

# THE GENERAL STATUTES OF NORTH CAROLINA

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## 1987 CUMULATIVE SUPPLEMENT

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

*Under the Direction of*

A. D. KOWALSKY, S. C. WILLARD, W. L. JACKSON,  
K. S. MAWYER, P. R. ROANE AND S. S. WEST

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## Volume 3C, Part II

Chapters 144 to 156

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Annotated through 356 S.E.2d 26. For complete scope of  
annotations, see scope of volume page.

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

THE MICHIE COMPANY  
*Law Publishers*  
CHARLOTTESVILLE, VIRGINIA  
1987

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## Preface

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This Cumulative Supplement to Replacement Volume 3C, Part II contains the general laws of a permanent nature enacted by the General Assembly through the 1987 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.

The first of these is the fact that the...

Another point is that the...

It is also worth noting that...

The second of these is the fact that...

It is also worth noting that...

The third of these is the fact that...

## Scope of Volume

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### **Statutes:**

Permanent portions of the General Laws enacted by the General Assembly through the 1987 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 319, p. 464.
- North Carolina Court of Appeals Reports through Volume 85, p. 173.
- South Eastern Reporter 2nd Series through Volume 356, p. 26.
- Federal Reporter 2nd Series through Volume 817, p. 761.
- Federal Supplement through Volume 658, p. 304.
- Federal Rules Decisions through Volume 115, p. 78.
- Bankruptcy Reports through Volume 72, p. 618.
- Supreme Court Reporter through Volume 107, p. 2210.
- North Carolina Law Review through Volume 65, p. 847.
- Wake Forest Law Review through Volume 22, p. 424.
- Campbell Law Review through Volume 9, p. 206.
- Duke Law Journal through 1987, p. 190.
- North Carolina Central Law Journal through Volume 16, p. 222.
- Opinions of the Attorney General.

# League of Nations

1919

League of Nations was established by the Treaty of Versailles in 1919. It was the first international organization to be based on a legal basis.

The League of Nations was created to maintain world peace and prevent future wars. It was the first time that nations agreed to settle their disputes peacefully.

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League of Nations

The General Statutes of North Carolina  
1987 Cumulative Supplement

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1A, Part I for the complete User's Guide.

Chapter 106

State Flower, Bird, Tree, Shell, Mammal, Fish,  
Insect, Stone, Reptile and Rock

See 106-101. State Symbols  
106-21. State Historical Trust

§ 106-10.1. State beverage

Milk is hereby adopted as the official state beverage of the State of North Carolina. (1987 - 1987 - 13)

Editor's Note. - Chapter 106-10.1 was renumbered. The act was codified in 1987, § 106-10.1 which was enacted effective June 12, 1987.

§ 106-11. State historical trust

The State Historical Trust is hereby established as the official State historical trust of the State of North Carolina. (1987 - 1987 - 13)

Editor's Note. - Chapter 106-11 was renumbered. The act was codified in 1987, § 106-11 which was enacted effective June 12, 1987.

§ 106-12. State language

(a) Purpose. - English is the predominant language of the people of the United States of America and the State of North Carolina. This section is intended to preserve, protect and strengthen the English language, and not to supersede any of the rights guaranteed to the people by the Constitution of the United States or the Constitution of North Carolina.

(b) English as the Official Language of North Carolina. - English is the official language of the State of North Carolina.

(c) G.S. 106-12 as enacted by Chapter 106, Session Laws of 1987, shall not require the Division of Motor Vehicles to disseminate providing driver's license applications in any language previously administered. (1987 - 1987 - 13, § 106-12, subchapter 1)

Editor's Note. - Chapter 106-12 was renumbered. The act was codified in 1987, § 106-12 which was enacted effective June 12, 1987. The act was renumbered in 1987, § 106-12 which was enacted effective June 12, 1987.

In order to meet both the legal profession and the public in  
the future, the Commission on the Future of the Legal Profession  
has recommended a number of changes to the North Carolina  
Bar. A number of these changes have been included in this  
bill. The Commission also recommends that the State Bar  
be reorganized and restructured on the basis of the  
recommendations of the Commission. The Commission  
also recommends that the State Bar be reorganized  
and restructured on the basis of the  
recommendations of the Commission.



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# The General Statutes of North Carolina 1987 Cumulative Supplement

## VOLUME 3C, PART II

### Chapter 145.

#### State Flower, Bird, Tree, Shell, Mammal, Fish, Insect, Stone, Reptile and Rock.

Sec.  
145-10.1. State beverage.  
145-11. State historical boat.

Sec.  
145-12. State language.

#### § 145-10.1. State beverage.

Milk is hereby adopted as the official State beverage of the State of North Carolina. (1987, c. 347, s. 1.)

**Editor's Note.** — Session Laws 1987, upon ratification. The act was ratified c. 347, s. 2 makes this section effective June 12, 1987.

#### § 145-11. State historical boat.

The Shad Boat is adopted as the official State historical boat of the State of North Carolina. (1987, c. 366, § 1.)

**Editor's Note.** — Session Laws 1987, upon ratification. The act was ratified c. 366, s. 2 makes this section effective June 15, 1987.

#### § 145-12. State language.

(a) Purpose. — English is the common language of the people of the United States of America and the State of North Carolina. This section is intended to preserve, protect and strengthen the English language, and not to supersede any of the rights guaranteed to the people by the Constitution of the United States or the Constitution of North Carolina.

(b) English as the Official Language of North Carolina. — English is the official language of the State of North Carolina.

(c) G.S. 145-12 as enacted by Chapter 480, Session Laws of 1987, shall not permit the Division of Motor Vehicles to discontinue providing driver's license examinations in any language previously administered. (1987, c. 480, s. 1; c. 877, s. 1.1.)

**Editor's Note.** — Session Laws 1987, c. 480, s. 2 makes this section effective upon ratification. The act was ratified June 25, 1987.

Section 2 of Session Laws 1987, c. 877 makes subsection (c) of this section effective August 14, 1987, and provides for its expiration on June 30, 1989.

### Chapter 146.

### State Lands.

**SUBCHAPTER I. UNALLOCATED STATE LANDS.**

**Article 2.**

**Dispositions.**

Sec.

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

**Article 4.**

**Miscellaneous Provisions.**

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

**SUBCHAPTER II. ALLOCATED STATE LANDS.**

**Article 6.**

**Acquisitions.**

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

Sec.

146-25.1. Proposals to be secured for leases.

**Article 7.**

**Dispositions.**

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

146-29.1. Lease or sale of real property for less than fair market value.

146-30. Application of net proceeds.

**Article 8.**

**Miscellaneous Provisions.**

146-32. Exemptions as to leases, etc.

**SUBCHAPTER IV. MISCELLANEOUS.**

**Article 16.**

**Form of Conveyances.**

146-74. Approval of conveyances.

### SUBCHAPTER I. UNALLOCATED STATE LANDS.

#### ARTICLE 1.

#### *General Provisions.*

### § 146-1. Intent of Subchapter.

#### CASE NOTES

Stated in *West v. Slick*, 313 N.C. 33, 326 S.E.2d 601 (1985).

### § 146-2. Department of Administration given control of certain State lands; general powers.

**Legal Periodicals.** — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine

Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

## ARTICLE 2.

*Dispositions.*

## § 146-3. What lands may be sold.

**Legal Periodicals.** —

For comment, "Sunbathers Versus Property Owners: Public Access to

North Carolina Beaches," see 64 N.C.L. Rev. 159 (1985).

## 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*, 313 N.C. 33, 326 S.E.2d 601 (1985).

**Ownership of the foreshore remains in the state.** *West v. Slick*, 313 N.C. 33, 326 S.E.2d 601 (1985).

**The foreshore is reserved for the use of the public.** *West v. Slick*, 313 N.C. 33, 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).

**Legal Periodicals.** —

For comment, "Sunbathers Versus Property Owners: Public Access to

North Carolina Beaches," see 64 N.C.L. Rev. 159 (1985).

For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

#### 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).

### § 146-13. Erection of piers on State lakes restricted.

#### CASE NOTES

**Applied in** *Woodlief v. Johnson*, 75 N.C. App. 49, 330 S.E.2d 265 (1985).

#### ARTICLE 3.

#### *Discovery and Reclamation.*

### § 146-17. Mapping and discovery agreements.

#### CASE NOTES

**Stated in** *West v. Slick*, 313 N.C. 33, 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.

**Legal Periodicals.** — For article, "The Battle to Preserve North Caro-

lina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

## 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.

**Editor's Note.** — Session Laws 1987, c. 855 relates to a site for a superconducting super collider. Sections 1 to 8 of c. 855 provide: "Purpose. The General Assembly finds that the acquisition, dedication, and use of the real property authorized to be acquired by this act for the establishment of a superconducting super collider in North Carolina will lead to the educational, scientific, and economic development of the State and its people and hereby declares such acquisition, dedication, and use to serve a public purpose and to be for the benefit of the people of the State.

"Acquisition by the State. The Department of Administration may acquire for a superconducting super collider in fee simple or in any lesser interest including negative easements, in the name of and on behalf of the State of North Carolina, by donation, purchase, or condemnation pursuant to the provisions of G.S. 146-24 and 146-24.1:

- "(1) those lands together with any improvements thereon, in Durham, Granville, and Person Counties, determined to be necessary for a site on which to locate and construct a superconducting super collider in accordance with specifications of the Secretary of the United States Department of Energy for the superconducting super collider;
- "(2) easements for roads and access to various points to and around the site;
- "(3) easements for the purpose of bringing utilities onto the site and for the distribution of utilities to service areas around the site;
- "(4) temporary easements to facilitate construction, including easements for temporary roads; and
- "(5) off-site locations for the disposition of materials and spoils excavated from the site, and rights-of-way for access to such areas.

"The specific location of the real property to be acquired shall be determined by the Governor and the Council of State.

"Acquisition by the United States; reimbursement of expenses. The United

States, by condemnation or other judicial proceedings, may acquire title to any tract or parcel of land together with any improvements thereon, in Durham, Granville, and Person Counties, determined to be necessary for a site on which to locate and construct a superconducting super collider in accordance with specifications of the Secretary of the United States Department of Energy for the superconducting super collider.

"The State of North Carolina is authorized to reimburse the United States for any and all awards of just compensation that may be made in any such condemnation or judicial proceedings.

"Right of entry. The Department of Administration, the United States Department of Energy, and their agents and contractors, shall have the right to enter upon any lands to make surveys, borings, examinations, and appraisals as may be necessary or required by the United States Department of Energy or the Department of Administration in connection with the selection and acquisition of a site for a superconducting super collider and for easements and other property interests necessary for the purposes of this act. Entry pursuant to this act shall not be a trespass or taking of property. The Department of Administration shall make reimbursement for any damages to real property resulting from activities authorized by this section. Any property owner shall be entitled to bring a civil action in Superior Court of the county in which the real property is located to recover for any such damages for which he has not been reimbursed.

"Agreements with the United States; use of appropriated or donated funds. Notwithstanding the provisions of G.S. 146-36, and with the concurrence of the Council of State, the Governor may enter into any contract, conveyance, or other agreement to acquire for and to convey to the United States of America land or any interest in land, and to do such other acts and things as may be necessary to implement the provisions of this act. In carrying out the provisions of this act, the Department of Administration may use funds which have been or may be appropriated for the acquisition of the site for the superconducting super collider or which may otherwise be au-

thorized or which may have been received from gifts, devises, donations, bequests, or other sources for such purposes.

"Jurisdiction. The Governor and Council of State are authorized to grant concurrent jurisdiction on behalf of the State of North Carolina to the United States of America in those lands in which an interest is held by the United States of America pursuant to this act. The State of North Carolina shall continue to exercise jurisdiction in all lands covered by this act.

"Unused land to State. In the event that the superconducting super collider is not built on land conveyed to the United States by the State for that purpose, or that the scope of the project is so reduced that a portion of the land is not

required, title to the property or to an appropriate portion thereof shall revert to the State of North Carolina upon the release of the property by the United States. In the event that the superconducting super collider is not built on land condemned by the United States for that purpose, or that the scope of the project is so reduced that a portion of the land is not required, title to the property or to an appropriate portion thereof shall vest in the State of North Carolina upon the release of the property by the United States.

"The North Carolina Environmental Policy Act of 1971, Article 1 of Chapter 113A of the General Statutes, shall not apply to this act or to any action taken pursuant to this act."

#### CASE NOTES

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

### § 146-24.1. The power of eminent domain.

**Editor's Note.** — Session Laws 1987, c. 855 relates to a site for a superconducting super collider. For the

text of ss. 1 to 8 of c. 855, see the Editor's Note under § 146-24, above.

### § 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 provide 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.**

Every sale, lease, or rental of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State; provided that if the proposed disposition is a sale of land with an appraised value of at least twenty-five thousand dollars (\$25,000), the sale may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The Department of Administration may initiate proceedings for sales, leases, and rentals of land owned by the State or by any State agency. (1957, c. 584, s. 6; G.S., s. 146-108; 1959, c. 683, s. 1; 1977, c. 425, ss. 1, 2; 1987, c. 738, s. 47(b).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** — The 1987 amendment, effective August 7, 1987, added the proviso at the end of the first sentence.

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*, 72 N.C. App. 676, 325 S.E.2d 53, cert. denied, 313 N.C. 611, 330 S.E.2d 616 (1985).

**§ 146-29.1. Lease or sale of real property for less than fair market value.**

(a) Real property owned by the State or any State agency may not be sold, leased, or rented at less than fair market value to any private entity that operates, or is established to operate for profit.

(b) Real property owned by the State or by any State agency may be sold, leased, or rented at less than fair market value to a public entity. "Public entity" means a county, municipal corporation, local board of education, community college, special district or other political subdivision of the State and the United States or any of its agencies. Any such sale, lease, or rental shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, with the details of such transaction.

(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society upon a



determination by the Department of Administration that such transaction is in consideration of public service rendered or to be rendered. The transaction shall be reported in detail to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.

(d) Any sale, lease, or rental of real property made in conformity with the provisions of this section is not a violation of G.S. 66-58(a).

(e) All sales, leases, or rentals, prior to July 15, 1986, of real property owned by the State or any State agency are not invalid because of a conflict with G.S. 66-58(a) or with a prior version of this section, but any renewal of any such lease or rental agreement on or after July 15, 1986, shall conform to the requirements of this section. (1985, c. 479, s. 172(a); 1985 (Reg. Sess., 1986), c. 1014, s. 188(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 and Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contain severability clauses.

**Effect of Amendments.** — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, rewrote this section.

## § 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 subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land in or around the unincorporated area known as Butner on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Hospital to provide water and sewers and to bring those streets in the unincorporated area known as Butner not on the State highway system up to standards adequate for acceptance on the system, according to a plan adopted by the Department of Administration, and the Office of State Budget and Management, with the approval of the Board of County Commissioners of Granville County and to build industrial access roads to industries on the Butner lands. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, 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. —**

The reference in this section to § 105-296.1 is to that section as it ex-

isted before the revision of the Machinery Act by Session Laws 1971, c. 806. Session Laws 1983, c. 717, s. 1, pro-

vides: "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, substi-

tuted "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.

## § 146-36. Acquisitions for and conveyances to federal government.

**Editor's Note.** — Session Laws 1987, text of ss. 1 to 8 of c. 855, see the Editor's c. 855 relates to a site for a superconducting super collider. For the Note under § 146-24.

### SUBCHAPTER III. ENTRIES AND GRANTS.

#### ARTICLE 12.

#### *Correction of Grants.*

### § 146-55. Registration of grants.

#### CASE NOTES

**Registration is not required to pass title under a grant.** VEPCO v. Tillett, 80 N.C. App. 383, 343 S.E.2d 188, cert. denied, 317 N.C. 715, 347 S.E.2d 457 (1986).

### § 146-60. Further extension of time for registering grants or copies for two years from January 1, 1947.

#### CASE NOTES

**Registration is not required to pass title under a grant.** VEPCO v. Tillett, 80 N.C. App. 383, 343 S.E.2d 188, cert. denied, 317 N.C. 715, 347 S.E.2d 457 (1986).

### § 146-60.1. Further extension of time for registering grants or copies for four years from January 1, 1977.

#### CASE NOTES

**Registration is not required to pass title under a grant.** VEPCO v. Tillett, 80 N.C. App. 383, 343 S.E.2d 188, cert. denied, 317 N.C. 715, 347 S.E.2d 457 (1986).

## SUBCHAPTER IV. MISCELLANEOUS.

## ARTICLE 14.

*General Provisions.***§ 146-64. Definitions.****Legal Periodicals. —**

For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to

Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

## CASE NOTES

**Ownership of the foreshore remains in the state.** West v. Slick, 313 N.C. 33, 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, 313 N.C. 33, 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, 72 N.C. App. 676, 325 S.E.2d 53, cert. denied, 313 N.C. 611, 330 S.E.2d 616 (1985).

**§ 146-68. Statutes of limitation.**

**Legal Periodicals. —** For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine

Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

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. (Reg. Sess., 1984) amendment, effective July 1, 1984, inserted the present second sentence.

**Effect of Amendments.** — The 1983

ARTICLE 17.

*Title in State.*

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

**Legal Periodicals.** — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

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, 465 U.S. 1075, 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, 465 U.S. 1075, 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,

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).

304 S.E.2d 767 (1983), cert. denied and  
appeal dismissed, 310 N.C. 311, 312  
S.E.2d 655 (1984).

**Chapters 147 and 148.**

**Editor's Note.** — The legislation and annotations affecting Chapters 147 and 148 have been included in recently published replacement chapters.



## Chapters 150A and 150B.

**Editor's Note.** — The legislation and 150B have been included in recently published replacement chapters. annotations affecting Chapters 150A

**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): Moore (office of coroner abolished effective July 1, 1984): 1983, c. 36; 1985, c. 236; Rowan (office of coroner abolished): 1985, c. 40.

## Chapter 153A.

**Editor's Note.** — The legislation and annotations affecting Chapter 153A have been included in a recently published replacement chapter.

**Chapter 156.**  
**Drainage.**

SUBCHAPTER III. DRAINAGE  
DISTRICTS.

Sec.  
156-97.1. Issuance of assessment anti-  
pation notes.

**Article 8.**

**Assessments and Bond Issue.**

Sec.  
156-97. Bonds issued.

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.** — Pate, 308 N.C. 759, 304 S.E.2d 199  
In accord with original. See White v. (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 anticipation 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 "fourteen percent (14%)"

for "six percent (6%)" in the second sentence of the first paragraph.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*November 1, 1987*

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 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*

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1950