THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1989 CUMULATIVE SUPPLEMENT

Volume 3C, Part II

Chapters 144 through 159G

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 379 S.E.2d 161. 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.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1989

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 1989 Regular Session, which are within the scope of such volume, and brings up 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 purposes 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.

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.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1989 Regular Session affecting Chapters 144 through 159I of the General Statutes.

Annotations:

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

North Carolina Reports through Volume 324, p. 436.
North Carolina Court of Appeals Reports through Volume 92, p. 757.
South Eastern Reporter 2nd Series through Volume 379, p. 161.
Federal Reporter 2nd Series through Volume 873, p. 1452.
Federal Supplement through Volume 710, p. 802.
Federal Rules Decisions through Volume 124, p. 691.
Bankruptcy Reports through Volume 98, p. 605.
Supreme Court Reporter through Volume 109, p. 2114.
North Carolina Law Review through Volume 67, p. 740.
Wake Forest Law Review through Volume 24, p. 538.
Campbell Law Review through Volume 11, p. 310.
Duke Law Journal through 1988, p. 1271.
North Carolina Central Law Journal through Volume 17, p. 228.
Opinions of the Attorney General.

The General Statutes of North Carolina
1989 Cumulative Supplement

VOLUME 3C, PART II

Chapter 145.

State Flower, Bird, Tree, Shell, Mammal, Fish, Insect, Stone, Reptile and Rock, Beverage, Historical Boat, Language and Dog.

§ 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, c. 347, s. 2 makes this section effective upon ratification. The act was ratified 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, c. 366, s. 2 makes this section effective upon ratification. The act was ratified 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) Expired. (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 made subsection (c) of this section effective August 14, 1987, and provided for its expiration on June 30, 1989. Subsection (c) is shown above as expired pursuant to c. 877, s. 2.

§ 145-13. The State dog.

The Plott Hound is adopted as the official dog of the State of North Carolina. (1989, c. 773, s. 1.)

Editor's Note. — Session Laws 1989, c. 773, s. 4 makes this section effective upon ratification. The act was ratified August 12, 1989.

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, 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 Foreshore Remains in State. See also 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).

§ 146-8. Disposition of mineral deposits in State lands under water.

The State, acting at the request of the Department of Environment, Health, and Natural Resources, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Environment, Health, and Natural Resources, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Environment, Health, and Natural Resources, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Environment, Health, and Natural Resources in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the

advice of the Council of State. (1937, c. 285; C.S., s. 113-26; 1959, c. 683, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" throughout the section.

§ 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 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).

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.

CASE NOTES

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. — Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of Administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

§ 146-22.1. Acquisition of property.

In order to carry out the duties of the Department of Administration as set forth in Chapters 143 and 146 of the General Statutes, the Department of Administration is authorized and empowered to acquire by purchase, gift, condemnation or otherwise:

(14) Lands necessary for the construction of hazardous waste facilities as defined in G.S. 130A-290, inactive hazardous substance or waste disposal sites as defined in G.S. 130A-310. Superfund sites as described in G.S. 130A-310.22, and lands necessary for the construction of low-level radioactive waste facilities as defined in G.S. 104E-5.

(1969, c. 1091, s. 1; 1973, c. 1284, s. 2; 1981, c. 704, s. 23; 1989, c. 286, s. 11.)

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

Editor's Note. —

Session Laws 1989, c. 286, s. 13 provides that the act shall not be construed to invalidate any action taken by the State with regard to the administration of the Superfund program prior to June 12, 1989.

Effect of Amendments. —

The 1989 amendment, effective June 12, 1989, rewrote subdivision (14).

§ 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 authorized 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. Leases and rentals.

CASE NOTES

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. — Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of Administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

§ 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).

CASE NOTES

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. — Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

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 Environment, Health, and Natural Resources 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, to build industrial access roads to industries on the Butner lands, to construct new city streets on the Butner lands, extend water and sewer service on the Butner lands, and repair storm drains on the Butner lands. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1; 1981, c. 859, s. 23.4; c. 1127, s. 33; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1989, c. 727, s. 218(155); c. 799, s. 26.)

Editor's Note. —

The reference in this section to § 105-296.1 is to that section as it existed before the revision of the Machinery Act by Session Laws 1971, c. 806.

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.

Session Laws 1989, c. 727, s. 218(155), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the fourth sentence of the last paragraph.

Session Laws 1989, c. 799, s. 26, effective July 1, 1989, also substituted "Department of Environment, Health, and Natural Resources" for "Department of Natural Resources and Community Development" in the fourth sentence of the last paragraph; and in the last sentence of that paragraph, deleted "and" preceding "to build" and inserted "to construct new city streets on the Butner lands, extend water and sewer service on the Butner lands, and repair storm drains on the Butner lands."

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, 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.

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.

Cross References. — For provision requiring state-licensed or state-certified real estate appraiser to appraise property acquired by state, see § 93A-71.1.

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 Foreshore Remains in State. See also, 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.

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.

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,

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

Applied in State ex rel. Rohrer v. Credle, 322 N.C. 522, 369 S.E.2d 825 (1988).

Chapter 147.

State Officers.

Article 2A.

Annuities for State Employees.

§ 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. (1971, c. 433, s. 3; 1983, c. 559, s. 3; 1985, c. 660, s. 4; 1989, c. 792, s. 2.10.)

Effect of Amendments. — The 1989 amendment, effective for taxable years beginning on or after January 1, 1989, deleted "and exempt from all State and local taxation" following "section" at the end of the last paragraph.

ARTICLE 3.

The Governor.

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

(a) **(Effective until July 1, 1990)** The salary of the Governor shall be one hundred sixteen thousand three hundred sixteen dollars ($116,316) annually, payable monthly.

(a) **(Effective July 1, 1990)** The salary of the Governor shall be one hundred twenty-three thousand three hundred dollars ($123,300) annually, payable monthly.

(b) 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.

(c) 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 warrent 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.

§ 147-11(a) is set out twice. See headings for effective dates.

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; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, s. 6; 1989, c. 752, s. 23(a), (b).)

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Session Laws 1989, c. 752, s. 167 contains a severability clause.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, designated the three paragraphs of this section as subsections (a) through (c), and in subsection (a) substituted "one hundred nine thousand, seven hundred twenty-eight dollars ($109,728)" for "one hundred five thousand dollars ($105,000)."

Session Laws 1989, c. 752, s. 23(a), effective July 1, 1989, substituted "one hundred sixteen thousand three hundred sixteen dollars ($116,316)" for "one hundred nine thousand, seven hundred twenty-eight dollars ($109,728)" in subsection (a).

Session Laws 1989, c. 752, s. 23(b), effective July 1, 1990, substituted "one hundred twenty-three thousand three hundred dollars ($123,300)" for "one hundred sixteen thousand three hundred sixteen dollars ($116,316)" in subsection (a).

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

CASE NOTES

Governor May Employ Special Counsel Without First Being Advised of Impracticability of Representation by Attorney General. — The Governor, pursuant to subsection (a), may employ special counsel in a proceeding in which the State is interested without first being advised by the Attorney General that it is impracticable for the latter to represent the interest of the State. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

§ 147-31.1. Office space and expenses for Governor-elect and Lieutenant Governor-elect; and other Council of State members-elect.

(a) The Department of Administration, upon request of the Governor-elect and Lieutenant Governor-elect, made after the general election for these respective offices, is empowered and directed to provide suitable office space and office staff for each such official for the period between the general election and inauguration.

The Department of Administration shall provide, for the fiscal years in which general election and inauguration of the Governor and Lieutenant Governor shall occur, such sums, not in excess of eighty thousand dollars ($80,000) for the Governor-elect, and not in excess of ten thousand dollars ($10,000) for the Lieutenant Governor-elect, as may be necessary for the salary of the staffs and the payment of office expenses of each such official during such interim.

(b) The Department of Administration, upon request of any other member-elect of the Council of State who is not an incumbent in that office, shall provide for such persons suitable office space and office staff for each such official for the period between the general election and inauguration.

The Department of Administration shall provide, for the fiscal years in which general election and inauguration of such persons occurs, ten thousand dollars ($10,000) for the salary of the staffs and the payment of office expenses of each such official during such interim. If there are more than two such persons, such services and payments shall be made from the Contingency and Emergency Fund upon approval of the Council of State. (1965, c. 407; 1987 (Reg. Sess., 1988), c. 1086, s. 48.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, designated the first two paragraphs as subsection (a), in the second paragraph of subsection (a) substituted "eighty thousand dollars ($80,000)" for "three thousand five hundred dollars ($3,500)" and "ten thousand dollars ($10,000)" for "one thousand five hundred dollars ($1,500)", and added subsection (b). In addition, the amendment rewrote the catchline to this section.

ARTICLE 4.

Secretary of State.

§ 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

Agency or Institution	Session Laws	Assembly Journals
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment, Health, and Natural Resources, Department of	1	0
Division of Environmental Management	2	0
Board of Environment, Health, and Natural Resources	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 [Developmental Disabilities], 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
Economic and Community Development, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1

Agency or Institution	Session Laws	Assembly Journals
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk — Senate	1	1
Principal Clerk — House	1	1
Reading Clerk — Senate	1	1
Reading Clerk — House	1	1
Sergeant at Arms — House	1	1
Sergeant at Arms — Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1

Agency or Institution	Session Laws	Assembly Journals
Elon College	1	1
Guilford College	1	1
Campbell College	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Atlantic Christian College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J. C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2

Agency or Institution	Session Laws	Assembly Journals
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; 1987, c. 827, s. 59; 1989, c. 727, s. 223(b); c. 751, s. 9(b).)

Editor's Note. — In light of the provisions of Session Laws 1989, c. 625, the phrase "Developmental Disabilities" has been inserted in brackets in the reference to the Division of Mental Health, Mental Retardation, and Substance Abuse Services.

Pursuant to Session Laws 1989, c. 727, s. 223(b), references to the Board and Department of Environment, Health, and Natural Resources was substituted for references to the Board and Department of Natural Resources and Community Development.

Session Laws 1989, c. 751, s. 8(28) purported to amend this section by substituting reference to the North Carolina Secretary of Commerce with reference to the Secretary of Economic and Community Development. The section does not contain a reference to the State Secretary of Commerce.

Pursuant to Session Laws 1989, c. 751, s. 9(b), a reference to the Department of Economic and Community Development was substituted for a reference to the Department of Commerce.

ARTICLE 4B.

Business License Information Office.

§ 147-54.15. License coordination and assistance to applicants.

Upon request, the Office shall assist a person as provided below:

(1) Identify the type and source of licenses that may be required and the potential difficulties in obtaining the licenses based on an informal review of a potential applicant's business at an early stage in its planning. Information provided by the Office is for guidance purposes only and may not be asserted by an applicant as a waiver or release from any license requirement. However, an applicant who uses the services of the Office as provided in this subdivision, and who receives a written statement identifying required State business licenses relating to a specific business activity, may not be assessed a penalty for failure to obtain any State business license which was not identified, provided that the applicant submits an application for each such license within sixty (60) days after written notification by the Office or the agency responsible for issuing the license;

(1987, c. 808, s. 1; 1989, c. 22.)

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 1989 amendment, effective March 20, 1989, added the last sentence in subdivision (1).

ARTICLE 5A.

Auditor.

§ 147-64.6. Duties and responsibilities.

(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 recommend changes to the State Controller. The State Controller shall prescribe and supervise the installation of such changes, as provided in G.S. 143B-426.39(2).

(11) The Auditor shall, through appropriate tests, satisfy himself concerning the propriety of the data presented in the Comprehensive Annual Financial Report and shall 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.

(16) The Auditor shall be responsible for receiving reports of allegations of the improper governmental activities set

forth in G.S. 126-84. The Auditor shall provide a telephone hotline to receive such allegations and informant may choose whether to remain anonymous. The Auditor shall implement the necessary policies and procedures to investigate hotline allegations and recommend appropriate action. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate agency immediately. In addition, the Auditor shall publicize the hotline number periodically and shall report findings to the agencies involved.

All records maintained by the State Auditor which involve unsubstantiated allegations of improper governmental activities set forth in G.S. 126-84 shall be destroyed within four years from the date such allegation was received.

(1983, c. 913, s. 2; 1985 (Reg. Sess., 1986), c. 1024, ss. 24, 25; 1987, c. 738, s. 62; 1989, c. 236, 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 1989 amendment, effective October 1, 1989 and applicable to acts incurring liability on and after October 1, 1989, added subdivision (c)(16).

Article 6.

Treasurer.

§ 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. The Commissioner of Banks and the bank examiners, and the Administrator of the Savings Institutions 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; 1987, c. 751, s. 1; 1989, c. 76, s. 27.)

Effect of Amendments. — The 1989 amendment, effective April 26, 1989, substituted "Institutions" for "and Loan" in the next to last sentence.

§ 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, the African Development Bank, and the Student Loan Marketing Association.

(3) Repurchase Agreements with respect to securities issued or guaranteed by the United States government or its agencies or other securities eligible for investment by this section executed by a bank or trust company or by primary or other reporting dealers to the Federal Reserve Bank of New York.

(4) Obligations of the State of North Carolina:

(5) 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, by a mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of the Department of Economic and Community Development of the State of North Carolina, be fully collaterized;

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 collaterized;

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 any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of the Department of Economic and Community Development 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.

g. Asset-backed securities (whether considered debt or equity) provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest rating by any nationally recognized rating service which rates the particular securities.

h. Corporate bonds and notes provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(6) Obligations or securities of The North Carolina Enterprise Corporation; provided that the investment may not exceed twenty million dollars ($20,000,000) and that the investment may be made solely from the General Fund and the Highway Fund.

(1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1969, c. 125; 1975, c. 482; 1979, c. 467, s. 1; c. 717, s. 1; 1981, c. 801, ss. 1, 2; 1985, c. 313, c. 3; 1987, c. 751, ss. 2-4; 1987 (Reg. Sess., 1988), c. 882, s. 5; 1989, c. 76, s. 28; c. 751, s. 7(43).)

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 1987 (Reg. Sess., 1988) amendment, effective June 15, 1988, added subdivision (c)(6).

Session Laws 1989, c. 76, s. 28, effective April 26, 1989, in subdivision (c)(5), substituted "Institutions" for "and

Loan" in paragraphs a and d.

Session Laws 1989, c. 751, s. 7(43), effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in paragraph (c)(5)a and paragraph (c)(5)d.

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

(c) Notwithstanding the provisions of subsection (b) of this section, the State Treasurer may not invest the assets of the Retirement Systems listed in G.S. 147-69.2(b)(8), or the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, in the stocks, securities, or other obligations of a company or financial institution doing business in the Republic of South Africa during any period of time in which either of the following conditions apply:

(1) The company or financial institution or any subsidiary or division thereof is not a signatory to the Sullivan Principles; or

(2) The company or financial institution or any subsidiary or division thereof is a signatory to the Sullivan Principles but has received a Category III (failing) performance rating for compliance with the Sullivan Principles, as measured by Arthur D. Little, Inc., the official compliance monitor for the signatories to the Sullivan Principles.

For the purposes of this subsection, the Sullivan Principles are a code of business practices relating to equal employment opportunities for black, coloured, and Asian workers in South Africa, including but not limited to the following principles:

(1) Nonsegregation of the races in all eating, comfort, locker room and work facilities;

(2) Equal and fair employment practices for all employees;

(3) Equal pay for all employees doing equal or comparable work for the same period of time;

(4) Initiation and development of training programs that will prepare blacks, coloureds, and Asians in substantial numbers for supervisory, administrative, clerical, and technical jobs;

(5) Increasing the number of blacks, coloureds, and Asians in management and supervisory positions;

(6) Improving the quality of employees' lives outside the work environment in such areas as housing, transportation, schooling, recreation, and health facilities;

(7) Working to eliminate laws and customs that impede social and political justice.

The State Treasurer shall determine which companies and financial institutions have received favorable ratings solely from the annual report prepared by Arthur D. Little, Inc. The State Treasurer shall determine which companies are signatories to the Sullivan Principles and which companies are doing business in or with the Republic of South Africa based on current, reliable and accurate information that is readily available.

(1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg. Sess., 1988), c. 1070; 1989, c. 770, s. 54.)

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 1987 (Reg. Sess., 1988), c. 1070, effective July 7, 1988, reenacted Session Laws 1987, c. 446, s. 1, which added subsection (c) of this section.

Effect of Amendments. — The 1989 amendment, effective August 12, 1989, substituted "G.S. 147-69.2(b)(8)" for "G.S. 147-69.2(b)(6)" in the introductory paragraph of subsection (c).

§ 147-83. Receipts from federal government and gifts not affected.

OPINIONS OF ATTORNEY GENERAL

When Federally Confiscated Drug Related Property Is Returned to Local Authorities. — If federal authorities confiscate drug related property and thereafter return a part of it to local authorities for law enforcement purposes, the N.C. Constitution and laws do not require these funds to go to the local school board as forfeited property and they may be used by local law enforcement. See opinion of the Attorney General to Mr. Aubrey S. Tomlinson, Jr., Attorney for Franklin County, — N.C.A.G. — (July 6, 1988).

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

§ 148-4.1. Release of inmates.

(d) **(Effective until July 1, 1991)** If the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system exceeds ninety-eight percent (98%) of 18,000 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system to ninety-seven percent (97%) of 18,000.

From the date of the notification until the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system has been reduced to ninety-seven percent (97%) of 18,000, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) **(Effective until July 1, 1991)** In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system has been reduced to ninety-seven percent (97%) of 18,000, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination of supervision upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving.

§ 148-4.1(d)-(f) have a delayed expiration date. See notes for date.

(f) **(Effective until July 1, 1991)** In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed 18,000.

(g) **(Effective until July 1, 1991)** The Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense in order to meet the requirements of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A. (1983, c. 557, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 197(a); 1987, c. 7, ss. 1, 3, 4; c. 879, s. 1.2; 1989, c. 1, 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 1987, c. 7, s. 6, as amended by Session Laws 1989, c. 1, s. 2, provides that the amendment to this section by ss. 1 and 3 of Session Laws 1987, c. 7, which added subsections (d) and (e) and inserted a reference to subsection (e) in subsection (b), shall expire July 1, 1991, unless reenacted by the General Assembly.

Session Laws 1989, c. 1, s. 9 provides that the amendment to this section by s. 1 of c. 1, which amended subsections (d) and (e) and added subsections (f) and (g), shall expire July 1, 1991, unless reenacted by the General Assembly.

Effect of Amendments. —

The 1989 amendment, effective February 1, 1989, in the first paragraph of subsection (d), substituted "ninety-eight percent (98%)" for "ninety-seven percent (97%)" in the first sentence, in the second sentence, substituted "90 days" for "60 days" and "ninety-seven percent (97%)" for "ninety-six percent (96%)," and substituted "ninety-seven percent (97%)" for "ninety-six percent (96%)" in the first sentence of the second paragraph of subsection (d), in subsection (e), substituted "ninety-seven percent (97%)" for "ninety-six percent (96%)," and substituted the language following "shall be eligible for parole" for "notwithstanding any other provision of law, except those persons convicted of a misdemeanor for which assault is one of the elements necessary to establish the offense of which the person was convicted", and added subsections (f) and (g). As to the expiration of this amendment, see the Editor's note.

ARTICLE 2.

Prison Regulations.

§ 148-10. Department of Environment, Health, and Natural Resources to supervise sanitary and health conditions of prisoners.

The Department of Environment, Health, and Natural Resources shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Department of Correction, and shall make periodic examinations of the same and report to the State Department of Correction the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; C.S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 476, s. 128; 1989, c. 727, s. 219(37).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources".

§ 148-11. Authority to make regulations.

CASE NOTES

Obtaining Medical Care Outside of Prison. — North Carolina law bars all but minimum-security prisoners from exercising an option to go outside the prison and obtain medical care of their choice at their own expense or funded by family resources or private health insurance. West v. Atkins, — U.S. —, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988).

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

(a) The Secretary of Correction may issue regulations regarding the grades of custody in which State Prisoners are kept, the privileges and restrictions applicable to each custody grade, and the amount of cash, clothing, etc., to be awarded to State prisoners after their discharge or parole. The amount of cash awarded to a prisoner upon discharge or parole after being incarcerated for two years or longer shall be at least forty-five dollars ($45.00).

(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; 1987 (Reg. Sess., 1988), c. 1086, s. 120(a).)

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 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, added the second sentence of subsection (a).

§ 148-19. Health services.

CASE NOTES

Basic Health Services for Prisoners. — In compliance with this section, 5 N.C. Admin. Code § 02E.0201 (1987) charges the director, division of prisons, with the responsibility of providing each prisoner the services necessary to maintain basic health. West v. Atkins, — U.S. —, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988).

Article 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners.

(e) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Secretary of Environment, Health, and Natural Resources as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction. Such work may include but is not limited to work with State or local government agencies in cleaning, construction, landscaping and maintenance of roads, parks, nature trails, bikeways, cemeteries, landfills or other government-owned or operated facilities.

(1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86; 1975, c. 278; c. 506, ss. 1, 2; c. 682, s. 2; c. 716, s. 7; 1977, c. 771, s. 4; c. 802, s. 25.36; c. 824, ss. 1-3; 1981, c. 516; 1981 (Reg. Sess., 1982), c. 1400; 1989, c. 727, s. 218(156).)

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 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in subsection (e).

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

(a) The Department of Correction shall pay each local confinement facility a standard sum set by the General Assembly in its appropriation acts at a per day, per inmate rate, for the cost of providing food, clothing, personal items, supervision and necessary ordinary medical services to those inmates committed to the custody of the local confinement facility to serve sentences of 30 days or more. This reimbursement shall not include any period of detention prior to actual commitment by the sentencing court. The Department shall also pay to the local confinement facility extraordinary medical expenses incurred for the inmates, defined as follows:

(1) Medical expenses incurred as a result of providing health care to an inmate as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurence or illness as a result of providing health care to an inmate as an outpatient (non-hospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the

inmate is incarcerated, provided the inmate was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the Department is obtained by the local facility.

(b) (**See note for expiration provision**) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate anymore prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 180 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(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.

(d) When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to a recommendation of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the Department of Correction, which shall disburse the earnings as determined under G.S. 148-33.1(f). When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to an order of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the clerk of the court that sentenced the prisoner or to the Department of Correction, as provided in the prisoner's commitment order. The clerk or the Department, as appropriate, shall disburse the earnings as provided in the prisoner's commitment order. Upon agreement between the Department of Correction and the custodian of the local confinement facility, however, the clerk may disburse to the local confinement facility the amount of the earnings to be paid for the cost of the prisoner's keep, and that amount shall be set off against the reimbursement to be paid by the Department to the local confinement facility pursuant to G.S. 148-32.1(a).

§ 148-32.1(b) has a delayed expiration provision. See notes.

(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 information, 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); 1985 (Reg. Sess., 1986), c. 1014, ss. 199, 201(e); 1987, c. 7, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 120; c. 1100, s. 17.4(a); 1989, c. 761, s. 3.)

Editor's Note. —

Session Laws 1987, c. 7, s. 6, as amended by Session Laws 1989, c. 1, s. 2, provides that the amendment to this section by s. 2 of the act shall expire July 1, 1991, unless reenacted by the General Assembly.

Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 48 is a severability clause.

Effect of Amendments. — Session Laws 1987 (Reg. Sess., 1988), c. 1037, s. 120, effective January 1, 1989, in the first sentence of subsection (b), substituted "district court district as defined in G.S. 7A-133" for "judicial district," substituted "any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1" for "any judge of the superior court or a special judge of the superior court assigned to hold court in the judicial district," and substituted "within that district or within another such district" for "within that judicial district or within another judicial district."

Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 17.4(a), effective July 1, 1988, deleted "male" preceding "inmates committed to the custody" near the end of the first sentence of the introductory language of subsection (a).

The 1989 amendment, effective August 11, 1989, inserted "including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a nonviolent misdemeanant" in the first sentence of subsection (b).

§ 148-37. Additional facilities authorized; contractual arrangements.

Editor's Note. — Session Laws 1989, c. 500, s. 65 provides that no privately for-profit owned or operated confinement facilities may be added to the State prison system unless approved by the General Assembly. The State may contract with private, nonprofit firms to provide or operate work and study release centers for women.

Session Laws 1989, c. 500, s. 127 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1989-91 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1989-91 biennium."

ARTICLE 3B.

Facilities and Programs for Youthful Offenders.

§ 148-49.10. Purposes of Article.

CASE NOTES

Article Not Applicable, etc. — This Article does not apply to a conviction or plea of guilty of a sexual offense in the first degree, for which the punishment is mandatory life imprisonment. State v. Browning, 321 N.C. 535, 364 S.E.2d 376 (1988); State v. Rhinehart, 322 N.C. 53, 366 S.E.2d 429 (1988).

Article Does Not Apply Where Sentence of Less Than Life Is Served Concurrently with Mandatory Life Sentence. — A defendant serving a sentence or sentences of less than life imprisonment concurrently with a mandatory life sentence is not entitled to the benefit of this Article. State v. Smith, 323 N.C. 359, 372 S.E.2d 557 (1988).

§ 148-49.11. Definitions.

CASE NOTES

Any doubts as to the trial court's knowledge that defendant was 18 years old and therefore could have been sentenced as a committed youthful offender were erased when the court made specific findings that defendant should not obtain the benefit of release as a committed youthful offender. State v. McKinney, 88 N.C. App. 659, 364 S.E.2d 743 (1988).

§ 148-49.14. Sentencing committed youthful offenders.

CASE NOTES

Reasons for Finding, etc. — The trial court was not required to state the reasons for its findings under this section in the record. State v. McKinney, 88 N.C. App. 659, 364 S.E.2d 743 (1988).

Any doubts as to the trial court's knowledge that defendant was 18 years old and therefore could have been sentenced as a committed youthful offender were erased when the court made specific findings that defendant should not obtain the benefit of release as a committed youthful offender. State v. McKinney, 88 N.C. App. 659, 364 S.E.2d 743 (1988).

ARTICLE 4.

Paroles.

§ 148-60.1. Allowances for paroled prisoner.

Upon the release of any prisoner upon parole, the superintendent or warden of the institution shall provide the prisoner with suitable clothing and, if needed, an amount of money sufficient to purchase transportation to the place within the State where the prisoner is to reside. The Parole Commission may, in its discretion, provide that the prisoner shall upon his release on parole receive a sum of money of at least forty-five dollars ($45.00). (1953, c. 17, s. 8; 1973, c. 1262, s. 10; 1987 (Reg. Sess., 1988), c. 1086, s. 120(b).)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 172 is a severability clause.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, substituted "of at least forty-five dollars ($45.00)" for "not to exceed twenty-five dollars ($25.00)."

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

§ 150B-1. Policy and scope.

(d) (1) The following are specifically exempted from the provisions of this Chapter:

a. The Administrative Rules Review Commission;
b. The Employment Security Commission;
c. The Industrial Commission;
d. The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers; and
e. The Utilities Commission.

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

(3) The Department of Human Resources is exempt from this Chapter in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes. The Department of Human Resources is also exempt from Article 3 of this Chapter in complying with the procedural safeguards mandated by the Section 680 of Part H of P.L. 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(4) 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.

(5) Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue.

(6) Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this Chapter do not apply to the Department of Transportation.

(7) 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.

(8) Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Economic and Community Development, and the Credit Union Division of the Department of Economic and Community Development.

(9) 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).

(10) Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2 and G.S. 130A-293.

(11) Article 2 of this Chapter shall not apply to the North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(12) Article 2 of this Chapter shall not apply to the North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of this Chapter shall not apply to the North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(13) Article 3 and G.S. 150B-51(a) of this Chapter shall not apply to hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. (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; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44).)

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 1987 (Reg. Sess., 1988), c. 993, s. 23, repeals Session Laws 1987, c. 850, s. 27(a), as noted under this section in the main volume.

Session Laws 1987 (Reg. Sess., 1988), c. 1082, which added the first sentence of present subdivision (d)(12), provides in s. 9: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it af-

fect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 14, effective July 8, 1988, added the first sentence of present subdivision (d)(12), relating to the Low-Level Radioactive Waste Management Authority.

Session Laws 1987 (Reg. Sess., 1988), c. 1111, s. 9, applicable to citations and notifications issued and to notices filed under Article 16 of Chapter 95 on or after October 1, 1988, inserted "in all actions that do not involve agricultural employers" in present paragraph (d)(1)d.

Session Laws 1989, c. 76, s. 29, effective April 26, 1989, substituted "Institutions" for "and Loan" in subdivision (d)(8).

Session Laws 1989, c. 168, s. 33, effective May 30, 1989, in subsection (d) designated the first paragraph as subdivision (d)(1); inserted in subdivision (d)(1) paragraph designators a through e; designated the former second paragraph through the former eighth paragraph as subdivisions (d)(2) through (d)(11); inserted "and G.S. 130A-293" at the end of subdivision (d)(10); and added subdivision (d)(12).

Session Laws 1989, c. 373, s. 2, effective June 21, 1989, and applicable to hearings and rules adopted on or after June 21, 1989, added subdivision (13) to subsection (d) as amended by Session Laws 1989, cc. 76 and 168.

Session Laws 1989, c. 538, s. 1, effective October 1, 1989, added the second sentence of subdivision (d)(3).

Session Laws 1989, c. 751, s. 7(44), effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in two places in subdivision (d)(8).

Legal Periodicals. —

For article, "The New Administrative Procedures Act: A Practical Guide to Understanding and Using It," see 9 Campbell L. Rev. 293 (1987).

CASE NOTES

Direct Challenge to Constitutionality of North Carolina Supreme Court Order. — A direct challenge of the constitutionality of an order of the North Carolina Supreme Court cannot be adjudicated under the Administrative Procedure Act. The issue must be litigated as an original action in the General Court of Justice. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

University of North Carolina's State Residency Committee (SRC) is exempt from the entire Administrative Procedure Act; therefore, although provisions in the act requiring judicial review of final administrative review were applicable, the SRC was not governed by § 150B-36, which requires agencies to state reasons for their decisions. Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988).

Board of Trustees. — Language in § 135-39.7 that board of trustees "may make a binding decision" concerning a dispute between an aggrieved individual and a claims administrator of a medical plan is not an express and unequivocal exemption of the board from the requirements of the Administrative Procedure Act; instead, the use of the term "binding" in the statute was intended to mean only that the board's decision would be binding upon the parties absent further review according to law. Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

Cited in North Carolina Dep't of Justice v. Baker, 90 N.C. App. 30, 367 S.E.2d 392 (1988); State v. Grimes, — N.C. —, 376 S.E.2d 10 (1987); Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

OPINIONS OF ATTORNEY GENERAL

Applicability of § 150B-23(a). — Section 150B-23(a), as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

When a contested case hearing is conducted by an agency governed

by Article 3A of this Chapter, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

Chapter 78A Does Not Take Precedence over This Act. — The provisions of Chapter 78A are not stated with the specificity and particularity sufficient to take precedence over any similar provisions of the Administrative Procedure Act which might conceivably apply to the actions and proceedings addressed by the Securities Act. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (Sept. 6, 1988).

This Chapter applies to the Secretary of State in the execution of the duties delegated in Chapter 78A. To be entirely exempt from Chapter 150B through § 150B-1(c), the agency must either be listed in § 150B-1(d) or have a specific statement of exemption from Chapter 150B in its enabling legislation; however, neither basis for exemption exists for Chapter 78A. Section 150B-1(c) does have the additional effect of causing any applicable provisions of Chapter 150B which cannot be reconciled with provisions of Chapter 78A to fail in favor of Chapter 78A. See opinion of Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (1988).

§ 150B-2. Definitions.

As used in this Chapter,

(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 within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, 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 of 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.

(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; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c. 878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17.)

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 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, inserted "within the same principal office or department enumerated in G.S. 143A-11 or 143B-6" in paragraph (8a)a.

CASE NOTES

Standing Is Question of Subject Matter Jurisdiction. — Whether one has standing to obtain judicial review of an administrative decision is a question of subject matter jurisdiction. Carter v. North Carolina State Bd. of Registration, 86 N.C. App. 308, 357 S.E.2d 705 (1987).

State Employee's Attempt to Recover for Surgery Costs. — State employee's dispute with the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, an administrative agency, seeking to recover costs of surgery should have been brought under this Chapter. Vass v. Board of Trustees, 89 N.C. App. 333, 366 S.E.2d 1, cert. granted, 323 N.C. 180, 373 S.E.2d 126 (1988).

Board of trustees of medical plan was an "agency" of the executive branch of State government under this section. Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

OPINIONS OF ATTORNEY GENERAL

Contested Cases. — Determinations made by the securities administrator pursuant to his statutory authority are considered "contested cases" within the meaning of subsection (2) of this section. Such determinations control or restrict the activities of dealers, salesmen, or issuers of securities, but these determinations only become "contested cases" if the administrator's action is "disputed" by the subject of such determination. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (Sept. 6, 1988).

The registration of securities dealers and salesmen by the Securities Division pursuant to § 78A-37 constitutes the granting of an "occupational license" within the meaning of subsection (4a) of this section. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (Sept. 6, 1988).

Scope of Article 3A of This Chapter. — Even though the Securities Division is determined to be an "occupational licensing agency" within the meaning of subsection (4b) of this section, the provisions of Article 3A of Chapter 150B (procedure for conduct of administrative hearings by occupational licensing agencies) in no way restrict or modify provisions of §§ 78A-39(a), (c),(e)

and (f); 78A-45 or 78A-46(b). See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (Sept. 6, 1988).

The Securities Division is an "occupational licensing agency" within the meaning of subsection (4b) of this section. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (Sept. 6, 1988).

§ 150B-3. Special provisions on licensing.

CASE NOTES

Stated in Miller v. North Carolina State Bd. of Registration for Professional Eng'rs & Land Surveyors, 322 N.C. 465, 368 S.E.2d 605 (1988).

OPINIONS OF ATTORNEY GENERAL

The requirements in subsection (c) of this section that an agency make a finding that the "public health, safety, or welfare requires emergency action" prior to a summary suspension of a license or an occupational license, and that the agency incorporate such finding in its order of suspension, are not in any way in conflict with the findings required to be made by the securities administrator by § 78A-39(a) prior to denying, suspending, or revoking the registration of a securities dealer or salesman and by § 78A-29(a) prior to denying, suspending, or revoking the effectiveness of a securities registration statement. See opinion of the Attorney General to Mr. Stephen M. Wallis, Deputy Securities Administrator (acting), 58 N.C.A.G. 76 (Sept. 6, 1988).

ARTICLE 2.

Rule Making.

§ 150B-11. Special requirements.

CASE NOTES

The Board of Medical Examiners is required by this section to establish regulations and procedures related to reinstatement of licenses automatically suspended under § 90-14(a)(10), to afford procedural protection to suspended licensees. In re Magee, 87 N.C. App. 650, 362 S.E.2d 564 (1987).

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

(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. No rule-making hearing is required to adopt, amend or repeal a rule to comply with G.S. 143B-30.2 in accordance with G.S. 150B-59(c).

(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; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(7); 1987, c. 285, ss. 7-9; 1989, c. 5, 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 1989, c. 5, s. 3 provides that s. 1 of c. 5 shall apply retroactively to January 1, 1986.

Effect of Amendments. —

The 1989 amendment, effective March 1, 1989, and applicable retroactively to January 1, 1986, inserted "adopt," in the second sentence of subsection (h).

§ 150B-13. Temporary rules.

Editor's Note. —

Session Laws 1989, c. 544, s. 22, provides that rules amended to comply with c. 544, which amended various sections of Chapters 19A, 81A, and 106 may be filed as temporary rules pursuant to G.S. 150B-13, and shall become permanent without any further rule-making procedures.

Session Laws 1989, c. 752, s. 84 provides "Notwithstanding G.S. 150B-13, the State Board of Community Colleges may, until six months from the effective date of this act [July 1, 1989], adopt temporary rules for college formula allocations without prior notice or hearing or upon any abbreviated notice or hearing the State Board of Community Colleges finds practicable. The State Board of Community Colleges shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B at the same time it adopts a temporary rule as authorized under this section. Temporary rules adopted under this section shall be published by the Director of the Office of Administrative Hearings in the *North Carolina Register* and shall be effective for a period of not longer than 180 days."

ARTICLE 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

CASE NOTES

State Employee's Attempt to Recover for Surgery Costs. — State employee's dispute with the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, an administrative agency, seeking to recover costs of surgery should have been brought under this Chapter. Vass v. Board of Trustees, 89 N.C. App. 333, 366 S.E.2d 1, cert. granted, 323 N.C. 180, 373 S.E.2d 126 (1988).

Cited in Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper

addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(9), 1(10), 6(2), 6(3); 1987, c. 878, ss. 3-5; c. 879, s. 6.1; 1987 (Reg. Sess., 1988), c. 1111, 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 1987 (Reg. Sess., 1988) amendment, effective with respect to agency decisions made on or after October 1, 1988, added subsection (f).

CASE NOTES

Notice Held Sufficient to Comply With Due Process. —

Any variance between notice and proof was insignificant in notice served defendant real estate broker that Commission would present evidence that defendant doctored tapes he used in his defense, since defendant was not surprised nor deprived of an opportunity to present his defense when he attempted to use tapes to defend himself. Watson v. North Carolina Real Estate Comm'n, 87 N.C. App. 637, 362 S.E.2d 294 (1987), cert. denied, 321 N.C. 746, 365 S.E.2d 296 (1988).

OPINIONS OF ATTORNEY GENERAL

Subsection (a) of this section, as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

When a contested case hearing is conducted by an agency governed by Article 3A of this Chapter, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

§ 150B-33. Powers of administrative law judge.

(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the Office of Administrative Hearings, 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) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person

should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act 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 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.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 9, 10, 26; 1987 (Reg. Sess., 1988), c. 1111, ss. 18, 19.)

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 1987 (Reg. Sess., 1988) amendment, applicable to contested cases or charges pending in the Office of Administrative Hearings on or after July 12, 1988, rewrote subdivision (b)(8) and added subdivision (b)(10).

§ 150B-34. Recommended decision or order of administrative law judge.

(a) Except as provided in G.S. 150B-36(c), in each contested case the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 23; 1987 (Reg. Sess., 1988), c. 1111, s. 21.)

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 1987 (Reg. Sess., 1988) amendment, applicable to contested cases or charges pending in the Office of Administrative Hearings on or after July 12, 1988, substituted "Except as provided in G.S. 150B-36(c), in each contested case" for "In a contested case" at the beginning of subsection (a).

§ 150B-36. Final decision.

(c) A determination by an administrative law judge in a contested case that the Office of Administrative Hearings lacks jurisdiction, or an order entered pursuant to the authority in G.S. 7A-759(e) shall constitute a final decision. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 67; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(16); 1987, c. 878, ss. 12, 24; 1987 (Reg. Sess., 1988), c. 1111, 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.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1111, s. 26 provides: "Section 5 of this act shall become effective with respect to agency decisions made on or after October 1, 1988. Sections 9 through 12 shall apply to citations and notifications issued and to notices filed under Article 16 of Chapter 95 on or after October 1,

1988. Sections 14 and 18 through 21 shall apply to contested cases or charges pending in the Office of Administrative Hearings on or after the date of ratification of this act. Section 20 of this act is effective upon ratification. The remainder of this act shall become effective July 1, 1988."

The act was ratified July 12, 1988.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment added subsection (c). For effective date and applicability, see Editor's note above.

CASE NOTES

University of North Carolina's State Residency Committee (SRC) is exempt from the entire Administrative Procedure Act; therefore, although provisions in the act requiring judicial review of final administrative review were applicable, the SRC was not governed by § 150B-36, which requires agencies to state reasons for their decisions. Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988).

§ 150B-37. Official record.

OPINIONS OF ATTORNEY GENERAL

Tapes Must Be Included in Official Record. — The tapes of a contested case which have not been transcribed must be included in the official record prepared by the Office of Administrative Hearings pursuant to subdivision (a)(3) and forwarded to the final agency decision maker pursuant to subsection (c). See opinion of Attorney General to Mr. John B. DeLuca, Assistant Director, Office of Legal Affairs, Dept. of Human Resources, 58 N.C.A.G. 85 (1988).

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 Institutions Division of the Department of Economic and Community Development and the Credit Union Division of the Department of Economic and Community Development; and

(3) The Department of Insurance and the Commissioner of Insurance.

(1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 6(3); 1989, c. 76, s. 30; c. 751, s. 7(45).)

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. —

Session Laws 1989, c. 76, s. 30, effective April 26, 1989, substituted "Institutions" for "and Loan" in subdivision (a)(2).

Session Laws 1989, c. 751, s. 7(45), effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in two places in subdivision (a)(2).

OPINIONS OF ATTORNEY GENERAL

Subsection 150B-23(a), as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

When a contested case hearing is conducted by an agency governed by Article 3A of this Chapter, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

Intended Sanction Not Required in Notice of Hearing. — While subdivision (b)(2) of this section requires licensing boards to include in their notices a reference to the particular sections of the statutes and rules involved, it does not appear to require a board to state which sanction under the applicable disciplinary statute it intends to impose. However, once a board states with specificity that it is proposing to impose only one or two sanctions available under a referenced disciplinary statute for the stated alleged infractions, the board is then precluded from imposing a greater sanction for these infractions. Miller v. North Carolina State Bd. of Registration for Professional Eng'rs & Land Surveyors, 322 N.C. 465, 368 S.E.2d 605 (1988).

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

OPINIONS OF ATTORNEY GENERAL

Subsection 150B-23(a), as amended by Session Laws 1987, Chapter 878, is not applicable to agencies governed by Article 3A of this Chapter. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

When a contested case hearing is conducted by an agency governed by Article 3A of this Chapter, a petition or other notice need not be filed with the Office of Administrative Hearings. See opinion of Attorney General to Mr. Phillip T. Fisher, Executive Director, N.C. Real Estate Commission, — N.C.A.G. — (Dec. 11, 1987).

ARTICLE 4.

Judicial Review.

§ 150B-43. Right to judicial review.

CASE NOTES

I. GENERAL CONSIDERATION.

Standing Is Question of Subject Matter Jurisdiction. — Whether one has standing to obtain judicial review of an administrative decision is a question of subject matter jurisdiction. Carter v. North Carolina State Bd. of Registration, 86 N.C. App. 308, 357 S.E.2d 705 (1987).

This Section Did Not Oust Supreme Court's Jurisdiction of Appeal from Board of Medical Examiners. — The General Assembly in § 90-14.11 provided that any decision of the Board of Medical Examiners being reviewed by the Superior Court could only be appealed to the Supreme Court and not to the Court of Appeals. Section 7A-27(b) did not change this appeal process, nor was the Supreme Court's jurisdiction of this appeal ousted by enactment of this section. In re Guess, 89 N.C. App. 711, 367 S.E.2d 11, cert. granted, 322 N.C. 606, 370 S.E.2d 246 (1988).

Applied in Concerned Citizens v.

North Carolina Envtl. Mgt. Comm'n, 89 N.C. App. 708, 367 S.E.2d 13 (1988); Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988).

Cited in In re Guess, 89 N.C. App. 711, 367 S.E.2d 11 (1988); North Carolina Dep't of Justice v. Eaker, 90 N.C. App. 30, 367 S.E.2d 392 (1988); Tay v. Flaherty, 90 N.C. App. 346, 368 S.E.2d 403 (1988); Davis v. Hiatt, — N.C. App. —, 376 S.E.2d 44 (1989).

II. AGGRIEVED PERSON.

Meaning of "Person Aggrieved". — "Person aggrieved" means one who is adversely affected in respect of legal rights, or is suffering from an infringement or denial of legal rights. Carter v. North Carolina State Bd. of Registration, 36 N.C. App. 308, 357 S.E.2d 705 (1987).

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

Exhaustion of Administrative Remedies Required. —

Where board of trustee's decision denying plaintiff's claim was subject to judicial review only under the terms of the Administrative Procedure Act and, at the time he brought the action in the District Court, plaintiff had not exhausted the administrative remedies available to him under the Act, the court of appeals did not err in concluding that the trial court was without subject matter jurisdiction and that the plaintiff's civil action must be dismissed. Vass v. Board of Trustees, — N.C. —, 379 S.E.2d 26 (1989).

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

CASE NOTES

Decision Held Unreasonably Delayed. — State Personnel Commission's decision against a county employee issued 130 days after it had received the official record from the hearing officer was "unreasonably delayed" as defined in this section; however, the hearing officer's decision would not be reinstated. The only available remedy was a court order compelling action by the agency or hearing officer. Davis v. Vance County Dep't of Soc. Servs., 91 N.C. App. 428, 372 S.E.2d 88 (1988).

§ 150B-45. Procedure for seeking review; waiver.

Applied in Concerned Citizens v. North Carolina Envtl. Mgt. Comm'n, 89 N.C. App. 708, 367 S.E.2d 13 (1988).

§ 150B-51. Scope of review.

CASE NOTES

I. GENERAL CONSIDERATION.

Constitutional Review Not Contemplated, etc. —

The superior court misperceived the proper scope of its review where the record nowhere demonstrated petitioners raised any constitutional issues in a manner requiring the superior court to pass on the constitutional validity of any assessment under § 113A-64. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, — N.C. —, 374 S.E.2d 873 (1988).

Appellate Review of Improper Constitutional Consideration. — Although the trial court improperly considered a constitutional issue, where that court vacated the Department of Natural Resources and Community Development's assessment based on an interpretation of N.C. Const., Art. IV, § 3, which the department properly challenged on appeal, the Court of Appeals

would address that constitutional ground in the exercise of its supervisory jurisdiction. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, — N.C. —, 374 S.E.2d 873 (1988).

Official Acts Presumed, etc. —

There is a rebuttable presumption that an administrative agency has properly performed its official duties, and while arbitrary and capricious agency action is itself prohibited by federal and state due process, any assertion of arbitrary agency action does not necessarily require the agency's action be reviewed for compliance with every other requirement under the state and federal Constitutions. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, — N.C. —, 374 S.E.2d 873 (1988).

This Section Distinguished from Review Pursuant to Section 150B-52. — When an appellate court reviews the decision of a lower court (as opposed to when it reviews an administrative agency's decision on direct appeal), the scope of review to be applied under § 150B-52 is the same as it is for other civil cases. Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

When De Novo Review Permissible. —

When the issue on appeal is whether a state agency erred in interpreting a statutory term, an appellate court may freely substitute its judgment for that of the agency and employ de novo review. Brooks v. Rebarco, Inc., 91 N.C. App. 459, 372 S.E.2d 342 (1988).

This section, as recodified in 1985, and prior to its amendment in 1987, did not require the reviewing court to set out its reasons for reversal or modification, unlike under former § 150A-51, which required the reviewing court to set out written reasons only when reversing or modifying an agency decision. Shepherd v. Consolidated Judicial Retirement Sys., 89 N.C. App. 560, 366 S.E.2d 604 (1988).

Appellate Court Review Not Limited to Superior Court's Findings and Conclusions. — Appellate court's review is limited to assignments of error to the superior court's order, but is not required to accord any particular deference to the superior court's findings and conclusions concerning the Commission's actions. Watson v. North Carolina Real Estate Comm'n, 87 N.C. App. 637, 362 S.E.2d 294 (1987), cert. denied, 321 N.C. 746, 365 S.E.2d 296 (1988).

Applied in Johnson v. Division of Social Servs., 89 N.C. App. 481, 366 S.E.2d 538 (1988); Meyers v. Department of Human Resources, 92 N.C. App. 193, 374 S.E.2d 280 (1988); Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988); Uicker v. North Carolina State Bd. of Dental Exmrs., — N.C. —, 378 S.E.2d 45 (1989).

Cited in Harris v. Flaherty, 90 N.C. App. 110, 367 S.E.2d 364 (1988); In re Medical Center, 91 N.C. App. 107, 370 S.E.2d 597 (1988); In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, — N.C. —, 379 S.E.2d 30 (1989).

II. EXCEEDING STATUTORY AUTHORITY OR JURISDICTION.

Assessment Based upon Penalty Factors Reasonably Related to Act's Enforcement. — Department's assessment was not based upon the secretary's "absolute" discretion, but instead upon numerous penalty factors reasonably related to the act's administration and enforcement, which resulted in a fair and reasoned penalty assessment. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, — N.C. —, 374 S.E.2d 873 (1988).

III. UNLAWFUL PROCEDURE.

A verification Procedure Unsupported by Federal Regulations Violated Subdivision (b)(3). — Federal regulations govern verification of information concerning a food stamp recipient by a State agency. And thus where the verification procedure used by a county was unsupported by the federal regulations, it was in violation of subdivision (b)(3) of this section. Tay v. Flaherty, 90 N.C. App. 346, 368 S.E.2d 403, cert. denied, 323 N.C. 370, 373 S.E.2d 556 (1988).

IV. "WHOLE RECORD" TEST.

"Substantial Evidence" Defined. — Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to sup-

port a conclusion. Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

Court Must Consider All Evidence. —

The reviewing court must take into account contradictory evidence or evidence from which conflicting inferences could be drawn and determine whether the administrative decision had a rational basis in the evidence. Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

And Must Examine the "Whole Record," etc. —

In accord with the main volume. See Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

Court May Not Replace Agency's Judgment, etc. —

In accord with 7th paragraph in bound volume. See In re Kozy, 91 N.C. App. 342, 371 S.E.2d 778 (1988).

The "whole record" standard of review is not intended to encourage "judicial duplication" of administrative decision-making. Watson v. North Carolina Real Estate Comm'n, 87 N.C. App. 637, 362 S.E.2d 294 (1987), cert. denied, 321 N.C. 746, 365 S.E.2d 296 (1988).

Where Judgment Met All Requirements of This Section. — Where the judgment recited that the court had reviewed the record and matters on file and had considered the oral arguments and relevant statutory provisions, and based on these considerations, the judge concluded that the declaratory ruling was not erroneous as a matter of law and was due to be affirmed, the judgment met all the requirements of this section and was clearly sufficient as a matter of law. Shepherd v. Consolidated Judicial Retirement Sys., 89 N.C. App. 560, 366 S.E.2d 604 (1988).

V. ARBITRARY OR CAPRICIOUS FINDINGS, DECISIONS, ETC.

"Whole Record" Standard of Review Applied. — The "whole record" test is applied when the court considers whether an agency decision is arbitrary and capricious. Brooks v. Rebarco, Inc., 91 N.C. App. 459, 372 S.E.2d 342 (1988).

School Board's Termination of Teacher Was Not an Abuse of Discretion. — Where school board took into consideration the attribution rate, the qualifications, certification, evaluations and experience of teachers, and respondent had the lowest level of certification and the least amount of experience, the school board's determination to terminate respondent was not arbitrary, capricious or an abuse of discretion. Taborn v. Hammonds, 91 N.C. App. 302, 371 S.E.2d 736 (1988).

State Personnel Commission abused its discretion and lacked careful and impartial decisionmaking when it passed over personnel office employee and filled a vacant position with an applicant who did not meet state qualifications for the position and who had filed her application and had been effectively offered the job a month before it was posted. Joyce v. Winston-Salem State Univ., 91 N.C. App. 153, 370 S.E.2d 866, cert. denied, 323 N.C. 476, 373 S.E.2d 862 (1988).

Assessment of Penalty Held Not Arbitrary or Capricious. — Where the penalty assessed by the Department of Natural Resources and Community Development was within the statutory limits provided in § 113A-64, and the record evidenced the secretary's reasoned weighing of the penalty factors announced in 15 N.C. Adm. Code 4C.006, which were reasonably related to the act's administration and enforcement, the department's assessment of the monetary penalty in this case was not arbitrary and capricious. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, — N.C. —, 374 S.E.2d 873 (1988).

Dismissal Held Not Arbitrary or Capricious. — Department of Human Resource's dismissal of employee's appeal on grounds it was filed one day after the deadline was neither arbitrary or capricious where employee was informed of the time limits for perfecting appeal, offered assistance for complying with appeal procedures since legal representation was not allowed at that time of the proceeding, and employee's apparent justification for filing late was difficulty in retaining an attorney. Lewis v. North Carolina Dep't of Human Resources, — N.C. App. —, 375 S.E.2d 713 (1989).

§ 150B-52. Appeal; stay of court's decision.

CASE NOTES

Scope of Appellate Review, etc. — In accord with main volume. See Tay v. Flaherty, 90 N.C. App. 346, 368 S.E.2d 403, cert. denied, 323 N.C. 370, 373 S.E.2d 556 (1988).

When an appellate court reviews the decision of a lower court, (as opposed to when it reviews an administrative agency's decision on direct appeal), the scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. Henderson v. North Carolina Dep't of Human Resources, 91 N.C. App. 527, 372 S.E.2d 887 (1988).

Appellate Review of Improper Constitutional Consideration. — Although the trial court improperly considered a constitutional issue, where that court vacated the Department of Natural Resources and Community Development's assessment based on an interpretation of N.C. Const., Art. IV, § 3, which the department properly challenged on appeal, the Court of Appeals would address that constitutional ground in the exercise of its supervisory jurisdiction. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, — N.C. —, 374 S.E.2d 873 (1988).

Failure to Cross-Appeal Constituted Waiver. — Where trial court erroneously failed to render conclusions concerning all statutory grounds for review raised by the petition for review, petitioners' failure to cross-appeal any such error to the appellate court waived its consideration on appeal. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572, supersedeas allowed on reconsideration, — N.C. —, 374 S.E.2d 873 (1988).

ARTICLE 5

Publication of Administrative Rules.

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

(c) Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, whether or not amended on or after that date, 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 September 1, 1986, whether or not amended on or after that date, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until July 15, 1988. These rules are repealed effective July 16, 1988, unless the Administrative Rules Review Commission determines that a rule complies with G.S. 143B-30.2(a). Provided, however, that:

(1) The rules of the Office of State Personnel and the occupational licensing boards shall remain in effect until February 28, 1990, but are repealed effective March 1, 1989, unless approved by the Administrative Rules Review Commission.

(2) The rules of the Department of Human Resources shall remain in effect until June 30, 1990, but are repealed effective July 1, 1990, unless approved by the Administrative Rules Review Commission.

(3) Although the Department of Cultural Resources, the Office of the Governor, and the Council of State did not file the

reports required under Chapter 746, Session Laws of 1985, nevertheless the rules of these three agencies shall remain in effect until February 28, 1989, but are repealed effective March 1, 1989, unless approved by the Administrative Rules Review Commission.

Review of these rules shall be carried out in the manner prescribed in G.S. 143B-30.2 except that a rule determined to be in compliance shall remain in effect. In the event of rules which the Commission determines do not comply with G.S. 143B-30.2, such rules may be revised or repealed by the agency without a rulemaking hearing in accordance with G.S. 150B-12(h). Revised rules shall be returned to the Commission. If the Commission approves the rules, the Commission shall notify the agency and file the rules with the Office of Administrative Hearings. 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; 1985 (Reg. Sess., 1986), c. 851, ss. 5, 6; c. 1022, s. 1(1); c. 1028, ss. 34, 36; 1987, c. 285, ss. 14, 15; 1987 (Reg. Sess., 1988), c. 1036, s. 18.1; c. 1053; c. 1111, s. 4; 1989, c. 5, s. 2; c. 538, 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.

Editor's Note. —

Section 3 of Session Laws 1989, c. 5, provides that s. 2 of c. 5 shall apply retroactively to January 1, 1986.

Session Laws 1989, c. 727, s. 226, as amended by Session Laws 1989, c. 751, s. 17, provides: "The provisions of G.S. 150B-59(c)(2), as amended by Section 2 of Chapter 538 of the 1989 Session Laws, shall apply to any agency which is a part of the Department of Human Resources on 30 June 1989, even though such agency is subsequently transferred to the Department of Environment, Health, and Natural Resources or to any other department."

Session Laws 1989, c. 751, s. 21 provides: "The provisions of G.S. 150B-59(c)(2), as amended by Section 2 of Chapter 538 of the 1989 Session Laws, shall apply to any agency which is a part of the Department of Human Resources on 30 June 1989, even though such agency is subsequently transferred to the Department of Economic and Community Development or to any other department."

Effect of Amendments. —

Session Laws 1987 (Reg. Sess., 1988), c. 1036, s. 18.1, effective June 30, 1988, substituted "July 5, 1988" for "June 30, 1988" and "July 6, 1988" for "July 1, 1988" in subsection (c).

Session Laws 1987 (Reg. Sess., 1988), c. 1053, effective July 5, 1988, amended subsection (c) of this section, as amended by Session Laws 1987 (Reg. Sess., 1988), c. 1036, s. 18.1, by substituting "July 15, 1988" for "July 5, 1988" and "July 16, 1988" for "July 6, 1988."

Session Laws 1987 (Reg. Sess., 1988), c. 1111, s. 4, effective July 1, 1988, added "Provided, however, that" at the end of the introductory paragraph of subsection (c) and inserted subdivisions (c)(1) through (c)(3).

Session Laws 1989, c. 5, s. 2, effective March 1, 1989, and applicable retroactively to January 1, 1986, inserted "whether or not amended on or after that date," in the second sentence of subsection (c).

Session Laws 1989, c. 538, s. 2, effective October 1, 1989, substituted the year 1990 for the year 1989 in two places in subdivision (c)(2).

§ 150B-61. Authority to revise form.

(c) The agency shall be responsible for notifying the Director within 30 days after a rule becomes effective of any typographical or technical error in the rule as codified. The Director shall correct the codified rule if it differs from the rule as adopted by the agency. Errors in any rule discovered more than 30 days after codification shall be changed only by the procedures established by Article 2 of this Chapter. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1); 1987 (Reg. Sess., 1988), c. 1111, s. 23.)

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 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, added subsection (c).

§ 150B-63. Publication of executive orders and rules; the North Carolina Register.

(e) Notwithstanding Article 1A of Chapter 125 of the General Statutes, reference copies of the compilation, supplements, and recompilations of the rules, and the North Carolina Register shall be distributed by the Director as soon after publication as practicable, without charge, only 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 to the Administrative Rules Review Commission; 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 Administrative Office of the Courts; one copy to the office of the Governor; and five copies to the Legislative Services Commission for the use of the General Assembly;

(2) Upon request, 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. 125-11.7; and

(4) Upon request, one copy of the North Carolina Register to each member of the General Assembly.

(f) The Director shall make available to persons not listed in subsection (e) copies of the compilation, supplements, and recompilations of the rules and the North Carolina Register, and shall make available to all persons copies of other public documents filed in the Office of Administrative Hearings. The Director shall set a fee to be charged for publications and documents made available under this subsection at an amount that covers publication, copying, and mailing costs. All moneys received by the Office of Administrative Hearings pursuant to this subsection shall be deposited in the General Fund.

(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; 1985 (Reg. Sess., 1986), c. 1003,

s. 2; c. 1022, ss. 1(1), 1(19); c. 1032, s. 12; 1987, c. 774, ss. 2-4; 1987 (Reg. Sess., 1988), c. 1111, s. 3; 1989, c. 500, s. 43(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. —

Section 2 of Session Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

Session Laws 1989, c. 500, s. 43(b) provides: "(b) Any funds remaining in the special funds account established by G.S. 150B-63(f) shall be credited to the General Fund."

Session Laws 1989, c. 500, s. 127 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1989-91 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occuring during the 1989-91 biennium."

Session Laws 1989, c. 500, § 128 contains a severability clause.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective July 1, 1988, in subsection (e) substituted "Notwithstanding Article 1A of Chapter 125 of the General Statutes" for "Notwithstanding G.S. 147-50," inserted "one copy to the Administrative Rules Review Commission," and "125-11.7" for "147-50.1".

The 1989 amendment, effective July 1, 1989, substituted the last sentence of subsection (f) for the former last two sentences, which provided for deposit of moneys in a special funds account and for audit of such moneys.

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. McDowell (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 1; Yancey (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 4.

Chapter 153A.

Counties.

Article 23.

Miscellaneous Provisions.

ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-1. Definitions.

CASE NOTES

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

§ 153A-3. Effect of Chapter on local acts.

CASE NOTES

Section 153A-345 did not change Forsyth County zoning ordinance enacted pursuant to Session Laws 1947, c. 677 in April, 1967. Cardwell v. Forsyth County Zoning Bd. of Adjustment, 88 N.C. App. 244, 362 S.E.2d 843 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 858 (1988).

Cited in Cardwell v. Smith, 92 N.C. App. 505, 374 S.E.2d 625 (1988).

ARTICLE 2.

Corporate Powers.

§ 153A-11. Corporate powers.

CASE NOTES

I. GENERAL CONSIDERATION.

A county may not exercise jurisdiction over any part of a city located within its borders. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Cited in Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987).

ARTICLE 3.

Boundaries.

§ 153A-18. Uncertain or disputed boundary.

(a) If two or more counties are uncertain as to the exact location of the boundary between them, they may cause the boundary to be surveyed, marked, and mapped. The counties may appoint special commissioners to supervise the surveying, marking, and mapping. A commissioner so appointed or a person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Upon ratification of the survey by the board of commissioners of each county, a map showing the surveyed boundary shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary.

(b) If two or more counties dispute the exact location of the boundary between them, and the dispute cannot be resolved pursuant to subsection (a) of this section, any of the counties may apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in any of the districts or sets of districts as defined in G.S. 7A-41.1 in which any of the counties is located for appointment of a boundary commission. The application shall identify the disputed boundary and ask that a boundary commission be appointed. Upon receiving the application, the court shall set a date for a hearing on whether to appoint the commission. The court shall cause notice of the hearing to be served on the other county or counties. If, after the hearing, the court finds that the location of the boundary is disputed, it shall appoint a boundary commission.

The commission shall consist of one resident of each disputing county and a resident of some other county. The court may appoint one or more surveyors to assist the commission. The commission shall locate, survey, and map and may mark the disputed boundary. To do so it may take evidence and hear testimony, and any commissioner and any person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Within 45 days after the day it is appointed, unless this time is extended by the court, the commission shall make its report (which shall include a map of the surveyed boundary) to the court. To be sufficient, the report must be concurred in by a majority of the commissioners. If the court is satisfied that the commissioners have made no error of law, it shall ratify the report, after which the map shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. Upon recordation, the map is conclusive as to the location of the boundary.

The disputing counties shall divide equally the costs of locating, surveying, marking, and mapping the boundary, unless the court finds that an equal division of the costs would be unjust. In that case the court may determine the division of costs. (1836, c. 3; R.C.,

c. 27; Code, s. 721; Rev., s. 1322; C.S., s. 1299; 1925, c. 251; 1973, c. 822, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 121.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in any of the districts or set of districts as defined in G.S. 7A-41.1 in which any of the counties is located" for "a resident or presiding superior court judge in the judicial district or districts in which the counties are located" in the first sentence of subsection (b).

Article 4.

Form of Government.

Part 1. General Provisions.

§ 153A-26. Oath of office.

CASE NOTES

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

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

(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, 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; 1987, c. 196, s. 1; 1989, c. 296; c. 497, 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. —

Session Laws 1989, c. 296, effective June 12, 1989, added Dare county to the list of counties in subsection (h).

Session Laws 1989, c. 497, s. 2, effective June 28, 1989, added the counties Carteret and Forsyth to the list of counties in subsection (h).

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-40. Regular and special meetings.

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-45. Adoption of ordinances.

CASE NOTES

For discussion of the distinction between an ordinance and a resolution, see Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

Personnel Rules. — Absent evidence that "personnel resolution" containing "rules and regulations" for the dismissal of county employees, incorporated in an employee handbook, was passed with the formality required for the enactment of an ordinance, the court would conclude that it was not an ordinance. Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-48. Ordinance book.

CASE NOTES

For discussion of the distinction between an ordinance and a resolution, see Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

Personnel Rules. — Absent evidence that "personnel resolution" containing "rules and regulations" for the dismissal of county employees, incorporated in an employee handbook, was passed with the formality required for the enactment of an ordinance, the court would conclude that it was not an ordinance. Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-58. Optional structures.

Local Modification. — Lee (as to Part 4 and § 153A-58): 1989, c. 195, ss. 4, 5 (effective June 1, 1989, but only applicable to resolutions approved on or before August 1, 1990), as amended by 1989, c. 770, s. 43.

CASE NOTES

Cited in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

§ 153A-60. Initiation of alterations by resolution.

Local Modification. — Lee: 1989, c. 195, s. 1 (effective June 1, 1989, but only applicable to resolutions approved on or before August 1, 1990).

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-61. Submission of proposition to voters; form of ballot.

Local Modification. — Lee: 1989, c. 195, s. 2 (effective June 1, 1989, but only applicable to resolutions approved on or before August 1, 1990).

§ 153A-64. Filing results of election.

If the proposition is approved under G.S. 153A-61, a certified true copy of the resolutions and a copy of the abstract of the election shall be filed with the Secretary of State, and with the Legislative Library. (1985 (Reg. Sess., 1986), c. 935, s. 1; 1989, c. 191, s. 1.)

Local Modification. — Lee: 1989, c. 195, s. 3 (effective June 1, 1989, but only applicable to resolutions approved on or before August 1, 1990).

Effect of Amendments. — The 1989 amendment, effective June 1, 1989, deleted "Supreme Court Library" following "Secretary of State."

ARTICLE 5.

Administration.

Part 2. Administration in Counties Having Managers.

§ 153A-81. Adoption of county-manager plan; appointment or designation of manager.

CASE NOTES

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

§ 153A-82. Powers and duties of manager.

CASE NOTES

Applied in Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

Part 4. Personnel.

§ 153A-92. Compensation.

(a) Subject to the limitations set forth in subsection (b) of this section, the board of commissioners shall fix or approve the schedule of pay, expense allowances, and other compensation of all county officers and employees, whether elected or appointed, and may adopt position classification plans.

(b) In exercising the authority granted by subsection (a) of this section, the board of commissioners is subject to the following limitations:

(1) The board of commissioners may not reduce the salary, allowances, or other compensation paid to an officer elected by the people for the duties of his elective office if the reduction is to take effect during the term of office for which the incumbent officer has been elected, unless the officer agrees to the reduction or unless the Local Government Commission pursuant to Chapter 159, Article 10, orders a reduction.

(2) During the year of a general election, the board of commissioners may reduce the salary, allowances, or other compensation of an officer to be elected at the general election only in accordance with this subdivision. The board of commissioners shall by resolution give notice of intention to make the reduction no later than 14 days before the last day for filing notice of candidacy for the office. The resolution shall set forth the reduced salary, allowances, and other compensation and shall provide that the reduction is to take effect at the time the person elected to the office in the general election takes office. Once adopted, the resolution may not be altered until the person elected to the office in the general election has taken office. The filing fee for the office shall be determined by reference to the reduced salary.

(3) If the board of commissioners reduces the salaries, allowances, or other compensation of employees assigned to an officer elected by the people, and the reduction does not apply alike to all county offices and departments, the elected officer involved must approve the reduction. If the elected officer refuses to approve the reduction, he and the board of commissioners shall meet and attempt to reach agreement. If agreement cannot be reached, either the board or the officer may refer the dispute to arbitration by the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the county is located. The judge shall make an award within 30 days after the day the matter is referred to him. The award may extend for no more than two fiscal years, including the fiscal year for which it is made.

(4) The board of commissioners shall fix their own salaries, allowances, and other compensation in accordance with G.S. 153A-28.

(5) The board of commissioners shall fix the salaries, allowances and other compensation of county employees subject to the State Personnel Act according to the procedures set

forth in Chapter 126. The board may make these employees subject to a county position classification plan only as provided in Chapter 126.

(c) In counties with a county manager, the manager is responsible for preparing position classification and pay plans for submission to the board of commissioners and for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the board. In counties without a county manager, the board of commissioners shall appoint or designate a personnel officer, who shall then be responsible for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the board.

(d) A county may purchase life insurance or health insurance or both for the benefit of all or any class of county officers and employees as a part of their compensation. A county may provide other fringe benefits for county officers and employees. (1927, c. 91, s. 8; 1953, c. 1227, ss. 1-3; 1969, c. 358, s. 1; c. 1017; 1973, c. 822, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 122.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1" for "senior regular resident superior court judge of the judicial district" in the third sentence of subdivision (b)(3).

§ 153A-97. Defense of officers, employees and others.

A county may, pursuant to G.S. 160A-167, provide for the defense of:

(1) Any county officer or employee, including the county board of elections or any county election official;

(2) Any member of a volunteer fire department or rescue squad which receives public funds; and

(3) Any person or professional association who at the request of the board of county commissioners provides medical or dental services to inmates in the custody of the sheriff and is sued pursuant to 42 U.S.C. § 1983 with respect to the services. (1957, c. 436; 1973, c. 822, s. 1; 1977, c. 307, s. 1; 1989, c. 733, s. 2.)

Effect of Amendments. — The 1989 amendment, effective August 7, 1989, rewrote this section.

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-103. Number of employees in offices of sheriff and register of deeds.

CASE NOTES

Control of the employees hired by the sheriff is vested exclusively in the sheriff. The sheriff has the exclusive right to fire any deputy or employee in his office. The only authority vested in the board of commissioners is in determining the number of employees the sheriff can hire and the ability to approve the appointment of a relative or a person convicted of a crime involving moral turpitude. Peele v. Provident Mut. Life Ins. Co., 90 N.C. App. 447, 368 S.E.2d 892, appeal dismissed, 323 N.C. 366, 373 S.E.2d 547 (1988).

Employee of Sheriff Held Not an Employee of the County. — Plaintiff's argument that even though she was hired by the sheriff, she remained the employee of the county, and that thus all the protections and privileges provided by the Board of Commissioners to other county employees should have been afforded her, was without merit. Peele v. Provident Mut. Life Ins. Co., 90 N.C. App. 447, 368 S.E.2d 892, appeal dismissed, 323 N.C. 366, 373 S.E.2d 547 (1988).

Article 6.

Delegation and Exercise of General Police Power.

§ 153A-121. General ordinance-making power.

CASE NOTES

A county's zoning authority is limited: it can be applied only to buildings within the county's borders which are outside city limits, and it is confined to the purposes of promoting health, safety, morals, or the general welfare. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

§ 153A-122. Territorial jurisdiction of county ordinances.

Local Modification. — Catawba: 1987 (Reg. Sess., 1988), c. 1021, s. 3.

§ 153A-123. Enforcement of ordinances.

Local Modification. — Orange: 1989, c. 478, s. 3.

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-126. Regulation of begging.

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-129. Firearms.

CASE NOTES

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

§ 153A-132.2. Regulation, restraint and prohibition of abandonment of junked motor vehicles.

(a) A county may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the county's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing and disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon counties. Nothing in this section shall be construed to authorize a county to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00).

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property 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 finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;
(2) Promotion of tourism and other economic development opportunities;
(3) Indirect protection of public health and safety;
(4) Preservation of the character and integrity of the community; and
(5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The county may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the county against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. 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).

(a3) 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 prior 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 city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any ordinance adopted pursuant to this section shall include a prohibition against removing or disposing of any motor vehicle that is used on a regular basis for business or personal use. (1983, c.

841, s. 1; 1985, c. 737, s. 1; 1987, c. 42, s. 1; c. 451, s. 1; 1987 (Reg. Sess., 1988), c. 902, s. 1; 1989, c. 743, s. 1.)

Editor's Note. —

Session Laws 1989, c. 743, s. 4 provides that the act does not affect the validity of any ordinance passed prior to October 1, 1989.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective June 23, 1988, deleted a reference to Mecklenburg County from the first sentence of subsection (a).

The 1989 amendment, effective October 1, 1989, rewrote the first sentence of subsection (a), and added subsections (a1) to (a4).

§ 153A-134. Regulating and licensing businesses, trades, etc.

CASE NOTES

Stated in Treants Enters., Inc. v. Onslow County, 320 N.C. 776, 360 S.E.2d 783 (1987).

Cited in Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988).

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

CASE NOTES

Stated in Treants Enters., Inc. v. Onslow County, 320 N.C. 776, 360 S.E.2d 783 (1987).

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 assessor, 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 pro-

grams 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.

(15a) Housing Rehabilitation. — To provide for personnel costs related to planning and administration of housing rehabilitation programs authorized by G.S. 153A-376. This subdivision only applies to counties with a population of 400,000 or more, according to the most recent decennial federal census.

(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, developmental disabilities, 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.
(27a) Railway Corridor Preservation. — To acquire property for railroad corridor preservation as authorized by G.S. 160A-498.
(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.
(31a) Stormwater. — To provide structural and natural stormwater and drainage systems of all types.
(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; 1987, c. 45, s. 2; c. 697, s. 2; 1989, c. 600, s. 5; c. 625, s. 25; c. 643, s. 1.)

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

Local Modification. — Gaston: 1987 (Reg. Sess., 1988), c. 897, s. 6(c); Mecklenburg: 1987 (Reg. Sess., 1988), c. 897, s. 6(c).

Editor's Note. — Subdivision (c)(27a) was originally codified as subdivision (c)(38); it was recodified to facilitate alphabetization.

Effect of Amendments. — Session Laws 1989, c. 600, s. 5, effective July 11, 1989, added subdivision (c)(27a).

Session Laws 1989, c. 625, s. 25, effective January 1, 1990, substituted "developmental disabilities" for "mental retardation" in subdivision (c)(22).

Session Laws 1989, c. 643, s. 1, effective July 15, 1989, added subdivision (c)(31a).

§ 153A-152.1. Privilege license tax on low-level radioactive and hazardous waste facilities.

(a) Counties in which hazardous waste facilities as defined in G.S. 130A-290 or low-level radioactive waste facilities as defined in G.S. 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; 1987, c. 850, s. 21; 1989, c. 168, s. 34.)

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 1987 (Reg. Sess., 1988), c. 993, s. 23, repeals Session Laws 1987, c. 850, s. 27(a), as noted under this section in the main volume.

Session Laws 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. —

The 1989 amendment, effective May 30, 1989, substituted "G.S. 130A-290" for "G.S. 130A-290(5)" in subsection (a).

Article 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-158. Power to acquire property.

Local Modification. — Watauga: 1989, c. 487, s. 1.

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property.

Local Modification. — Lee: 1987 (Reg. Sess., 1988), c. 933; Lincoln: 1989, c. 411, s. 1; McDowell: 1987 (Reg. Sess., 1988), c. 909; Pender: 1989, c. 503, s. 1; Polk: 1989, c. 375, s. 1; Transylvania: 1989, c. 4.

Article 9.

Special Assessments.

§ 153A-185. Authority to make special assessments.

Local Modification. — (As to Article 9) Avery and Brunswick: 1987 (Reg. Sess., 1988), c. 1046.

§ 153A-191. Notice of preliminary resolution.

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

§ 153A-192. Hearing on preliminary resolution; assessment resolution.

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

§ 153A-193. Determination of costs.

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

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

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

§ 153A-195. Hearing on preliminary assessment roll; revision; confirmation; lien.

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

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

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

§ 153A-199. Payment of assessments in full or by installments.

Local Modification. — Brunswick: 1987 (Reg. Sess., 1988), c. 984.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-216. Legislative policy.

CASE NOTES

The use of the word "may" in § 153A-223 is not accidental. It is consistent with the clearly defined statutory role of the Department of Human Resources and its Secretary. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

The enforcement of minimum standards at local jails is a discretionary duty. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

State Officials Held Not Vicariously Liable for Conditions at County Jail. — In an action by inmates of a county jail against state officials of the Department of Human Resources alleging the existence of unconstitutional conditions at the jail, the state officials could not be held vicariously liable under 42 U.S.C.A. § 1983, where plaintiffs did not demonstrate that actions taken by the officials under color of state law in any way caused constitutionally deficient conditions at the county jail. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

§ 153A-218. County confinement facilities.

Legal Periodicals. — For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

CASE NOTES

County Responsible for Its Own Confinement Facilities. — This section makes clear that the primary responsibility for county confinement facilities rests upon the county itself. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

State Officials Held Not Liable for Conditions of a County Jail. — In an action by inmates of a county jail against state officials of the Department of Human Resources alleging the existence of unconstitutional conditions at the jail, the state officials could not be held vicariously liable under 42 U.S.C.A. § 1983, where plaintiffs did not demonstrate that actions taken by the officials under color of state law in any way caused constitutionally deficient conditions at the county jail. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

§ 153A-221. Minimum standards.

Legal Periodicals. — For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

CASE NOTES

Cited in Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

§ 153A-222. Inspections of local confinement facilities.

CASE NOTES

Cited in Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

§ 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:

(1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior resident superior court judge of the superior court

district or set of districts as defined in G.S. 7A-41.1 in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, request a contested case hearing, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the minimum standards; (ii) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (iii) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final agency decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary to the senior resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The Secretary, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150B-37, with the senior resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order. (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; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 123.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1" for "senior regular resident superior court judge for the judicial district" in the second sentence of subdivision (1), and deleted "regular" preceding "resident superior court judge" in the first sentence of subdivision (5) and in the first and third sentences of subdivision (6).

CASE NOTES

The use of the word "may" in this section is not accidental. It is consistent with the clearly defined statutory role of the Department of Human Resources and its Secretary. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

The enforcement of minimum standards at local jails is a discretionary duty. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

Secretary of the Department of Human Resources' affirmative duties are limited by the discretionary language in this section. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

State Officials Held Not Liable for Conditions at a County Jail. — In an action by inmates of a county jail against state officials of the Department of Human Resources alleging the existence of unconstitutional conditions at the jail, the state officials could not be held vicariously liable under 42 U.S.C.A. § 1983, where plaintiffs did not demonstrate that actions taken by the officials under color of state law in any way caused constitutionally deficient conditions at the county jail. Reid v. Johnston County, 688 F. Supp. 200 (E.D.N.C. 1988).

§ 153A-225. Medical care of prisoners.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Environment, Health, and Natural Resources. The report shall be made on forms developed and distributed by the Department of Environment, Health, and Natural Resources.

(1967, c. 581, s. 2; 1973, c. 476, ss. 128, 138; c. 822, s. 1; 1973, c. 1140, s. 3; 1989, c. 727, s. 204.)

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 1989 amendment, effective July 1, 1989, in subsection (b), substituted "Environment, Health, and Natural Resources" for "Human Resources" at the end of the second sentence, and rewrote the last sentence.

§ 153A-226. Sanitation and food.

(b) The Commission for Health Services shall prepare a score sheet to be used by sanitarians of local or district health departments in inspecting local confinement facilities. The sanitarians shall inspect local confinement facilities as often as may be required by the Commission for Health Services. If an inspector of the Department finds conditions that reflect hazards or deficiencies in the sanitation or food service of a local confinement facility, he shall immediately notify the local or district health department. The health department shall promptly cause a sanitarian to inspect

the facility. After making his inspection, the sanitarian shall forward a copy of his report to the Department of Human Resources and to the unit operating the facility, on forms prepared by the Department of Environment, Health, and Natural Resources. The report shall indicate whether the facility and its kitchen or other place for preparing food is approved or disapproved for public health purposes. If the facility is disapproved, the situation shall be rectified according to the procedures of G.S. 153A-223.

(1967, c. 581, s. 2; 1973, c. 476, s. 128; c. 822, s. 1; 1989, c. 727, s. 205.)

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 1989 amendment, effective July 1, 1989, in subsection (b), inserted "Commission for Health Services" in the first sentence, and in the fifth sentence, inserted "of Human Resources" and "Department of Environment, Health, and Natural Resources."

Part 3. Satellite Jail/Work Release Units.

§ 153A-230. Legislative policy.

Legal Periodicals. — For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

§ 153A-230.1. Definitions.

Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:

(2) "Satellite Jail/Work Release Unit" means a building or designated portion of a building primarily designed, staffed, and used for the housing of misdemeanants participating in a work release program. These units shall house misdemeanants only, except that, if he so chooses, the Sheriff may accept responsibility from the Department of Correction for the housing of felons who do not present security risks, who have achieved work release status, and who will be employed on work release, or for felons committed directly to his custody pursuant to G.S. 15A-1352(b). These units shall be operated on a full time basis, i.e., seven days/nights a week. (1987, c. 207, s. 1; 1987, (Reg. Sess., 1988), c. 1106, 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 1987 (Reg. Sess., 1988) amendment, effective October 1, 1988, divided the former second sentence of subdivision (2) into the present second and third sentences thereof, at the end of the present second sentence added the language beginning "except that, if he so chooses," and at the beginning of the present third sentence substituted "These units" for "and."

§ 153A-230.2. Creation of Satellite Jail/Work Release Unit Fund.

(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

(1) Develop application and grant criteria based on the basic requirements listed in this Part,

(2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,

(3) Review all applications,

(4) Select grantees and award grants,

(5) Award no more than seven hundred fifty thousand dollars ($750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,

(6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanant population to be diverted from the State prison system,

(7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate,

(8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit,

(9) Take into consideration the appropriateness and cost effectiveness of the proposal,

(10) Take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive probation, community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item.

(b) A county or group of counties is eligible for a grant under this section if it agrees to abide by the basic requirements for satellite jail/work release units established in G.S. 153A-230.3. In order to receive a grant under this section, there must be a written agreement to abide by the basic requirements for satellite jail/work release units set forth in G.S. 153A-230.3. The written agreement shall be signed by the Chairman of the Board of County Commissioners, with approval of the Board of County Commissioners and after consultation with the Sheriff, and a representative of the Office of State Budget and Management. If a group of counties applies for the grant, then the agreement must be signed by the Chairman of the Board of County Commissioners of each county. Any variation from, including termination of, the original signed agreement must be approved by both the Office of State Budget and Management and by a vote of the Board of County Commissioners of the county or counties.

When the county or group of counties receives a grant under this section, the county or group of counties accepts ownership of the satellite jail/work release unit and full financial responsibility for maintaining and operating the unit, and for the upkeep of its occupants who comply with the eligibility criteria in G.S. 153A-230.3(a)(1). The county shall receive from the Department of Correction the amount paid to local confinement facilities under G.S. 148-32.1 for prisoners which are in the unit, but do not meet the eligibility of requirements under G.S. 153A-230.3(a)(1). (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, ss. 2, 3; 1989, c. 761, 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 1987 (Reg. Sess., 1988) amendment, effective October 1, 1988, inserted "and the percentage of the county's or counties' misdemeanant population" in subdivision (a) (6) and substituted "existing" for "vacant" in subdivision (a) (7).

The 1989 amendment, effective August 11, 1989, substituted "seven hundred fifty thousand dollars ($750,000)" for "one million five hundred thousand dollars ($1,500,000)" in subdivision (a)(5); in subsection (b), in the third sentence of the first paragraph inserted "and after consultation with the Sheriff," and in the second paragraph inserted "who comply with the eligibility criteria in G.S. 153A-230.3(a)(1)" at the end of the first sentence and added the second sentence.

§ 153A-230.3. Basic requirements for satellite jail/work release units.

(a) Eligibility for Unit. — The following rules shall govern which misdemeanants are housed in a satellite jail/work release unit:

(1) Any convicted misdemeanant who:

a. Receives an active sentence in the county or group of counties operating the unit,

b. Is employed in the area or can otherwise earn his keep by working at the unit on maintenance and other jobs related to upkeep and operation of a unit or by assignment to community service work, and

c. Consents to placement in the unit under these conditions,

shall not be sent to the State prison system except by written findings of the sentencing judge that the misdemeanant is violent or otherwise a threat to the public and therefore unsuitable for confinement in the unit.

(2) The County shall offer work release programs to both male and female misdemeanants, through local facilities for both, or through a contractual agreement with another entity for either, provided that such arrangement is in reasonable proximity to the misdemeanant's workplace.

(3) The sentencing judge shall make a finding of fact as to whether the misdemeanant is qualified for occupancy in the unit pursuant to G.S. 15A-1352(a). If the sentencing judge determines that the misdemeanant is qualified for occupancy in the unit and the misdemeanant meets the requirements of subdivision (1), then the custodian of the local confinement facility may transfer the misdemeanant to the unit. If at any time either prior to or after placement of an inmate into the unit the Sheriff determines that

there is an indication of violence, unsuitable behavior, or other threat to the public that could make the prisoner unsuitable for the unit, the Sheriff may place the prisoner in the county jail.

(4) The Sheriff may accept work release misdemeanants from other counties provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(5) The Sheriff may accept work release misdemeanants or felons from the Department of Correction provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(a1) Non-eligible for unit. — If the sentencing judge finds that the misdemeanant does not meet the eligibility criteria set forth in G.S. 135A-230.3(a)(1)b, but is otherwise eligible for placement in the unit, then the Sheriff may transfer the misdemeanant from the local confinement facility to the unit if the misdemeanant meets the eligibility criteria at a later date. The Sheriff may also transfer prisoners who were placed in the unit pursuant to G.S. 148-32.1(b) to the local confinement facility when space becomes available.

(1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, ss. 4, 5; 1989, c. 761, ss. 4, 7.)

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 1987 (Reg. Sess., 1988) amendment, effective October 1, 1988, rewrote subdivision (a)(2), which read "The County shall offer the program to both men and women," and in subdivision (a)(5) inserted "or felons" and deleted a former second sentence, which read "If accepted, these inmates shall become the sole responsibility of the Sheriff and subject to the rules, regulations, and policies of the satellite jail/work release unit."

The 1989 amendment, effective August 11, 1989, in subdivision (a)(3) substituted "the custodian of the local confinement facility may transfer the misdemeanant to the unit" for "the judge may order the misdemeanant to be placed in the unit" in the second sentence, and substituted "may place the prisoner in the county jail" for "may hold the prisoner in the county jail while petitioning the court for a final decision regarding placement of the prisoner" in the last sentence and added subsection (a1).

§ 153A-230.4. Standards.

The county satellite jail/work release units for misdemeanants shall not be subject to the standards promulgated for local confinement facilities pursuant to G.S. 153A-221. The Secretary of Human Resources shall develop and enforce standards for satellite/work release units. The Secretary shall take into consideration that they are to house only screened misdemeanants most of whom are on work release and therefore occupy the premises only in their off-work hours. After consultation with the North Carolina Sheriff's Association, the North Carolina Association of County Commissioners, and the Joint Legislative Commission on Governmental Operations, the Secretary of Human Resources shall promulgate standards suitable for these units by January 1, 1988, and shall include these units in the Department's monitoring and inspection responsibilities. Further, the North Carolina Sheriffs' Education

and Training Standards Commission shall include appropriate training for Sheriffs and other county law enforcement personnel in regard to the operation, management and guidelines for county work release centers pursuant to its authority under G.S. 17E-4. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, s. 6.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective October 1, 1988, substituted "G.S. 153A-221" for "G.S. 153A-221.1" at the end of the first sentence, and added the last sentence.

§ 153A-230.5. Satellite jails/work release units built with non-State funds.

(a) If a county is operating a satellite jail/work release unit prior to the enactment of this act, the county may apply to the Office of State Budget and Management for grant funds to recover any verifiable construction or renovation costs for those units and for improvement funds except that the total for reimbursement and improvement shall not exceed seven hundred fifty thousand dollars ($750,000). Any county accepting such a grant or any other State monies for county satellite jails must agree to all of the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3.

(b) If a county operates a non-State funded satellite jail/work release unit that does not comply with the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3, then the satellite jail shall be subject to the standards, rules, and regulations to be promulgated by the Secretary of Human Resources pursuant to Part 2 of Article 10 of Chapter 153A. If a county is reimbursed for the cost of a prisoner's keep from an inmate's work release earnings in an amount equal to or greater than that paid by the Department of Correction to local confinement facilities under G.S. 148-32.1, the county may not receive additional payments from the department for the cost of a prisoner's keep. However, if reimbursement to the county for the cost of a prisoner's keep is less than the amount allowed under G.S. 148-32.1, the county may receive from the Department of Correction the difference in the amount received from work release earnings and the amount paid by the department to local confinement facilities. The department may promulgate rules regarding such payment arrangements. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, s. 7; 1989, c. 761, s. 5.)

Editor's Note. — The phrase "this act" in subsection (a) refers to Session Laws 1987, c. 207, which became effective July 1, 1987.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective October 1, 1988, inserted "to be" preceding "promulgated" in the first sentence of subsection (b), and substituted the present second through fourth sentences of that subsection for a former second sentence, which read "Further, the male inmates who are serving a sentence of 30 days or more in these units shall be regarded as State prisoners and subject to the rules and regulations of the Department of Correction, which shall develop policies and procedures for the operation."

The 1989 amendment, effective August 11, 1989, substituted "seven hundred fifty thousand dollars ($750,000)" for "one million five hundred thousand dollars ($1,500,000)" in subsection (a).

Article 11.

Fire Protection.

§ 153A-235. (For contingent repeal see note) Fire protection Code.

Contingent Repeal of Section. — This section is repealed by Session Laws 1989, c. 681, s. 14, effective upon the adoption of fire protection code provisions by the North Carolina Building Code Council.

Article 12.

Roads and Bridges.

§ 153A-239. Public road defined.

Local Modification. — Alamance: 1987 (Reg. Sess., 1988), c. 900; 1989, c. 335, s. 1; Cleveland: 1987 (Reg. Sess., 1988), c. 906; McDowell: 1989, c. 335, s. 1; New Hanover: 1989, c. 335, s. 1.

CASE NOTES

Quoted in In re Easement of Right of Way, 90 N.C. App. 303, 368 S.E.2d 639 (1988).

§ 153A-240. Naming roads and assigning street numbers in unincorporated areas.

Local Modification. — Alamance: 1987 (Reg. Sess., 1988), c. 900; 1989, c. 335, s. 1; Cleveland: 1987 (Reg. Sess., 1988), c. 906; 1989, c. 156, s. 1; McDowell: 1989, c. 335, s. 1; New Hanover: 1989, c. 335, s. 1; Wake (Incorporated municipalities therein, only): 1989, c. 511, s. 1.

§ 153A-241. Closing public roads or easements.

CASE NOTES

Restrictions on County's Power to Close a Way of Passage. — From this section and § 153A-239, it is clear that a county does not have the power to close a way of passage which has not been dedicated to the public or in which the public has not acquired rights by prescription. In re Easement of Right of Way, 90 N.C. App. 303, 368 S.E.2d 639 (1988).

§ 153A-235 has a contingent repeal date. See note for date.

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

As used in this Article, "public enterprise" includes:

(6) Public transportation systems,

(7) Structural and natural stormwater and drainage systems of all types. (1965, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1; 1979, c. 619, s. 1; 1989, c. 643, 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 1989 amendment, effective July 15, 1989, substituted a comma for the period at the end of subdivision (6), and added subdivision (7).

OPINIONS OF ATTORNEY GENERAL

Use of City-Owned Sewage Treatment Plant without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

§ 153A-275. Authority to operate public enterprises.

CASE NOTES

Cited in Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987).

§ 153A-277. Authority to fix and enforce rates.

CASE NOTES

Rate Classification Must Be Reasonable and Based on Substantial Differences. — Rates may be fixed in view of dissimilarities in conditions of service, but there must be some reasonable proportion between the variance in the conditions and the variances in the charges. Classification must be based on substantial difference. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

Charge Imposed Only on Commercial, Industrial and Municipal Haulers Upheld. — It was not a levy of an unreasonable discriminatory rate for a county to charge only commercial, industrial and municipal haulers of gar-

bage for the use of the landfills. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

Part 3. Special Provisions for Solid Waste Collection and Disposal.

§ 153A-292. County collection and disposal; tax levy.

CASE NOTES

Landfill fees, like sewer service charges, are neither taxes nor assessments, but are tolls or rents for benefits received by the use of the landfill. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

Municipality Status Not Available to Privately Owned Corporation to Challenge Validity of an Ordinance. — Where the record revealed that plaintiff was a privately owned corporation, it could not assert the status of a municipality in order to challenge the validity of an ordinance, as an agent of the municipality. Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 856 (1988).

Part 4. Long Term Contracts for Disposal of Solid Waste.

§ 153A-299.6. Applicability.

This Part shall apply only to Beaufort County, Carteret County, Craven County, Davie County, Edgecombe County, Gaston County, Hyde County, Lenoir County, Martin County, New Hanover County, Pamlico County, Pitt County, Rowan County, Rutherford County, Washington County, Wayne 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; 1985 (Reg. Sess., 1986), c. 830, s. 2; c. 889; 1987 (Reg. Sess., 1988), c. 923; 1989, c. 319.)

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective June 23, 1988, inserted a reference to Rutherford County.

The 1989 amendment, effective June 14, 1989, added the counties of Carteret and Wayne to the list of counties in this section.

ARTICLE 16.

County Service Districts; County Research and Production Service Districts.

Part 1. County Service Districts.

§ 153A-301. Purposes for which districts may be established.

(a) 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:

(1) Beach erosion control and flood and hurricane protection works;
(2) Fire protection;
(3) Recreation;
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
(5) Solid waste collection and disposal systems;
(6) Water supply and distribution systems;
(7) Ambulance and rescue;
(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.

(b) The General Assembly finds that coastal-area counties have a special problem with lack of maintenance of platted rights-of-way, resulting in ungraded sand travelways deviating from the original rights-of-way and encroaching on private property, and such cartways exhibit poor drainage and are blocked by junk automobiles.

(c) To address the problem described in subsection (b), the board of commissioners of any coastal-area county as defined by G.S. 113A-103(2) 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:

(1) Removal of junk automobiles; and
(2) Street maintenance. (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; 1989, c. 620.)

Effect of Amendments. — The 1989 amendment, effective July 11, 1989, designated the first paragraph as subsection (a); and added subsections (b) and (c).

§ 153A-304.2. Reduction in district after annexation to Chapter 69 fire district.

(a) When the whole or any portion of a county service district organized for fire protection purposes under G.S. 153A-301(2) has been annexed into a fire protection district created under Chapter 69 of the General Statutes, then such county service district or the portion thereof so annexed shall immediately thereupon cease to be a county service district or a portion of a county service district; and such district or portion thereof so annexed shall no longer be subject to G.S. 153A-307 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing in this section prevents the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a county service district not annexed into a fire protection district. This section does not affect the rights or liabilities of the county, a taxpayer, or other person concerning taxes previously levied. (1989, c. 622.)

Editor's Note. — Session Laws 1989, c. 622, s. 2 makes this section effective with respect to annexations into fire districts effective on or after July 1, 1989.

§ 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), (including a district established with a rate limitation under G.S. 153A-309.2), 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, but if the district was established under G.S. 153A-309.2, the rate limitation established under that section shall continue to apply.

(1983, c. 642; 1989, c. 559.)

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 1989 amendment, effective July 4, 1989, in subsection (a), inserted "(including a district established with a rate limitation under G.S. 153A-309.2)" and inserted the language beginning "but if the district was established under G.S. 153A-309.2" at the end thereof.

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

CASE NOTES

A county may not exercise jurisdiction over any part of a city located within its borders. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Statutes do not give a county authority over provision of sewer services within a city, or over newly annexed areas of the city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

§ 153A-321. Planning agency.

Legal Periodicals. — For article, "Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals," see 65 N.C.L. Rev. 957 (1987).

Part 2. Subdivision Regulation.

§ 153A-330. Subdivision regulation.

Local Modification. — (As to Part 2) Person: 1987 (Reg. Sess., 1988), c. 932, s. 1.

§ 153A-335. "Subdivision" defined.

Local Modification. — Lincoln: 1989, c. 626, s. 1.1; Person: 1987 (Reg. Sess., 1988), c. 932, s. 2; Stanly: 1987 (Reg. Sess., 1988), c. 930.

Part 3. Zoning.

§ 153A-340. Grant of power.

Legal Periodicals. —
For note, "The North Carolina Supreme Court Solves a City-County Conflict," see 66 N.C.L. Rev. 1266 (1988).

CASE NOTES

The practice of conditional use zoning is an approved practice in North Carolina, so long as the action of the local zoning authority in accomplishing the zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Property Rezoned to Conditional Use District. — It is not necessary that property rezoned to a conditional use district be available for all of the uses allowed under the corresponding general use district. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning Held Valid Conditional Use Zoning. — The rezoning of two tracts of land from A-1 to CU-M-2 so as to allow the storage and sale of agricultural chemicals was valid conditional use zoning and not illegal contract zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

City Immune from County's Zoning Ordinances. —

A county's zoning authority is limited: it can be applied only to buildings within the county's borders which are outside city limits, and it is confined to the purposes of promoting health, safety, morals, or the general welfare. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Spot Zoning. —

Spot zoning is not invalid per se, but rather, it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Clear Showing of Reasonable Basis for Spot Zoning. — While the rezoning of two tracts from A-1 to CU-M-2, so as to allow the storage and sale of agricultural chemicals, constituted a form of spot zoning, this activity was legal and not illegal spot zoning. Because of the substantial benefits created for the surrounding community by the rezoning and because of the close relationship between the likely uses of the rezoned property and the uses already present in the surrounding tracts, there was a clear showing of a reasonable basis for the spot zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

The principal differences between valid conditional use zoning and illegal contract zoning are related and are essentially two in number: First, valid conditional use zoning features merely a unilateral promise from the landowner to the local zoning authority as to the landowner's intended use of the land in question, while illegal contract zoning anticipates a bilateral contract in which the landowner and the zoning authority make reciprocal promises. Second, in the context of conditional use zoning, the local zoning authority maintains its independent decision-making authority, while in the contract zoning scenario, it abandons that authority by binding itself contractually with the landowner seeking a zoning amendment. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Use of City-Owned Sewage Treatment Plant without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Cited in White v. Union County, — N.C. App. —, 377 S.E.2d 93 (1989).

§ 153A-341. Purposes in view.

CASE NOTES

In exercising their zoning authority, counties are limited in that they are required by statute to exercise their zoning regulations "with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development." Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Statutes do not give a county authority over provision of sewer services within a city, or over newly annexed areas of the city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Spot Zoning. —

In accord with main volume, see Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

In determining whether rezoning was invalid as spot zoning, the courts have also considered the classification and development of nearby land. Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

§ 153A-341.1. Zoning regulations for manufactured homes.

CASE NOTES

Cited in White v. Union County, — N.C. App. —, 377 S.E.2d 93 (1989).

§ 153A-342. Districts; zoning less than entire jurisdiction.

CASE NOTES

The practice of conditional use zoning is an approved practice in North Carolina, so long as the action of the local zoning authority in accomplishing the zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Property Rezoned to Conditional Use District. — It is not necessary that property rezoned to a conditional use district be available for all of the uses allowed under the corresponding general use district. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Spot zoning is not invalid per se, but rather, it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor.

Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Clear Showing of Reasonable Basis for Spot Zoning. — While the rezoning of two tracts from A-1 to CU-M-2, so as to allow the storage and sale of agricultural chemicals, constituted a form of spot zoning, this activity was legal and not illegal spot zoning. Because of the substantial benefits created for the surrounding community by the rezoning and because of the close relationship between the likely uses of the rezoned property and the uses already present in the surrounding tracts, there was a clear showing of a reasonable basis for the spot zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

The principal differences between valid conditional use zoning and illegal contract zoning are related and are essentially two in number: First, valid conditional use zoning features merely a unilateral promise from the landowner to the local zoning authority as to the landowner's intended use of the land in question, while illegal contract zoning anticipates a bilateral contract in which the landowner and the zoning authority make reciprocal promises. Second, in the context of conditional use zoning, the local zoning authority maintains its independent decision-making authority, while in the contract zoning scenario, it abandons that authority by binding itself contractually with the landowner seeking a zoning amendment. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning Held Valid Conditional Use Zoning. — The rezoning of two tracts of land from A-1 to CU-M-2 so as to allow the storage and sale of agricultural chemicals was valid conditional use zoning and not illegal contract zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

§ 153A-343. Method of procedure.

Local Modification. — Chatham: 1989, c. 415, s. 3 (effective June 22, 1989 to January 1, 1991); Durham: 1989, c. 516, s. 1; Wake: 1989, c. 252, s. 1; Town of Pittsboro: 1989, c. 415, s. 3 (effective June 22, 1989 to January 1, 1991).

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments.

CASE NOTES

Legislative act of enacting or amending zoning ordinance invalid if unreasonable, arbitrary, or unequal exercise of legislative power. Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

Spot Zoning. —

In accord with main volume. See Alderman v. Chatham County, 89 N.C. App. 610, 366 S.E.2d 885, cert. denied, 323 N.C. 171, 373 S.E.2d 103 (1988).

§ 153A-345. Board of adjustment.

CASE NOTES

This section did not change Forsyth County zoning ordinance enacted pursuant to Session Laws 1947, c. 677 in April, 1967. Cardwell v. Forsyth County Zoning Bd. of Adjustment, 88 N.C. App. 244, 362 S.E.2d 843 (1987), aff'd, 321 N.C. 742, 366 S.E.2d 858 (1988).

Cemetery was not estopped from asserting that no special use permit was required for the construction and installation of facilities for above-

ground burial since such facilities were not an unlawful extension of its nonconforming use of its cemetery property. Stegall v. Zoning Bd. of Adjustment, 87 N.C. App. 359, 361 S.E.2d 309 (1987), cert. denied, 321 N.C. 480, 364 S.E.2d 671 (1988).

Above-Ground Burial Facilities Held Legal Extension of Cemetery's Nonconforming Use of Cemetery Property. — Where the Zoning Ordinance provides for the continuation of pre-existing nonconforming uses of property, a cemetery construction of above-ground burial facilities relates to the process by which the nonconforming activity is conducted and does not amount to a change in the nature and kind of use to which the property was devoted. Stegall v. Zoning Bd. of Adjustment, 87 N.C. App. 359, 361 S.E.2d 309 (1987), cert. denied, 321 N.C. 480, 364 S.E.2d 671 (1988).

The inquiry on review upon writ of certiorari under this section is whether the board committed an error of law or whether an order of the board is arbitrary, oppressive or attended with manifest abuse of authority. Teen Challenge Training Center, Inc. v. Board of Adjustment, 90 N.C. App. 452, 368 S.E.2d 661 (1988).

Appeal Held Not Taken Within Reasonable Time. — Where Board of Adjustment failed to prescribe any time within which an appeal had to be taken from a zoning compliance officer, a notice of appeal, consisting of a letter from an attorney representing adjacent landowners, filed 322 days after the officer issued the certificate of zoning compliance, was not taken within a reasonable time. See Teen Challenge Training Center, Inc. v. Board of Adjustment, 90 N.C. App. 452, 368 S.E.2d 661 (1988).

Challenge Under Dillon's Rule — Certiorari Not Necessary. — Where owner of mobile home challenged validity of city ordinance as violating requirements of Dillon's Rule, complaint did not need to be in form of a petition for certiorari since trial court should have allowed owner to attack ordinance directly; owner stated direct attack on ordinance so long as she could show that attack was timely under § 153A-348. White v. Union County, — N.C. App. —, 377 S.E.2d 93 (1989).

§ 153A-347. Part applicable to buildings constructed by the State and its subdivisions; exception.

CASE NOTES

County does not have authority over provision of sewer services within a city, or over newly annexed areas of a city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

§ 153A-348. Statute of limitations.

CASE NOTES

This section is absolute bar to plaintiff's attack on validity of amended zoning ordinance since the period of time between the enactment of the amended zoning ordinance and the institution of this action was approximately four and one-half years. Baucom's Nursery Co. v. Mecklenburg County, 89 N.C. App. 542, 366 S.E.2d 558, cert. denied, 322 N.C. 834, 371 S.E.2d 274 (1988).

Challenge Under Dillon's Rule — Certiorari Not Necessary. — Where owner of mobile home challenged validity of city ordinance as violating requirements of Dillon's Rule, complaint did not need to be in form of a petition for certiorari since trial court should have allowed owner to attack ordinance directly; owner stated direct attack on ordinance so long as she could show that attack was timely under this section. White v. Union County, — N.C. App. —, 377 S.E.2d 93 (1989).

Part 4. Building Inspection.

§ 153A-357. Permits.

(a) 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.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2; 1983, c. 377, s. 2; c. 614, s. 2; 1987 (Reg. Sess., 1988), c. 1000, s. 1.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, designated the first paragraph as subsection (a) and added subsection (b).

§ 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 or his designee within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance or his designee written notice of appeal, with a copy to the local inspector. The Commissioner or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal, no further work may take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or

(2) Appealing to the Superior Court as provided in G.S. 143-141.

Violation of a stop order constitutes a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1983, c. 377, s. 4; 1989, c. 681, s. 5.)

Effect of Amendments. — The 1989 amendment, effective September 1, 1989, inserted "or his designee" in the third to the seventh sentences, substituted "an investigation and the appellant" for " a hearing at which the appellant" in the fifth sentence, divided the former fifth sentence into the present fifth and sixth sentences by deleting "and" at the end of the present fifth sen-

tence, in the present sixth sentence, deleted "rule on the appeal" preceding "as expeditiously," and added the language beginning "provide a written statement of the decision," and substituted the present next to last sentence for the former last sentence, which read: "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."

§ 153A-374. Appeals.

Unless otherwise provided by law, any appeal from an order, decision, or determination of a member of a local inspection department pertaining to the State Building Code or any other State building law shall be taken to the Commissioner of Insurance or his designee or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within 10 days after the day of the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1989, c. 681, s. 7.)

Effect of Amendments. — The 1989 amendment, effective September 1, 1989, inserted "or his designee" in the first sentence.

Part 5. Community Development.

§ 153A-376. Community development programs and activities.

(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient "severely distressed counties", as designated under G.S. 105-130.40(c), for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 105-130.40(c) shall not affect this subsection as to designations of severely distressed counties made prior to its expiration. (1975, c. 435, s. 2; c. 689, s. 2; 1987 (Reg. Sess., 1988), c. 992, 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 1987 (Reg. Sess., 1988) amendment, effective June 27, 1988, added subsection (f).

ARTICLE 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

Local Modification. — Catawba: 1987 (Reg. Sess., 1988), c. 980; Mecklenburg: 1987 (Reg. Sess., 1988), c. 980.

CASE NOTES

Waiver of Immunity by Local Agencies. — Since cities and counties can waive their immunity by purchasing liability insurance, local agencies of the state such as a county ABC Board can likewise waive their immunity by purchasing such insurance. McNeill v. Durham County ABC Bd., 87 N.C. App. 50, 359 S.E.2d 500 (1987), modified on other ground, 322 N.C. 425, 368 S.E.2d 619, rehearing denied, 322 N.C. 838, 371 S.E.2d 278 (1988).

Waiver of Immunity by Nonprofit Fire Company. — Defendant, a nonprofit fire company employed by the county, was liable for plaintiff's injuries in a nonfire related rescue attempt only to the extent of their insurance coverage, since they had governmental immunity up to their insurance coverages and were engaged in duties other than the suppression of a reported fire. Geiger v. Guilford College Community Volunteer Firemen's Ass'n, 668 F. Supp. 492 (M.D.N.C. 1987).

Failure to Protect Minors. — For case reversing summary judgment in favor of defendants county and social worker in case alleging their tort liability for failure to protect minors from harm, see Coleman v. Cooper, 89 N.C. App. 188, 366 S.E.2d 2, cert. denied, 322 N.C. 834, 371 S.E.2d 275 (1988).

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

§ 153A-445. Miscellaneous powers found in Chapter 160A.

(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. — Joint Exercise of Powers.

(2) Chapter 160A, Article 20, Part 2. — Regional Councils of Governments.

(3) G.S. 160A-487. — Financial support for rescue squads.

(4) G.S. 160A-488. — Art galleries and museums.

(5) G.S. 160A-492. — Human relations programs.

(6) G.S. 160A-497. — Senior citizens programs.

(7) G.S. 160A-489. — Auditoriums, coliseums, and convention and civic centers.

(8) G.S. 160A-498.— Railroad corridor preservation.

(1973, c. 822, s. 1; 1975, c. 19, s. 61; 1979, 2nd Sess., c. 1094, s. 3; 1981, c. 692, s. 3; 1989, c. 600, s. 6.)

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

Effect of Amendments. — The 1989 amendment, effective July 11, 1989, added subdivision (a)(8).

Chapter 156.
Drainage.

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

CASE NOTES

Drainage District Subject to Open Meetings Requirements. — As a political subdivision of the state, organized pursuant to the provisions of this section with quasi-judicial and administrative authority, plaintiff drainage district was subject to the open meetings requirements of § 143-318.10; however, failure to notify defendants of its meetings at which assessments were levied did not deprive defendants of due process where under §§ 143-318.10 and 143-318.16A(b) they had a right within 45 days after plaintiff's action was disclosed to seek a declaratory judgment voiding the disputed action, as well as a prospective injunction against its repetition. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

§ 156-59. Board of viewers appointed by clerk.

The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Environment, Health, and Natural Resources; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the

character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C.S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(157).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the second sentence.

§ 156-74. Adjudication upon final report.

At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Environment, Health, and Natural Resources may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C.S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(158).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the fourth sentence of the first paragraph.

§ 156-76. Compensation of board of viewers.

The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Environment, Health, and Natural Resources and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C.S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(159).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the first sentence.

§ 156-78.1. Municipalities.

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

ARTICLE 6.

Drainage Commissioners.

§ 156-79. Election and organization under original act.

CASE NOTES

Defendant landowners had no claim for violations of equal protection due to plaintiff drainage district's service of two counties where no one in either county could vote for commissioners and if the clerk did call an election, the people enfranchised to vote under this section and § 156-81(a) would be the landowners of the district, rather than the residents of the counties. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

§ 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).

Permitting the clerk of superior court to establish a drainage district is not an unconstitutional delegation of legislative authority, as the clerk's function in

such matters is quasi-judicial in nature. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

There is not constitutional infirmity in subsections (a) and (i) permitting the Clerk of Superior Court of Northampton County to either appoint the commissioners of plaintiff two-county drainage district or provide for their election by the landowners as he sees fit. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

Defendant landowners had no claim for violations of equal protection due to plaintiff drainage district's service of two counties where no one in either county could vote for commissioners and if the clerk did call an election, the people enfranchised to vote under § 156-79 and this section would be the landowners of the district, rather than the residents of the counties. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

ARTICLE 7.

Construction of Improvement.

§ 156-83. Superintendent of construction.

The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Environment, Health, and Natural Resources, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C.S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(160).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the second sentence of the first paragraph.

ARTICLE 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water-retardant structures; borrowing in anticipation of revenue.

CASE NOTES

Due Process and Equal Protection Requirements Met. — Where assessments were levied to cover routine maintenance costs of the drainage district and were not taxes, duties, or imposts, their levying met due process and equal protection requirements, and since they were in the same ratio as for the costs of construction and installation, notice was not required. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

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 "fourteeen percent (14%)" for "six percent (6%)" in the second sentence of the first paragraph.

§ 156-105. Assessment lien; collection; sale of land.

CASE NOTES

Failure to Levy Annual Assessments No Bar to Later Collection. — This section provides that assessments shall be collected "in the same manner and by the same officers as the state and county taxes are collected," and § 105-394(3) provides that "[t]he failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law" is an immaterial irregularity that does not affect the validity of the assessment; therefore, plaintiff drainage district's failure to levy annual assessments for 1974 and 1983 by the first Monday in September of those years did not bar later collection of the assessments. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

ARTICLE 10.

Reports of Officers.

§ 156-134. Duties of the auditor.

The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a session of superior court in the county following the first Monday in July, and a copy to the district attorney of the prosecutorial district as defined in G.S. 7A-60 in which the county is located, and it shall be the duty of such district attorney to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C.S., s. 5378; 1963, c. 767, s. 4; 1973, c. 47, s. 2; c. 108, s. 97; 1987 (Reg. Sess., 1988), c. 1037, s. 124.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "prosecutorial district as defined in G.S. 7A-60" for "judicial district" in the last paragraph.

ARTICLE 11.

General Provisions.

§ 156-138.3. Notice.

CASE NOTES

Where assessments were levied to cover routine maintenance costs of the drainage district and were not taxes, duties, or imposts, their levying met due process and equal protection requirements, and since they were in the same ratio as for the costs of construction and installation, notice was not required. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988).

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

§ 157-5. Appointment, qualifications and tenure of commissioners.

An authority shall consist of not less than five nor more than nine commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official. Notwithstanding G.S. 157-7, 14-234, or any other provision of law, no person shall be barred from serving as a commissioner of any housing authority created under this Chapter because such person is a tenant of the authority or a recipient of housing assistance through any program operated by the authority; provided, that no such commissioner shall be qualified to vote on matters affecting his official conduct or matters affecting his own individual tenancy, as distinguished from matters affecting tenants in general; and further provided, that no more than one third of the members of any housing authority commission shall be tenants of the authority or recipients of housing assistance through any program operated by the authority. Avery, Beaufort, Bertie, Burke, Caldwell, Camden, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Graham, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Jackson, Jones, Lenoir, Macon, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Pitt, Polk, Robeson, Rowan, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson and Yadkin Counties are exempted from any provision of law allowing a person who is a tenant of the authority to serve as a commissioner of a housing authority. The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his

services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5; 1971, c. 362, ss. 2-5; 1981, ch. 864.)

Editor's Note. — This section is set out above to correct an error in the main volume.

§ 157-29. Rentals and tenant selection.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement. (1939, c. 150; 1985, c. 741, s. 2; 1987, c. 464, s. 5; 1989, c. 272.)

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 1989 amendment, effective June 8, 1989, in the first sentence of subsection (c), deleted "not" preceding "terminate," deleted "other than" following "to renew a rental agreement," and substituted "whether or not such failure was the fault of the tenant," for "without regard to fault on the part of the tenant" in clause (i).

ARTICLE 5.

State Indian Housing Authority.

§ 157-66. Authority created.

Legal Periodicals. — For an article on criminal jurisdiction on the North Carolina Cherokee Indian reservation, see 24 Wake Forest L. Rev. 335 (1989).

§ 157-68. Commissioners of Authority.

The Authority shall consist of not less than five nor more than nine commissioners (the number to be set by the North Carolina State Commission of Indian Affairs) who shall be appointed by the Governor, after receiving nominations from the North Carolina State Commission of Indian Affairs. For each vacancy, the Governor must appoint one person from a list of two eligible persons so nominated. Commissioners shall be selected from the major groups of North Carolina Indians that elect members to the North Carolina State Commission of Indian Affairs under G.S. 143B-407. No person shall be barred from serving as a commissioner because he is a tenant or home buyer in an Indian housing project. (1977, c. 1112, s. 3; 1987 (Reg. Sess., 1988), c. 1014.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1014, s. 2 provides that the act, which rewrote this section, is effective upon ratification (June 29, 1988), but does not affect the term of office of any current member of the North Carolina State Indian Housing Authority.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective June 29, 1988, rewrote this section.

Chapter 158.

Local Development.

Article 1.

Local Development Act of 1925.

Article 1.

Local Development Act of 1925.

§ 158-7.1. Local development.

(g) Repealed by Session Laws 1989, c. 374, s. 1, effective June 21, 1989. (1973, c. 803, s. 37; 1985, c. 639, s. 1; 1985 (Reg. Sess., 1986), c. 846, s. 1; c. 848, s. 1; c. 858, s. 1; c. 911, s. 1; c. 921, s. 1; 1987, c. 577, s. 1.1; 1989, c. 374, 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.

Local Modification. — (As to Article 1) Burke: 1987 (Reg. Sess., 1988), c. 1002, s. 3.2; (As to Article 1) Lenoir: 1987 (Reg. Sess., 1988), c. 1002, ss. 1-3; (As to Article 1) City of Kinston: 1987 (Reg. Sess., 1988), c. 1002, ss. 1-3; (As to Article 1) City of Morganton: 1987 (Reg. Sess., 1988), c. 1002, s. 3.1; Duplin, Lenoir and Wilson: 1989, c. 266, s. 1; Cities of Kinston and Wilson: 1989, c. 266, s. 1.

Effect of Amendments. — The 1989 amendment, effective June 21, 1989, repealed subsection (g).

Article 2.

Economic Development Commissions.

§ 158-8. Creation of municipal, county or regional commissions authorized; composition; joining or withdrawing from regional commissions.

Local Modification. — Nash: 1989, c. 697, s. 1.

Chapter 159.

Local Government Finance.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

(b) The words and phrases defined in this section have the mean-

ings indicated when used in this Article, unless the context clearly requires another meaning.

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes accruing within a fiscal year.

(5), (6) Repealed by Session Laws 1975, c. 514, s. 2.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).

(8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(9) Repealed by Session Laws 1975, c. 514, s. 2.

(10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the Executive Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(11) Repealed by Session Laws 1975, c. 514, s. 2.

(12) "Sinking fund" means a fund held for the retirement of term bonds.

(13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.

(14) "Taxes" do not include special assessments.

(15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) and that has the power to levy taxes, and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(16) "Vending facilities" has the same meaning as it does in G.S. 143-12.1.

(1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1; 1973, c. 474, ss. 3, 4; 1975, c. 437, s. 12; c. 514, s. 2; 1981, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 173; 1987, c. 282, ss. 30, 31; c. 796, s. 3(1); 1989, c. 756, s. 3.)

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

Local Modification. — (As to Article 3) Town of Cedar Point: 1987 (Reg. Sess., 1988), c. 1005; Town of Leland: 1989, c. 564, s. 3; (As to Article 3) Town of Sandy Creek: 1987 (Reg. Sess., 1988), c. 1007, s. 3; (As to Article 3) Town of Santeetlah: 1987 (Reg. Sess., 1988), c. 1012; Town of Stokesdale: 1989, c. 488, s. 2; (As to Article 3) Town of Varnamtown: 1987 (Reg. Sess., 1988), c. 1003, s. 3 (for fiscal year 1988-89); (As to Article 3) Village of St. Helena: 1987 (Reg. Sess., 1988), c. 942, s. 2.

Editor's Note. —

Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 1989, c. 756, s. 10 contains a severability clause.

Effect of Amendments. —

The 1989 amendment, effective August 11, 1989, inserted "or Chapter 159I of the General Statutes" in subdivision (b)(4).

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing.

(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) A contingency appropriation shall not exceed five percent (5%) of the total of all other appropriations in the same fund, except there is no limit on contingency appropriations for public assistance programs required by Chapter 108A. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the governing board, which resolution shall be deemed an amendment to the budget ordinance setting up an appropriation for the object of expenditure authorized. The governing board may authorize the budget officer to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditures shall be reported to the board at its next regular meeting and recorded in the minutes.

(4) No appropriation may be made that would require the levy of a tax in excess of any constitutional or statutory limitation, or expenditures of revenues for purposes not permitted by law.

(5) The total of all appropriations for purposes which require voter approval for expenditure of property tax funds under Article V, Sec. 2(5), of the Constitution shall not exceed the total of all estimated revenues other than the property tax (not including such revenues required by law to be spent

for specific purposes) and property taxes levied for such purposes pursuant to a vote of the people.

(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal year.

(7) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year, including amounts to be realized from collections of taxes levied in prior fiscal years.

(8) Repealed by Session Laws 1975, c. 514, s. 6.

(9) Appropriations made to a school administrative unit by a county may not be reduced after the budget ordinance is adopted, unless the board of education of the administrative unit agrees by resolution to a reduction, or unless a general reduction in county expenditures is required because of prevailing economic conditions.

(10) Appropriations made to another fund from a fund established to account for property taxes levied pursuant to a vote of the people may not exceed the amount of revenues other than the property tax available to the fund, except for appropriations from such a fund to an appropriate account in a capital reserve fund.

(11) Repealed by Session Laws 1975, c. 514, s. 6.

(12) Repealed by Session Laws 1981, c. 685, s. 4.

(13) No appropriation of the proceeds of a bond issue may be made from the capital project fund account established to account for the proceeds of the bond issue except (i) for the purpose for which the bonds were issued, (ii) to the appropriate debt service fund, or (iii) to an account within a capital reserve fund consistent with the purposes for which the bonds were issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than bond proceeds available to the account.

(14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes.

(15) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the governing board the right to limit or not to make such appropriation.

(16) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

(17) No appropriations may be made from a county reappraisal reserve fund except for the purposes for which the fund was established.

(18) No appropriation may be made from a service district fund to any other fund except (i) to the appropriate debt service fund or (ii) to an appropriate account in a capital reserve fund unless the district has been abolished.

(19) No appropriation of the proceeds of a debt instrument may be made from the capital project fund account established to account for such proceeds except for the purpose for which such debt instrument was issued. The total of other appropriations made to another fund from such a capital project fund account may not exceed the amount of revenues other than debt instrument proceeds available to the account.

Notwithstanding subdivisions (9), (10), (12), (14), (17), or (18) of this subsection, any fund may contain an appropriation to another fund to cover the cost of (i) levying and collecting the taxes and other revenues allocated to the fund, and (ii) building maintenance and other general overhead and administrative expenses properly allocable to functions or activities financed from the fund.

(1927, c. 146, s. 8; 1955, cc. 698, 724; 1969, c. 976, s. 2; 1971, c. 780, s. 1; 1973, c. 474, ss. 7-9; c. 489, s. 3; 1975, c. 437, ss. 13, 14; c. 514, ss. 5, 6; 1981, c. 685, ss. 3-5, 10; 1987, c. 796, s. 3(2); 1989, c. 756, s. 2.)

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

Editor's Note. —

Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 1989, c. 756, s. 10 contains a severability clause.

Effect of Amendments. —

The 1989 amendment, effective August 11, 1989, inserted "unless such contract reserves to the governing board the right to limit or not to make such appropriation" in subdivision (b)(15).

Part 2. Capital Reserve Funds.

§ 159-18. Capital reserve funds.

CASE NOTES

Cited in South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988).

Part 3. Fiscal Control.

§ 159-29. Fidelity bonds.

(c) A local government or public authority may adopt a system of blanket faithful performance bonding as an alternative to individual bonds. If such a system is adopted, statutory requirements of individual bonds, except for elected officials and for finance officers and tax collectors by whatever title known, do not apply to an officer, employee, or agent covered by the blanket bond. However, although an individual bond is required for an elected official, a tax collector, or finance officer, such an officer or elected official may also be included within the coverage of a blanket bond if the blanket bond protects against risks not protected against by the individual bond. (1971, c. 780, s. 1; 1975, c. 514, s. 14; 1987 (Reg. Sess., 1988), c. 975, s. 32.)

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 1987 (Reg. Sess., 1988) amendment, effective June 27, 1988, rewrote the last sentence of subsection (c).

§ 159-30. Investment of idle funds.

(c) Moneys may be invested in the following classes of securities, and no others:

(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.

(3) Obligations of the State of North Carolina.

(4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.

(5) 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 Institutions Division of the Department of Economic and Community Development of the State of North Carolina, be fully collateralized.

(6) 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.

(7) Bills of exchange of 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.

(8) Participating shares in a mutual fund for local government investment; provided that the investments of the fund are limited to those qualifying for investment under this subsection (c) and that said fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.

(9) A commingled investment pool established and administered by the State Treasurer pursuant to G.S. 147-69.3.

(10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to G.S. 160A-460 through G.S. 160A-464, if the investments of the pool are limited to those qualifying for investment under this subsection (c).

(11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.

(12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:

a. Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

b. A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;

c. Such securities are free and clear of any adverse third party claims; and

d. Such repurchase agreement is in a form satisfactory to the local government or public authority.

(13) In connection with funds held by or on behalf of a local government or public authority, which funds are subject to the arbitrage and rebate provisions of the Internal Revenue Code of 1986, as amended, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.

(1957, c. 864, s. 1; 1967, c. 798, ss. 1, 2; 1969, c. 862; 1971, c. 780, s. 1; 1973, c. 474, ss. 24, 25; 1975, c. 481; 1977, c. 575; 1979, c. 717, s. 2; 1981, c. 445, ss. 1-3; 1983, c. 158, ss. 1, 2; 1987, c. 672, s. 1; 1989, c. 76, s. 31; c. 751, s. 7(46).)

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

Effect of Amendments. — Session Laws 1989, c. 76, s. 31, effective April 26, 1989, substituted "Institutions" for "and Loan" in subdivision (c)(5).

Session Laws 1989, c. 751, s. 7(46), effective July 1, 1989, substituted "De-

partment of Economic and Community Development" for "Department of Commerce" in subdivision (c)(5).

§ 159-35. Secretary of Local Government Commission to notify units of debt service obligations.

(c) The secretary shall mail to each unit of local government not later than 30 days prior to the due date of each payment due to the State under debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes a statement of the amount so payable, the due date, the amount of any moneys due to the unit of local government that will be withheld by the State and applied to the payment, the amount due to be paid by the unit of local government from local sources, the place to which payment should be sent, and a summary of the legal penalties for failing to honor the debt instrument according to its terms. Failure of the secretary timely to mail such statement or otherwise comply with the provisions of this subsection (c) shall not affect in any manner the obligation of a unit of local government to make payments to the State in accordance with any such debt instrument. (1931, c. 60, ss. 36, 37; 1971, c. 780, s. 1; 1987, c. 796, s. 3(7); 1989, c. 756, s. 4.)

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

Editor's Note. —

Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 1989, c. 756, s. 10 contains a severability clause.

Effect of Amendments. —

The 1989 amendment, effective August 11, 1989, inserted "or Chapter 159I of the General Statutes" in subsection (c).

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-43. Short title; legislative intent.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 882, s. 6 provides: "All actions and proceedings heretofore taken by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to the Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina, in order to provide funds to

purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed."

Session Laws 1989, c. 90, effective May 5, 1989, provides: "All actions and proceedings heretofore taken since June 15, 1988, by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to The Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated and confirmed."

§ 159-44. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; sanitary districts; mosquito control districts; hospital districts; metropolitan sewerage districts; metropolitan water districts; county water and sewer districts; regional public transportation authorities; and special airport districts.

(5) "Utility or public service enterprise" includes:

i. Electric power transmission and distribution systems;
ii. Water supply facilities and distribution systems;
iii. Sewage collection and disposal systems;
iv. Gas transmission and distribution systems;
v. Public transportation systems, including but not limited to bus lines, ferries, and mass transit systems;
vi. Solid waste collection and disposal systems and facilities;
vii. Cable television systems;
viii. Off-street parking facilities and systems;
ix. Public auditoriums, coliseums, stadiums and convention centers;
x. Airport;
xi. Hospitals and other health-related facilities; and
xii. Structural and natural stormwater and drainage systems of all types. (1971, c. 780, s. 1; 1973, c. 494, s. 3; 1977, c. 466, s. 2; 1979, c. 727, s. 2; 1989, c. 643, s. 3; c. 740, s. 3.)

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. — Session Laws 1989, c. 643, s. 3, effective July 15, 1989, deleted "and" at the end of clause (5)x, inserted "and" at the end of clause (5)xi, and added clause (5)xii.

Session Laws 1989, c. 740, s. 3, effective August 8, 1989, inserted "regional public transportation authorities" in subdivision (4).

§ 159-48. For what purposes bonds may be issued.

(b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.

(2) Providing armories for the North Carolina national guard.

(3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.

(4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.

(5) Providing cemeteries.

(6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.

(7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.

(8) Providing land for corporate purposes.

(9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.

(10) Providing library facilities, including without limitation fixed and mobile libraries.

(11) Providing art galleries, museums, and art centers, and providing for historic properties.

(12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including with-

out limitation meters, buildings, garages, driveways, and approaches.

(13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.

(14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.

(15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.

(16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.

(17) Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.

(18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.

(19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.

(20) Providing voting machines.

(21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.

(22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(23) Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.

(24) Providing industrial parks, land suitable for industrial or commercial purposes, shell buildings, in order to provide employment opportunities for citizens of the county or city.

(25) Providing property to preserve a railroad corridor.

(e) Each sanitary district, mosquito control district, hospital district, metropolitan sewerage district, metropolitan water district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 4; c. 1037; 1975, c. 549, s. 1; c. 821, s. 1; 1977, c. 402, ss. 1, 2; c. 811; 1979, c. 619, s. 3; c. 624, s. 1; c. 727, s. 3; 1985, c. 639, s. 2; 1987, c. 464, s. 7; c. 564, s. 10; 1989, c. 600, s. 7; c. 740, s. 4.)

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. —

Session Laws 1989, c. 600, s. 7, effective July 11, 1989, added subdivision (b)(25).

Session Laws 1989, c. 740, s. 4, effective August 8, 1989, inserted "regional public transportation authority" in subsection (e).

CASE NOTES

Cited in South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988).

§ 159-49. When a vote of the people is required.

Bonds may be issued under this Article only if approved by a vote of the qualified voters of the issuing unit as provided in this Article, except that voter approval shall not be required for:

(1) Bonds issued for any purpose authorized by G.S. 159-48(a)(1), (2), (3), or (5).

(2) Bonds issued by a county, county water and sewer district created under Article 6 of Chapter 162A of the General Statutes, metropolitan water district created under Article 4 of Chapter 162A of the General Statutes, or city for any purpose authorized by G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), (d), or (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) in an aggregate principal sum not exceeding two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city has been reduced during the next preceding fiscal year.

Pursuant to Article V, Sec. 4(2) of the Constitution, the General Assembly hereby declares that the purposes authorized by G.S. 159-48(a)(4), (6), and (7) and by G.S. 159-48(b), (c), (d), and (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) are purposes for which bonds may be issued without a vote of the people, to the extent of two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city was reduced in the last preceding fiscal year. (1971, c. 780, s. 1; 1973, c. 494, s. 5; 1977, c. 402, s. 3; 1989, c. 470.)

Effect of Amendments. — The 1989 amendment, effective June 27, 1989, in subdivision (2) inserted "county water and sewer district created under Article 6 of Chapter 162A of the General Statutes, metropolitan water district created under Article 4 of Chapter 162A of the General Statutes," substituted "d, or (e)" for "or (d)," and substituted "issuing county, county water and sewer district, metropolitan water district, or city" for "issuing county or city"; and in the last paragraph substituted "(d), and (e)" for "and (d)," and inserted "county water and sewer district, metropolitan water district."

Part 2. Procedure for Issuing Bonds.

§ 159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.

No bonds may be issued under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing unit is a regional public transportation authority, the application must be accompanied by a resolution of the special tax board of that authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed bonds and the financial condition of the issuing unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference to consider the proposed bond issue.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section. (1953, c. 1121; 1971, c. 780, s. 2; 1989, c. 740, s. 5.)

Effect of Amendments. — The 1989 amendment, effective August 8, 1989, added the present third sentence of the first paragraph.

§ 159-64. Within what time bonds may be issued.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 1027, effective June 30, 1988, and applicable only to bonds authorized during the period January 1, 1981, through December 31, 1981, amends the first sentence of this section to read as follows: "Bonds may be issued under a bond order at any time within ten years after the bond order takes effect." Section 3 of c. 1027 provides that all laws in conflict with the provisions of the act are repealed.

ARTICLE 5.

Revenue Bonds.

§ 159-80. Short title; repeal of local acts.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 882, s. 6 provides: "All actions and proceedings heretofore taken by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to the Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed."

Session Laws 1989, c. 90, effective May 5, 1989, provides: "All actions and proceedings heretofore taken since June 15, 1988, by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to The Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed."

§ 159-81. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional sports authority, and airport authority, a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, but not any other forms of local government.

(3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing unit:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water

for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.

c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.

d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.

e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.

g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.

h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.

i. Hospitals and other health-related facilities.

j. Public auditoriums, gymnasiums, stadiums, and convention centers.

k. Recreational facilities.

l. In addition to the foregoing, in the case of the State of North Carolina, low-level radioactive waste facilities developed pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and any other project authorized by the General Assembly.

m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.

n. Facilities for the use of any agency or agencies of the government of the United States of America.

o. Structural and natural stormwater and drainage systems of all types.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges;

the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

(4) "Revenues" include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. "Revenues" also include all moneys received by, or on behalf of, the North Carolina Low-Level Radioactive Waste Management Authority in connection with its financing of a low-level radioactive waste facility and all money received by, or on behalf of, the North Carolina Hazardous Waste Management Commission in connection with its financing of a hazardous waste facility.

(Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 15; 1975, c. 821, s. 2; 1977, c. 466, s. 3; 1979, c. 727, s. 4; c. 791; 1983, c. 554, ss. 2-2.2; 1985, c. 639, s. 3; 1987 (Reg. Sess., 1988), c. 976, s. 1; 1989, c. 168, ss. 37, 38; c. 643, s. 4; c. 740, s. 2; c. 780, 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.

Editor's Note. — Session Laws 1989, c. 374, s. 2, provides that Session Laws 1985, c. 639, s. 3.1, as added by Session Laws 1987, c. 577, s. 1.2, noted in the main volume under this section, is repealed. Therefore paragraph 3(m) of this section now has statewide application; there is no longer an exception for Buncombe County and the municipalities therein.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective June 27, 1988, added paragraph (3)n.

Session Laws 1989, c. 168, s. 37, effective May 30, 1989, inserted "low-level radioactive waste facilities developed pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and" in paragraph (3)*l*, and clarified the designation of paragraph (3)n.

Session Laws 1989, c. 168, s. 38, effective May 30, 1989, added the last sentence of subdivision (4).

Session Laws 1989, c. 643, s. 4, effective July 15, 1989, added paragraph (3)o.

Session Laws 1989, c. 740, s. 2, effective August 8, 1989, inserted "regional public transportation authority" in subdivision (1).

Session Laws 1989, c. 780, s. 2, effective August 12, 1989, inserted "regional sports authority" in subdivision (1).

§ 159-83. Powers.

(a) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to loca-

tion within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest.

(2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board not to be required for any public purpose.

(3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof.

(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner. Notwithstanding the foregoing, the North Carolina Low-Level Radioactive Waste Management Authority may create an encumbrance, mortgage, or other pledge of real property of the Authority in connection with its financing of a low-level radioactive waste facility and the North Carolina Hazardous Waste Management Commission may create an encumbrance, mortgage, or other pledge of real property of the Commission in connection with its financing of a hazardous waste facility.

(6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing

municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.

(8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

(9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the cost of acquisition, construction, reconstruction, extension, or improvement of the revenue bond projects authorized in the bond order and to provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.

(10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.

(11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

(12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.

(13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.

(14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice and to select and retain subject to approval of the Local Government Commission the fi-

nancial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed.

(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.

(16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds.

(d) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, notwithstanding any provisions of this Article or any other statute to the contrary, in connection with the development of facilities for the use of any agency or agencies of the government of the United States of America:

(1) To acquire, construct, own jointly with public and private parties, lease as leasor or leasee, mortgage, sell, or otherwise dispose of lands, facilities and improvements, including undivided interests therein and to do so, regardless of the provisions of any other statute, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this subsection;

(2) To finance and refinance facilities and related improvements for the use of any agency of the government of the United States of America;

(3) To secure any such financing or refinancing by all or any portion of the revenue, income or assets or other available monies associated with such facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of its faith and credit.

(e) In the case of the State of North Carolina, any action to be taken by the Council of State pursuant to this section shall be taken (i) with respect to the issuance of revenue bonds by the North Carolina Low-Level Radioactive Waste Management Authority, by the governing board of the Authority and (ii) with respect to the issuance of revenue bonds by the North Carolina Hazardous Waste Management Commission, by the governing board of the Commission, and not by the Council of State. (Ex. Sess., 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 17; 1983, c. 554, ss. 3-4; 1985, c. 723, s. 2;

1985 (Reg. Sess., 1986), c. 795, s. 1; c. 933, s. 4; 1987 (Reg. Sess., 1988), c. 976, s. 2; 1989, c. 168, ss. 39, 40.)

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 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. —

The 1987 (Reg. Sess., 1988) amendment, effective June 27, 1988, added subsection (d).

Session Laws 1989, c. 168, effective May 30, 1989, added the last sentence to subdivision (a)(5) and added subsection (e).

§ 159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application.

(a) Neither the State nor a municipality may issue revenue bonds under this Article unless the issue is approved by the Commission. The State Treasurer or the governing board of the issuing municipality or its duly authorized agent, as the case may be, shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing municipality is a regional public transportation authority, the application must be accompanied by a resolution of the special tax board of that authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the State or the issuing municipality, as the case may be, and its utilities and enterprises as the secretary may require. The Commission may prescribe the form of the application.

(d) In the case of the State of North Carolina, any action to be taken by the State Treasurer pursuant to this section shall be taken (i) with respect to the issuance of revenue bonds by the North Carolina Low-Level Radioactive Waste Management Authority, by the governing board of the Authority and (ii) with respect to the issuance of revenue bonds by the North Carolina Hazardous Waste Management Commission, by the governing board of the Commission, and not by the State Treasurer.

(Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 18; 1983, c. 554, s. 6; 1989, c. 168, s. 41; c. 740, s. 6.)

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

Editor's Note. —

Session Laws 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. —

Session Laws 1989, c. 168, s. 41, effective May 30, 1989, added subsection (d).

Session Laws 1989, c. 740, s. 6, effective August 8, 1989, added the third sentence of subsection (a).

§ 159-88. Adoption of revenue bond order.

(d) In the case of the State of North Carolina, any action to be taken by the Council of State pursuant to this section shall be taken (i) with respect to the issuance of revenue bonds by the North Carolina Low-Level Radioactive Waste Management Authority, by the governing board of the Authority and (ii) with respect to the issuance of revenue bonds by the North Carolina Hazardous Waste Management Commission, by the governing board of the Commission, and not by the Council of State. Subsection (c) of this section shall not apply to the issuance of revenue bonds by North Carolina Low-Level Radioactive Waste Management Authority or by the North Carolina Hazardous Waste Management Commission.

(1971, c. 780, s. 1; 1973, c. 494, s. 19; 1983, c. 554, s. 9; 1989, c. 168, s. 42.)

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 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. — The 1989 amendment, effective May 30, 1989, added subsection (d).

§ 159-94. Limited liability.

(a) Revenue bonds shall be special obligations of the State or the municipality issuing them. The principal of and interest on revenue bonds shall not be payable from the general funds of the State or the municipality, as the case may be, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the State or the municipality, as the case may be, are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the State or the municipality, as the case may be, or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the State or the municipality, as the case may be, is not obligated to pay the principal or interest except from such revenues.

(b) The provisions of this section relating to a legal or equitable pledge, charge, lien, or encumbrance upon real property or the forfeiture thereof shall not apply to revenue bonds issued by the North Carolina Low-Level Radioactive Waste Management Authority or by the North Carolina Hazardous Waste Management Commission.

(Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3; 1971, c. 780, s. 1; 1983, c. 554, s. 14; 1989, c. 168, s. 43.)

Editor's Note. —

Session Laws 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. — The 1989 amendment, effective May 30, 1989, designated the first paragraph as subsection (a); and added subsection (b).

§ 159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds.

(a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own use and for users within its corporate limits, may be operated incidentally for users outside its corporate limits. Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems, aeronautical facilities, marine facilities and systems, facilities and equipment for the collection, treatment or disposal of solid waste, notwithstanding that such systems, facilities or equipment may be operated for users outside the corporate limits of a municipality where the municipality finds that the system, facilities or equipment so financed would benefit the municipality.

(b) A revenue bond project financed wholly or partially by revenue bonds of the State may be located either within or without the State and, when operated primarily for the State's own use and for users within the State, may be operated incidentally for users outside the State.

(c) The provisions of subsection (b) of this section shall not apply to the financing of any revenue bond project by the North Carolina Low-Level Radioactive Waste Management Authority or by the North Carolina Hazardous Waste Management Commission.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section and G.S. 160A-312, municipalities may acquire sewage collection and disposal systems and water supply and distribution systems located within and without the corporate limits of such municipalities and finance such acquisition with revenue bonds. Further, municipalities may own, maintain and operate such acquired systems, enlarge and improve such acquired systems and finance the enlargement and improvement of such acquired systems with revenue bonds. This subsection applies only to acquisitions by municipalities financed by revenue bonds during the calendar year ending December 31, 1989. (1971, c. 780, s. 1; 1973, c. 1325; 1983, c. 554, s. 16; c. 795, s. 5; 1989, c. 168, s. 44; c. 263.)

Editor's Note. —

Session Laws 1989, c. 168, s. 49 is a severability clause.

Effect of Amendments. —

Session Laws 1989, c. 168, s. 44, effective May 30, 1989, designated the first paragraph as subsection (a); designated the second paragraph as subsection (b); and added subsection (c).

Session Laws 1989, c. 263, effective June 7, 1989, added subsection (d).

ARTICLE 7.

Issuance and Sale of Bonds.

§ 159-120. Definitions.

Editor's Note. —

Session Laws 1987 (Reg. Sess., 1988), c. 882, s. 6 provides: "All actions and proceedings heretofore taken by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to the Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes of North Carolina, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed."

Session Laws 1989, c. 90, effective May 5, 1989, provides: "All actions and proceedings heretofore taken since June 15, 1988, by units of local government relating to the authorization of general obligation refunding bonds, secured by a pledge of the taxing power and issued pursuant to The Local Government Bond Act, and revenue refunding bonds, secured by a pledge of revenues and issued pursuant to The State and Local Government Revenue Bond Act, and the sale and delivery of all such bonds pursuant to Article 7, as amended, of Chapter 159 of the General Statutes, in order to provide funds to purchase, at a discount, bonds of such units owned by the Farmers Home Administration, including without limitation, the introduction and adoption of bond orders, the holding of public hearings with respect to such bond orders, the passage of resolutions providing for the issuance and the sale, both public and private, of such refunding bonds, and the delivery of any such refunding bonds are hereby in all respects approved, ratified, validated, and confirmed."

§ 159-123. Sale of bonds by sealed bids; private sales.

(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.

(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.

(4) Refunding bonds issued pursuant to G.S. 159-78.

(5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1977, c. 201, s. 4; 1981 (Reg. Sess., 1982), c. 1276, s. 5; 1985, c. 723, s. 1; 1987, c. 585, s. 3; c. 796, s. 4; 1989, c. 756, 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.

Editor's Note. —

Session Laws 1989, c. 756, s. 9 provides "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 1989, c. 756, s. 10 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective August 11, 1989, inserted "and special obligation bonds issued pursuant to Chapter 159I of the General Statutes" at the end of subdivision (b)(3).

ARTICLE 8.

Financing Agreements.

§ 159-148. Contracts subject to Article; exceptions.

(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of the General Statutes, or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the General Statutes), relating to the lease, acquisition, or construction of capital assets, which contract

(1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, and

(2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract, and

(3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, to the extent of five hundred thousand dollars ($500,000) or a sum equal to one tenth of one percent ($^1/_{10}$ of 1%) of the appraised value of property subject to taxation by the contracting unit (before the application of any assessment ratio), whichever is less, and

(4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group.

(b) This Article shall not apply to:

(1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.
(2) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles or voting machines.
(3) Loan agreements entered into by a unit of local government pursuant to the North Carolina Solid Waste Management Loan Program, Chapter 159I of the General Statutes. (1971, c. 780, s. 1; 1973, c. 494, s. 31; 1989, c. 756, s. 6.)

Editor's Note. — Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 1989, c. 756, s. 10 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective August 11, 1989, in the first sentence of subsection (a) inserted "special obligation bonds issued pursuant to Chapter 159I of the General Statutes," and inserted "or, in the case of a special obligation bond, as defined in Chapter 159I of the General Statutes"; and added subdivision (b)(3).

ARTICLE 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

§ 159-165. Sale and delivery of bond anticipation notes.

(a) Bond anticipation notes of a municipality, including special obligation bond anticipation notes issued pursuant to Chapter 159I of the General Statutes, shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Bond anticipation notes of the State shall be sold by the State Treasurer at public or private sale, upon such terms and conditions, and according to such procedures as the State Treasurer may prescribe.

(b) When the bond anticipation notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The net proceeds of revenue bond anticipation notes or special obligation bond anticipation notes shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, s. 2; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973,

c. 494, s. 35; 1981 (Reg. Sess., 1982), c. 1276, s. 11; 1983, c. 554, s. 20; 1989, c. 756, s. 7.)

Editor's Note. —

Session Laws 1989, c. 756, s. 9 provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 1989, c. 756, s. 10 contains a severability clause.

Effect of Amendments. — The 1989 amendment, effective August 11, 1989, inserted "including special obligation bond anticipation notes issued pursuant to Chapter 159I of the General Statutes" in subsection (a); and inserted "or special obligation bond anticipation notes" in the third sentence of subsection (b).

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

Article 1.

Short Title, Legislative Findings and Definitions.

§ 159B-3. Definitions.

The following terms whenever used or referred to in this Chapter shall have the following respective meanings unless a different meaning clearly appears from the context:

(2) "Cost" or "cost of a project" shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency (provided that a period of three years shall be deemed to be reasonable for bonds issued to finance a generating unit expected to be operated to supply base load); establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation. The term shall also mean the capital cost of nuclear fuel for any project. (1975, c. 186, s. 1; 1977, c. 708, s. 2; 1983, c. 609, ss. 3-6; 1985, c. 266, s. 1; 1989, c. 329.)

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 1989 amendment, effective June 15, 1989, added the last sentence in subdivision (2).

ARTICLE 2.

Joint Agencies; Municipalities.

§ 159B-5.1. Joint ownership with other public or private entities engaged in generation, transmission or distribution of electric power for resale.

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Eddleman, 320 N.C. 344, 358 S.E.2d 339 (1987).

§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Eddleman, 320 N.C. 344, 358 S.E.2d 339 (1987).

§ 159B-25. Refunding bonds.

(a) A municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds.

(b) In addition to any refunding bonds that may be issued pursuant to subsection (a), a municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of providing for the payment of any interest accrued or to accrue on any bonds which shall have been issued by the joint agency under the provisions of the Chapter; provided, however, that the refunding bonds are issued on or prior to June 30, 1992, and the latest maturity of the refunding bonds issued for a project is no later than the latest maturity of any other bonds issued by the municipality or joint agency, as the case may be, then outstanding for the same project; and provided further that the Local Government Commission shall conduct an evidentiary hearing and upon the evidence presented find and determine that:

(1) The municipality's or the joint agency's debt will be managed in strict compliance with law;

(2) The requirements of this Chapter with respect to the issuance of its bond and the details thereof and security therefor have been and will be satisfied;

(3) The estimated revenues of the project or the revenues of the municipality's electric system, as the case may be, will be

sufficient to service all bonds to be outstanding after the issuance of the refunding bonds;

(4) The application of the proceeds of the refunding bonds will result in the deferral of recovery in rates of a portion of the capital costs of the project for a reasonable period of time;

(5) All capital costs of the project will be recovered over a period ending, and all bonds issued for the project will mature, no later than the end of the then estimated useful economic life of the project;

(6) The issuance of the bonds is in the best interest of the municipality's or joint agency's electricity customers; and

(7) The bond rating of the State and its several political subdivisions and agencies allowed to issue bonds should not be adversely affected.

(c) The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate thereof. (1975, c. 186, s. 1; 1989, c. 735, s. 2.)

Editor's Note. — Session Laws 1989, c. 735, s. 1 provides: "The General Assembly finds and determines as hereinafter set forth in this section.

"Joint agencies have issued bonds to finance base-load electric generating projects under Chapter 159B. When the bonds were issued, debt service structures were established on the basis of then existing factors. These factors have changed significantly since the debt service structures were established. Adjustment of these debt service schedules would permit the joint agencies to respond to these changed circumstances.

"Adjustment of the joint agencies' debt service schedules would permit debt service to more closely match the expected economic lives of the projects in a manner that is consistent with the prudent utility practice of recovering capital costs so that ratepayers bear debt service costs in proportion to the benefits they can expect to receive, and would permit the joint agencies to structure their electric rates in a manner similar to what is now common for the private utilities. Utility regulatory commissions have adopted plans providing for the phase-in of recovery of capital costs of capital-intensive generating projects, thus deferring recovery of these costs in rates.

"Adjustments in debt service schedules would also permit the joint agencies to extend the utilization of reserves providing enhanced flexibility to the joint agencies in managing their fiscal affairs in a prudent manner.

"It is necessary and desirable to amend Chapter 159B to permit existing modification of debt service schedules to reflect these circumstances, but only if the municipality or joint agency can adequately service its debt and otherwise is in compliance with the provisions of Chapter 159B.

"The circumstances affecting joint agencies are not of broad application, and accordingly the provisions of this act affect only Chapter 159B and grant new authority only for the period through June 30, 1992."

Effect of Amendments. — The 1989 amendment, effective August 7, 1989, designated the first paragraph as subsection (a); deleted the former last sentence of subsection (a), which read "The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate thereof"; and added subsections (b) and (c).

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

§ 159C-4. Creation of authorities.

(a) The governing body of any county is hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The .....(the blank space to be filled in with the name of the county) County Industrial Facilities and Pollution Control Financing Authority," which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution creating such authority, or by subsequent resolution. At least 30 days prior to the adoption of such resolution, the governing body of such county shall file with the Department of Economic and Community Development and the Local Government Commission of the State notice of its intention to adopt a resolution creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes. All authority commissioners will serve at the pleasure of the governing body of the county. If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed and qualified.

(f) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Economic and Community Development and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Economic and Community Development and the Local Government Commission of changes in commissioners and officers and of new projects under consideration by the authority. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, s. 1; 1989, c. 751, s. 7(47).)

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 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in the first sentence of subsection (a) and in two places in subsection (f).

§ 159C-7. Approval of project.

No bonds may be issued by an authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of Economic and Community Development. The authority shall file an application for approval of its proposed project with the Secretary of Economic and Community Development, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

(1) In the case of a proposed industrial project,
   a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county, or (ii) which is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and
   b. That the proposed project will not have a materially adverse effect on the environment;

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,
   a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
   b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and
   c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

In no case shall the Secretary of Economic and Community Development make the findings required by subdivisions (1)b and (2)

of this section unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In no case shall the Secretary of Economic and Community Development make the findings required by subdivision (2a) unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1; 1981, c.

704, s. 22; 1987, c. 827, s. 1; 1989, c. 727, ss. 218(161), 219(38); c. 751, s. 8(29).)

Editor's Note. — Session Laws 1989, c. 751, s. 7(48), effective July 1, 1989, directed the substitution of "Department of Economic and Community Development" for "Department of Commerce" in this section. However, references to the Department of Economic and Community Development only occurred in this section in conjunction with reference to the Secretary thereof, and were amended by Session Laws 1989, c. 751, s. 8(29).

Effect of Amendments. —

Session Laws 1989, c. 727, s. 218(161), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the third paragraph.

Session Laws 1989, c. 727, s. 219(38), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in the third paragraph.

Session Laws 1989, c. 751, s. 8(29), effective July 1, 1989, substituted "Secretary of Economic and Community Development" for references to the Secretary of the Department of Commerce in the first and third paragraphs.

§ 159C-8. Approval of bonds.

No bonds may be issued by an authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of the Department of Economic and Community Development of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and

statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; 1979, c. 109, s. 1; 1989, c. 751, s. 7(49).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in the second paragraph.

Chapter 159D.

The North Carolina Industrial and Pollution Control Facilities Pool Program Financing Act

§ 159D-4. Creation of the authority.

(h) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Economic and Community Development and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Economic and Community Development and the Local Government Commission of changes in the commissioners and officers, of counties which have become members of the authority and of new projects under consideration by the authority. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 5; 1989, c. 751, s. 7(50).)

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 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in two places in subsection (h).

§ 159D-7. Approval of project.

No bonds may be issued by the authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of Economic and Community Development. The authority shall file an application for approval of its proposed project with the Secretary of Economic and Community Development, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

(1) In the case of a proposed industrial project,
   a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county in which the project is to be located or (ii) which is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State; and
   b. That the proposed project will not have a materially adverse effect on the environment;

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment; and

(3) In any case (whether the proposed project is an industrial or a pollution control project),

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

In no case shall the Secretary of Economic and Community Development make the findings required by subdivisions (1)b and (2) of this section unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In no case shall the Secretary of Economic and Community Development make the findings required by subdivision (2a) unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of

providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 shall be deemed to satisfy the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant hereto. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 6; c. 827, s. 1; 1989, c. 727, ss. 218(162), 219(39); c. 751, s. 8(30).)

Editor's Note. — Session Laws 1989, c. 751, s. 7(51), effective July 1, 1989, directed the substitution of "Department of Economic and Community Development" for "Department of Commerce," in this section. However, references to the Department of Economic and Community Development only occurred in this section in conjunction with reference to the Secretary thereof, and were amended by Session Laws 1989, c. 751, s. 8(30).

Effect of Amendments. —

Session Laws 1989, c. 727, s. 218(162), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the third paragraph.

Session Laws 1989, c. 727, s. 219(39), effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Human Resources" in the third paragraph.

Session Laws 1989, c. 751, s. 8(30), effective July 1, 1989, substituted "Secretary of Economic and Community Development" for references to the Secretary of the Department of Commerce in the first and third paragraphs.

§ 159D-8. Approval of bonds.

No bonds may be issued by the authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Economic and Community Development of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section. (1977, 2nd Sess., c. 1198, s. 1; 1989, c. 751, s. 7(52).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Department of Economic and Community Development" for "Department of Commerce" in the second paragraph.

Chapter 159G.

North Carolina Clean Water Revolving Loan and Grant Act of 1987.

§ 159G-3. Definitions.

As used in this Chapter, the following words shall have the meanings indicated, unless the context clearly requires otherwise:

(2) "Applicant" means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that unit of local government.

(4) "Construction costs" means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property.

(6) "Commission for Health Services" means the Commission for Health Services of the Department of Environment, Health, and Natural Resources.

(7) "Division of Environment Health" means the Division of Environmental Health of the Department of Environment, Health, and Natural Resources.

(8) "Environmental Management Commission" means the Environmental Management Commission of the Department of Environment, Health, and Natural Resources.

(12) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of Environmental Management with respect to receipt of ap-

plications for revolving loans and grants for wastewater systems. (1987, c. 796, s. 1; 1989, c. 727, s. 206; c. 770, s. 36; c. 799, s. 13.)

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. — Session Laws 1989, c. 727, s. 206, effective July 1, 1989, in subdivision (4), substituted "Division of Environmental Health" for "Division of Health Services" and "G.S. 159G-14" for "G.S. 159G-314"; substituted "Environment, Health, and Natural Resources" for "Human Resources" in subdivision (6); rewrote subdivisions (7) and (8); and substituted "Division of Environmental Health" for "Division of Health Services" in subdivision (12).

Session Laws 1989, c. 770, s. 36, effective August 12, 1989, also substituted "G.S. 159G-14" for "G.S. 159G-314" in the last sentence of subdivision (4).

Session Laws 1989, c. 799, s. 13, effective July 1, 1989, added the second sentence of subdivision (2).

§ 159G-4. Appropriations.

(b) Of the appropriations made from the General Fund to the Clean Water Revolving Loan and Grant Fund for use of the Office of State Budget and Management as provided in this Chapter, allocations are made as follows after first subtracting the amounts allocated under subsection (a) of this section, to the extent that there are any excess funds available:

Wastewater Accounts	
General Wastewater Revolving Loan Account	45.00%
Emergency Wastewater Revolving Loan Account	14.00%
High-Unit Cost Wastewater Account	10.00%
Water Supply Accounts	
General Water Supply Revolving Loan Account	23.00%
High-Unit Cost Water Supply Account	3.00%
Emergency Water Supply Revolving Loan Account	5.00%

(c) All payments of interest and repayments of principal resulting from revolving loans shall be credited to the respective accounts from which the revolving loan funds were disbursed. Terms and conditions for repayment of revolving loans shall be established by the Office of State Budget and Management, with the assistance of the Local Government Commission, consistent with the requirements of the Federal Water Pollution Control Act and this Chapter. Provided, the interest rate for all revolving loans authorized by this Chapter shall be fixed at the same percent per annum as the interest rate fixed under the Federal Water Pollution Control Act for loans from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c), not to exceed the lesser of four percent (4%) or one half (1/2) the prevailing national market rate for tax exempt general obligation debt of similar maturities derived from a published indicator. Provided further, the interest rate may be fixed at a lower rate per annum if authorized by the Federal Water Pollution Control Act Regulations. It is the intent of the General Assem-

bly to provide uniform interest payments for all loans made to units of local government irrespective of the account from which loans are made for either wastewater or water supply projects. (1987, c. 796, s. 1; 1989, c. 500, s. 123; c. 770, s. 36.)

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

Editor's Note. —

Section 2 of Session Laws 1989, c. 500 provides that c. 500 shall be known as "The Current Operations Appropriations Act of 1989."

Session Laws 1989, c. 500, s. 127 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1989-91 biennium, the textual provisions of this act shall apply only to fund appropriated for and activities occurring during the 1989-91 biennium."

Session Laws 1989, c. 500, § 128 contains a severability clause.

Effect of Amendments. — Session Laws 1989, c. 500, s. 123, effective July 1, 1989, rewrote the chart in subsection (b).

Session Laws 1989, c. 770, s. 36, effective August 12, 1989, substituted "G.S. 159G-5(c)" for "G.S. 159G-305(c)" in the third sentence of subsection (c).

§ 159G-6. Distribution of funds.

(b) Wastewater Accounts. — The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Office of the State Budget and Management shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. — The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. — The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the county in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subsection (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. — The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. — The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Office of State Budget and Management shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. — The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. — The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. — The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Administrative Account. — The Office of State Budget and Management, from time to time, may allocate funds from the Administrative Account to meet the expenses of the Office of State Budget and Management, Local Government Commission, Division of Environmental Health and Environmental Management Commission incurred in the administration of this Chapter in excess of normal operating expenses.

Each agency entitled to receive administrative expense funds from the Administrative Account shall prepare an itemized estimate of administrative funds required for the succeeding fiscal year, and the Division of Environmental Health, the Local Government Commission and the Environmental Management Commission shall deliver their estimates to the Office of State Budget and Management at least 45 days prior to the beginning of the fiscal year for which the funds are required. The Office of State Budget and Management shall determine the administrative expense funds available and, along with its recommendations, shall deliver the estimates of the Division of Environmental Health, the Local Government Commission and of the Environmental Management Commission and its own estimate, if any, to the Advisory Budget Commission at least 30 days prior to the beginning of the fiscal year for which the funds are required. Any administrative expense funds shall be disbursed by the Office of State Budget and Management to the appropriate agency. If the administrative expense funds disbursed to any agency shall prove insufficient, it may apply at any time during the fiscal year for additional funds in the manner above provided.

(1987, c. 796, s. 1; 1989, c. 727, s. 207; c. 770, s. 36.)

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. — Session Laws 1989, c. 727, s. 207, effective July 1, 1989, substituted "G.S. 159G-4" for "G.S. 159G-304" in the introductory paragraph of subsection (b); substituted "Division of Environmental Health" for "Division of Health Services" throughout subsections (c) and (d); in subsection (c), substituted "G.S. 159G-4" for "G.S. 159G-304" in the first sentence of the first paragraph; and also substituted "G.S. 159G-6(b)(2)" for "G.S. 159G-306(b)(2)" in subdivision (c)(2).

Session Laws 1989, c. 770, s. 36, effective August 12, 1989, also substituted "G.S. 159G-4" for "G.S. 159G-304" in the introductory paragraphs of subsection (b) and subsection (c); and substituted "G.S. 159G-6(b)(2)" for "G.S. 159G-306(b)(2)" in subdivision (c)(2).

§ 159G-8. Application; environmental assessment; notice; hearing.

(a) Application. — All applications for revolving loans and grants for water supply systems shall be filed with the Division of Environmental Health and all applications for revolving loans and grants for wastewater treatment works or wastewater collection systems shall be filed with the Environmental Management Commission. Every applicant shall also file with the Office of State Budget and Management such information concerning the application as the Office of State Budget and Management may require by rules adopted pursuant to this Chapter. Any application may be filed in as many categories as it is eligible for consideration under this Chapter. Applications for revolving construction loans or grants for wastewater treatment works and wastewater collection systems, except applications for emergency wastewater loans, shall first be submitted for a loan or grant from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c). If the application is denied, the application shall then be considered for a revolving loan or a grant from the General Wastewater Revolving Loan and Grant account established under G.S. 159-6(b)(1).

The Office of State Budget and Management, the Division of Environmental Health and the Environmental Management Commission may develop jointly and adopt a standard form of application under this Chapter. Any application for construction grants under the Federal Water Pollution Control Act may be considered as an application for revolving construction loans or grants under G.S. 159G-5(c) and G.S. 159G-6(b)(1). The information required to be set forth in the application shall be sufficient to permit the respective agencies to determine the eligibility of the applicant and to establish the priority of the application, as set forth in this Chapter.

Any applicant shall furnish information in addition or supplemental to the information contained in its application upon request by the receiving agency.

(b) Environmental Assessment. — Every applicant shall file with its application an assessment setting forth the impact that the project for which funds are sought will have upon the environment of the area within which the project is proposed to be located. The assessment shall set forth the impact of the project upon water resources, other natural resources, land use pattern, and such other factors as the Commission for Health Services or the Environmental Management Commission shall require by duly adopted rules. Any environmental assessment required as part of an application for grants under the Federal Water Pollution Control Act shall

satisfy the requirement of this provision. If, after reviewing the environmental assessment, the Division of Environmental Health or the Environmental Management Commission concludes that an environmental impact statement is required, then the application shall receive no further consideration until a final environmental impact statement has been completed and approved as provided in Article 1 of Chapter 113A of the General Statutes.

(c) Hearing. — A public hearing may be held by the receiving agency at any time on any application filed pursuant to G.S. 159G-5(c), 159G-6(b), or 159G-6(c) in accordance with the provisions of this subsection. A public hearing may be held by the receiving agency upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is proposed to be located if it appears that the public interest will be served by this hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the person(s) submitting it. The receiving agency may consider all written objections to the proposed project and other statements along with the application, including any significant adverse effects that the proposed project may have on the environment, and shall determine if the public interest will be served by a hearing. The determination by the receiving agency shall be conclusive; but all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application, whether or not the request is granted. (1987, c. 796, s. 1; 1989, c. 727, s. 208; c. 770, s. 36.)

Effect of Amendments. — Session Laws 1989, c. 727, s. 208, effective July 1, 1989, throughout the section substituted "Division of Environmental Health" for "Division of Health Services", and substituted references to § 159G-5(c) for references to § 159G-305(c), references to § 159G-6(b)(1) for references to § 159G-306(b)(1), and references to §§ 159G-6(b) and 159G-6(c) for references to §§ 159G-306(b) and 159G-306(c); deleted "or regulations" following "rules" in the second sentence of the first paragraph of subsection (a); and substituted "rules" for "rules and regulations" in the second sentence of subsection (b).

Session Laws 1989, c. 770, s. 36, effective August 12, 1989, made the same changes to internal references to sections in Chapter 159G as were made by c. 727, s. 208.

§ 159G-10. Priorities.

(a) Determination. — Determination of priorities to be assigned each eligible application shall be made semiannually by each receiving agency during each fiscal year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1) shall be considered by the receiving agency with every other application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible for consideration during the same priority period, to determine the priority to be assigned to each application. The same procedure shall apply to every eligible application filed under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which does not contain the information required by this Chapter or regulations adopted by the receiving agency(s) shall not be deemed received until such information is furnished by the applicant to the receiving agency.

(d) Failure to Qualify. — Any application filed under G.S. 159G-5(c), G.S. 159G-6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the priority period in which the application was eligible for consideration by reason of the priority assigned the application shall be considered for a revolving loan or grant during the next succeeding priority period upon request of the applicant. If such application should again fail to qualify for a revolving loan or grant during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time, and may amend any pending application to include additional data or information. (1987, c. 796, s. 1; 1989, c. 770, s. 36.)

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 1989 amendment, effective August 12, 1989, in subsection (a) and (d), substituted "G.S. 159G-5(c)" for "G.S. 159G-305(c)"; substituted "G.S. 159G-6(b)(1)" for "G.S. 159G-306(b)(1)"; substituted "G.S. 159G-6(c)(1)" for "G.S. 159G-306(c)(1)"; substituted "G.S. 159G-6(b)(3)" for "G.S. 159G-306(b)(3)"; substituted "G.S. 159G-6(c)(3)" for "G.S. 159G-306(c)(3)"; substituted "G.S. 159G-6(b)" for "G.S. 159G-306(b)"; and substituted "G.S. 159G-6(c)" for "G.S. 159G-306(c)".

§ 159G-12. Disbursement.

(c) The receiving agency, in its sole discretion, may determine whether the payment of any revolving loan or grant made under this Chapter shall be in a lump sum or in installments as progress payments and shall, by adoption of appropriate rules and regulations, provide for the manner of approval and payment of revolving loans or grants. The State Treasurer, with the approval of the receiving agency and consistent with the provisions of G.S. 159G-6(a)(3), shall, by adoption of appropriate rules, provide for the payment of revolving loans or grants. (1987, c. 796, s. 1; 1989, c. 770, s. 36.)

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 1989 amendment, effective August 12, 1989, substituted "G.S. 159G-6(a)(3)" for "G.S. 159G-306(a)(3)" in subsection (c).

§ 159G-14. Inspection.

Inspection of a project for which a revolving loan or grant has been made under this Chapter may be performed by qualified personnel of the Division of Environmental Health or the Environmental Management Commission or may be performed by qualified professional engineers, registered in this State, who have been approved by the Division of Environmental Health or the Environmental Management Commission; but no person shall be approved to perform inspections who is an officer or employee of the unit of government to which the revolving loan or grant was made or who is an owner, officer, employee or agent of a contractor or subcontractor engaged in the construction of the project for which the revolving loan or grant was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "construction cost" as used in this Chapter. (1987, c. 796, s. 1; 1989, c. 727, s. 209.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Division of Environmental Health" for "Division of Health Services" in two places.

§ 159G-17. Annual reports to Joint Legislative Commission on Governmental Operations.

(a) The Office of State Budget and Management, the Division of Environmental Health and the Environmental Management Commission shall prepare and file on or before July 31 of each year with the Joint Legislative Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of revolving loans and grants authorized by this Chapter.

(b) Office of State Budget and Management. — The portion of the report prepared by the Office of State Budget and Management shall set forth for the preceding fiscal year itemized and total allocations from the Administrative Account for administrative expenses; itemized and total allocations from the Wastewater Accounts of revolving loans and grants authorized by the Environmental Management Commission; and itemized and total allocations from the Water Supply Accounts of revolving loans and grants authorized by the Division of Environmental Health. The Office of State Budget and Management shall also prepare a summary report of all allocations made from the Clean Water Revolving Loan and Grant Fund for each fiscal year; the total funds received and allocations made; and unallocated funds on hand in each account as of the end of the preceding fiscal year.

(c) Environmental Management Commission and Division of Environmental Health. — The portions of the report prepared by the Environmental Management Commission and the Division of Environmental Health shall include:

(1) Identification of each revolving loan and grant made by the receiving agency during the preceding fiscal year; the total amount of the revolving loan and grant commitments; the sums actually paid during the preceding fiscal year to each revolving loan and grant made and to each revolving loan and grant previously committed but unpaid; and the total revolving loan and grant funds paid during the preceding fiscal year.

(2) Itemization of expenditures of any administrative expense funds allocated from the Administrative Account during the preceding fiscal year.

(3) Summarization for all preceding years of the total number of revolving loans and grants made; the total funds committed to such revolving loans and grants; the total sum actually paid to such revolving loans and grants and the total expenditure of administrative expense funds allocated from the Administrative Account.

(4) Assessment and evaluation of the effects that approved projects have had upon water pollution control and water supplies within the purposes of this Chapter and with relation to the total water pollution control and water supply problem.

(1987, c. 796, s. 1; 1989, c. 727, s. 210.)

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 1989 amendment, effective July 1, 1989, substituted "Division of Environmental Health" for "Division of Health Services" in subsections (a), (b) and (c).

Chapter 159H.

Reserved for future codification purposes.

Chapter 159I.

Editor's Note. — The legislation and annotations affecting Chapter 159I have been included in a recently published chapter.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1989

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1989 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