Stop orders.

Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific

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

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, inserted "involving alleged violation of the State Building Code or any approved local modification thereof" in the third sentence and inserted the next-to-last sentence.

§ 153A-373. Records and reports.

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

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, deleted "permanent," following "shall keep complete," in the first sentence and inserted the present second sentence.

ARTICLE 23.

Miscellaneous Provisions.

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

(a) A county may establish and maintain a county watershed

improvement program pursuant to G.S. 139-41 or 139-41.1 and for these purposes may appropriate funds not otherwise limited as to use by law. A county watershed improvement program or project may also be financed pursuant to G.S. 153A-301, G.S. 153A-185 or by any other financing method available to counties for this purpose.

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

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

§ 153A-448. Mountain ridge protection.

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

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

§ 153A-449. Contracts with private entities.

A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. (1985, c. 271, s. 2.)

Editor's Note. — Session Laws 1985, c. 271, s. 3, makes this section effective on ratification. The act was ratified May 28, 1985.

§ 153A-450. Contracts for construction of satellite campuses of community colleges or technical institutes.

(a) Boards of county commissioners may enter into contracts for the construction of satellite campuses of community colleges or technical institutes, to be located in their counties.

(b) The board of county commissioners of the county in which a satellite campus of a community college or technical institute is to be constructed shall submit the plans for the satellite facility's construction to the board of trustees of the community college or technical institute that will be operating the facility for its approval prior to entering into any contract for the construction of the satellite facility.

(c) A satellite facility may be used only as a satellite facility of the community college or technical institute that operates it and for no other purpose except as approved by the board of trustees of the community college or technical institute that has been assigned the county where the satellite facility is located as a service delivery area either by an act of the General Assembly or by the State Board of Community Colleges. (1985, c. 757, s. 148(b), (d), (e).)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

Session Laws 1985, c. 757, s. 148(c) provides: "Funds appropriated in Chapter 480 of the 1985 Session Laws to the Department of Community Colleges that are used to construct satellite facilities of a community college or technical institute shall be paid directly to the board of county commissioners of the county where the facility is to be built upon the board's entering into a contract for construction of the building. These funds shall be paid to the board of county commissioners according to the payment schedule contained in the construction contract."

Chapter 156.

Drainage.

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-78.1. Municipalities.

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

ARTICLE 6.

Drainage Commissioners.

§ 156-81. Election and organization under amended act.

CASE NOTES

Constitutionality. — In accord with original. See White v. Pate, 308 N.C. 759, 304 S.E.2d 199 (1983).

ARTICLE 8.

Assessments and Bond Issue.

§ 156-97. Bonds issued.

At the expiration of 15 days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the treasurer. Bonds issued by the board of drainage commissioners shall comply with the following provisions:

(3) The interest upon said bonds shall not be more than fourteen percent (14%) per annum, from the date of issue and payable semiannually;

(6) If the total amount of bonds to be issued does not exceed ten percent (10%) of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipa-

tion bonds which shall mature over a period of not less than four nor more than 10 years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than fourteen percent (14%) per annum;

(1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C.S., s. 5354; 1923, c. 217, s. 5; 1955, c. 1340; 1957, c. 1410, s. 1; 1961, c. 601, s. 1; 1963, c. 767, s. 4; 1969, c. 878; 1985, c. 136, 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 1985 amendment, effective April 29, 1985, substituted "fourteen percent (14%)" for "eight percent (8%)" in subdivision (3) and substituted "fourteen percent (14%)" for "eight per centum (8%)" in the second sentence of subdivision (6).

§ 156-97.1. Issuance of assessment anticipation notes.

In lieu of the bonds provided for in G.S. 156-97, the board of drainage commissioners may issue assessment anticipation notes of the district for an amount not to exceed the assessment levied by the commissioners and approved by the clerk of the superior court, less such amounts as shall have been paid in in cash to the treasurer. It shall be optional with the board of drainage commissioners in issuing assessment anticipation notes to issue serial notes in any denominations bearing not more than fourteen percent (14%) interest from the date of issue, payable semiannually. The first annual installment of principal shall be due not less than one year nor more than two years after date thereof, and each annual installment of principal shall not be less than two percent (2%) nor more than twenty-five percent (25%) of the total amount of notes authorized and issued.

Such assessment anticipation notes, when issued, shall have the same force and effect of bonds issued under the provisions of this Article and shall be collectible in the same manner.

The commissioners may issue either serial notes or an amortized note. (1957, c. 912, s. 2; 1961, c. 601, s. 3; 1963, c. 767, ss. 4, 7; 1985, c. 136, s. 3.)

Effect of Amendments. — The 1985 amendment, effective April 29, 1985, substituted "fourteeen percent (14%)" for "six percent (6%)" in the second sentence of the first paragraph.

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