**POPULAR GOVERNMENT**

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# 1947 Legislative Summary

## General Assembly of North Carolina

*Prepared by the*

INSTITUTE OF GOVERNMENT

THE UNIVERSITY OF NORTH CAROLINA

Chapel Hill

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## THE INSTITUTE'S LEGISLATIVE SERVICE

### Origin and Development

The first step in the development of the Institute of Government's legislative service began in 1933, when Henry Brandis, Jr. of the Institute staff attended sessions of the General Assembly, analyzed and classified the public laws enacted and summarized them in a two-hundred page book published and distributed by the Institute to five thousand city, county and state officials in North Carolina.

Early in January, 1935, Henry Brandis, Dillard S. Gardner, and T. N. Grice, of the Institute staff, with Elizabeth Coates as Secretary, went to Raleigh for the beginning of the 1935 General Assembly and laid the foundations of the unique and distinctive legislative service rendered by the Institute of Government in each succeeding General Assembly.

These staff members attended every session of the House and Senate, analyzed and digested all bills as they were introduced, followed them through committees, noting amendments and recording calendar actions, until the bills failed or passed the final reading. At the end of each day's sessions they wrote summaries of the proceedings, mimeographed them, put them in the mails and the following morning these mimeographed reports appeared on the desks of the Governor, Lieutenant Governor and Speaker, all legislators and state department heads in the State capital, and officials in every city hall and county courthouse in North Carolina. As soon as the General Assembly adjourned they wrote final summaries of all public, public-local, and private laws and special acts for distribution to all groups of city, county and state officials.

From the beginning they faced all the expected and unexpected difficulties of pioneering efforts. There was no place for them at the reporters' desks under the stands of the reading clerks in either House or Senate, nor in the open spaces around the dais of the presiding officers—only in the galleries where in single and solitary isolation they wrote down on desks pads on their knees what they picked up by ear from the intonations and the chants of the reading clerks and the comments of legislators, supplemented by a tortuous and precarious accessibility to copies of bills by virtue of the uncertain whereabouts of in-

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## APPROPRIATIONS

The Biennial Appropriations Act, Chapter 500 (HB 23)

Looking at round numbers the spending authorized by the 1947 General Assembly breaks out in a splendor previously unknown in North Carolina. This, however, is no indication of spendthrift tactics, instead it represents the growing costs of materials and salaries and wages that have grown side by side with the enlargement of State services and functions.

A quick examination of what the State has been spending from year to year for operating expenses and for debt service aside from capital investment will be helpful in measuring the appropriations passed this year. In 1929 North Carolina spent $33,371,000 for current expenses and debt service. This figure was gradually increased until 1945 when the record shows that the State spent $121,404,026 (exclusive of the addition of $51,000,000 to debt service reserve) for the same purposes—almost four times as much as was spent seventeen years before. The appropriations made for these purposes by the 1947 General Assembly will average $155,615,959 for each year of the coming biennium, almost five times as much as was spent in 1929. Succinctly, the Budget Appropriations Act for the Biennium 1947-1949 appropriated a total of slightly more than $311 million for current operating expenses and debt service of the State government. Leaving consideration of permanent improvements appropriations out of the discussion for a moment, it will be profitable to examine the principal portions of this Act to determine how this figure will break down. In other words, how is the money to be spent?

Appropriations were made from three State funds: the General Fund, the Agriculture Fund, and the State Highway and Public Works Fund. The largest General Fund appropriations go toward operation of the public schools; the appropriations from the other two funds are allocated to the departments charged with the functions indicated by their titles.

### SCHOOLS

The public schools appropriation totals $159,368,711 for the next biennium. Approximately $3½ million of this total is intended for vocational education work, almost $4 million will be used for the purchase of school busses, approximately $1½ million will be used for the purchase of free textbooks, slightly more than $200,000 will go to the State Board of Education, and all the rest is designated to cover the cost of State support of the 9-months school term and all that that implies. The vast sum of money and the increase it marks over past appropriations for the same purpose are direct reflections of the concerted demands made by teachers and their supporters for increased salaries. Had the South Piedmont Plan embodied in the companion bills, HB 194 and SB 104, passed this figure would have been appreciably greater for this salary scale would have placed a floor under the A Grade teacher's salary at $1,360 and would have provided for increases up to $3,600 per year. While this plan failed it served as the spearhead of a movement to divorce teacher salary scales from the existing systems covering both teachers and state employees. The result was a salary increase for teachers approaching 30 per cent while the increase for state employees remained at the 20 per cent average recommended by the administration.

### HIGHWAY FUND

The Highway Fund will be drawn on during the next two years in the amount of $117,761,968. Approximately $13 million of this amount is carmarked for debt serv-

ice, the only substantial debt service the State is called upon to meet. The remaining $104,870,990 has been divided among the expenses of operating the Department of Motor Vehicles, constructing, maintaining and improving State primary and secondary roads, operating the Probation and Parole Commissions, bus investigations, and administration of the Highway Department. Approximately $95 million of these funds have been earmarked for the actual road work operations of construction, betterments and maintenance. Such an allocation of the total appropriation can be traced to the understandable backlog of road work that has accumulated during the war and the recent period of expensive materials and labor, and in no small measure to the increasingly loud demands from rural areas for better road service.

## OTHER APPROPRIATIONS

State Aid and Obligations is the catch-all phrase used to designate the objectives covered by the third largest single appropriation, $16,881,150. Aid to dependent children, old age assistance, aid to county welfare work, certain special agricultural and labor projects, State contributions to the Teachers and State Employees Retirement System, aid to libraries, to the State Art Society, to the State Symphony, indigent care work of the Medical Care Commission, and a number of smaller projects are provided for in this lump sum. Well over half the total sum, however, is absorbed by the State's contributions toward the retirement benefits of its teachers and employees, another increase directly attributable to salary increases, as well as to the increased rate of contribution required of the State by law.

The operation of the State's numerous institutions for the handicapped will use almost $16 million; operation of the institutions of higher education will absorb over $14 million, while operation of the State's executive and administrative departments and agencies will require $12,578,406. These figures are subject to an increase sufficient to give present employees salary increases averaging 20 per cent. Efforts to increase this percentage raise as embodied in HB 836 and HB 1080 as well as in other bills providing raises for particular groups were unsuccessful. Increased demands for educational facilities, the large increase in college enrollments, the growing need for services to the mentally and physically infirm and the growing demands for additional State services in labor, agriculture and industry all played a part in swelling these figures.

Maintenance of the State legislature, the judiciary, pensions, debt service, and a $2,000,000 contingency and emergency fund round out the general picture of current expenses and debt service appropriations. One significant observation should be made before leaving the subject: for what was certainly the first time in the memory of most observers, the total recommendations of the Advisory Budget Commission, of the Joint Appropriations Committee, and the actual legislative appropriations all exceeded the total requests made by the State departments, institutions and agencies before the General Assembly met.

## SUPPLEMENTAL APPROPRIATIONS

Finding that the appropriations made by the 1945 General Assembly were proving inadequate to cover the advancing costs which have characterized the last two years, the 1947 session found it necessary to pass two bills supplementing the appropriations made for the 1945-47 biennium.

One of these bills, Chapter 711 (SB 341), simple increased the contingency and

emergency fund by $250,000. The other bill, Chapter 6 (SB 11), proved to be of considerably more significance. Its title provided specifically that its purpose was to provide "additional emergency salaries for public school teachers and other State employees." As finally passed the term "emergency salaries" had been replaced by the term "emergency bonus," and while the Budget Bureau estimated that the bill as introduced would have cost the State approximately $6 million, the beneficiaries and their friends succeeded in amending the bill so that when passed it was estimated that it would cost the State approximately $8,050,000. Following the normal practice, this Act made no distinction in pay between teachers and state employees as separate groups, but rather provided for a sliding scale of bonuses based on salary groups. Efforts to separate the two groups were unsuccessful in this case, but when the identical question arose in connection with the salary scales in the Appropriations Act for the next biennium, the break was made: teachers' salaries were advanced to approach a 30 per cent increase while the salaries of other State employees were increased an average 20 per cent.

## THE POST-WAR RESERVE FUND

Chapter 325 (HB 22) appropriated and transferred the sum of $9,300,000 from surplus funds in the General Fund to the Post-War Reserve Fund. The preamble to this Act recites a number of facts and figures that should be appraised in interpreting its provisions: Appropria ions from the General Fund for 1947-49 exceed current appropriations by approximately $45,000,000. The major part of this increase reflects salary increases for teachers and State employees. While it is anticipated that revenues will meet these appropriations, it is "apprehensively recognized that the revenues estimated" for the next biennium are $26,000,000 greater than revenues ever collected in this State in a single biennium, and are only about 4 per cent less than collections expected to be realized in the "present abnormal two year period" ending June 30, 1947. It further recites that a period of economic stabilization marked with a downward adjustment to be reflected in revenue collections is in prospect; that a moderate recession would be sufficient to cause large losses in General Fund revenues; that the reasons for increasing salaries demand that every reasonable effort be made to insure that the appropriations be met.

When this fund was established by the appropriation of $20,000,000 in 1943 it was specifically provided that the fund was to be held "for such use as shall hereafter be directed by an Act of the General Assembly." By June 30, 1947, the original fund will have earned about $700,000. The legislature felt that the uncertainties recited in the Act would be met by increasing the fund to $30,000,000, and proceeded to insert the specific objective left blank by the General Assembly of 1943: "This Reserve Fund shall be used for the purpose of protecting against loss of General Fund revenue in a period of declining economy and shrinking tax collections in the General Fund, and transfers may be made from this Reserve Fund to the General Fund operating account only to replace loss of revenue, which loss may have become great enough to prevent the State from carrying out the purposes and providing funds therefor as contemplated by General Fund appropriations made by the General Assembly."

## PERMANENT IMPROVEMENTS, CHAPTER 662 (HB 24)

1947 appropriations from the General Fund for the permanent improvement of State institutions through capital outlay reached the unprecedented figure of $48,-

432,176. While this amount exceeds the sum of all such appropriations from 1921 through 1945 by more than $8 million, it still falls more than $40 million short of what the State institutions had requested before the session began. Since 1927, appropriations for permanent improvements had been small, and in at least two instances, in 1943 and in 1945, no appropriations at all had been made for capital outlay. Thus a fair appraisal of the astonishingly large figure requires consideration of the fact that, in effect, it reflects compensation for more than fifteen years of relative inactivity as well as appreciation of the need for continual growth.

Something slightly more than $30 million was set aside for educational institutions. Almost $8 million of this $30 million was earmarked for the University of North Carolina at Chapel Hill, but included in this total was $3,790,000 for the establishment of a four-year medical school and teaching hospital, part of the Medical Care Program, contingent upon the receipt of Federal funds. State College received $6½ million, the Woman's College of the University received over $3 million, and East Carolina Teachers College, the Negro Agricultural and Technical College, and the North Carolina College at Durham all received more than $2 million each. Efforts to increase this total by separate bills setting aside $35,000 for erecting and equipping a dormitory at the Eastern Carolina Training School for Indians (SB 400), and $800,000 for establishing a medical school for negroes at the North Carolina College at Durham (HB 630) were unsuccessful.

$10½ million of the permanent improvements money was set aside for charitable and correctional institutions. The State Hospitals at Raleigh, Morganton and Goldsboro, and the Caswell Training School will each receive well over a million dollars, with the other similar institutions sharing in the total.

The North Carolina Medical Care Commission will receive $6¼ million under this Act provided Federal funds are forthcoming to assist in the program. The Board of Public Buildings and Grounds will receive $800,000, the Commission for the Blind will receive $275,000, and the Department of Conservation and Development will receive $500,000 for its park work.

The most significant permanent improvements measures that failed to pass were SB 55 and HB 118 introduced in the two houses on the same day. While the provisions of the two bills were not identical, they were one in purpose, to set up special equalization funds to be distributed to the counties on the basis of need as grants-in-aid for school plant repair and construction. Both bills would have provided for termination of the program on July 1, 1952. The House bill would have made a flat appropriation of $11 million for the purpose. Under the Senate bill there would have been an initial appropriation of $10 million with an unusual plan for increasing the equalization fund. At the end of each six-months period during the life of the program, the Advisory Budget Commission would have been required to estimate General Fund surplus and allocate that surplus to the equalization fund, provided no more than $15,000,000 be so allocated in any one biennium.

Returning to the provisions of the Permanent Improvement Act itself, there is one additional provision that affects the entire spending program. In addition to the contingencies indicated for certain aspects of the Medical Care Program, no funds appropriated by this Act will be available for a given project until the Governor and the Advisory Budget Commission have approved the project's starting date. Their approval of a starting date for one project would not constitute authorization for starting other projects. This provision was inserted as a safeguard against having the State get less than a dollar's worth of labor and materials for a dollar spent, a

direct reflection of apprehension for the State's investment should there be no check rein on expenditures at a time when inflationary tendencies are obvious in the costs of construction, materials and labor.

## FURTHER APPROPRIATIONS

The Biennial Appropriations Act and the Permanent Improvements Act do not account for all the spending of the 1947 General Assembly. Separate acts covering a variety of objectives and State agencies were passed with substantial appropriations, some firm and some contingent. These appropriations will be mentioned in discussions of the affected agencies. The actual figures involved appear on the chart marked "Special Appropriations."

AVERAGE YEARLY STATE APPROPRIATIONS FOR THE BIENNIUM 1947-49—BY FUNCTIONS COMPARED WITH ACTUAL EXPENDITURES FOR THE FISCAL YEAR ENDING JUNE 30, 1946

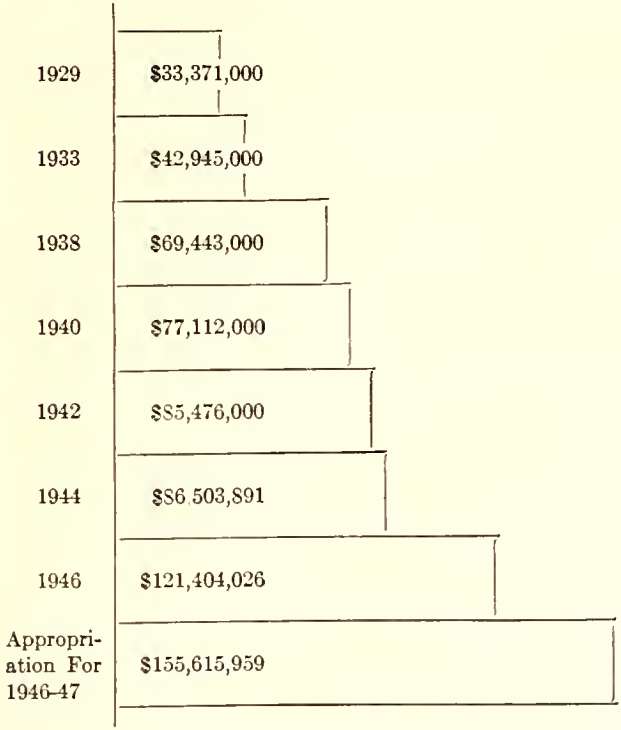
| | Actual Appropriations 1945-46 * | Actual Expenditures 1945-46 * | Departmental Requests * | Budget Commission Recommendations * | Appropriation Committee Recommendations * | Legislative Appropriations * |
|---|---|---|---|---|---|---|
| I. Legislative | $ 100,000 | $ 107,846 | $ 112,500 | $ 112,500 | $ 112,500 | $ 112,500 |
| II. Judicial | 458,593 | 459,238 | 475,107 | 507,991 | 507,991 | 507,991 |
| III. Executive and Administrative | 3,913,006 | 4,252,739 | 7,630,467 | 6,078,265 | 6,289,203 | 6,289,203 |
| IV. Educational Institutions | 4,769,595 | 5,026,206 | 8,924,253 | 7,001,309 | 7,095,574 | 7,095,574 |
| V. Charitable and Correctional Institutions | 5,053,576 | 5,580,160 | 7,430,825 | 7,451,633 | 7,776,068 | 7,776,068 |
| VI. State Aid and Obligations | 5,499,359 | 5,301,243 | 7,644,721 | 8,252,818 | 8,502,933 | 8,502,933 |
| VII. Pensions | 266,200 | 364,898 | 299,200 | 299,200 | 299,200 | 299,200 |
| VIII. Contingency and Emergency | 750,000 | 644,898 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 |
| IX. Public Schools | 44,483,662 | 47,158,447 | 61,626,366 | 60,941,667 | 64,049,167 | 64,049,167 |
| X. Debt Service | 112,136 | 151,858 | 33,178 | 33,178 | 33,178 | 33,178 |
| XI. Agriculture | 751,135 | 724,086 | 1,131,427 | 1,007,161 | 1,069,161 | 1,069,161 |
| XII. Highway and Public Works | 42,596,655 | 44,055,699 | 47,849,329 | 52,435,495 | 52,435,495 | 52,435,495 |
| XIII. Debt Service (Highway Fund) | 7,508,974 | 7,576,708 | 6,445,489 | 6,445,489 | 6,445,489 | 6,445,489 |
| Totals | $116,262,891† | $121,404,026‡ | $150,602,862 | $151,569,706 | $155,615,959 | $155,615,959 |

Notes: * Figures do not include receipts and expenditures of funds derived from sources other than Legislative appropriations.

† Does not include $10 monthly bonus for teachers and state employees for which no specific figures were shown in 1945 Appropriations Act.

‡ Figures deal only with actual expenditures in fiscal year 1945-46 and do not reflect the approximately $8,050,000 salary increases added to the 1946-47 fiscal year by the Supplemental Appropriations Act passed by the 1947 General Assembly.

TOTAL ACTUAL STATE EXPENDITURES FOR CURRENT EXPENSE AND DEBT SERVICE 1929-1946, COMPARED WITH AVERAGE YEARLY STATE APPROPRIATIONS FOR THE BIENNIUM 1947-1949



## PRINCIPAL SPECIAL APPROPRIATIONS MADE BY THE 1947 GENERAL ASSEMBLY NOT INCLUDED IN THE BIENNIAL BUDGET APPROPRIATIONS BILL

| | |
|---|---|
| To acquire Camp Butner as hospital site, contingent upon approval of Governor and Advisory Budget Commission, chapter 789 (SB 360) | $1,500,000 |
| To newly created State Art Commission, contingent upon (a) sufficient surplus in General Fund at end of next biennium and (b) gifts of equal amount, chapter 1097 (SB 395). | 1,000,000 |
| To Department of Agriculture for milk inspection and labeling work, $15,000 per year for biennium, chapter 999 (SB 477). | 30,000 |
| To Roanoke Island Historical Association for preservation and improvement of site, chapter 919 (HB 409). | 25,000 |
| To North Carolina State Ports Authority, $50,000 per year, chapter 927 (HB 590). | 100,000 |
| To State Armory Commission, $100,000 for each year of biennium, chapter 1064 (HB 1049) | 200,000 |
| To acquire and furnish Veterans Vocational School at Camp Butner, chapter 839 (HB 604) | 35,000 |
| To Commission to Survey Shrimping Grounds, chapter 980 (SB 310) | 50,000 |
| To complete Tablerock Smallmouth Bass Hatchery, Chapter 1011 (HB 561) | 50,000 |
| To pay claims against the State, contingent upon approval of appropriate State agency, chapter 1095 (HB 1039). | 44,586 |
| To Department of Conservation and Development for Shellfish division, chapter 1000 (SB 236) | 100,000 |
| To State Education Commission $25,000 for each year of biennium, chapter 724 (HB 548) | 50,000 |

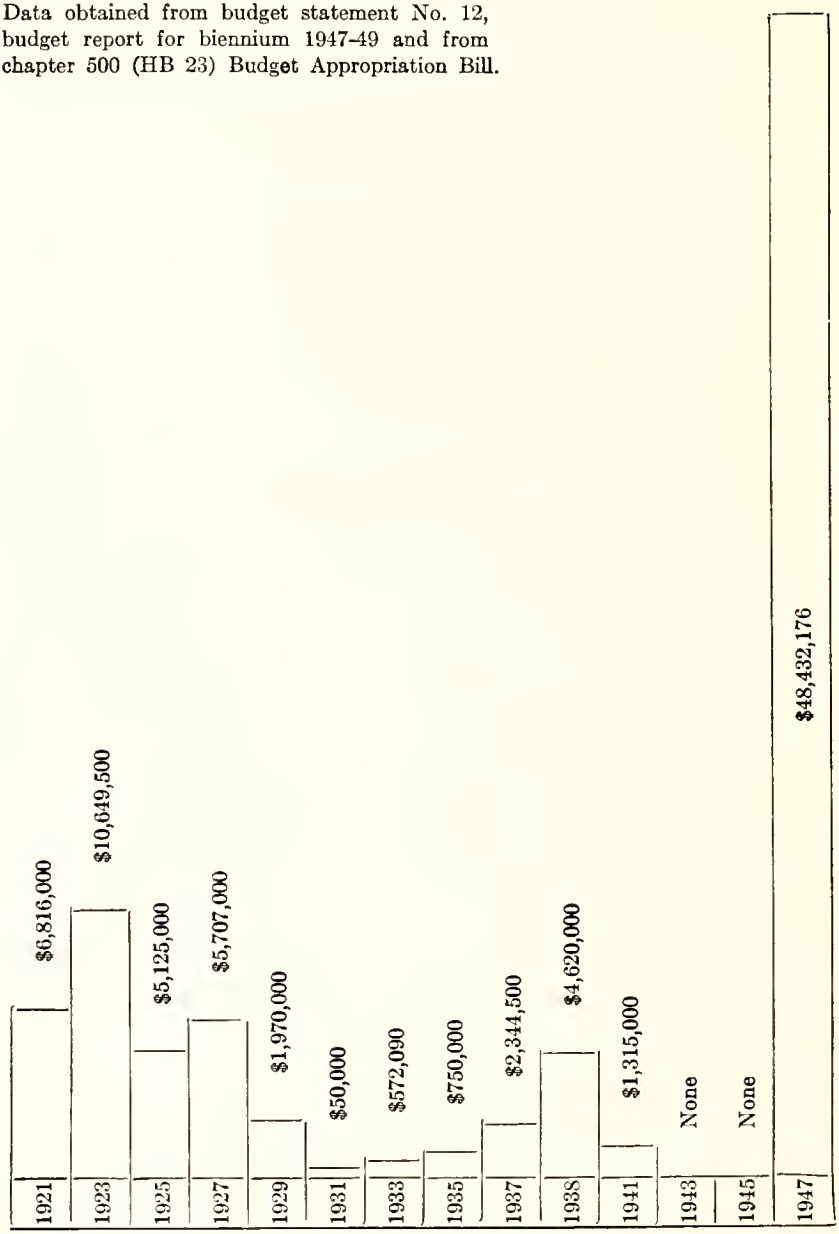
ACTUAL GENERAL FUND APPROPRIATIONS MADE FOR PERMANENT IMPROVEMENTS FROM 1921 THROUGH 1945 COMPARED WITH REQUESTS, RECOMMENDATIONS AND ACTUAL APPROPRIATIONS BY THE 1947 GENERAL ASSEMBLY

| Object | Total Actual Appropriations 1921-1945 | Departmental Requests 1947-1949 | Budget Commission Recommendations | Appropriations Committee Recommendations | Actual Appropriation 1947-1949 |
|---|---|---|---|---|---|
| I. Educational Institutions | $ 23,984,579 | $ 56,859,251 | $ 28,809,780 | $ 30,042,452 | $ 30,042,452 |
| II. Charitable and Correc ional Institutions | 12,412,912 | 20,348,805 | 8,611,657 | 10,564,721 | 10,564,724 |
| III. Buildings, Grounds and Others | 3,521,599 | 11,454,824 | 7,050,000 | 7,825,000 | 7,825,000 |
| Totals | $ 39,919,090 | $ 88,662,880 | $ 44,501,437 | $ 48,432,176 | $ 48,432,176 |

Note: These figures have been compiled from Budget Statement No. 12, Budget Report for the Biennium 1947-49 and from chapter 500 (HB 23), the Budget Appropriation Bill for the Biennium 1947-49.

## PERMANENT IMPROVEMENTS APPROPRIATIONS FROM GENERAL FUND COMPARED 1921 THROUGH 1947

Data obtained from budget statement No. 12, budget report for biennium 1947-49 and from chapter 500 (HB 23) Budget Appropriation Bill.



TOTAL AVERAGE YEARLY REQUESTS, RECOMMENDATIONS AND AND APPROPRIATIONS FOR CURRENT EXPENSES AND DEBT SERVICE FOR ALL STATE FUNCTIONS FOR THE BIENNIUM 1947-1949

## CHANGES AT THE COUNTY COURTHOUSE AND THE CITY HALL

The 1947 General Assembly was much concerned with matters affecting the administration of local government. Changes that affect particular officials are dealt with elsewhere in some detail, but municipal problems of zoning, the extension of corporate limits, parking meters, and fire protection, county problems regarding the recordation of certain instruments, the payment of certain officials, and the qualification of electrical inspectors, as well as problems regarding cemeteries, armories and sanitary districts that municipalities and counties share, are all dealt with here. Legislation affecting both counties and cities will be discussed first, and the remainder of this section will be devoted to an examination of acts affecting the counties and the cities separately.

As usual, a large number of changes were affected at county courthouses and city halls throughout the State by local Acts applicable only to the particular county or municipality concerned. This article, however, is confined to a discussion of State-wide measures applying generally to local governmental units. For a discussion of those State-wide measures affecting local taxation and finance, see the article on Local Taxation and Finance.

### CEMETERIES AND GRAVE REMOVAL

Chapter 821 (SB 331) provides that in any case where cemetery property not under the control or in the possession of some religious organization in any municipality has been set aside for cemetery purposes, and the trustees or owners named in the deed or deeds for the property have died, or are unknown, or if the deeds have been lost or misplaced and no record of title has been found, the municipality in which the cemetery is located is empowered to take possession of all such land within its corporate limits and such adjoining land not held or owned by known claimants of title. The town is authorized to have the property surveyed, have lines established, and to designate and appropriate the property as a cemetery. If such property had been used exclusively as the cemetery of a particular race, the Act requires that the racial identity be retained. The municipality is authorized to subdivide the property into lots and sell them for burial purposes, except those portions of the property which families have been using for burial purposes. These lots must be allotted to those families without charge. The municipality is authorized to use proceeds from such sales for the upkeep and improvement of the cemetery, and it is further authorized to appropriate such funds as may be necessary for improvement and maintenance of the property. Existing laws and ordinances affecting cemeteries in a particular municipality will apply to cemeteries taken over under authority of this Act.

Cities and other political subdivisions of the State are granted further powers regarding graves by Chapter 168 (HB 177). If it becomes necessary in order to perform governmental functions and duties, municipalities and other political subdivisions are empowered to remove graves from their own property or from the property of individuals and corporations, whether known or not. The graves may be moved after 30 days' notice to the relatives of the deceased persons, if they are known; if they are unknown, then local newspaper publication of a notice of intended removal once a week for four weeks. They must be moved at the town's expense to a suitable place in another cemetery, due care being taken to preserve markers.

To implement the administration of G. S. 65-3 which requires county commissioners to take charge of and preserve abandoned public cemeteries, chapter 236 (HB 359) authorizes boards of county commissioners to appoint a board of trustees, not over five in number, to carry out the commissioners' duties in this respect.

## SANITARY DISTRICTS

Chapter 476 (HB 579) is intended to make uniform the powers of all sanitary districts. Prior to the 1947 enactment, powers relating to the collection and disposal of garbage, establishment of district fire departments, enjoyment by the district of governmental privileges and immunities in connection with the exercise of the governmental functions of collecting garbage and furnishing fire protection, the use of district income and levying taxes by the district for these governmental functions and the establishment of capital reserve funds, were restricted to those sanitary districts which adjoin cities having a population of 50,000 or more. The Act is intended to repeal this limitation, but through error refers to a section that has been renumbered by the General Assembly of 1945.

Chapter 463 (HB 358) modifies the existing procedure for annexing territory to sanitary districts. The Act adds provisions to G. S. 130-56 providing that if the owners of all the real property in the territory to be annexed petition the district board to annex their land to the district, then no election shall be necessary, and the board is authorized to annex the territory with the approval of the board of county commissioners of the county or counties in which the district lies and with the approval of the State Board of Health. The Act also validates prior annexations of property containing no resident freeholders under such circumstances without an election, specifically providing that its provisions not affect pending litigation.

## ARMORIES

Chapter 1010 (HB 433) empowers every municipality and county to lease or convey by deed to the State of North Carolina: (1) any existing armory and the land adjacent thereto, (2) any real property hereafter acquired which is suitable for the construction of an armory, warehouse or other facility, and (3) any real property suitable for use in the administration, instruction and training of any National Guard unit, active or inactive, or State Guard unit or other organized military unit of which the Governor is Commander-in-Chief. Counties and municipalities are also empowered to acquire real property which may be suitable for these purposes. The Act further provides that "Contracting of an indebtedness and expenditure of public funds by any municipality or county to comply with the provisions of this Act are hereby declared to be a necessary expense and for a public purpose." In addition, counties and municipalities are empowered to appropriate from year to year for the benefit of National and State Guard units such amounts from public funds as the governing bodies deem "wise, patriotic and expedient," and are further authorized, alone or in connection with others, to provide heat, light, water, telephone service, and/or other costs of operation and maintenance of any armory.

## CHANGES AFFECTING COUNTIES

### Office of the Register of Deeds

Chapter 816 (SB 211) requires the register of deeds to set up a special book to be called the "Record of Real Estate Development Control Corners." This record is

made necessary by the provisions of the Act which require the seller of lots in real estate developments to designate and permanently mark one or more control corners either at the time he records the plat of the development or prior to the first sale in the development. The map of the development showing the control corners must be filed with the register of deeds, and the register of deeds is prohibited from accepting for registration and from registering such a map made after July 1, 1947 (the effective date of the Act) unless the location of control corners is shown thereon. The intention of the Act is to facilitate the location of lot lines in real estate developments by requiring the establishment of one or more permanent points of reference, or control corners, and for this purpose the Act makes this method prima facie the correct method of ascertaining boundary lines for lots within such a real estate development.

When a deed or other instrument conveying real property by a trustee, mortgagee, commissioner, or other officers appointed by the court, or by the sheriff under execution, is filed with the register of deeds for the purpose of being recorded, Chapter 211 (SB 76) requires the register of deeds from and after July 1, 1947, to index and cross-index as grantors the names of all persons recited in the instrument as the persons whose interest is being conveyed or from whom the title was acquired by the grantor named in the instrument. The register of deeds is allowed a fee of 10 cents for indexing and cross-indexing such names, but it is specifically provided that the Act does not repeal any local act fixing a different fee for this service.

### County Electrical Inspectors

Chapter 719 (HB 320) sets up an examination system for county electrical inspectors. Before an inspector's appointment can be confirmed he must pass an examination under the State Electrical Engineer and Inspector and the Board of Examiners of Electrical Contractors. Examinations must be based on the type of work the particular inspector will deal with. The results of the examination will determine whether the appointee is given a Class I, II, or III rating. Class II and III inspectors will be limited to the territory for which they can qualify. Certificates must be renewed annually. If an appointee fails the examination, the county commissioners must continue to make appointments until au applicant passes. In the interim, a temporary inspector may act with the approval of the Commissioner of Insurance. The Act further provides that the county may pay the inspector a salary in lieu of fees, in which case fees collected must be deposited in the county treasury. It further prohibits inspectors or their agents from engaging in the business of installing electrical wiring, devices, appliances, or equipment and from having any financial interest in any concern engaged in such business in the county at any time while he holds the office of inspector.

### County and District Boards of Health

Chapter 474 (HB 530) amends paragraph 3 of G. S. 130-66 governing the procedure for selecting members of district health departments to provide that ex officio members must be appointed during the first week of each December following election of members of the General Assembly, and that they shall serve for two years after the date of appointment. The terms of ex officio members appointed before March 25, 1947 (date of ratification of the Act) will expire on November 30, 1948. Vacancies in the membership of a district board of health caused by death, resignation

or other reason, must be filled, in the case of ex officio members, by appointment of the State Board of Health from the officials of the county of the member causing the vacancy, and in the case of public members, by election by the district board at its next regular meeting. The same Act also makes provision for county boards of health. It adds a provision to G. S. 130-18 providing that vacancies in membership of public members of a county board of health must be filled by the board itself at its next regular meeting.

### County Boards of Public Welfare

Prior to the 1947 General Assembly G. S. 108-12 provided that members of county boards of public welfare might be "reimbursed for expenses incurred in the attendance at official meetings." Under Chapter 92 (SB 20) this provision was changed to provide that, effective July 1, 1947, the county commissioners, in their discretion, may provide for the payment to welfare board members of a per diem not to exceed $5 per day and actual expenses when attending official meetings. The Act also validates such per diem and expense payments heretofore made.

## CHANGES AFFECTING CITIES AND TOWNS

### Extension of Corporate Limits

Chapter 725 (HB 592) is designed to make it unnecessary for a municipality to have a special act passed by the General Assembly when it desires to extend its corporate limits. The Act sets out an extension procedure which may be employed by any municipality in the State except those for which a different method has been provided by Public-Local or Private Act and except those in Dare and New Hanover counties. The governing body of the municipality must first give public notice describing by metes and bounds the territory it seeks to annex, thus notifying the property owners concerned, and stating that a session of the governing body will be held for the purpose of considering the annexation. After this notice has been given in the manner prescribed by the Act, the governing body is authorized to adopt an ordinance extending its corporate limits by annexing the described land unless it lies within the limits of some other municipality. If at the meeting to consider the annexation, however, a petition has been filed and signed by at least 15 per cent of the qualified voters residing in the area to be annexed requesting a referendum, then before passing the ordinance, the governing body must submit the question of annexation to a vote of the qualified voters of the area proposed to be annexed. In its discretion, the governing body may also submit the question o the residents of the municipality voting separately. Even if no such petition is received, the governing body may call a referendum on the question of annexation on its own motion. It is required to call a referendum within the municipality if 15 per cent of the qualified voters residing in the municipality who "actively participated in the last gubernatorial election" file a petition to that effect. Upon receiving a sufficient petition, or on its own motion, the local governing body must determine whether or not the election will be conducted solely in the area to be annexed or "simultaneously with the qualified voters of the municipality." It must then order the county board of elections to call the election, and the county board of elections must proceed to hold the election within 60 days after receiving this order. The Act contains specific instructions for the elections board in such cases which include ordering a special registration of voters in the territory proposed to be

annexed. Costs of the election must be paid by the municipality. If a majority of the votes cast from the area proposed for annexation are for extension and, if an election is also held in the municipality, the majority of the votes cast in the municipality are for extension, then from and after the date of the declaration of the results of the election the territory is annexed. The Act makes one limitation that should be observed: a municipality cannot under the Act, annex any territory in which there are fewer than 25 legal residents eligible to register and vote unless the owners of all the property proposed to be annexed sign a petition requesting the governing body to annex the territory. The territory annexed under this Act becomes subject to all the debts, laws, ordinances, and regulations in force in the municipality and becomes entitled to the same privileges and benefits as other parts of the municipality. It becomes subject to municiapl taxes levied for the fiscal year following the date of annexation. Whenever a municipality extends its corporate limits under this Act, it becomes the duty of the mayor to have an accurate map of the annexed territory, together with a certified copy of the annexation ordinance and the election results, if any, recorded in the office of the register of deeds of the county or counties in which the annexed territory is situated, and also in the office of the Secretary of State. Municipal governing bodies are authorized to make the required surveys.

### Parking Meters

Chapter 7 (HB 5) makes it possible for cities and towns, regardless of population, to provide for a system of parking meters designed to promote traffic regulations. This is accomplished by deleting the population requirement of subsection 31 of G. S. 160-200.

### Zoning

Chapter 311 (SB 65) modifies the provisions of G. S. 160-178 concerning the appointment of municipal boards of adjustment to permit the municipal governing body in its discretion to appoint two alternate members of the board of adjustment to serve in the absence of any regular member. When serving, an alternate member will be able to exercise all the powers and will have all the duties of the regular member he replaces. The two alternate members must be appointed for the same terms as regular members, and must be appointed in the same manner and at the regular times for appointment, except that in the first instance of appointing alternates, the appointments must be for a term that will expire at the next time when the term of any regular member expires.

### Municipal Recorders' Courts

Chapter 1021 (HB 899) amends G. S. 7-256 to permit the governing body of any municipality of more than 20,000 population as of January 1, 1945, to establish a municipal recorder's court without a vote of the people. This Act also amends G. S. 7-264 to include Alamance among those counties in the tenth judicial district to which the Act applies, the provisions of the particular article of Chapter 7 not being applicable to the following judicial districts: the tenth, except as to Granville, Orange and Alamance, the eleventh, the seventeenth, the eighteenth except as to Rutherford and Transylvania, the nineteenth, the twentieth except as to Cherokee, Jackson, Haywood, and Swain, nor does it apply to the counties of Chatham, Columbus, Johnston, New Hanover, and Robeson. Chapter 840 (HB 642) goes further and provides a procedure by which the governing body of any municipality not

located in a county exempt by the provisions discussed above may establish a recorder's court without an election. The procedure calls for public notice of the intention to establish the court, a public hearing on the matter, and an appropriate resolution establishing the court.

### Fire Departments and Fire Protection

Chapter 669 (SB 230) amends G. S. 160-238 to provide that in permitting its fire department to answer calls outside the twelve-mile area beyond the city limits and in answering such calls a municipality is acting in a governmental capacity. The Act further provides that firemen performing duties in response to such calls outside the city limits shall have the same workmen's compensation, disability fund, and other rights and privileges as if the duties were being performed within the corporate limits. Chapter 1066 (SB 228), while dealing largely with the regulations and standards of fire protection in hotels and buildings of like occupancy, makes certain provisions of interest to municipal fire departments. In those hotels within a municipality required by this Act to maintain watchman service, that service must be satisfactory to the municipal fire chief and/or the Insurance Commissioner. Such hotels are also required to maintain a record of this service subject to inspection by the fire chief or the Insurance Commissioner. Before a hotel or building of like occupancy may make interior structural alterations or put up decorations and scenery, it must secure permission from the fire chief. The Act specifically provides that its provisions are not to be construed to limit the powers granted to and the duties imposed upon chiefs of fire departments and building inspectors by Article II of Chapter 160 of the General Statutes generally defining those offi ers' powers and duties.

# CIVIL PROCEDURE, ESTATES AND CONVEYANCES

## THE COURTS—JURIES

Jury lists in this state have heretofore been made up from tax returns and have been confined to "such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and intelligence." Chapter 1007 (HB 87) broadens the group from which jury lists may be composed. While jurors must still be of good moral character and of sufficient intelligence, two specific modifications to this rule have been inserted: persons who have been convicted of any crime involving moral turpitude and persons who have been adjudged to be *non compos mentis* are specifically disqualified. The most important change, however, is a provision providing that in addition to tax returns, the county commissioners must also use a list of the names of persons who do not appear on the tax lists who are residents of the county and who are over twenty-one years of age. The act provides that this list may be made up by the board clerk "from such sources of information deemed reliable." This is clear authorization for the use of telephone directories, city directories, and registration books. An attempt to repeal the requirement of G. S. 9-11 that tales jurors must be freeholders (HB 104), however, was unsuccessful.

Approval of the recent constitutional amendment permitting women to serve on juries required certain procedural changes in the state's jury laws. After adding registered or practical nurses in active practice to the practicing attorneys list of persons exempted from jury service, Chapter 1007 (HB 87), over the determined efforts of the only woman member of the General Assembly, made detailed provisions under which women may be excused from serving. When a woman is summoned to serve on a regular jury or tales jury, either she or her husband may go before the Superior Court Clerk and certify that she desires to be excused for one of the following reasons: (1) that she is ill and unable to serve, (2) that she is required to care for her children who "may be" under the age of twelve, or (3) that some member of her family is ill and that her presence is required to give that person attention. It is then within the clerk's discretion as to whether she will be excused. He must notify the Superior Court judge of any such excused absences when court is convened. The influence of women jurors cropped up again in Chapter 71 (SB 5) which changed the form of oath required of jury officers by G. S. 11-11. No longer must he swear to keep the jury "together" although he must swear to keep them in some private and convenient place and no longer must he swear to keep them "without meat or drink (water excepted)." The changed oath of jury officers is in line with section 2 of Chapter 1007 which permits the court, in its discretion, to permit the separation of the jury in felonies and other criminal cases, to permit jurors of opposite sexes to be provided with separate rooming accommodations, and to appoint two jury officers—a man and a woman.

Annoyed with the number of local bills regulating the pay of jurors, and mindful of the constitutional provision (Art. II, Section 29) prohibiting the General Assembly from passing local and private acts dealing with the pay of jurors, bills were introduced in both houses, three in all, designed to regulate the pay of jurors on a statewide basis. The bill finally passed, Chapter 1015 (HB 754), completely rewrites G. S. 9-5. Effective July 1, 1947, the fees of all jurors in the Superior Court and inferior courts must be fixed by the boards of county commissioners between the minimum per diem of $2 and maximum per diem of $5. County Commissioners,

however, are permitted to set different rates of compensation for different classes of jurors, e.g., Superior Court urors, inferior court jurors, grand jurors, regular jurors, etc. All jurors will receive, in addition to the compensation allowed by the boards of county commissioners, a travel allowance of 5 cents per mile while coming to the county seat and return. This allowance must be paid on the basis of one round trip per calendar week for each calendar week in which attendance is required.

## TRIAL OF CIVIL CASES AT CRIMINAL TERMS

G. S. 7-72 permits motions in civil actions to be heard at criminal terms upon due notice, trials in civil actions at criminal terms upon consent of the parties, and motions for confirmation or rejection of referees' report upon ten days' notice and judgments on such reports at criminal terms. Chapter 25 (HB 77) adds still another provision to this section. The court is given authority to enter consent orders and consent judgments and to try uncontested civil actions and uncontested divorce cases at criminal terms.

## TRIAL OF PROCEEDINGS IN CONTEMPT

Chapter 781 (SB 94), section 1 (5) amended G. S. 5-9 to delete the requirement that proceedings as for contempt be prosecuted and carried on as provided in provisional remedies. This requirement was changed to require that such proceed ngs must be "by an order directing the offender to appear within a reasonable time and show cause why he should not be attached for contempt." The former provisions regulating the return of the rule or order were not changed.

## ADMINISTRATION OF JUSTICE COMMISSION

For a discussion of the commission created to investigate the administration of justice in this state, see section dealing with State Departments and Agencies.

## ESTATES AND ADMINISTRATION

### Wills

Chapter 110 (HB 105) which is effective July 1, 1947, rewrites G. S. 31-6 dealing with the revocation of a will by marriage. As rewritten the section provides that while a subsequent marriage revokes a will, there are two exceptions to the rule. First, a will made prior to the marriage which contains an express statement to the effect that it is made in contemplation of marriage to a person named in the will is not revoked by the maker's subsequent marriage to that person. Second, a will made in the exercise of a power of appointment, or so much of the will as is made in the exercise of such a power, is not revoked by the maker's subsequent marriage, if the real or personal estate appointed by the will would not, in default of the appointment, pass to the maker's heirs or next of kin. The second exception appeared in G. S. 31-6 prior to its amendment.

G. S. 31-35 dealing with affidavits of witnesses to wills as evidence was amended by Chapter 781 (SB 94), section 1(21). Prior to amendment the section had provided that when a subscribing witness to a will shall die or be absent from the state, then upon an issue of devisavit vel non that it is competent to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, such affidavit and proceedings before the clerk to be prima facie evidence

of the due and legal execution of the will. The amendment merely adds witnesses who have become insane or mentally incompetent to the class of witnesses from whom this action may be taken. Chapter 781 (SB 94), section 1(20), rewrote the first sentence of G. S. 31-33 to make the language unambiguously state that the posting of proper bond, security or proof of inability to do so by a caveator are required before the clerk can transfer the caveator's cause to the Superior Court for trial.

### Sale of Personal Property

Chapter 460 (HB 480) adds an additional paragraph to G. S. 28-76 dealing wi h the situations in which the clerk may order a private sale of personal property in a decedent's estate. The additional paragraph provides that where the property to be sold consists of cotton, corn, tobacco, peanuts, cattle, hogs, or other livestock, or other farm commodities or produce having "a known or readily ascertainable market value" and which are bought and sold on an established market, the executor or administrator, after obtaining from the clerk an order approving the sale, may sell such property privately at the current market price.

### Simultaneous Deaths

Although the factual situation is uncommon, the problem of how to administer estates where there is insufficient evidence to show which of two or more persons killed in a common disaster died first, is important. Chapter 1016 (HB 757) deals with this situation. The Act is intended to govern those cases in which the title to property or the devolution of property depends upon the priority of death and in which the evidence is insufficient to show that the persons died otherwise than simultaneously. It is essential, however, to note that the Act does not have a retroactive effect and that it does not apply to wills, living rusts, deeds, or insurance contracts in which the distribution provisions differ from those provided by the Act. The general rule established by this Act is that the property belonging to each person before death must be disposed of as if he had survived the other. Where successive beneficiaries by reason of survivorship, or joint tenants or tenants by the entirety have apparently died simultaneously, however, the property must be divided into as many equal portions as there are beneficiaries or tenants and distributed respectively as if each beneficiary or tenant had survived. Where an insured and the beneficiary under an insurance policy have apparently died simultaneously the proceeds of the policy must be distributed as if the insured had survived the beneficiary. This Act conforms to the provisions of the Uniform Simultaneous Death Act.

### Inheritance and Distribution Rights of Adopted Children

The amendments to G. S. 29-1 and G. S. 28-149 contained in Chapter 879 (HB 166) and Chapter 832 (HB 169) clarifying the rights of adopted children and their adoptive parents in each others' estates will be found treated in the section dealing with Public Welfare.

### Estates of Missing Persons

When it has been established by a special proceeding under G. S. 28-167 to the satisfaction of the Superior Court judge or clerk of the county of the absent person's last known residence having jurisdiction of the appointment of executors and administrators that a person has disappeared from the community of his residence, that his whereabouts remain unknown in the community for a period of seven years

or more, that after diligent inquiry his whereabouts cannot be ascertained by those most likely to have heard from or of him; that such person has property or property rights within the court's jurisdiction which may be affected by his absence or may need protection and administration, and that the absent person has made no provision for the management of his affairs or the administration of his estate in the event of his death, Chapter 921 (HB 421) authorizes the clerk or judge to appoint an administrator of the estate as would be done in the case of a decedent's estate. The administrator is given the same powers and duties with respect to the estate as he would have for that of a known decedent, and the laws of distribution and inheritance will apply to the assets of the estate. Before entering upon his duties the administrator appointed is required to give bond in the same amount that other administrators must give with the additional requirement that the bond must include as a basis the value of all real estate or interest in real estate in addition to the value of the personal property of the estate. Administrators appointed under this Act are protected from suit by reason of their administration of the estates of missing persons except in so far as they violate requirements of Chapter 28 of the General Statutes.

Without entering into an extended discussion it may be pointed out that serious doubts as to the constitutionality of the Act may be raised in that it fails to provide any sort of notice to the missing person which is essential to the satisfaction of the "due process" clause of the 14th Amendment to the Constitution of the United States. The Act also represents a departure in that it gives the judge probate powers in the appointment of administrators, rather than leaving this function exclusively within the province of the clerk as probate judge.

## MARRIED WOMEN, ALIMONY AND DIVORCE

### Acknowledgment and Probation of Instruments by Married Women

Apparently designed to clarify questions arising from the 1945 amendments to G. S. 47-12 dealing with the proof of instruments executed by married women, Chapter 991 (SB 450) rewrites the opening clause to read as follows: "In all instruments required or permitted by law to be registered, including deeds and mortgages on real estate, executed by a married woman, where her husband is not the grantee, and attested by subscribing witness, the said instruments may be proven and probated by the oath and examination of such subscribing witness before any official authorized by law to take proof, probate or acknowledgments of such instruments." The remaining provisions of this section as amended by Chapter 73, S. L. 1945, were not changed. The Act carries an additional provision, however, stating that all acknowledgments, probates and registrations of instruments in which any married woman was a grantor, including deeds and mortgages on land, made since February 7, 1945 (the effective date of Chapter 73, S. L. 1945) are "validated, approved and declared of full force and effect." The Act does not apply to pending litigation.

### Consent Judgments as Contracts Between Husband and Wife

The requirement of G. S. 52-12 that contracts of more than three-years duration between husband and wife made during coverture which affect or change any part of the wife's real or personal estate or the accruing income therefrom must be in writing and "duly proven as is required for the conveyance of land" was modified by Chapter 111 (HB 106). These requirements are not to be construed to apply to any Superior Court judgment which, by reason of its being consented to by a hus-

band and wife, or their attorneys, may be construed to constitute a contract between such husband and wife.

### Writ of Assistance in Dower

When dower has been allotted by petition in the Superior Court as provided for by G. S. 30-12, Chapter 141 (SB 82), through an amendment to that section of the General Statutes, authorizes the clerk of court, upon the widow's application, to issue a writ of assistance to place her in possession of the land that has been so allotted to her.

### Alimony

Chapter 95 (SB 58) amends G. S. 1-247 allowing confession of judgment in certain cases to permit entry of confession of judgment for alimony or for support of minor children, and makes failure of the defendant to make payments in accordance with the judgment subject to contempt proceedings. The provision, however, is subject to the authority of the court to modify such a judgment for proper cause shown as already provided by law in cases of adverse judgments in proceedings for alimony or support.

### Divorce

Chapter 393 (HB 521) amends G. S. 50-9 which deals with the effect of a divorce action defendant's answer to a summons accompanied by either a verified or unverified complaint. Prior to this amendment in any case where the defendant had answered the summons and the proceedings were otherwise regular and legal, the judgment was validated notwithstanding the fact that the complaint was unverified. The effect of the 1947 amendment, however, is to make the validating provisions of this section apply only to judgments of divorce heretofore granted. The provisions of Chapter 165 (HB 167) dealing with the affidavit required to be filed with divorce action complaints is treated under the section which discusses Domestic Relations.

## MINOR CHILDREN

### Legitimation

The procedure by which a putative father may have his illegitimate child legitimated under G. S. 49-10 was rewritten by Chapter 663 (SB 50). Prior to the 1947 enactment the statute made no provision as to necessary parties in such a proceeding. As rewritten the section provides that effective July 1, 1947, the putative father may apply by a verified written petition filed in a special proceeding in the Superior Court of the county in which he resides asking that the child be legitimated. The child and the mother, if living, are made necessary parties to the proceeding, and the full names of the father, mother and child must be recited in the petition. "If it appears to the court that the petitioner is the father of the child, the court may thereupon declare and pronounce the child legitimated." The court order decreeing legitimation must set out the full names of the father, mother and child. The clerk of court must record the order in the record of orders and decrees and must cross-index it under the name of the father as plaintiff or petitioner and under the names of the mother and child as defendants or respondents.

### Birth Certificates

Chapter 663 (SB 50) also provides that after a child has been legitimated under G. S. 49-10 the clerk of Superior Court must send a certified copy of the order of

legitimation under his official seal to the State Registrar of Vital Statistics who is then required to issue a new birth certificate for the child bearing the full name of the father. It further provides that when a child is legitimated by the subsequent marriage of its parents under G. S. 49-12, the State Registrar of Vital Statistics must issue a new birth certificate for the child bearing the full name of its father upon the presentation of a "certified copy of the marriage license" issued to the child's father and mother. It was apparently intended that the new birth certificate be issued on presentation of an executed marriage license. Chapter 473 (HB 529) authorizes the issuance of photostatic copies of birth and death certificates, in lieu certified copies, and provides that they shall have the same force and effect as prima facie evidence of the truth of the matters recited as do certified copies.

### Changing Names

Chapter 115 (HB 217) adds a paragraph to G. S. 101-2 dealing with the procedure for changing a person's name to make special provision for minor children. The 1947 addition requires applications to change the name of minor children to be filed by their parent or parents, guardian, or next friend. Such applications may be joined in the application for a change of name filed by their parent or parents. One parent, however, is not permitted to make such an application on behalf of a minor child without the consent of the other parent if both parents are living.

### Adoptions

Chapter 885 (HB 65) which rewrites the law of adoptions is dealt with in the section entitled Public Welfare.

## CONVEYANCES AND REGISTRATION

### Conveyances by Heirs

Before the 1947 amendment, G. S. 28-63 provided that all conveyances of real property of a decedent made by any devisee or heir at law within two years after the death of the decedent shall be void as to the creditors, executors, administrators and collectors of such decedent with certain exceptions not pertinent here, but such conveyances to bona fide purchasers for value and without notice, if made after two years from the death of the decedent, shall be valid even against creditors. Chapter 112 (HB 158) made a change in the time limit. As amended, conveyances to bona fide purchasers for value and without notice, if made after two years from the death of the decedent *"or if made after the filing of the final account by the duly authorized executor or administrator of the decedent and the approval thereof by the clerk of the Superior Court having jurisdiction of the estate,"* shall be valid even as against creditors. Thus it is possible fo the bona fide purchaser to be put in a protected condition as soon as an estate has been settled.

### Revocation of Contingent Future Interests

G. S. 39-6 provides that the grantor or settlor who voluntarily or for a valuable consideration makes a conveyance of property or sets up a trust for the benefit of a person or persons not *in esse* or not determinable until the happening of some future event may revoke the grant of the future interest by a proper instrument to that effect. This revocation must taken place prior to the happening of the contingency vesting the future estates. A 1943 proviso, however, modified this provision by

providing that instruments executed after 1943 creating such contingent interests should not be be revocable if they carried a provision stating specifically that they are not revocable. An additional 1943 proviso dealt with the revocation of such instruments made before 1943, whether or not they carried provisions making them irrevocable. To enjoy the power of revocation permitted by the section it was made necessary that the grantor exercise his power of revocation or file notice of his intent to retain the power within six months after March 4, 1943, the effective date of the 1943 proviso. Otherwise the power of revocation permitted by G. S. 39-6 was considered destroyed. If the original instrument creating the interest had been recorded the revocation or declaration of intention to retain the power of revocation was also required to be recorded. Chapter 62 (HB 120) serves to cure defects in the attempts to comply with the 1943 provision. Deeds or instruments executed prior to February 11, 1947, the effective date of the Act, which revoke conveyances of future interests to persons not *in esse* are validated "in so far as any such deed of revocation may be in conflict with the provisions of General Statutes 39-6." No such deed of revocation is to be held invalid by reason of not having been executed within the six-month period prescribed by the 1943 proviso. The provisions of the 1947 act do not apply to pending litigation.

### Conveyances by Corporations

Chapter 75 (HB 44) amends G. S. 47-41 by rewriting the last form of proof and certificate permissible for use in corporate conveyances to include the vice president of a corporation among those permitted to execute under that form. The Act also validates corporate conveyances probated and recorded prior to July 1, 1947, otherwise regular, which have been executed and admitted to registration when this particular form, before amendment, was employed by vice presidents. The Act does not apply to pending litigation, and does not become effective until July 1, 1947.

### Registration of State Grants

Chapter 99 (HB 146) extends the time in which grants from the State or copies of such grants certified by the Secretary of State may be registered for a period of two years from January 1, 1947.

### Preservation of Charitable Gifts and Trusts

Chapter 630 (HB 678) declares it to be the policy of the State that gifts, transfers, grants, bequests, and devises for religious, educational, charitable, or benevolent uses or purposes, are and shall be valid, notwithstanding the fact that they shall be in general terms. It is specifically provided that no such gift shall be invalid simply because it is in general terms, or is uncertain as to specific purposes, objects or beneficiaries, or because the fiduciary or donee is given no specific instructions, powers or duties as to the manner or means of effecting the donor's desires. The trustee or donee under such circumstances is charged with carrying out the purpose of the donor and is given the specific power to prescribe or select the specific object or purpose for which the gift or trust is to be administered and to select or create the machinery for accomplishing the objects or purposes provided by the donor or selected by the fiduciary. Benevolent gifts valid under this act may be enforced in a suit by a writ of mandamus by the Attorney General in any court of the state having original equity jurisdiction, and such a court is empowered to enter judgment requiring the

donee or trustee to make the necessary selection of objects as may be required as well as the manner of enforcing the donor's intent. This method of enforcement is supplemental to any others that may already exist for such purposes.

While the 1947 Act makes no reference to specific sections of existing laws, the provisions of G. S. 36-21 have direct bearing on the same problem. The significant additions made by the 1947 act are (1) the validation of such gifts even when "in general terms," (2) and the additional method of enforcement provided.

## ATTACHMENT AND GARNISHMENT

G. S. Chapter 1, article 35 is labelled "Attachment," but included in that article is also the statutory law dealing with garnishment, which is the descriptive word for the process by which intangible property—choses in action, debts due the principal debtor, etc.—are "attached" and made subject to a judgment rendered against the principal debtor. The inherent difficulty in writing a comprehensive statute to clarify and regulate the procedure in attachment and garnishment is symbolized to some extent by the antipathetic connotations of the terms employed: "attachment" relates to a process whereby a thing capable of being touched, i.e., tangible property, is subjected to the jurisdiction of a court, while garnishment relates to a process designed to render subject to the jurisdiction of the court "intangible" property, i.e., property incapable of being touched. Both attachment and garnishment, however, are ancillary remedies designed to subject whatever valuable rights or interests a debtor might have to the satisfaction of his debts. Each process is complementary to the other, and if the procedure relative to either is weak or uncertain the effectiveness of the other will almost certainly be lessened.

One of the major tasks assumed by the General Statutes Commission, authorized by the 1945 General Assembly, was to clarify and simplify the laws relative to attachment and garnishment—clarify, in that there were many procedural points where serious doubts existed, and simplify, in that even if the right answer could be found and definitely established by reference to the statute and court decisions, the finding of the answer was often an unduly arduous task. The result of the effort of the General Statutes Commission to clarify and simplify the procedure in attachment and garnishment represents one of the most comprehensive and understandable pieces of major legislation now on the statute books.

The 46 printed pages of HB 188, now Chapter 693 of the Session Laws of 1947, completely rewrites article 35 of Chapter 1 of the General Statutes. So succinct is the language employed and so concise the coverage that a complete summary of the provisions of the act would require not less than the same space that would be taken by a reprint of the statute, and not much could be added except by way of pointing out the background of specific provisions. It is apparent that the authors of the act studied carefully the provisions of the existing statutory law, gave due consideration to the sometimes conflicting and often confusing court decisions relative thereto, pondered the difficulties which the practicing attorney often runs into, and gave a great deal of time to the pay-off job of draftsmanship. The resulting new law is no "new law" to any appreciable extent, but rather a restatement of the old statutory law integrated with a codification of the better reasoned or finally settled court decisions.

As inadequate and perplexing in spots as the old law was the new law with its comprehensiveness necessarily made some changes or additions, such as filling gaps

in some places and resolving doubts arising from ambiguous language or conflicting decisions in others. The result, however, is much more important than the not inconsiderable accomplishment of filling the gaps in a somewhat perplexing procedure: the General Statutes Commission has drafted and procured the passage of a relatively lengthy and technical act which is so concise and explicit in its provisions that "he that runs may read," and it has thereby demonstrated the great value of commissions composed of qualified persons charged with the duty of making serious studies of specific subjects of legislation while the legislature itself is not in session.

## ESCHEATS

Chapter 614 (HB 463) makes a number of changes in the escheats law. It removes the provisions in G. S. 116-22, 116-23, 116-24 and 116-25 providing that if a claim for property that has escheated to the University is not preferred within ten years after its receipt by the University that the property shall be held by the University absolutely. The Act adds to G. S. 116-24, dealing with the escheat of unclaimed bank deposits, a requirement that upon the receipt of such funds the University must post for thirty days, at the courthouse door of the county in which the bank is located, a notice giving the names of the persons in those names the deposits had been made in the bank, the amount of the deposit, and the last known address of the depositor. The bank paying over such funds is required to furnish the University with the information necessary for this notice. Should a claimant appear and show that he is the person to whom the funds are due, the University is required to pay the amount of the deposit over to him, but it is not liable for interest or profits on the money. An additional provision of Chapter 614 rewrites G. S. 116-26 dealing with the application of escheats received by the University. The section had formerly provided that such receipts could be used solely for "the maintenance of the University." As rewritten the section provides that receipts from escheated or derelict property, and all interest and earnings on such property, must be set apart by the trustees for use in maintenance of the University and/or for scholarships and loan funds for worthy and needy North Carolina students attending the University.

Chapter 613 (HB 462) makes provision for the escheat of unclaimed shares of stock in dissolved corporations. The Act applies to corporations already dissolved as well as to those to be dissolved in the future. Chapter 621 (HB 576) makes provision for the escheat of unclaimed dividends from the liquidation of insolvent state and national banks. These two Acts merely supplement existing escheat law.

Chapter 494 (HB 672) amends G. S. 116-19 to enable the Superior Court to order the public sale of escheated property upon petition by the University. The Act provides that title to escheated property must be conveyed by deed executed by the Governor in the name of the State, attested by the Secretary of State and sealed with the State Seal (G. S. 143-146 through 143-150). In any action in the Superior Court in which the University is a party and in which the court enters a judgment of escheat in behalf of the University for real property, then upon the University's petition, the court is empowered to appoint the Escheat Officer of the University as a commissioner for the purpose of selling the real property at public sale, after proper advertisement, for cash at the courthouse door of the county in which it is located. This commissioner is empowered to convey a valid title to the purchaser at such a sale provided the sale is approved and confirmed by the Comptroller of the University. Funds derived from such sales must be paid by the commissioner into the escheat fund of the University.

## SERVICE OF PROCESS

### Service by Publication

As amended in 1945, G. S. 1-100 provided that in cases in which service by publication is allowed the summons is deemed served at the expiration of seven days from the date of the last publication, and the party so served is then in court. After this Act was passed apparently a number of actions were instituted in this state relying on the unamended G. S. 1-100 which, in effect, had provided that summons in such cases is deemed served at the expiration of "the time prescribed by the order of publication." Chapter 666 (SB 124) validates all judgments, orders and decrees entered in actions or proceedings started under the section as originally written even after its amendment. This validation, however, does not apply to any judgment, order or decree entered in an action or proceeding started under the original terms of G. S. 1-100 if such order, judgment or decree has heretofore been set aside or vacated, or if appropriate action has heretofore been taken to vacate it or set it aside, or if appropriate action has been commenced attacking its validity by reason of lack of compliance with the provisions of the section as amended by Chapter 158, Session Laws 1945.

Chapter 838 (SB 212) amends G. S. 1-98 to permit service by publication where the action or proceeding is for the adoption of a minor child who is a resident of the State, whose parents are necessary parties to the action, and where the parent or parents are nonresidents of the State or cannot, after "due and diligent search," be found within the State.

### Service on Motor Vehicle Dealers

Chapter 817 (SB 212) provides an additional method of service of process upon motor vehicle dealers. Obtaining a license as a motor vehicle dealer under G. S. 105-89(4) is deemed equivalent to designating the Commissioner of Revenue the licensee's attorney for service of process in actions resulting from business conducted under such license. When such a defendant motor vehicle dealer cannot be found in the state, and when that fact is established by affidavit to the satisfaction of the court, the plaintiff is permitted to leave a copy of the process with a $1 fee at the office of the Revenue Commissioner. This substituted service is deemed sufficient provided (1) notice of service and a copy of the process are forthwith sent by registered mail by the plaintiff *or* the Commissioner to the defendant licensee, and (2) provided the defendant's return receipt and the plaintiff's affidavit of compliance are appended to the process and filed. The new act requires the Commissioner of Revenue to keep a record of such processes and requires him to deliver return receipts to the plaintiff upon request and keep a record of them. This act became effective May 31, 1947.

### Qualification of Newspapers for Legal Advertising

Chapter 213 (SB 90) which becomes effective July 1, 1947, completely rewrites G. S. 1-598 dealing with the reports required of newspapers engaged in handling legal advertisements. As rewritten this section provides that whenever an owner, partner, publisher or other authorized officer or employee of a newspaper which has published a legal notice or advertisement within the meaning of G. S. 1-597 has made a written statement under oath stating that the newspaper concerned was, at the time of such publication, a newspaper meeting all the requirements of G. S. 1-597, that sworn statement must be received in all courts of the state as prima facie evi-

dence that the newspaper at the time stated did meet those requirements. When filed in the office of the clerk of the Superior Court of the county in which the publication was required, this sworn statement must be deemed a record of the court and that record or a copy thereof certified by the clerk must be deemed prima facie evidence that the newspaper named was at the time stated qualified under G. S. 1-597. "Any such sworn written statement shall be prima facie evidence of the qualification of any newspaper at the time of any publication of any notice, paper, document, or legal advertisement published in such newspaper at any time from and after the first day of May 1940." Proof of a newspaper's qualification need not be confined to the method provided by this act. An authorized officer or employee of a newspaper in which a legal advertisement appears, when the paper is qualified under G. S. 1-597, is required to include in the affidavit of publication a statement that at the time of such publication the newspaper was so qualified. The act, however, does not affect pending litigation.

## JUDICIAL AND FIDUCIARIES' SALES

### Increased Bids in Foreclosure Proceedings

Chapter 1013 (HB 663), which becomes effective July 1, 1947, amends G. S. 45-28 dealing with the reopening of judicial sales on an advanced bid. As amended the section provides that if within ten days from the date of the sale in a foreclosure proceeding or within ten days from the date of the filing of a report of sale in a judicial proceeding, the sale price is increased 10 per cent where the price does not exceed $1,000, and in addition 5 per cent on the amount of the increased bid in excess of $1,000, and if the same is paid to the Superior Court clerk, the mortgagee, trustee, executor, or person offering the real estate for sale is required to reopen the sale and readvertise it.

### Exceptions and Confirmations of Sales and Reports

Chapter 484 (HB 620) amends G. S. 30-32, 46-19 and 105-391, subsections *q* and *r*. Its effect is to change from 20 to 10 days the length of time in which exceptions may be filed to a commissioner's report assigning a widow's year's allowance in the Superior Court, to a commissioner's report in a special proceeding for the partition of real property, and in which increased bids may be made or exceptions filed to a commissioner's report of sale under procedure for the foreclosure of tax liens by an action in the nature of an action to foreclose a mortgage. In the latter case the act changes from 20 to 10 the number of days that must elapse after a resale or a ruling on the exceptions before the commissioner may apply for confirmation.

Chapter 377 (SB 154) supplements G. S. 41-11 by providing that the approval by the district resident judge of orders for sale, lease or mortgage of property subject to remainders may be given either at term or in chambers. The act ratifies and validates all previous orders of approval made under this section by resident district judges either at term or in chambers.

## DISCHARGE OF MORTGAGES AND DEEDS OF TRUST

As amended by Chapter 988, Session Laws 1945, subsection 5 of G. S. 45-37 was made applicable for one year after March 20, 1945 (date of ratification) to all mortgages and deeds of trust executed prior to the enactment of Chapter 192, Public Laws, 1923. Persons affected by the amendment were given a year from March 20,

1945, in which to file with the register of deeds the affidavit referred to in the section or in which to make proper entry on the margin of the record. Chapter 880 (HB 392), while not applying to pending litigation, provides that subsection 5 of G. S. 45-37 shall be applicable from and after July 1, 1947, to all such instruments executed subsequent to March 6, 1923, and prior to January 2, 1924. Persons affected by the 1947 proviso, however, are only given until July 1, 1947 to file the required affidavit or to make the proper marginal entry.

## GUARDIANS

Chapter 667 (SB 242) adds a new section to Chapter 33 of the General Statutes designated as G. S. 33-13.1. This act gives Superior Court clerks authority from time to time to order the penalty of a bond of a guardian or trustee to be reduced to a stated sum when the guardian or trustee has disbursed income or income and principal of the estate according to law, either for the purchase of real estate, support of the ward, or any other lawful cause, and when the personal assets and income of the estate have been so diminished. In his discretion the clerk may reduce the penalty of the bond to an amount not less than the amount which would be required if the guardian or trustee were first qualifying to administer such personal assets and annual income. The act becomes effective July 1, 1947.

Under Chapter 596 (SB 309) which inserts a new section to be numbered G. S. 33-42.1 in the chapter of the General Statutes dealing with guardians, the Superior Court clerk, when a guardian files an account, is required to have the guardian exhibit to the court all investments and bank statements showing cash balances. The clerk must then certify on the original account that an examination was made of all investments and cash balances and that they are correctly stated in the account. Chapter 531 (HB 693) validates deeds executed prior to January 1, 1944, by any guardian acting under court authority, in which the guardian failed to affix his seal or the seal after the signature of his ward. The act, however, does not apply to pending litigation.

Chapter 413 (SB 49) dealing with the appointment of guardians of the persons of minors by juvenile and domestic relations courts is discussed at some length in the section on Public Welfare. It should be noted, however, that this act amends G. S. 33-1 to provide that clerks of the Superior Court shall not appoint guardians of the persons of minors except in their capacity as judges of the juvenile courts. The act also inserts a new section designated G. S. 33-1.1 providing that the appointment of a guardian of the person of a minor must be made either by the judge of the domestic relations court or of the juvenile court having jurisdiction over the area in which the minor resides.

## CASH DEPOSIT IN LIEU OF BOND

Chapter 936 (HB 838) amends G. S. 109-32 to permit the depositing of securities of the State of North Carolina or of the United States, as well as cash, in lieu of bond. The section is made specifically applicable to fiduciaries by authorizing the deposit of cash or securities in the amount of the trust.

## ADMISSION TO MENTAL INSTITUTIONS

Chapter 623 (HB 626) changes the wording of the affidavit required to be filed with the Superior Court clerk to be used in procuring admission to a mental institution so that the affidavit will no longer state that the affiant believes the person to

be "a mentally disordered person." Instead it will state that he believes him to be "mentally disordered, epileptic, or addicted to the use of drugs or alcohol (strike out the terms not applicable)." G. S. 122-43 is amended to conform to the same language.

## SPECIFIC ACTIONS

### Trespass to Realty

G. S. 1-543 dealing with disclaimer of title in trespass to real property was completely rewritten by Chapter 781 (SB 94), section 1(4). As rewritten the section provides that in actions of trespass upon real estate, the defendant in his answer may disclaim any title or claim to the lands against which the trespass is alleged, he may allege that the trespass was by negligence or involuntary, and he may make a tender or offer of sufficient amends for the trespass. Should he make such a disclaimer, defense and offer, then before the trail the plaintiff is required to file a reply with respect to the defendant's al egation that the trespass was negligent or involuntary and that a sufficient tender has been made. If the plaintiff controverts any part of the defendant's answer and at the trial verdict is found for the defendant, or if the plaintiff is involuntarily non-suited, the plaintiff is barred from the action. All costs incurred after the defendant's disclaimer and tender must be charged against the plaintiff in the event the jury finds for the defendant on the issues of disclaimer and tender, or in the event the plaintiff is non-suited.

### Trial of Title to Public Office

G. S. 1-521 designed to expedite the trial of title to public office was completely rewritten by Chapter 781 (SB 94), section 1(3). The section now provides that actions to try title to state, county or municipal offices must stand for trial at the next term of court after the summons and complaint have been served for a period of thirty days, regardless of whether issues were joined more than ten days before the term. The judge has a duty to expedite the trial of such actions and to give them precedence over all other criminal or civil cases. The provision of the prior law making it unlawful to appropriate any public funds to the payment of counsel fees in such actions was retained by the 1947 act.

### Eminent Domain

Chapter 781 (SB 94), section 1(22), amends G. S. 40-33 to provide that petitions under the Public Works Eminent Domain Law (Article 3, G. S. Chapter 40) shall be heard and determined by the clerk of the Superior Court rather than by "the court, whether during a term or during a vacation" as was formerly provided. Section 1(23) of the same act amends G. S. 40-43 dealing with hearing of objections in eminent domain proceedings of this kind so that it will apply to the clerk of Superior Court rather than to the "court" as formerly written.

### Depositions

Chapter 781 (SB 94), section 1(17) amends G. S. 8-75 dealing with depositions in courts of justices of the peace. In addition to the procedure for taking depositions by commission in such cases, the rewritten section permits depositions to be taken before a notary public of this or any other state or of a foreign country without a commission from the court.

Section 1(16) of the 1947 act adds a clause to G. S. 8-71 dealing with the manner of taking depositions in civil actions providing that after such depositions have been passed upon by the clerk and allowed that they shall be subject to such objections as subsequently might be made according to law despite the fact that they "shall be deemed legal evidence, if the witness be competent."

## LIENS FOR MEDICAL ATTENTION

Chapter 1027 (HB 971) amends G. S. 44-49 creating a lien upon sums recovered as damages for personal injury in civil actions to provide that no such lien shall be valid with respect to claims arising from future actions unless the person or corporation entitled to the lien shall file a claim with the clerk of the court in which the civil action is instituted within 30 days after institution. This provision places the burden upon the lienor to follow the institution of suit regardless of where it may be instituted. For the clerk's protection the act further provides that no action shall lie against any clerk of court or any surety on his bond to recover claims based upon liens created by this section when recovery has heretofore been had by the person injured, and where no claims against such recovery were filed with the clerk, and the clerk has otherwise disbursed the money recovered in the personal injury action according to law. While the act makes it clear that these provisions apply only to liens for medical attention against personal injury action recoveries, there is some ambiguity in the provision that it shall not apply to G. S. 44-50 and G. S. 44-51 "except to fix the time within which such claims must be filed." The provisions of those two sections contemplate liens for medical attention against recoveries other than by personal injury action, and it is difficult to see how the time limit fixed for filing liens in personal injury actions can be used for liens where no action is instituted.

## NOTARIES PUBLIC

Chapter 102 (HB 182) validated the registration, certifica ion probate and recordation of instruments carrying certificates of notaries public showing the acknowledgments or proofs of execution of such instruments prior to November 26, 1921, notwithstanding the absence of records in he office of the Governor or any clerk of Superior Court showing that such persons acting as notaries had ever been appointed and qualified. The Act does not affect pending litigation.

Chapter 313 (SB 85) while not affecting pending litigation, provides that the acts of any person heretofore performed after appointment as a notary public and prior to qualification as a notary in performing "any act purportedly in the capacity of a notary public" are validated. Instruments in respect to which such purported actions have been taken are given full legal effect.

## JUSTICES OF THE PEACE

Chapter 389 (HB 350) amends the 1943 JP "Omnibus Bill," that is, the bill appointing justices of the peace in that year. This Act deletes from the 1943 act (Chapter 779, Session Laws 1943) the provision requiring that justices of the peace appointed under that act qualify within 90 days after April 1, 1943. It also validates the acts of justices of the peace named in the 1943 act who failed to qualify within the time limit. This validation does not affect pending litigation.

## CONSTITUTIONAL AMENDMENTS

During the thirty-year period ending with the general elections of November, 1946, the people of North Carolina have voted on 58 constitutional amendments proposed to them by the General Assembly. Of these, 32 were accepted by the people and thus became part of the fundamental law; 25 were rejected by the people; and one, which proposed a comprehensive revision of the Constitution, never was voted on by the people because of an election technicality.

The General Assembly of 1947 considered eight bills proposing to amend the Constitution. It adopted four of them, for submission to the voters at the next general election (November, 1948), involving: State and local debt limitations, local necessary expense voting requirements, State and county tax limitations, and salary of General Assembly members. It rejected four of them, involving: salary of General Assembly members (a different bill from the one which passed), 18-year minimum voting age, governorship succession, and eligibility of women for jury service.

### 1. DEBT LIMITATION—ARTICLE V, SECTION 4

#### History

The Constitution of 1868 left the General Assembly with no power to contract new debt "until the bonds of the State shall be at par," except to supply a casual deficit or suppress an invasion or insurrection, "unless it shall in the same bill levy a tax to pay the interest annually." The amendment of 1924 rewrote this provision, leaving the General Assembly no power to contract a total net indebtedness exceeding 7½ per cent of the assessed value of taxable property within the State, except for refunding of valid bonded debt, for supplying a casual deficit, or for suppressing invasions or insurrections.

#### Present Limitation

The amendment of 1936 rewrote this provision again, in the form in which it stands today, making it apply for the first time to counties and municipalities as well as to the State. It eliminated the 7½ per cent limitation on State debt, substituting a new formula which forbids any new State debt in any biennium, and any new local unit debt in any fiscal year, in excess of two-thirds of the amount by which the State or local unit reduced its outstanding debt during the biennium or fiscal year next preceding—unless the proposed new debt is approved by the voters. It allows four exceptions to this rule, giving the General Assembly power to contract new State debt, and to authorize local units to contract new debt, without a vote of the people, for the following purposes: To fund or refund an existing debt, to borrow in anticipation of taxes up to 50 per cent of taxes due and payable within the fiscal year, to supply a casual deficit, and to suppress riots or insurrections or repel invasions.

Untouched by the 1924 and 1936 amendments, and still in force today, is the debt limitation provision of the 1868 Constitution which forbids the General Assembly to "give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject . . ." be approved by the voters. This provision, along with the two-thirds limitation imposed in 1936, is in the present Section 4 of Article V of the Constitution.

### Proposal for 1948 General Election

The General Assembly of 1947 has asked the voters to consider the debt limitation provisions again. Chapter 784 (SB 196) provides for a vote at the 1948 general election on the question of rewriting Section 4 of Article V as follows: "Section 4. *Power to contract debts.* The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State, and to authorize counties and municipalities to contract debts and pledge their faith and credit."

This proposed amendment would free the General Assembly from State debt limitations which have been in the Constitution in one form or another since 1868, and would free county and municipal governing boards from local debt limitations which have been in the Constitution since 1936.

In the changing versions of the debt limitation section since 1868, varying formulas of limitation on creation of new debt were enunciated—"until the bonds of the State shall be at par . . ." in 1868; the 7½ per cent rule, in 1924; and the two-thirds rule, applying to local units as well as to the State, in 1936. The proposed amendment would abandon the 1936 limitation formula, and would create no new yardstick to take its place.

### 2. Necessary Expense—Article VII, Section 7

Since 1868, the Constitution has contained the following provision (Article VII, Section 7): "No county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, *unless by a vote of the majority of the qualified voters therein.*" (Italics supplied.)

The General Assembly of 1947, in Chapter 34 (HB 4) submits to the people for consideration at the next general election the question of amending this section of the Constitution, so as to change the italicized portion quoted above to read: ". . . *unless approved by a majority of those who shall vote thereon in any election held for such purpose.*"

In making this proposal, the legislature took notice of the fact that because of its "majority vote of the qualified voters" requirement, this section has been the rock upon which many a county and municipal project has gone aground, even when favored by a majority of those voting. As the section stands, it requires proponents of a tax or bond issue which is not for a "necessary expense" (within the meaning of this section as defined by dozens of Supreme Court decisions) to muster not a favorable majority of those who go to the polls and vote, but a favorable majority of **all** those *qualified* to vote, whether they do so or not. Thus it requires what is usually called a "vote against the registration." And one of the chief arguments which has been raised against it is that it puts a premium on non-voting, thus weakening our democratic form of government in that it encourages non-participation by the citizens at the polls. Its practical effect, argued the bill's sponsors in the legislature, is to arm opponents of local tax measures and bond issues at special non-necessary expense elections with a powerful weapon, in that they need only register as many people as they can, and then encourage them to stay away from the polls on election day. The way this would work can be seen from the following simple example; if 1,000 citizens were on the registration books for such an election, and if 499 voted for a proposal to levy a tax for a non-necessary expense and 1 voted against it, the proposal would be defeated notwithstanding the favorable majority

among those actually voting. The effect of the proposed amendment on such a situation would be to allow the issue to be determined by a simple majority of those who actually voted.

### 3. TOTAL STATE AND COUNTY LEVY—ARTICLE V, SECTION 6

Since 1920, the Constitution has contained the following provision (Article V, Section 6): "The total of the State and county tax on property shall not exceed *fifteen* cents on the one hundred dollars value of property, except where the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act; Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

The General Assembly proposes in Chapter 421 (SB 254) that the people decide at the next general election whether to raise the fifteen cent limitation in this section of the Constitution to twenty-five cents. Since 1920, when the section was amended to read as it stands today, the State has refrained from levying any property tax for general purposes allowed to it under this section, leaving the whole fifteen cents to the counties. Thus the proposed amendment would operate chiefly to the benefit of the counties.

### 4. LEGISLATORS' PAY—ARTICLE II, SECTION 28

Between 1875 and 1928, members of the General Assembly were paid, under the Constitutional provision then effective, "the sum of four dollars per day for each day of their session, for a period not exceeding sixty days. . . ." They were also entitled to ten cents per mile for one round trip between home and capital. Presiding officers of the two houses received six dollars per day for the same period, plus mileage. During extra sessions, members and presiding officers received the regular session daily rate of compensation, but for a period not exceeding twenty days.

In 1928 the people adopted the present provision of the Constitution, Section 28 of Article II, which provides: "The members of the General Asembly for their term of office shall receive a salary of six hundred dollars each. The salaries of the presiding officers of the two houses shall be seven hundred dollars each. . . ." In addition to these salaries, Section 28 declares that during an extra session, members shall receive eight dollars per day, and presiding officers ten dollars per day, for every day of the extra session, not exceeding twenty days.

The people of North Carolina have been notably reluctant to increase the pay of their representatives in the legislature—for example, the increase provided by the present Section 28 was voted on and defeated at four general elections before it was finally adopted in 1928. And the proposal of the 1945 General Assembly to amend the section to increase legislators' pay went down to defeat by a narrow margin at the general election of 1946.

The 1947 General Assembly considered two bills proposing amendments to rewrite Section 28. The one which failed (HB 287) would have proposed a $900 biennial salary for members and $1,000 for presiding officers, with $13 and $15 daily for members and officers respectively, for not over twenty days of an estra session. The one which passed, Chapter 361 (HB 516), calls for a decision by the voters at the next general election on the following substitute which it proposes for the present Section 28: "The members of the General Assembly for their term of office shall receive a

salary for their services of twelve hundred dollars ($1,200) each. The salaries of the presiding officers of the two houses shall be fifteen hundred dollars ($1,500) each. Provided, that in addition to the salaries herein provided for, should an extra session of the General Assembly be called, the members shall receive two hundred and fifty ($250) and the presiding officers of the two houses three hundred dollars ($300) for such extra session."

It may be noted here, in connection with the question of legislator's compensation, that HB 276, which would have amended the 1946-47 Supplemental Appropriation Bill so as to provide each member of the General Assembly with the same subsistence and travel allowance authorized by the bill for State officials and employees ($6 per day for subsistence plus 6 cents per mile for travel), was tabled in the House on receipt of an advisory opinion previously requested from the Supreme Court by joint resolution, which opinion held that HB 276 would be unconstitutional.

## BILLS WHICH FAILED

The four bills proposing constitutional amendments which were rejected by the legislature were HB 287, the legislators' pay amendment already discussed above; HB 13, which would have proposed an amendment permitting every citizen 18 years of age and older to vote; SB 145, which would have proposed an amendment to make women ineligible for jury service, thus undoing the work of the 1946 amendment, which made them eligible; and HB 738, which would have proposed an amendment to add the following provision to Article II, Section 12 (relating to governorship succession): "If at the time fixed for the beginning of the term of the Governor, the Governor-elect shall have died, or in case the Governor-elect shall fail to qualify, the Lieutenant-Governor-elect shall become Governor."

## CRIMINAL LAW, PROCEDURE, AND ADMINISTRATION

The face of the criminal law was hardly altered by the 1947 General Assembly, except for the incidental effect of the Highway Safety Act and various regulatory measures discussed in other articles in this volume. New acts make illegal certain subversive activities, disorderly conduct at airports, bus and railway stations, and the use and sale of fireworks. Old acts are amended to broaden the definition of unlawful aircraft flight, and to allow the owner of a pistol or gun to recover his weapon from the court. Machinery for compensation for those erroneously imprisoned was set up, the State Bureau of Investigation records were made confidential, and the governor was empowered to appoint two new groups of special police.

Bills introduced, but failing to pass, would have prevented prosecution for the kind of bigamy that brought the famous Williams case into the courts; would have exempted bootleggers from prosecution for the sale of liquor to someone procured to purchase it by a law enforcement officer; would have provided for the registration of pistols and other firearms; would have allowed evidence that a person killed or assaulted had criminally assaulted the defendant's wife, sister, daughter, or mother; would prescribe graduated punishments for the possession of liquor for sale; would make it a misdemeanor to leave an unattended child confined in an automobile; would have increased the punishment for assault with intent to commit rape from 15 to 30 years; would have made disorderly conduct a State-wide offense; and would have closed filling stations during the church hour.

### SUBVERSIVE ACTIVITIES

To advocate, advise, or teach, by word of mouth or writing, the necessity or propriety of overthrowing the government of the United States or "a political subdivision of the United States," by force or violence or other unlawful means, is declared to be a felony by Chapter 1028 (HB 980), which is designated as G. S. 14-12.1. The crime includes the printing, issuing, circulating, or selling of written or printed matter advising, advocating, or teaching the doctrine that the Government of the United States or a political subdivision thereof should be overthrown by force or violence or any unlawful means. It is also a felony to organize or become a member of any group which teaches or advocates the overthrow of the government. This Act was apparently patterned to cover the activities of an active political group, but it will also probably fit for the prosecution of any person unrelated to this group that sets out to overthrow a state or city government by force. This, however, would depend upon the court's interpretation of the phrase, "a political subdivision of the United States," for strictly and historically speaking the State of North Carolina, its counties, cities, and towns, are not political subdivisions of the United States.

The Act further prohibits any person who has participated in any such activities from being employed by the State, and directs the discharge of any person now employed by the State who participates in any of the unlawful activities. All that is necessary for such refusal to hire or cause for discharge is "evidence satisfactory to the head of such department."

### DISORDERLY CONDUCT

A bill to make disturbing the peace and disorderly conduct a misdemeanor was defeated, but a bill was enacted to make disorderly conduct a misdemeanor if committed at an airport or a bus or railroad station. This is Chapter 310 (SB 32) which became effective on ratification, March 18.

The Act makes it an offense to engage in disorderly conduct, which isn't defined, to use vulgar, obscene or profane language, or to loiter and loaf upon the premises,

without having necessary business there, after being requested to leave by any peace officer or by any person lawfully in charge of such premises.

To be an offense the prohibited acts must be committed at any bus station, depot or terminal, any railroad passenger station, depot or terminal, or any airport. The Act covers most airports by specifying any airport or air terminal used by a common carrier, any airport or air terminal owned or leased, in whole or in part, by any county, municipality, or other political subdivision of the State, or any privately owned airport.

The original bill made whistling at women a punishable offense, but the committee, in deleting this part of the bill, apparently felt that this kind of action should not be made a crime.

The maximum punishment is a fine of fifty dollars or imprisonment of thirty days.

## AIRCRAFT FLIGHT

G. S. 63-18, enacted in 1929, makes it a misdemeanor for any aeronaut to perform acrobatic flight over a thickly inhabited area or a gathering of people, to drop any object except loose sand ballast or water, or to fly at "such a low level as to endanger the persons on the surface beneath." Chapter 1001 (SB 385) amends this section by expanding the clause prohibiting the flying at such a low level as to "endanger the persons" so that it now prohibits "flying at such a low level as to disturb the public peace or the rights of private persons in the enjoyment of their homes, or injure the health, or endanger the persons or property."

Chapter 1001 (SB 385) also amends G. S. 63-13 to make unlawful that flight which is so conducted as to be "injurious to the health and happiness" of persons on the land or water beneath.

## FIREWORKS

The story by a chief of police of a firecracker accidentally thrown into a baby carriage on the main street of a North Carolina city, countless accounts of both mild and serious injuries from the use of fireworks, and numerous reports of property damage, were all evidence to North Carolina legislators of the necessity of some control over pyrotechnics. They came to the 1947 session of the General Assembly prepared to write this control into the laws, and within the first few days eleven bills pertaining to pyrotechnics were introduced.

Chapter 210 (SB 4) was enacted, and beginning July 1 pyrotechnics cannot be manufactured, purchased, sold, dealt in, transported, possessed, received, advertised or used in North Carolina. The original bill did not prohibit the manufacture of pyrotechnics or the sale by jobbers to points out of the state, but these were included by amendment and the entire bill passed over the vigorous opposition from manufactures and dealers.

"Pyrotechnics" is defined by the Act to include "any and all kinds of fireworks and explosives, which are used for exhibitions or amusement purposes" except "explosives or signal flares used in the course of ordinary business or industry, or shells or cartridges used as ammunition in firearms."

A violation of this Act is a misdemeanor, with the fine or imprisonment, or both left to the discretion of the court.

There are two exceptions to the prohibitions: boards of county commissioners are authorized to issue permits for the use of pyrotechnics under the supervision of ex-

perts in connection with the conduct of public exhibitions, such as fairs, carnivals, and shows of all description; common carriers are permitted to receive, transport, and deliver pyrotechnics in the regular course of business without the necessity of obtaining a permit.

The possession of pyrotechnics by any person for any purpose other than those permitted under the Act, is made prima facie evidence that they are possessed in violation of this Act.

## DEADLY WEAPONS

G. S. 14-269, which formerly called for the mandatory destruction of deadly weapons upon conviction of carrying concealed weapons, was amended by Chapter 459 (HB 297). Now, if the weapon involved is a pistol or gun, and is not the property of the person convicted, the court may return it to the rightful owner, upon petition showing that he was unlawfully deprived of the pistol or gun, and that he is then entitled to the same.

## COMPENSATION FOR IMPRISONMENT

Reportedly to aid an individual wrongfully imprisoned some years ago, Chapter 465 (HB 412) provides for compensation for those imprisoned erroneously in a State prison of this State. This act became effective upon ratification, and such a person may petition the Commissioner of Pardons who is required to fix a time and place for hearing. The petitioner must show that he was pardoned by the governor on the ground that he didn't commit the crime with which he was charged, or that the crime was not committed at all. The Commissioner of Pardons is to report the facts, together with his conclusions and recommendations to the governor, who, with the approval of the Council of State, may pay the petitioner an amount of not more than $500 for each year of imprisonment, the total amount not to exceed $5,000.

## SPECIAL POLICE

G. S. 60-83 was amended by Chapter 390 (HB 408) to allow the governor to appoint special police for railway express agencies, just as he now has the power to appoint special police for railroads, motor carriers, and manufacturing, power, and construction companies.

Chapter 577 (SB 165) added two sections (G. S. 113-28.1, 28.2) empowering the governor to appoint special police for the Department of Conservation and Development. These officers are to have the power to enforce the laws, rules and regulations enacted or adopted for the protection, preservation and government of State parks, lakes, reservations and other lands or waters under the control or supervision of the Department. The offiicers will have the authority to arrest with a warrant for any such violation, or without a warrant if the violation is committed in their presence.

## S. B. I. RECORDS

G. S. 114-15 was amended by Chapter 280 (HB 195) to provide that the records and evidence collected and compiled by the State Bureau of Investigation shall not be considered public records within the meaning of G. S. 132-1, *et. seq.*, and may be made available to the public only upon proper court order. A solicitor, however, may obtain records and evidence concerning persons or investigations in his district.

## COUNTY CRIMINAL COURTS

G. S. 7-395, pertaining to process of county criminal courts, was rewritten and clarified by Chapter 130 (HB 174). Before amendment the statute provided that process should run anywhere in the State when "attested by the seal of said county." This was changed to the seal of the "court." Other changes merely clarify the statute and state more clearly the existing practice.

## EDUCATION AND THE PUBLIC SCHOOLS

"I yield to no man in my love for the public schools" was the substance of many a legislator's declaration during consideration of the 40-odd bills affecting school teachers, school children, school buildings and school busses introduced during the 1947 session of the General Assembly. And most observers agreed that the sincerity of this oft-heard profession of faith in the public school system was demonstrated by much progressive legislation for the benefit of the schools, even though many were disappointed on particular items which either failed of passage or were trimmed down on appropriations.

### EDUCATION COMMISSION

Acting on the theory that the State's public education program needs a thorough and over-all study to point up its strengths and its weaknesses for action by the 1949 session, the legislature enacted Chapter 724 (HB 548), which authorizes the Governor to appoint an 18-member State Education Commission, which will make a study of educational problems. The scope of the Commission's inquiry includes school administration, finance, teacher education, organization, curriculum, consolidation, transportation, buildings, merit rating system for teachers, vocational education, and any other educational problems. To cover the Commission's expenses in this undertaking, the legislature appropriated $25,000 for each year of the biennium, part of which will go to pay the salary of a full-time executive secretary to be chosen by the Commission, from its own membership or from outside.

### FEDERAL AID

Another step looking to the future was taken with adoption of Joint Resolution 13 (HR 240), which memorializes the North Carolina delegation in Congress to support legislation providing federal funds for equalizing educational opportunities in the public schools of the nation, without federal control.

### SCHOOL BUILDINGS

Chapter 636 (HB 729) amends G. S. 115-224 so as to raise from $12,000 to $17,500 the amount which the S ate Board of Education may annually set aside from funds accruing to interest of the State Loan Fund, for the purpose of furnishing free school building plans to the school districts, for inspection of school buildings and the administration of the State Loan Fund. Chapter 791 (SB 364) authorizes county commissioners and county boards of education having on hand unexpended funds derived from sale of school bonds issued without a vote of the people "subsequent to August 1, 1946, and prior to December 1, 1946," to use such funds for constructing and equipping vocational educational buildings for teaching vocational agriculture and allied subjects. Such buildings may be placed anywhere the county board of education decides to put them, despite the fact that the bond ordinance adopted may have designated the site for the new buildings.

Reported unfavorably by the Joint Appropriations Committee were SB 55 and HB 118, which were similar in that the aim of each was to provide a special equalization fund to be distributed among the counties as grants-in-aid for school plant construction and repair, but which differed as to amounts to be appropriated and as to procedure and basis for allocation among the counties. (For further discussion, see section on Appropriations.)

## SCHOOL MACHINERY ACT AMENDMENTS

The School Machinery Act of 1939 (G. S. Chapter 115, Art. 50) was amended by several Acts of the 1947 General Assembly. Most of the changes were incorporated in Chapter 1077 (HB 772), which:

1. Deleted from G. S. 115-370 the provision that made county and city administrative units liable for Workmen's Compensation Act benefits to school employees connected with teaching vocational agriculture, home economics, trades and industrial vocational subjects supported in part by State and federal funds (left untouched by the amendment is a provision which makes the State liable for workmen's compensation for these same employees);

2. Deleted from G. S. 115-351 the requirement that the nine-month term be made available to every county and district "which shall request the same," so that now the section requires operation of a nine-month term in every county and district, whether or not it is locally requested;

3. Added to G. S. 115-351 a proviso "that when the operation of any school is suspended no teacher therein shall be entitled to pay for any portion of the suspended term";

4. Amended G. S. 115-351 so as to continue for the 1947-48 and 1948-49 school terms the authority previously given the governor as director of the budget to reduce the terms from 180 to 170 days if in his opinion declining revenues justify such action;

5. Added to G. S. 115-352 a provision that "School children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education";

6. Added to G. S. 115-376 a proviso that where road, geographic or other conditions make it inadvisable to offer transportation to any child entitled to attend school in a district, the State Board of Education is authorized to approve the assignment of the child to another school, and that in lieu of actual transportation the Board may authorize payment of not exceeding $10 to the parent or guardian for each month that the child attends school outside the district of residence;

7. Added to G. S. 115-352 a provision authorizing the State Board of Education to establish additional city administrative units in its discretion;

8. Added to G. S. 115-356 a provision authorizing the tax levying authorities of county administrative units to levy taxes to provide necessary funds for attendance enforcement, supervision of instruction, health and physical education, clerical assistance, and accident insurance for school children transported by school bus (plus a proviso declaring that nothing in G. S. 115-356 should be interpreted as repealing the present statutes requiring approval of the State Board of Education for local unit budgets);

9. Added workmen's compensation for school employees as one of the "objects of expenditure" of State funds authorized by G. S. 115-356;

10. Deleted from G. S. 115-356 the requirement that the State Board of Education must give its approval before a county administrative unit may levy taxes for teaching vocational agriculture, home economics, and trades and industrial vocational subjects;

11. Added to G. S. 115-376, relating to bus routes, a proviso that the State Board of Education "may, in its discretion," route school busses so that they come within one-half mile of all children who live more than one-half mile from their schools (the section provides that the Board "shall, . . . unless road or other conditions make it

inadvisable, . . ." route the busses so that they come within one and one-half miles of all children who live more than one and one-half miles from their schools."

Other changes in the School Machinery Act were made by Chapter 925 (HB 571), which added to G. S. 115-377 a requirement that the State Board of Education provide for adequate heating facilities in all school busses placed in operation after ratification date of the Act (April 5), and by Chapter 383 (SB 194), which added to G. S. 115-374 a provision authorizing the State Board of Education to permit use of school busses for transportation of school children and employees within the boundaries of any county or health district to attend State planned group educational or health activities (specifically excluding athletic or recreational activities), when the educational or health activities are deemed by the Board to be directly connected with the public school program, and when they are conducted under the auspices or with the sanction of the Board.

## TEACHERS' MEETINGS

In addition to the changes it made in the School Machinery Act, Chapter 1077 (HB 772), discussed above, deleted from G. S. 115-116 (relating to duties of county superintendents toward committeemen, teachers and principals) the provision that allowed not exceeding three school days to be set aside, if necessary, for the purpose of holding teachers' meetings.

## PHYSICAL EXAMINATIONS—SCHOOL EMPLOYEES

Chapter 387 (HB 337) rewrote G. S. 115-140, relating to health certificates from teachers and other personnel. As now written the section requires every county and city superintendent, principal, teacher, and every other school employee to file annually in the county or city superintendent's office a certificate from the county physician, health officer or other reputable physician, certifying that he is free from tuberculosis and other communicable diseases, and from any disease, mental or physical, which would impair his ability to perform his duties effectively. The certificate is to be based on a physical examination conducted under rules adopted by the State Superintendent of Public Instruction with the approval of the State Health Officer, and the rules may include requirement of a chest X-ray examination. Responsibility for enforcing these provisions is placed upon the county or city superintendent of the school in which persons covered are employed.

## COUNTY BOARDS OF EDUCATION

Chapter 848 (HB 843) was the biennial omnibus Act appointing members of the county boards of education. The members appointed were to have taken the oath of office on or before the first Monday in April and, except where longer terms for individual members were specified, to hold office for two year terms. These new members, together with those whose terms did not expire this year, now constitute the boards of education of the respective counties, and the Act provides that the per diem and mileage allowances of not exceeding five members of a county board are to be paid out of the State school fund, and for any number of members in excess of five, out of the county school fund.

One local bill, Chapter 944 (HB 963), applying to the Forsyth County board of education, represents a departure from precedent. It provides that board members who hold office on and after the first Monday in April, 1947, shall continue to hold office until the first Monday in December, 1948, and provides for their successors to

be nominated in the 1948 primary and elected in the 1948 general elections, and likewise biennially thereafter. Members thus elected will take office without further action on the part of the legislature.

## BLIND AND DEAF CHILDREN

Chapter 375 (SB 101) rewrote G. S. 116-109, relating to admission of pupils to the State School for the Blind and Deaf in Raleigh, so as to permit admission of pupils who are not within the 7-to-21-year age limitation otherwise required, in cases where the Board of Directors of the institution finds that admission of pupils under 7 or over 21 years of age will be beneficial to them, and when there is sufficient space available. The requirement that applications for admission be made and applicants be received at stated times (at the commencement of scholastic years) was deleted from the section, as was the list of questions formerly required to be asked of deaf-mutes and blind applicants. Also omitted from the section as it was rewritten was the provision requiring applications to be filed in the superintendent's office, etc.

Also affecting deaf and blind children was Chapter 388 (HB 342), which amended G. S. 115-310, relating to failure of parents to send deaf children aged 7 to 18 to school, and G. S. 115-311, relating to failure of parents to send blind children aged 7 to 18 to school, by striking out the "7" in each section and substituting "6" therefor.

## TEXTILE TRAINING SCHOOL

Chapter 843 (HB 755) amended G. S. 115-256, which provided that only legal residents of the State were eligible to attend the school, by adding a proviso that out-of-state students may be enrolled when vacancies exist, upon payment of tuition as set by the institution's board of trustees. However, the number of out-of-state students must be limited to not more than 10 per cent of the school's total enrollment.

## BILLS THAT FAILED

More bills affecting education and the public schools failed to make the grade than were enacted, speaking numerically. However, in many cases, the legislature had its choice among several bills with more or less similar purposes, which accounts in great part for the preponderance of defeated bills in this field. Among those which died in committee, or were reported unfavorably, or were defeated on the floor, were the following: HB 336, which would have created a Teachers' Merit Rating Commission; HB 621, which would have provided that no school would lose any teachers for lack of average daily attendance when average daily enrollment would justify keeping the same allocation; HB 581 and SB 199, which would have freed teachers in 1947 and 1948 of the necessity of attending summer school to keep their certificates in effect; HB 478, which would have provided for increments to teachers' salaries as an inducement to them to attend summer school; HB 73, which would have provided free tuition at most State institutions of higher learning for those who promise to teach after graduation; HB 90, which would have provided free summer school tuition for teachers (but see State Taxation for income tax deduction for summer school expenses); SB 31, which would have required payment of principals and teachers in 12 equal monthly installments; SB 104 and HB 194, which would have established the so-called "South Piedmont plan" salary schedule for teachers, with salaries ranging between $1,360 for Class A certificate holders to a maximum of $3,600 for holders of graduate certificates; HB 2, which would have made a 10 per cent to 25 per cent

increase in teachers' salaries, as well as those of other State employees; HB 202 and HB 417, which would have increased sick leave benefits for teachers; HB 1071, which would have appropriated $5,000 annually for teaching the evils of alcoholism and narcotism in the schools; HB 163, which would have required school bus drivers to be 21 years of age; HB 164, which would have limited salaries of school bus drivers to a maximum of $60 monthly; HB 596, which would have set minimum school bus drivers' salaries at $22.50 monthly; HB 924 ,which would have required school busses to pick up and transport children within one-half mile of their homes; and HB 155, which would have prohibited exhibition of carnivals, circuses, etc., on school lands.

### Cross References

See section on Appropriations for bills affecting teachers' salaries and other school appropriations; see section on Retirement and Pensions for retirement system amendments affecting teachers; see section on Veterans for discussion of bills affecting veterans' education.

## ELECTION LAW CHANGES

Efforts to make sweeping changes in the election laws were largely unsuccessful. H. B. 477, designed to change the date of the statewide primary election from the last Saturday in May to the third Saturday in June, SB 7, designed to submit to vote of the people an amendment to the Constitution giving 18-year olds the right to vote, and HB 884, designed to outlaw the absentee ballot in general elections except for members of the armed forces, were all defeated. The changes actually effectuated are grouped by subject matter below.

### NOMINATIONS FOR VACANCIES IN THE GENERAL ASSEMBLY

Chapter 505 (SB 45), sec. 1, amended G. S. 163-6 to provide that candidates in a special election to fill a vacancy in the State House of Representatives are to be nominated by the county executive committees of the several political parties. Candidates in a special election to fill a vacancy in the State Senate are to be nominated: (a) in a district composed of only one county, by the county executive committees of the several political parties, (b) in a district composed of more than one county where there is no party rotation agreement, by the senatorial district executive committees of the several political parties, and (c) in a district composed of more than one county where there is a party rotation agreement, by the county party executive committees for the county or counties which under the agreement are entitled to select the candidate. The chairman and secretary of the committee making the nomination for State Senator in a special election are required to certify the name and party affiliation of the nominee to the chairman of each county board of elections in the district before the ballots are printed.

### NOMINATIONS FOR VACANCIES IN THE CONGRESSIONAL DELEGATION

Chapter 505 (SB 45), sec. 5, amended G. S. 163-105 to provide that if a vacancy occurs in the Congressional delegation within 8 months preceding the next succeeding general election the nominations of candidates in a special election to fill the vacancy may be made by the several political party Congressional executive committees in the district in which the vacancy occurs. In such a case the chairman and secretary of each party executive committee would have to certify the nominee's name and party affiliation to the State Board of Elections prior to the time for printing the official ballots. Should such a vacancy occur more than 8 months prior to the next succeeding general election, then a special primary election must be called by the Governor, to be held under the usual primary regulations with such filing time modifications as may be fixed in the Governor's proclamation.

### MUTILATED OR DESTROYED REGISTRATION BOOKS—PROCEDURE

Destruction of registration books in a recent fire in Vance County served to focus attention on the problems arising in such cases. The existing law apparently did not make adequate provisions for an emergency of this kind, so it was felt that a statewide measure was in order. The legislature sought to meet the problem by the enactment of Chapter 475 (HB 551) which amended G. S. 163-31 to provide that if registration books are destroyed or mutilated so that they cannot be used "prior to thirty days preceding any primary, general or special election" then new books must be provided. The new books must then be open for registration under

the provisions of G. S. 163-31 for regular registration, but it is required that at least ten days newspaper notice of the registration be given before the books are opened. In such a special registration it is permissible to register voters on challenge day when time does not permit an extra Saturday for challenge day prior to the primary or election. "Such new registration books may thereafter be used in such township, ward or precinct for all general, primary, or special elections, including municipal elections."

## CHANGES AFFECTING PRECINCT ELECTION OFFICIALS

*Who may serve as an election official?* Chapter 505 (SB 45), sec. 2, amended G. S. 163-15 to allow not only justices of the peace but also militia officers, notaries public, commissioners of public charities and commissioners for special purposes to serve as election officials.

*Police power election officials:* Chapter 505 (SB 45), sec. 3, amended G. S. 163-21 to empower precinct election officials to deputize persons as police officers to aid in maintaining order at the polls.

*Compensation:* Chapter 505 (SB 45), sec. 11 removed from G. S. 163-20 all language limiting the compensation of precinct election officials to the fees prescribed by that section. The effect of this amendment is to make the statutory fees minimum fees, leaving boards of county commissioners, in their discretion, authority to increase the compensation of precinct election officials.

## CHANGES AFFECTING CHAIRMEN OF COUNTY BOARDS OF ELECTIONS

*Certificates of election:* Chapter 505 (SB 45), sec. 4 amended G. S. 163-92 to require the chairman of the county board of elections to issue a certificate of election to each township officer elected in his county.

*State Senatorial Nomination Certificates:* Chapter 505 (SB 45), sec. 6 amended G. S. 163-113 to require the chairman of the county board of elections of the county in which a nomination for the State Senate is made under a party rotation agreement to certify the nominee's name to the chairman of the boards of elections of the other counties in the district who must print the names so certified on their official county ballots.

## CHANGES AFFECTING CANDIDATES

*Notices of Candidacy:* Chapter 505 (SB 45), sec. 7 amended G. S. 163-119 to require candidates to sign their own notices of candidacy either in the presence of the chairman or secretary of the elections board with whom they are filing, or else have their signatures on such notices acknowledged and certified to by an officer authorized to administer oaths. Notices of candidacy signed by the candidates' agents are specifically invalidated.

*Becoming candidate after ballots are printed:* Chapter 505 (SB 45), sec. 8 rewrote G. S. 163-153 to provide that where a person is chosen as a candidate to fill a vacancy after the ballots showing the name of the deceased, resigned or disqualified candidate have been printed, the substituted candidate's name must be certified by the political party executive committee chairman to the proper elections board. In such a case votes cast either for the deceased, resigned or disqualified candidate or the write-in for the substitute nominee will be counted for the person nominated to fill the vacancy. Reprinting of ballots in such cases is made discretionary with the board of elections.

## CHANGES AFFECTING THE INDIVIDUAL VOTER

*Write-in votes:* Chapter 505 (SB 45), sec. 10 amended G. S. 163-175, subsection 3, to invalidate all write-in votes except those written by the voter himself, and, in the case of disabled or illiterate voters, those written in by persons authorized to assist disabled and illiterate voters under G. S. 163-172, 163-173, 163-174.

## HOSPITALS AND MEDICAL CARE

### THE MEDICAL CARE PROGRAM

Organized State participation in medical care inaugurated by the creation of the Medical Care Commission in 1945 was greatly implemented by the 1947 General Assembly. Except for work in mental institutions and in venereal disease, the State had formerly limited its activities almost entirely to preventive measures. The Medical Care Program takes the State into the field of curative medicine. Appropriations graphically illustrate the impact of this program. The Permanent Improvements Act, Chapter 662 (HB 24), provided the Medical Care Commission with $6¼ million as the State's third of the cost of erecting and equipping local hospitals and medical centers throughout the State, and it also provided the University of North Carolina with $3,790,000 of the estimated $5,290,000 needed for the establishment and equipping of a four-year medical school and 400-bed teaching hospital with necessary housing for nurses and doctors. Neither of these appropriations, however, will be available for expenditure "unless and until the Federal Government has appropriated and provided funds to cover at least one third (⅓) of the cost of construction." Chapter 500 (HB 23), the Biennial Appropriations Act, provided the Commission with $350,000 for each year of the biennium to cover the cost of its payments to local hospitals for their care of the indigent. Chapter 933 (HB 744) permits the Commission to make contributions for such care to hospitals publicly owned or to hospitals operated by charitable, non-profit, non-stock corporations. (Formerly to receive such contributions, private hospitals had to be both "owned and operated" by such corporations.)

### GRANTS FOR LOCAL HOSPITAL FACILITIES

Chapter 933 (HB 744) amends G. S. 131-120 to provide that from funds made available by the State, the Medical Care Commission may make grants-in-aid to governmental subdivisions to be used by them in acquiring land and in the construction and remodeling of community hospitals under the regulations of the Commission. The Act also allows the Commission to extend similar aid upon the same terms to any non-profit hospital whose net earnings do not inure to the benefit of any private share-holder or individual. In making such grants the Commission is required to give preference to applicants in accordance with the priority established under the Federal Hospital Survey and Construction Act. Hospitals now under construction which have been approved by the Commission and the appropriate Federal agency are specifically included among those entitled to aid on the same basis as similar hospitals which may be constructed in the future.

### LOCAL HOSPITAL FINANCING

Chapter 933 (HB 744) further authorizes any county, city, town or other political subdivision to use available funds in constructing and operating hospital facilities. Such subdivisions are also empowered to acquire real and personal property, or any existing hospital facility, by gift, purchase, or condemnation. The acquisition and maintenance of such facilities are declared to be public purposes and in the exercise of governmental functions. For administrative purposes the municipality or county may vest the authority to acquire, construct and operate such a facility in a board

of managers or in some other agency of its own. Political subdivisions are empowered to appropriate funds and to levy special taxes as for a special purpose, notwithstanding any Constitutional or statutory limitations, upon the approval of a majority of the qualified voters in an election held for the purpose. They may issue bonds, for the purposes of the Act notwithstanding such limitations, provided the amount of the bond issue in excess of the Constitutional limitation is approved by a majority of the qualified voters of the political subdivision voting on the question. Special taxes for maintenance require approval of majority of the qualified voters. The Act specifically authorizes counties, cities and towns to accept Federal and State aid for hospital purposes, the funds so received to be handled in accordance with the conditions prescribed by the source agency. Provisions are also included under which two or more political subdivisions may furnish mutual aid in the acquisition and operation of hospitals or make such joint agreements as they may agree upon.

## LICENSING OF HOSPITALS

Chapter 933 (HB 744) further provides for a system of hospital licensing. After July 1, 1947, no hospital will be permitted to operate in North Carolina without a license from the Medical Care Commission. The first license applied for to the Commission must be accompanied by a $10 fee, and each license is required to be renewed annually, although there is no fee requirement for renewals. The Commission is empowered to deny or revoke a license upon finding that a hospital has failed to comply with the provisions of the Act or with the regulations or minimum standards promulgated by the Commission under the Act. Hospitals in operation when the regulations are promulgated are granted a reasonable time (not to exceed one year) in which to comply. The Commission is further authorized to make such inspections as it considers necessary, to delegate this authority to any State agency it desires, and to require licensees or prospective applicants to submit plans and specifications for proposed alterations or additions to facilities. Operation of a hospital without a license is punishable by a fine of not more than $50 for the first offense and not more than $500 for each subsequent offense, each day of continued violation after conviction to be considered a separate offense. The Commission is further empowered to seek injunctive relief against operators without licenses.

## REGULATION OF NON-PROFIT HOSPITAL AND MEDICAL SERVICE CORPORATIONS

Chapter 820 (SB 330) makes a number of minor changes in the powers and procedures of non-profit hospital and medical service corporations. It allows such corporations to make payments for medical expenses incurred by subscribers directly to a subscriber upon presentation of a statement from a hospital or physician marked paid; the coverage provisions allowed in a "family contract" for medical service are broadened; such corporations are permitted to accumulate contingent reserves of 6 times the average monthly expenditures for claims and expenses (the prior law permitted the reserve to be only 3 times this figure); and a procedure is set by which two or more medical service corporations may be merged or consolidated. Chapter 140 (SB 57) extends exemption from the regulatory provisions of this law to include the subsidiary corporations of a single employer given exemption by the Act.

## UNSUCCESSFUL BILLS PERTAINING TO PUBLIC HEALTH

Efforts to extend the authority of the State Board of Health in regulating the sanitary conditions of public swimming and bathing places (SB 261), and in the supervision and control over all public water supplies and treatment plants, sewerage, refuse disposal, sewerage and waste treatment plants (HB 718) met defeat.

## INTOXICATING BEVERAGES

Only two public laws were passed dealing with intoxicating beverages. They affect only beer and wine, and do not affect the state liquor law. Chapter 1084 (HB 1051) provides for local elections on the sale of beer and wine, and Chapter 1098 (SB 471) provides for issuance of retail wine permits by the State Board of Alcoholic Control.

### LOCAL BEER AND WINE ELECTIONS

Chapter 1084 (HB 1051) provides for the holding of county-wide elections on the question of the sale of beer or wine or both. An election must be called by any county board of elections upon receipt by it of a petition signed by 15 per cent of the registered voters of the county who voted for Governor in the last election. The petition must contain a request that (1) the question of the sale of wine, or (2) the question of the sale of beer, or (3) the question of the sale of both wine and beer be submitted to the voters, and a statement that the signers are registered voters of the county. The election would be carried by a majority of the votes cast.

If a majority *favors* sale of *beer*, then the governing body of the county and the governing body of each municipality therein shall, as provided in G. S. Ch. 18, issue licenses to sell beer of ½ of 1 per cent of alcohol by volume but not more than 5 per cent of alcohol by weight (as defined in G. S. 18-64), notwithstanding any public, special, private, or local law to the contrary. If a majority *favors* sale of *wine*, then the governing body of the county and the governing body of each municipality therein shall, as provided in G. S. Ch. 18, issue licenses to sell "unfortified" wine of not less than 5 per cent nor more than 14 per cent absolute alcohol by volume (as defined in G. S. 18-64) and "sweet" wine of not less than 14 per cent nor more than 20 per cent of absolute alcohol by volume (as defined in G. S. 18-99), notwithstanding any public, special, private or local law to the contrary.

(Strictly speaking, counties and municipalities are not authorized by G. S. Ch. 18 to issue licenses for the sale of "sweet" wine. This latter, as defined in G. S. 18-99, is a form of fortified wine, and fortified wines may be sold only in ABC stores. However, there is an exception to the latter rule in the case of "sweet" wines, in that they may be sold, in counties which have ABC stores, by Grade A hotels and restaurants for on premises consumption and by drug stores and grocery stores for off premises consumption, such sales to be subject to rules and regulations of the State Board of Alcoholic Control. The act provides that licenses for the sale of wine as defined in G. S. 18-64 and 18-99 shall be issued "as provided in Chapter 18 of the General Statutes." Since G. S. Ch. 18 does not authorize counties or municipalities to issue licenses for the sale of wine as defined in G. S. 18-99, it would seem that the provision of the act authorizing the issuance of such licenses is without effect, and the phrase, "notwithstanding any public, special, private, or local law to the contrary," would not seem to cure this ineffectiveness since that phrase modifies "as provided in Chapter 18 of the General Statutes.")

If a majority *opposes* the sale of *beer and/or wine*, then 60 days after election day the sale or possession for purpose of sale of beer (if beer is opposed) of more than ½ of 1 per cent of alcohol by volume and/or wine (if wine is opposed) of more than 3 per cent of alcohol by volume shall constitute a misdemeanor, punishable in the court's discretion.

In a county which has voted *against* wine or beer or both, any municipality of over 1,000 population may hold an election on the question, upon petition signed by 15 per cent of the registered voters of the municipality "that voted for the governing

body of such municipality in the last primary or general election in whichever was voted the greater number of votes," and submitted to the municipality's governing body, which body shall hold the election. If a majority favors beer or wine or both, then the governing body shall issue licenses as set out above for counties, notwithstanding the result of the county election or any public, special, private or local law to the contrary.

No election may be called under the Act within 160 days after the Act's effective date, which is July 1, 1947.

This Act also doubles, as of July 1, 1947, the additional taxes levied by G. S. 18-81 on the sale of beer and wine, the revenue from the tax increase to be distributed among local units where sales are permitted. For a discussion of this phase of the Act, see State Taxation.

## WINE REGULATION

Chapter 1098 (SB 471) prohibits issuance of a license for the sale of unfortified wine (as defined in G. S. 18-64 (b)) to any pool room or billiard parlor or any person, firm or corporation operating same.

It also adds a new subsection to G. S. 18-109 (first section in G. S. Ch. 18, Art. 8, dealing with standards for lawful wine) which gives the State Board of Alcoholic Control the following additional powers: (1) to control advertising of wine (not defined); (2) to issue, refuse to issue, suspend or revoke *permits* for the retail sale of wine (not defined) (heretofore permits from the State Board were not required to obtain a retail wine license); and (3) to determine number of permits which may be granted in any locality, and to adopt rules and regulations fixing hours of sale of wine (not defined).

It further provides that applicants for permits must first apply for county and municipal licenses, as provided in G. S. Ch. 18, Art. 4 (which deals with licenses for unfortified wines, as defined in G. S. 18-64), must publish notice of intention to apply for a permit, and must make application on forms furnished by the Board. Before the Board may refuse to issue or suspend or revoke a permit, hearing must be granted the applicant or permittee. Permits will be for one year, renewable on May 1 of each calendar year. Licenses (it is not clear whether this term is intended to include state or local or both kinds of licenses) will not be valid unless the applicant has obtained a permit as provided by the Act. The Act does not repeal any special, public-local or private act prohibiting the sale of wine, or permitting the governing body of any county or municipality to prohibit the sale of wine, or any act permitting prohibition of the sale of wine by a vote of the people. All persons holding a license to sell wine at retail at the time of the enactment of this law (April 5, 1947) are deemed to have complied with the requirements of the Board in filing application for a permit, except operators of pool rooms and billiard parlors. The Act became effective on May 1, 1947.

## LOCAL LAWS

Numerous local laws dealing with intoxicating beverages were passed, which fall roughly into three categories: (a) those regulating or prohibiting or granting authority to regulate or prohibit the sale of beer and/or wine in certain localities; (b) those authorizing liquor store elections, both county-wide and limited to specified municipalities in dry counties, and (c) those dealing with the distribution of profits from ABC stores.

### Beer And Wine Prohibition Or Regulation

(1) Laws setting up outright prohibition of sale of beer or wine in certain areas (usually areas near specified churches or schools).

*Chapter 903 (SB 447)—Bertie County*—Effective July 1, 1947.

*Chapter 913 (SB 463)—Cabarrus County*—Effective April 5, 1947.

*Chapter 971 (HB 993)—Duplin County*—Effective July 1, 1947.

*Chapter 938 (HB 845)—Forsyth County*—Effective April 5, 1947.

*Chapter 890 (SB 352)—Granville County*—Effective April 5, 1947.

*Chapter 899 (SB 75)—Lincoln County*—Effective March 20, 1947.

*Chapter 970 (HB 923)—Wake County*—Effective July 1, 1947.

(2) Law setting up outright prohibition of sale of wine in certain areas in county.

*Chapter 1076 (HB 907)—Surry County*—Effective April 5, 1947.

(3) Laws bringing county under Ch. 1076, S. L. 1945, and thus permitting county commissioners (as to non-municipal areas in county) and municipal governing bodies (as to municipalities) to regulate or prohibit sale of wine.

*Chapter 886 (SB 243)—Cleveland County*—Effective April 5, 1947.

*Chapter 918 (HB 309)—Rockingham County*—Effective April 5, 1947.

(4) Law bringing county under last paragraph of G. S. 18-77, and thus authorizing county governing body or governing bodies of municipalities therein to prohibit sale of beer and/or wine between 12:01 A. M. Sunday and midnight Sunday night. (But see G. S. 18-105, 106, and 107, which prohibit sale of beer and/or wine between 11:30 P. M. and 7:00 A. M. every day, consumption of beer and/or wine on premises between 12:00 midnight and 7:00 A. M. every day, and authorize county and/or municipal governing bodies to prohibit sale of beer and/or wine between 11:30 P. M. each Saturday and 7:00 A. M. the following Monday.)

*Chapter 932 (HB 715)—Bertie County*—Effective April 5, 1947.

### Liquor Store Elections

(1) County-wide Elections.

*Chapter 996 (SB 462)—Moore County*—provides for a county-wide vote on the question of the continued operation of ABC stores in Southern Pines and Pinehurst, upon petition of 15 per cent of the registered voters of the county. (These stores were set up under Ch. 493, P. L. 1935, upon vote of qualified voters in McNeills and Mineral Springs Townships, and that Act permits stores only in these two towns.) If a majority of the registered voters vote *against* stores, the ABC board must close the stores within six months after the results of the election are announced, and the Turlington Act will come into full effect throughout the county. If *less* than a majority of the registered voters vote *against* stores, operation will be continued. An election on the question can be held only under this Act, and cannot be held more often than every three years, nor within 60 days of any biennial election for county officers.

*Chapter 835 (HB 497)—Mecklenburg County*—directs the county commissioners to call a liquor referendum pursuant to G. S. Ch. 18, Art. 3, on or before 90 days after ratification of the Act (ratified April 4), without requiring a petition to be filed by voters. (This removal of the necessity to require a petition is a departure from the provisions of G. S. Ch. 18, Art. 3, the ABC law.) Provision is also made for distri-

bution of the net profits from operation of the stores, in the event stores are authorized by the election.

(2) Elections in Certain Municipalities in Dry Counties.

Four laws were passed, each authorizing a certain town or city in a dry county to hold an election on the question of establishing town or city liquor control stores. They are: *Chapter 717 (HB 180)—Hickory, Catawba County; Chapter 862 (HB 990) —Louisburg, Franklin County; Chapter 911 (SB 435)—Franklinton, Franklin County;* and *Chapter 1083 (HB 1124)—Asheville, Buncombe County.* All four laws are practically identical, with only a few minor variations.

*Principal provisions found in all four laws.* The governing body of each of the four municipalities named above may on its own motion, and must, upon petition of 15 per cent of the qualified voters of the municipality and within 60 days of the receipt of a sufficient petition, call an election on the question of establishment and operation of a municipal liquor control store. The election would be decided by a majority of the votes cast. If a majority favors establishment and operation of a liquor control store, then the governing body must appoint a three-member Board of Alcoholic Control, appointing one of the three as chairman. The chairman would serve for his first term a period of three years, one member for two years, and one member for one year. Thereafter all members would serve for three-year terms. The local board would have all the powers and duties imposed by G. S. 18-45 on county boards and would be subject to the authority of the State Board of Alcoholic Control, as now provided for county boards by G. S. 18-39, and its operations would be subject to all the provisions of G. S. Ch. 18, Art. 3, regarding county boards.

Elections under these laws may not be called more often than every three years, and if at a subsequent election, after a store or stores are established, the majority vote is against stores, they would have to be closed and all stocks and property disposed of and cash therefor turned over to the city treasurer within three months after the result of the election is declared, and all laws now applicable to the municipality relative to alcoholic beverages would again be in force. The election procedure is set out and no election may be held on the day or within thirty days of any biennial, county or municipal general or primary election. There is no specific provision as to subsequent elections other than those referred to above. Apparently the procedure for calling such an election would be the same as that for the first election called—namely, on governing body's own motion or on petition signed by 15 per cent of the voters.

*Points of variation in the four laws:* Under Chapter 717 (Hickory) the election would be held under the same rules and regulations as those governing election of the Hickory mayor, and the act specifically provides that the cost of the election will be borne by the city. The other three acts merely provide that the election procedure will be the same as for election of members of the General Assembly, and no specific provision is made as to who will bear the cost of the elections.

Chapter 862 and Chapter 911 (the Franklin County acts) provide for the establishment of only one liquor store each in Louisburg and Franklinton, Chapter 717 (Hickory) provides for more than one store, but does not indicate the maximum number; and Chapter 1083 (Asheville) provides for only one store, but adds that additional stores may be established, in the discretion of the governing body.

The Franklin County Acts provide that net profits from store operation are to be paid into the general fund of each town, to be expended for any town governmental purpose; the Asheville Act provides that net profits are to be divided between the

City of Asheville and Buncombe County on the basis of 75 per cent and 25 per cent, respectively, such sums to be subject to appropriation by the respective governing bodies for any lawful purpose; and the Hickory Act provides that net profits are to be turned over to the city general gund and be subject to appropriation by the city governing body for any city governmental purpose and/or for (a) acquisition and improvement of lands for public parks and playgrounds, (b) supplementing salaries of teachers in public schools of Hickory Administrative Unit, (c) operating such schools at a higher standard than that provided by county or state support, the term not to exceed 180 days, (d) acquiring, constructing, and improving airports, and (e) acquisition of sites and construction, maintenance and operation of public hospitals.

**Distribution of Profits from County ABC Stores**

(1) Where certain percentage of profits from county-wide operation to be shared periodically with certain town or towns in the county.

*Chapter 336 (HB 385)—Dare County*—Manteo—15 per cent.

*Chapter 370 (HB 545)—Pasquotank County*—Elizabeth City—equal division.

*Chapter 1030 (HB 996)—Onslow County*—Jacksonville—12.11 per cent.
Richlands—6.49 per cent.
Swansboro—4.12 per cent.
Holly Ridge—2.28 per cent.
Other towns upon establishment of liquor store therein—12.11 per cent
New towns *without* liquor store—2.28 per cent.

(2) Where certain percentage of profits from operation of each store to be shared periodically with town in which store located.

*Chapter 809 (HB 863)—Warren County*—10 per cent.

*Chapter 657 (HB 901)—Lenoir County*—25 per cent (Applies only to towns of Kinston, LaGrange, Pink Hill.)

*Chapter 945 (HB 970)—Washington County*—10 per cent cent, provided adequate police protection afforded stores by towns. (Applies only to Plymouth and Creswell.)

*Chapter 874 (HB 1061)—Carteret County*—5 per cent (of gross sales after payment of State tax)

*Chapter 1081 (HB 1110)—Craven County*—7½ per cent from June 30, 1947 to January 1, 1948. 10 per cent thereafter.

*Chapter 1062 (HB 1122)—Nash County*—10 per cent.

(3) Where special provision made for distribution of funds set aside by ABC board for law enforcement.

*Chapter 323 (SB 213)—Pasquotank County*—From surplus of such funds, up to $10,000 to be paid by county ABC board, in its discretion, to Recreation Commission of Pasquotank County and Elizabeth City.

*Chapter 355 (HB 484)—Wake County*—Surplus of such funds not spent by ABC board to be distributed annually to cities and towns on basis of sales therein, with provision that at least half of such funds shall be so distributed.

(4) Special situations.

*Chapter 33 (SB 60)—Halifax County*—Permits municipalities receiving share of ABC profits to spend such share for debt service or for any other objects authorized by law for such municipalities.

*Chapter 148 (SB 151)—Halifax County*—Amends Halifax ABC statute, sec. 7 (Ch. 433, S. L. 1943), to permit ABC board to spend funds for purchase of necessary equipment for sheriff's department so long as that department remains ABC enforcement agency.

*Chapter 824 (SB 374)—Halifax County*—Amends Halifax ABC statute (Ch. 433, S. L. 1943), by appointing 5 new members, requiring inventory of stocks on 30 April 1947, and setting up new distribution schedule.

*Chapter 164 (HB 430)—Cumberland County*—$65,000 to be paid annually to county from "Alcoholic Beverage Fund," after retaining sufficient to pay principal and interest on county bonds.

*Chapter 835 (HB 497)—Mecklenburg County*—Sets up distribution schedule.

*Chapter 650 (HB 849)—Rowan County*—Amends present distribution law (Ch. 585, Public-Local Laws 1937) to require that 10 per cent of profits, if stores established, be set aside for law enforcement *and* education (on evils of alcohol) purposes, and to require distributees of other portions of profits to make certain specific uses of distributed funds.

## BILLS THAT FAILED

Of principal interest in this department are the local bills. They show the general trend of thought of the legislators on the problem of alcoholic beverages, particularly beer and wine, and indicate the manner in which the 1947 version of a solution was arrived at.

Those local bills which were introduced but did not pass—43 in number—can be roughly classified as: (1) those calling for a countywide prohibition of the sale of wine or beer or both; (2) those calling for a referendum on the question of the sale of beer or of wine and beer; (3) those which would have authorized the governing bodies of a county or its municipalities or both to regulate or prohibit the sale of wine or beer or both; and (4) those which would have authorized the governing bodies of a county or its municipalities or both to refuse to issue wine or beer licenses or both.

Most of these bills were scuttled by the House and Senate Finance Committees in favor of two House so-called "pattern" bills, the benefits of which all counties were invited to receive. One of these, HB 770, would have authorized certain county governing bodies and governing bodies of municipalities therein to regulate or prohibit the sale of beer. The names of ten counties appeared in this bill before

it left the House. The other, HB 771, would have prohibited the sale of wine in certain counties, and would have authorized governing bodies of certain counties and governing bodies of municipalities therein to regulate or prohibit the sale of beer. 27 representatives got their counties' names in this bill before the House let it go. These bills, however, did not seem to meet enough of the problems, with the result that after a show of strength by the dry forces HB 1051 and SB 471, both public bills (discussed at the beginning of this article), were introduced and passed, and the Senate Finance Committee reported the "pattern" bills unfavorably on the next to the last day of the session.

## LABOR LAW, WORKMEN'S COMPENSATION AND UNEMPLOYMENT COMPENSATION

It might be safe to conclude that the North Carolina General Assembly followed the national trend in labor legislation which is also being followed at present by the federal Congress. Evidence of this would be the closed shop ban passed by the General Assembly, and the rejection of the wage and hour bill. The General Assembly turned down four other bills and one resolution affecting the labor picture, when it declined to pass a bill aimed at the control of picketing, declined to allow workmen's compensation for municipal firemen suffering heart disease or tuberculosis, declined to exempt highway construction workers from the maximum hour law, and declined either to regulate industrial homework or to direct the Commissioner of Public Welfare to investigate industrial homework. On the other hand the General Assembly passed nine bills, three of which relate to unemployment compensation, two to workmen's compensation, and one each to the closed shop, arbitration, the maximum hour law, and railroad employees.

### ARBITRATION

Under the 1945 Act providing for arbitration service (G. S. 95-36.1—36.7), an arbitration panel of five members was authorized, to be chosen by methods that proved, along with the panel itself, to be somewhat clumsy. The 1947 General Assembly streamlined this procedure and reduced the membership of the panel to three. Chapter 379 (HB 57) provides that in the event a panel is desired, rather than a single arbitrator, that the employer shall designate one member, the union or other representative of the employees one member, and that they shall agree on the third member who shall serve as chairman of the panel. In the event of their failure to agree they may request the commissioner of labor to appoint the third member. Before this amendment the five-member panel was made up by the employer designating one member from the plant concerned, one member from another industry, and the employees choosing one member from the plant concerned and one member from another industry, union, trade, or craft, with the chairman being appointed by the commissioner of labor from a list of qualified arbitrators maintained by him. The 1945 Act also provided that in the event the parties should desire to submit the controversy to a single arbitrator that he should be appointed from this list by the commissioner of labor. The 1947 amendment not only streamlines the panel, but it gives the parties first the opportunity to agree on a third or single arbitrator before calling on the commissioner of labor to appoint one, thus leaving this activity to a greater degree in the hands of the parties. Under the 1945 Act "necessary stenographic and clerical assistance to the panel or arbitrator, in those cases wherein an arbitrator has been named by the commissioner of labor," was furnished by the department of labor. This clause remains the same in the 1947 amendment, except for the addition of "technical service" which now will also be furnished by the department of labor, but it may be questioned as to whether these services will be furnished to those parties who agree among themselves to select as to the third panel member or single arbitrator an individual not on the commissioner of labor's list.

In the past these panels or single arbitrators, after hearing both sides of the controversy, would report their findings of fact and "recommendations" to all parties concerned. A "recommendation" has little binding effect on the parties, even if they voluntarily agree to arbitrate, so this word was changed to "award," thus giving finality to the decision of the panel or arbitrator.

Frequently an arbitration panel will find itself with three decisions after hearing a

controversy, with the management representative voting for one view, the union or employee representatives voting for the opposite view, and the chairman or public member holding out for a decision that will do some justice to both views. This obviously leaves the parties, even after they have called on the State's arbitration machinery, in an unimproved condition. To overcome such a deadlock, Chapter 379 (HB 57) added the proviso: "If any panel is unable to reach a unanimous decision on the merits of any issue, the finding and decision of a majority of the members of the panel shall constitute the award of the panel on that issue; if a majority vote cannot be obtained on any issue, the finding and decision of the chairman shall constitute the award of the panel on that issue."

One other amendment cleared up the disqualification section of the Act which has provided that no person named by the commissioner of labor should be qualified to serve as such arbitrator if such person had any financial or other interest in "a trade, business, industry or occupation in which a labor dispute exists or is threatened and of which the arbitration service has taken cognizance." This is vague and broad, and was amended to simply disqualify those with a financial or other interest in "the company or union involved in the dispute."

## CLOSED SHOP

Probably the most controversial bill of the session was the "right to work" bill, or, as it was more commonly called in the state press, the "anti-closed shop" bill.

This Act, Chapter 328 (HB 229) starts off by declaring that "the right to live includes the right to work," and that it is the public policy of North Carolina that the right to work shall not be denied or abridged "on account of membership or nonmembership in any labor union or labor organization." It makes any agreement between employer and union to make union membership a condition of employment "an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina." A contract between a company and its employees is, of course, usually written after a conference between the management of the company and the representative of the employees (the union, in most cases), and in the past a number of companies have agreed with the union that they would hire only union members, or that employees on being hired should then join the union. And a number of companies, in the past, have refused to agree to such a stipulation. In the past, whether or not this agreement was included in the contract depended to a large degree on the relative bargaining strengths of the management and the representative of the employees, and there was no statutory requirement that companies should or should not grant union or closed shops. Under the provisions of Chapter 328 (HB 229) this agreement no longer depends on bargaining strength, but the company is now required by law to refuse to grant to the union any provision requiring union membership as a condition of employment.

The Act also provides that no person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment. It further provides that no employer shall require "any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization." This apparently does not affect a voluntary check-off.

This chapter applies only to contracts made, renewed, or extended after the effective date of the Act. The scope of the Act, whether it applies to interstate, or merely intrastate industries, and its constitutionality are already being tested in the State courts.

## MAXIMUM HOUR LAW

Chapter 825 (SB 384) excludes from the operation of the Maximum Hour Law (Article 2 of Ch. 95 of the General Statutes) any "male employee eighteen years of age or over whose employment is covered by or in compliance with the Fair Labor Standards Act of 1938 (Public No. 718; 75th Congress; Chapter 676-3rd Session), as amended or as same may be amended."

## WORKMEN'S COMPENSATION ACT

Total incapacity, under the Workmen's Compensation Act, has never entitled the injured employee to more than 400 weeks of compensation, or never more than six thousand dollars. The 1947 General Assembly made the first inroad on this limitation by allowing compensation for life to a person totally incapacitated by a spinal injury. To G. S. 97-29, which provides that "in no case shall the period covered by such compensation be greater than four hundred weeks, nor shall the total compensation exceed six thousand dollars," Chapter 823 (SB 361) added: "Except that in cases in which total disability is due to paralysis resulting from injuries to the spinal cord, compensation including reasonable and necessary medical and hospital care shall be paid during the life of the injured employee, without regard to the 400 weeks limited herein, or to the $6,000 maximum compensation under the Act." This chapter also provides that should death result within 350 weeks, compensation "for the remaining weeks or until the full $6,000 including $200 funeral expense" shall be paid as in any other case.

The amendment goes further and provides for those employees who have already received such injuries. In the event the permanent disability due to paralysis resulted from an injury which occurred prior to the ratification of this amendment (April 4, 1947), and payments are still made, or if the last payment was made within two years of the date of ratification, the Industrial Commission may, "in its discretion taking into consideration the financial need and necessity of the injured employee, enter an award and pay compensation and reasonable, necessary medical, nursing and hospital expenses." This is to be paid from the second injury fund, after the employer's liability has ceased, and only if the funds are available.

G. S. 97-41, which limits the total compensation payable, was changed in accordance with the amendments noted above.

In addition to this significant change, the General Assembly, following the general trend of rising prices and wages, increased the limitations of compensation allowed under the Workmen's Compensation Act. G. S. 97-29 has provided that the employee shall be paid, for total incapacity, a weekly compensation equal to 60 per centum of his average weekly wages, but not more than $21 nor less than $7 per week. Chapter 823 (SB 361) raises the limits to not more than $24 and not less than $8 per week. Sections 30 and 38 of Ch. 97 are also changed to raise the limits to these figures. G. S. 97-29 is also amended to make the basis of compensation for members of the National Guard and the state guard the maximum amount of $24 instead of $18 per week; and to make the basis of compensation for deputy sheriffs, who serve on a fee basis, a minimum of $8 instead of $7.

Various other changes were made in the Act. G. S. 97-37 has provided that compensation, in the event the employee dies from any other cause than the injury for which he was entitled to compensation, should be paid to his "next of kin dependent upon him for support." This was amended to provide for payment "First, to the

surviving whole dependents; second, to partial dependents, and, if no dependents, to the next of kin as defined in the Act, then to personal representative and Second Injury Fund as provided in the Act."

G. S. 97-47 provides for a review of an award by the Industrial Commission on the grounds of a change of condition. It provides that "no such review shall be made after twelve months from the date of the last payment of compensation pursuant to an award under this article," and the amendment adds, "except that in cases in which only medical or other treatment bills are paid, no such review shall be made after twelve months from the date of the last payment of bills for medical or other treatment, paid pursuant to this Act."

G. S. 97-86 provides that either party may appeal to the Superior Court within thirty days after the date of the award, or within thirty days after receipt of notice. The amendment adds: "Provided the Commission shall have sixty days after receipt of notice of appeal, properly served on the opposing party and the Industrial Commission, within which to prepare and furnish to the appellant or his attorney a certified transcript of the record in the case for filing in Superior Court."

G. S. 97-78(c) has allowed members of the Commission and its assistants to receive travel expenses, when "sworn to" by the person who incurred them. The amendment makes possible travel expenses now if they are merely "certified."

Chapter 574 (SB 123) amends G. S. 97-100(d) to require annual rather than semi-annual reports from insurance carriers to the Commissioner of Insurance. This amendment requires the annual report to be made on or before April 1st each year, and became effective "as of January 1, 1947."

## RAILROAD EMPLOYEES

G. S. 60-64, under the Article applying to the liability of railroads for injuries to employees, was amended by Chapter 916 (HB 259) to include the definition of the term "employee or servant" as "any person carried on the payroll of such railroad company and required to be on its property regardless whether such person is receiving compensation at the time or not."

## UNEMPLOYMENT COMPENSATION

The most noticeable alteration the Unemployment Compensation Commission received at the hands of the 1947 General Assembly was its change of name. That Commission is now known as the "Employment Security Commission of North Carolina," and the Act is to be known as the "Employment Security Law of North Carolina." This change was made because of the feeling that the old name did not properly describe the functions of the agency which is concerned with employment services as well as unemployment compensation. A number of states have already made similar changes to designate their agencies more accurately. After changing its name, the General Assembly called upon the Commission to coöperate with the agencies of other states to prevent "federalization of state unemployment compensation funds or state employment security programs."

The 1947 Session Laws contain three chapters concerning this renamed agency. The first, Chapter 326 (HB 127), contains the principal amendments to the Act. This Chapter, answering a frequently-voiced opinion that some individuals are able to obtain unemployment compensation benefits without any intention of seeking employment or going back to work until these benefits are exhausted, amended G. S.

96-13 (c) which has required that an unemployed individual shall be eligible to receive benefits only if he is able to work, and is available for work, by adding: "Provided that no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work." In the past it has been sufficient evidence that an individual was available for work if he was merely registered with the United States Employment Office, but now he must show the Commission that he is making efforts on his own behalf to secure reasonably suitable employment.

Many other amendments were included in this Chapter, in Chapter 598 (SB 319) and in Chapter 881 (HB 822). The following amendments are contained in Chapter 326 (HB 127) unless otherwise noted.

### Veterans

To provide for veterans returning and, through no fault of their own, unable to find employment, the 1941 General Assembly provided that wage credits of workers entering military service would be available to the workers when they were discharged from military service. Subsequent to this the Servicemen's Readjustment Allowance Act was passed, which is also administered by the Employment Security Commission. The 1947 General Assembly, feeling that the veteran's rights were adequately cared for, repealed Section 96-12 (e) which was passed in 1941, with the provision that any individual who has established a benefit year under the provisions of such section prior to the repeal thereof, should be paid benefits throughout such benefit year, if otherwise eligible.

Chapter 326 (SB 319) also made a change designed primarily to aid the veteran. G. S. 96-14 (g) provided that an individual should be disqualified during any week he should "have or assert" any right to unemployment benefits under an unemployment compensation law of either the federal or a state government, other than the State of North Carolina. This makes veterans ineligible to receive benefits during such time as they have rights under the Readjustment Allowance Act. This section was amended to read "have *and* assert" to allow the veteran to elect as between drawing the readjustment allowance benefits and the unemployment compensation benefits. The Employment Security Commission administers both of these benefits.

### Records and Reports

G. S. 96-4 (g), relating to records and reports required of each employing unit, was amended to allow the Commission to estimate payrolls and assess contributions in those cases where an employing unit fails to keep records or make proper reports, and to correct reports or returns which are incorrect or insufficient.

### Service of Notice

G. S. 96-4 (q) was amended to allow service of notices of hearings relative to the liability of employers to be made by registered mail instead of by the sheriff, constable, or other officer. These notices are to be mailed at least ten days prior to the date of the hearing, a return receipt is to be requested, and such postal receipt shall be prima facie evidence of service.

### Appeal Procedure

G. S. 96-4 (m) was amended to provide that the Commission may have a thirty-day period, instead of a ten-day period, to certify and transmit to the courts papers and

evidence considered in regard to the liability of an employer; and that this thirty-day period might be extended upon agreement by all parties concerned.

### Special Administration Fund

G. S. 96-5 was amended to create in the state treasury a "special employment security administration fund," into which all interest and penalties collected from employers shall be paid, and which will be used by the Commission for payments of costs which are not valid charges against any other funds because of Social Security Administration or other federal regulations.

### Definitions

G. S. 96-8 (a) was amended by deleting the now obsolete definitions of "annual payroll" and "average annual payroll," and transferring to this section the last two sentences of G. S. 96-9 (b)(4)(A), which are definitions of the terms "year" and "payroll year."

### American Vessels

G. S. 96-8 was amended to cover certain services of officers and members of the crews of American vessels, to bring the North Carolina Employment Security Act into line with the Amendment to the Federal Unemployment Tax Act effective as of July 1, 1946.

### Wages

G. S. 96-8 (n) was amended to exclude tips from taxable wages, and to provide for wages paid at irregular intervals to cover the maritime provisions added to the Act by this new Chapter. G. S. 96-9 (a)(2) was amended to provide that after January 1, 1947, the term "wages" should include the first $3,000 paid by an employer to an employee during the calendar year without regard to the year in which the employment occurred.

Chapter 598 (SB 319) amended G. S. 96-8 (m), which defines "wages," to provide "that wages shall not include, and no contributions shall be paid on that part of wages earned by an individual in this state, which, when added to wages previously earned by such individual in another state or states, exceeds the sum of three thousand dollars," if the employer has paid contributions to the other state or states, and the wages have been earned by the employee in the employ of one and the same employer.

### Transient Workers

G. S. 96-4 (1) was amended by Chapter 598 (SB 319) to allow the Commission to enter into reciprocal agreements with other states for the purpose of paying benefits to such workers as those engaged in transient employment earning less than the eligibility requirements in North Carolina or in any other one state.

### Voluntary Contributions

G. S. 96-9 (b)(4)(E) was amended to add: "Any voluntary contributions so made by an employer within ten days after the date of mailing of a statement of charges to the reserve account of such employer for the previous quarter ending July 31st shall be credited to the reserve account as of July 31st of such quarter: Provided, such notice of charges shall be mailed to the employer prior to December 1st of such year." The Act has provided that an employer might make a voluntary contribution for the purpose of reducing his tax rate for the following year, but such contribution

was required by July 31. It was impossible for an employer to know what contribution would be necessary for him to make in order to receive the desired reduction as he would not be able to know what charges had been made against his reserve account for the three month's period ending July 1. The Commission now has the responsibility of notifying the employer as soon after July 31 as possible of the charges against his reserve account for the three months preceding August 1, so that the employer will be able to compute the amount of voluntary contribution necessary to reduce his rate, and if the contribution is made within ten days after the mailing of the notice the contribution will be credited as of July 31 and taken into consideration in computing the tax rate for the following year.

### Administrative Amendments

In the section requiring a statement of charges and credits to the employer, G. S. 96-9 (c)(3), the clause "at least fifteen days" is deleted; "commission" is inserted for "commissioner" in section 96-10 (f) which gives the authority to make refunds; 96-15 (f) is amended to provide that the recording of testimony at a hearing before an appeals tribunal upon a disputed claim may be waived by the interested parties; the Employment Security Commission, rather than the director of the employment service division, is now charged by G. S. 96-20 with the duty of coöperating with the officials of the United States having powers under the Wagner-Peyser Act; G. S. 96-10 (i) is amended to define when a proceeding shall be deemed to have been instituted; "Social Security Board" is changed to "Social Security Administration" throughout the Act to conform with the new name of the federal agency; G. S. 96-23 is amended to make "absolute privileged communications" all information obtained by the State Employment Service Division from workers, employers, applicants, or other persons, or groups of persons in the course of administering the State Public Employment Service Program, not to be disclosed except under the conditions of the regulations to be set by the Commission. Chapter 881 (HB 822) further amended the Employment Security Act. To G. S. 96-14, subsection (a) and (b), regulating the benefits to be paid to an individual who leaves work voluntarily without good cause, or is discharged for misconduct, there was added the proviso that the "partially pooled account," and not the employer's reserve account, should be charged with any benefits paid such "an individual during any benefit year established on and after July 1, 1947, based on wages paid during the base period applicable at the time of such" separation or discharge. G. S. 96-9 (c)(2), which directs payments from reserve accounts, was amended to conform to this proviso.

## LEGISLATION AFFECTING VETERANS

Since the war's end, many state legislatures have felt the organized strength of veterans' blocs, and some of them have yielded to demands for veterans' bonuses and other substantial monetary benefits. No such bloc existed in North Carolina's 1947 General Assembly, where the prevailing sentiment among members who were themselves veterans was definitely against any considerable special privileges or benefits for veterans as a class, particularly when privileges proposed would have struck substantially at the State's revenues, and when benefits proposed would have left a dent in the State's funds. The fate of HB 523, which was proposed by some veterans and opposed by many more, was indicative of the dominant mood on the question of legislation for veterans: it would have allowed honorably discharged members of the armed forces to deduct $500 from their net income in computing their State income taxes, and it was reported unfavorably by the House finance committee.

### EDUCATION

Although clearly reluctant to legislate for veterans as a class, the General Assembly was not insensible to the State's obligation to assist veterans who were actually handicapped by loss of educational and business opportunities because of their period of service. Chapter 785 (SB 250) established the North Carolina State Trade School for Veterans to be operated at Camp Butner by the Division of Vocational Education of the State Department of Public Instruction. Chapter 839 (HB 604), with provisions identical with those of Chapter 785, was also ratified, through error. Training is to be provided in such skills as farm machinery operation and repair, radio and refrigeration servicing, air conditioning, shoe repairing, automobile machine shop practice, sheet metal working, plumbing, carpentry, drafting, electric wiring and motor repairing, and similar trade skills. The Act appropriated $25,000 to get the school into operation and for purchase of necessary equipment, and $10,000 for remodeling buildings at Camp Butner for occupancy by married couples, the latter appropriation to be repaid through rentals, with any excess received to be used for permanent improvements at the school. The Department of Public Instruction is authorized to apply for donations of land, buildings and equipment from the War Department and the War Assets Administration, and to contract with the Veterans Administration to secure, through veterans' tuition, funds to cover the schools operating costs.

### WORKMEN'S COMPENSATION BENEFITS FOR TRAINEES

On-the-job trainees under the so-called G. I. Bill of Rights are made eligible for Workmen's Compensation Act benefits by Chapter 698 (HB 627), which amends G. S. 97-2(e), relating to the definition of average weekly wages under the Workmen's Compensation Act, by extending the definition to include the subsistence allowance paid to veteran trainees by the Veterans Administration, provided trainees report the amount of the allowance monthly to their employers.

### VETERANS' PREFERENCE AND RETIREMENT BENEFITS

Coast Guard and Coast Guard Reserve veterans taking examinations for State jobs were granted the same 10 per cent preference rating already enjoyed by veterans of the other services, by the enactment of Chapter 412 (SB 34), which amends G. S. 128-15.1 to that end. Veterans who had service as teachers or State employees

prior to their military service, and who return to the service of the State within two years after discharge, can claim as "prior service" for retirement system purposes the period of honorable military service, under Chapter 575 (SB 135). Salaries paid such employees immediately prior to military service will be deemed the actual compensation rate during the period spent in the armed forces, for purpose of prior service credit.

## TAX BENEFITS

Chapter 894 (SB 396) was the sole amendment to the Revenue Act benefitting veterans, and its effect on the State's income tax revenues will probably be negligible. It authorizes deduction from gross income of contributions made to veterans' organizations, subject to the percentage limitations of 10 per cent of net income in the case of individuals and 5 per cent in the case of firms, partnerships and corporations as provided by G. S. 105-147 (a). A House committee amendment would have provided that this deduction could not be taken for contributions to the American Veterans Committee, but after sharp debate over whether the AVC was Communist-tainted, the amendment was not adopted. SB 33, which would have added to G. S. 105-342 a provision that disabled World War II veterans claiming poll tax exemption must have served at least 90 days between September 29, 1940, and December 31, 1946, died in committee.

## HOUSING

Honorably discharged veterans of World War II, when threatened with eviction from living quarters, now have the privilege under Chapter 1029 (HB 983) of remaining in possession 90 days longer than they or their immediate families would have if they were not veterans. This provision would not apply, however, in favor of a veteran if he has sold the living quarters he occupies, nor in favor of any veteran who is subject to eviction on account of unlawful or offensive use of the premises or because of default in rental payments, nor in any case in which the court finds it a fact that eviction is sought by "a person in good faith and for the purpose of personally occupying such premises as his own dwelling." Veterans buying living quarters may give written notice to occupants refusing to vacate, bring action for possession after the time allowed by law has expired, and the courts are authorized to grant actual damages, including reasonable attorney's fees. The Act expires four years after its effective date, which was April 5, 1947.

## SPOUSES OF VETERANS

G. S. 165-18, subsection (a) (Chapter 771, P. L. 1945), authorizes any minor who is the husband or wife of a veteran to *execute* in his or her own name any contracts, conveyances and instruments, to take title to property, to defend any action at law and to do all other acts necessary to make available to the veteran or his family or dependents all rights or benefits under the Serviceman's Readjustment Act of 1944 or other statutes, etc., enacted in the interest of veterans or their families or dependents.

Chapter 905 (SB 83) was enacted by the 1947 General Assembly to supplement G. S. 165-18. It adds a new subsection which authorizes any person under the age of 21 years, who is the husband or wife of a veteran, to *join* (in his or her own name) in the execution of any contract, deed conveyance or other instrument which may be deemed necessary to enable the veteran spouse to make full use of any property

purchased pursuant to the provisions of subsection (a) discussed above, including the right to dispose of such property.

It may be noted that the 1945 Act authorized the minor spouse of a veteran to "execute" instruments and do other acts necessary to make available to the veteran or his family benefits provided for servicemen and their families. The 1947 Act authorizes such minor spouses to "join" in the execution of instruments. This addition to the 1945 Act may have been intended to cure a technical defect, but it goes somewhat further: while the 1945 Act seems to be aimed at facilitating the veterans' acquisition of benefits, the 1947 Act deals with the disposition of property acquired through such benefits. Thus, the signature of a minor spouse of a veteran is now effective when subscribed to instruments *disposing* of property which had been acquired as a result or through the assistance of servicemen's benefits. This provision raises a question which must be answered by anyone who purchases from a veteran whose spouse is a minor and a necessary party to the transaction: the purchaser must decide whether the property in question was acquired as a result of benefits under any of the servicemen's acts. If so, the signature of the minor spouse would be valid and binding; otherwise the purchaser may be faced in the future with an effort on the part of the minor to avoid the transaction. The difficulty lies in the fact that often proof of the source of the property in question may lie in parol testimony rather than being a matter of public record.

## VETERANS' CHILDREN

Chapter 522 (HB 298) amends G. S. 116-147 so as to make it provide that the free tuition and other educational benefits now extended under G. S. 116, Art. 15, to children of partially disabled veterans, are limited to not more than 10 children of such a veteran in any one year. Prior to the amendment, these benefits were limited to not more than 5 children of a qualified veteran in any one year.

(See section on Regulation of Trades, Businesses and Professions, for note on Chapter 941 (HB 908), affecting veterans with barbering experience.)

## LOCAL TAXATION AND FINANCE

In addition to numerous local Acts dealing with local taxation and finance, which will not be discussed in this article, the 1947 legislature enacted a substantial volume of State-wide measures dealing with the subject, and some of them are of considerable and immediate importance. For example, some of the counties and municipalities to which the new statute of limitations on the foreclosure of tax liens applies may find themselves hard put to it to meet the dead-line, while municipalities which have been straining against the $1 limitation upon the levy for general expenses will find relief in Chapter 506 which increases the limitation to $1.50 on the $100 valuation. These and other State-wide Acts affecting local finance are discussed herein.

### AD VALOREM TAXES

#### 1. Tax Lien Limitations

Chapter 1065 (SB 38, ratified April 3) is entitled "An Act to amend G. S. 105-422, barring tax liens for 1936 and prior years." Before final passage the Act was so rewritten and amended that the title (which could not be amended to conform to the new contents) is almost a complete misnomer. The original bill would have merely brought forward the bar against the foreclosure or collection of tax liens which was imposed by section 7 of Chapter 181, P. L. 1933 on tax liens for 1926 and years prior thereto, so that, as indicated by the title, liens for 1936 taxes and those of all prior years would have been barred upon ratification of the bill. As finally passed, however, the Act now sets up a continuing 10-year statute of limitations against the enforcement of any remedy for the collection of taxes or the foreclosure of tax liens. Action must now be instituted within 10 years after the tax becomes due, which will mean within 10 years after the first Monday on October of any tax year with respect to the taxes for such year. With respect to foreclosure actions which under existing law would not be barred prior to December 31, 1948 actions may be instituted at any time prior to that date. In other words, counties and municipalities which are not subject to local Acts placing limitations upon foreclosure actions will have until December 31, 1948 to clean up or at least put into suit tax liens as far back as those for 1927, but after that date suits must be instituted within 10 years after the due date of the tax.

The Act does not apply to liens for street or sidewalk improvements, already subject to a 10-year statute of limitations under G. S. 160-93, as construed in Charlotte v. Kavanaugh, 221 N. C. 259, 20 S.E. (2d) 97 (1942) and Raleigh v. Mechanics and Farmers Bank, 223 N. C. 286, 26 S.E. (2d) 573 (1943).

Under the terms of the Act, those units which are using the summary or alternative method of foreclosure under G. S. 105-392, in the event that method should in the future be declared invalid by the court, are given one year from the rendition of such opinion in which to institute foreclosure actions under G. S. 105-391.

The Act specifically does not apply to pending foreclosure actions nor to the following counties and the political subdivisions thereof: Ashe, Buncombe, Burke, Carteret, Camden, Clay, Columbus, Cumberland, Currituck, Dare, Davie, Edgecombe, Franklin, Gates, Greene, Harnett, Hoke, Hyde, Iredell, Lee, Macon, Madison, Moore, Nash, Northampton, Orange, Pender, Pamlico, Perquimans, Richmond, Scotland, Rockingham, Rowan, Vance, Warren, Wayne, Wilson and Yadkin.

### 2. Quadrennial Reassessment

In 1945 the General Assembly, in recognition of the feeling of many local officials that then was not a good time to revalue real estate for taxation, amended G. S. 105-278 (section 300 of the Machinery Act) to permit boards of county commissioners, in their discretion, to "defer or postpone" revaluation and reassessment for the years 1945 and 1946. Since some counties apparently still felt that the time had not yet arrived to go through a revaluation program, the 1947 legislature further amended the section to permit deferment in 1947 and 1948. Thus, if the 1945 and 1947 amendments were fully taken advantage of, the regular 1945 revaluation could be entirely passed over until the next regular quadrennial year, which is 1949.

The 1947 Act, Chapter 50 (SB 39) adds the following proviso to the end of the section: "Provided, further, that the boards of commissioners of the various counties of the State may, in their discretion, defer or postpone revaluation and reassessment of real property for the years 1947 and 1948. Whenever revaluation is had, the same may be by horizontal increase or reduction or by actual appraisal thereof, or both."

This Act follows the 1945 Act in permitting commissioners to "postpone or defer" revaluation. While there has been no judicial interpretation of the 1945 Act, the language employed would seem to require some formal act on the part of the county commissioners postponing or deferring the 1945 revaluation, rather than merely merely letting it go through non-action, in order to be able to have a revaluation before 1949. At any rate several counties, perhaps out of an abundance of caution, obtained the passage of local Acts specifically authorizing revaluations in 1948.

### 3. Listing and Assessing

A very troublesome matter with many tax supervisors has been the problem of getting what they felt to be an adequate listing and valuation of stocks of merchandise of chain stores, and especially of some of the chain stores with home offices out of the State. With respect to single, locally operated stores, the supervisor could compare the tax listing with the income and franchise tax returns made to the State Department of Revenue and obtain a fair idea as to what valuation should be locally listed. He could also examine the State tax returns of chain stores, of course, but in many instances the inventories shown in the reports are not broken down by counties, and in such instances the supervisor could not tell with any reasonable degree of accuracy whether his county was getting a fair proportion of the total inventory on its tax books. He could, as in the case of local merchants, require a detailed inventory or statement of assets and liabilities to be furnished at the time of filing the tax list, but in many instances there would be no readily available way to check the accuracy of such inventories or statements, as they would relate only to the inventory in the particular county or would be a composite statement not broken down by counties.

It is the purpose of Chapter 892 (SB 358) to remedy this situation and to put chain stores on a parity with locally operated stores at least with respect to making available a check against the proffered tax list. Entitled "An Act to aid the counties of the State in the assessment and collection of certain ad valorem taxes," the Act requires any one engaged in the business of selling merchandise in more than one

county in the State to furnish to the tax listing authorities in each county in which stores are operated, at tax listing time, a list of the counties in which stores are operated, the value of the merchandise in each county, and the total value of merchandise owned in the State. This will at least give tax supervisors a basis against which to check the State tax returns, and, if not satisfied, a basis for checking with supervisors in other counties indicated on the list, to see whether the total inventory declared in the State has actually been listed in the several counties.

Also dealing with the listing of property for taxation is Chapter 836 (HB 508) which amends G. S. 105-302 (4) (section 800 (4) of the Machinery Act of 1939, as amended), governing the place for listing tangible personal property. Subsection (4) of G. S. 105-302 provides that, subject to subsection (2), which deals with the listing of farm products owned by the producer, tangible personal property shall be listed at the place where situated, rather than at the residence of the owner, if the owner or person having control of such property hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse at such place for use in connection with such property, and that property stored in public warehouses and merchandise in the possession of a consignee or broker shall be regarded as falling within the provisions of the subsection. The 1947 amendment adds to the subsection the following: "When tangible personal property, which may be used by the public generally or which is used to sell or vend merchandise to the public, is placed at or on a location outside of the county of the owner or lessor, such tangible personal property shall be listed for taxation in the county where located."

Since vending machines are usually placed in "leased" locations, and to that extent occupy "a place for the sale of property" (or are placed on a share-the-profit basis, which amounts to about the same), the 1947 Act amounts to little more than a clarifying amendment. As a practical matter, it might be easier for a tax supervisor and his assistants to check vending machines in their own county, by making an annual canvas, than to see that a resident of their county has listed locally all of the machines which he may have placed throughout a number of counties, but the amendment by no means furnishes an automatic method of getting this class of property on the tax books. It merely clarifies the tax situs of such property, leaving the listing difficulties pretty much the same.

HB 451 was intended to facilitate the listing of personal property not located in the county of the owner's residence. It would have required the owner to list such property in his home county unless he could show to the satisfaction of the tax listing authorities that it was properly listed in some other county. The bill passed the House on the day before final adjournment, was sent to the Senate, and there died in the Finance Committee. If it had passed, however, the bill would have been only a restatement of existing law and a confirmation of the practice of a number of tax supervisors who insist upon a listing of property unless the resident owner can show that the property should be and actually is listed in the county where situated.

### 4. Classification of Property for Taxation

In 1936 the people adopted an amendment to Article V, section 3 of the State Constitution which permits the classification of property for the purpose of taxation, thus departing from the rule of strict uniformity and equality of all taxable property. A number of partial exemptions, such as that afforded cotton to the extent of the amount of purchase money indebtedness for which it is pledged, can probably be

justified under the classification provision. Heretofore, however, the principal and most direct use made of the authority to classify property for taxation has been with respect to the taxation of intangibles. Chapter 1026 (HB 958) adds another classification—agricultural products in storage. It writes a new section, G. S. 105-294.1, which points directly at tobacco: "If the board of county commissioners of any county shall determine as a fact that any agricultural product is held in said county by any manufacturer or processor for manufacturing or processing, which agricultural product is of such nature as customarily to require storage and processing for periods of more than one year in order to age or condition such product for manufacture, and if such determination is entered on the minutes of such board on or before March 31 in any year, such agricultural product shall be taxed in that year uniformly as a class at sixty per cent (60%) of the rate levied for all purposes upon real estate and other tangible personal property by or for said county and/or the city, town, or special district in which such agricultural products are listed for taxation." Since the finding by the board of county commissioners must be made and entered on the minutes on or before March 31, and since the Act was not effective until ratification on April 5, it cannot be applied until the tax year 1948.

Although the purpose of the Act is clear on its face, provisions which are omitted are not less noteworthy than those expressed therein. For example, in order for the 60 per cent rate to apply to a product, a board of county commissioners must "determine as a fact," on or before March 31 of any year that a particular agricultural product is of such nature as customarily to require storage and processing for periods of more than a year in order to age or condition the product for manufacture, but the Act is silent as to what would happen if the commissioners refuse to make such a finding with respect to a product to which the terms of the Act are clearly applicable, or if the commissioners are merely tardy in their action and put it off until after March 31 of any year. While only a few counties will be substantially affected by the Act, and it is probable that no serious question may arise, at least with respect to county taxation, it is not easy to see why these and similar questions should not have been avoided simply by naming tobacco in storage for processing purposes and granting an outright automatic rate reduction. As the Act is written, bothersome questions can arise. The Act contemplates that upon a proper and timely finding by the county commissioners, the rate reduction will apply to any municipalities or other taxing units within the county in which is located the property listed for taxation. What would be the position of a town, upon demand being made for a rate reduction by an owner, if it should appear that the county commissioners' finding was inadequate or made too late? Ordinarily a town has no authority to release any part of a tax which has been properly assessed. It will be observed that the reduction applies to the tax *rate*, and not to the ratio of assessed value to the actual value or the usual assessment ratio. This means that all affected local taxing units must in some manner be advised as to whether a reduction is in order before tax bills are prepared, or they must allow a rebate upon demand and satisfactory proof that the county commissioners have made an appropriate and timely finding. The Act is silent as to how this matter is to be handled as between the county and any municipalities therein. It would probably have been simpler from an administrative standpoint if the Act had merely provided that such agricultural products be *assessed* at 60 per cent of the assessment ratio applied to other tangible personal property, thus automatically bringing about a reduction in the tax bills of all affected local units rather than requiring adjustments in the tax bills themselves.

### 5. Discounts and Penalties

Prior to the convening of the 1947 legislature, both the League of Municipalities and the County Commissioners' Association adopted resolutions favoring changes in the law relative to the prepayment of taxes and the discount to be allowed therefor. Apparently, however, the counties and municipalities were not able to get together on just what changes were desirable, nor were the members of the legislature able to agree when a bill dealing with tax discounts and penalties was introduced. HB 390 would have allowed a discount of 1 per cent for payment before September 1 (present maximum discount is 2 per cent for payment on or before July 1) and a discount of ½ per cent for payment during September. It would have made taxes payable at par from October 2 through January 1, with the penalties moved up one month to begin on January 2. After an uncertain trip through the House, however, the bill was finally reported unfavorably in the Senate. So, until another legislature convenes, at least, discounts and penalties will remain the same as at present. The only change effected was one of terminology: Chapter 888 (SB 290) provides that the word "penalty" or "penalties" when used in connection with the late payment of taxes shall be changed to "interest." Under this Act, "interest" of 1 per cent will be added to 1947 taxes on February 2, 1948 rather than a 1 per cent "penalty." The method of computation specifically is not changed.

### 6. State Board of Assessment

The late A. J. Maxwell, as Director of the Department of Tax Research, served as chairman of the State Board of Assessment. With the death of Mr. Maxwell an Act Chapter 184 (HB 365) was passed making the Commissioner of Revenue chairman of the State Board. The Director of the Department of Tax Research remains as a member.

### 7. County and Municipal General Fund Tax Limitation

For some years past many counties and municipalities, especially those without the aid of ABC store profits, have been finding it difficult and in many cases impossible to operate within the limitation upon the rate of tax which may be levied for general purposes. With respect to counties, the limitation is a Constitutional one and is set at 15 cents on the $100 valuation as a maximum. As to municipalities, the limitation of $1 on the $100 valuation (65 cents in cities where total assessed valuation in 1920 amounted to $100 million or more) was statutory but none the less restrictive. Because of these limitations, many "special purpose" levies have been authorized by the legislature and upheld by the courts, often in recognition of practical necessity and as a matter of pure expediency. Many other legislative measures have been resorted to in order to bolster inadequate general funds, and some of such measures have been of doubtful validity. With the increased cost of old governmental functions and the added costs of new but necessary functions and services, pressure against the general fund limitations became so great and so general that at last the legislature had to recognize it and do something about it. Relief measures are embodied in Chapters 421 (SB 254) and 506 (SB 203).

For the relief of county general funds, Chapter 421 will submit at the next general election the question of raising the general fund limitation in Article V, section 6 of the Constitution from 15 cents to 25 cents on the $100 valuation. The present provision limits the total State and county tax rate (except for authorized "special

purpose" levies and levies for the maintenance of the public schools) to 15 cents with the State limited to 5 cents of the amount. For more than 25 years the State has left the entire 15 cents to the counties, and in the absence of a reversal of State tax policy the passage of the proposed Constitutional amendment would make available to the counties an additional 10 cents on the $100 valuation for their general funds.

For the relief of municipal general expense funds, Chapter 506 rewrites G. S. 160-402 to increase the limit on the general purpose levy from $1 to $1.50 on the $100 valuation, and it repeals that part of the section which limited municipalities having a total assessed valuation in 1920 of $100 million or more to 65 cents.

## SPECIAL LEVIES

### 1. County Civic Centers

Chapter 520 (HB 26) adds to G. S. 153-77 an additional special purpose for which bonds may be issued and taxes levied: the "acquisition and improvement of lands and the erection thereon of buildings to be used as a civic center or indoor or out of door stadium and as a living memorial to veterans of World War I and World War II."

G. S. 153-78 provides, in subsection (e), paragraph 2, that if the bonds authorized in the preceding section are for a purpose other than for the payment of necessary expenses, the bond order will not take effect until approved by the voters of the county. In the absence of this statute the same restriction would be imposed, of course, by Article VII, section 7 of the Constitution. Under such decisions of the Supreme Court as Twining v. Wilmington, 214 N. C. 655, 200 S.E. 416 (1939) holding that the acquisition of buildings for recreational and athletic purposes, parks and playgrounds, a municipal auditorium and a library were not necessary expenses, it is probable that a bond issue or tax levy to carry out the purpose authorized by the Act would have to be approved by a majority of the qualified voters. Also, if a proposed bond issue for the purpose would exceed two-thirds of the amount by which the county's debt had been reduced the preceding fiscal year, the issue would have to be approved by a majority of the voters voting in an election called for the purpose, as provided by Article V, section 4 of the Constitution.

### 2. School Plant Facilities

G. S. 153-77 enumerates a number of special purposes for which counties may issue bonds and levy taxes. One of those purposes, set out in paragraph (a) is "Erection and purchase of schoolhouses." Chapter 931 (HB 679) amends this paragraph to read: "(a) Erection and purchase of schoolhouses, school garages, physical education and vocational education buildings, teacherages, lunchrooms, and other similar school plant facilities." The Court has held that in the erection of public school buildings a county acts as an agency of the State in providing a school system to meet the Constitutional requirement, and therefore is not bound by the limitation of Article VII, section 7, relative to necessary expenses. Bridges v. Charlotte, 221 N. C. 472, 20 S.E. (2d) 825 (1942). Whether the erection of school garages, physical education and vocational education buildings, teacherages, lunchrooms and other similar school plant facilities will receive the same treatment as school buildings proper remains to be seen. Denny v. Mecklenburg County, 211 N. C. 558, 191 S.E. 26 (1937) held the statute did not authorize a county to erect teacherages, on the ground that

"schoolhouses" did not as a matter of law embrace teacherages, as a part of the necessary school equipment of a consolidated school. On the other hand, Justice Connor dissented on the ground that it could not be held as a matter of law that a teacherage is not a "schoolhouse." In any event, the obstacle in the Denny case has been removed by the amendment, and the holding in the Bridges case that the necessary expense provision of the Constitution does not apply to municipalities and counties when acting as agencies of the State in carrying out its duty of providing a system of public schools indicates that counties are now as free from restrictions in erecting or acquiring the additional school facilities named in the 1947 amendment as they are in the case of schoolhouses proper. In considering the authority of counties to issue bonds and levy taxes to acquire and maintain these auxiliary facilities, the language of the Court in the Bridges case is enlightening:

> "We understand that what courts appropriately refer to as the 'mandate' of Article IX of the Constitution carries with it not merely the bare necessity of instructional service, but all facilities reasonably necessary to accomplish this main purpose. And in this respect the word 'necessary' has long been regarded as a relative, not an exigent, term—certainly not one which may be used to drain the life and substance out of a project with which it is connected, but one which itself must accept an interpretation consonant with the reasonable demands of social progress. We do not differ with the General Assembly in its policy as expressed in this (retirement) legislation, but we point out that the matter is exclusively within the province of that body. . . . After all, it is difficult to see how any want of relevancy, even if it could be supposed to exist, would bring the subject within the purview of Article VII, section 7, of the Constitution."

## FARM CENSUS REPORTS

G. S. 106-25 has long placed upon county tax supervisors and upon list takers and assessors the duty of compiling and reporting an annual crop census. This duty has been a source of considerable irritation to local tax authorities and for some time they have been trying to get rid of it. Bills introduced at the 1945 session intended to relieve the tax listing authorities of this job were unsuccessful, but those who felt that the taking of the farm census was incompatible with the list takers' primary duty of getting adequate tax lists, that the farm census interfered with tax listing duties, and that it placed an undue burden upon list takers' at a time when they needed to direct all of their efforts toward securing tax lists kept agitating for the removal of this duty. Last fall at Wrightsville Beach the County Commissioners' Association formally adopted as part of its legislative program a resolution to promote legislation which would relieve local tax authorities of the duty of taking the annual farm census.

The program with respect to the farm census was at least 80 per cent successful. Although one bill (HB 129) which would have abolished the census entirely, and another (HB 128) which would have provided for the appointment of census takers other than tax list takers and the payment by the State to the counties of 10 cents per accepted abstract failed to pass, another effort received legislative approval. Chapter 540 (HB 784) leaves G. S. 106-24 through 106-26 the same as at present, but instead of the farm census having to be taken annually it will henceforth be required only quinquennially. The first census under the 1947 Act will be taken in 1948, and a new census will be taken every fifth year thereafter. (The act uses the language "during the year 1948 and each five years thereafter.")

## HIGHWAY FUNDS ALLOCATED TO MUNICIPALITIES

Although efforts of municipalities to share in gasoline tax revenues and to have exempted from the tax gasoline used in certain municipal equipment used exclusively upon city streets were unsuccessful, municipalities did get a little tentative help in maintaining their non highway system streets. Chapter 290 (HB 310) amends G. S. 136-38 to provide that any balance of highway funds allocated to cities and towns, remaining after the application of such funds to highway system streets and connecting link streets as now required, may be used for the maintenance, repair or improvement of any streets designated by the municipal governing body.

## MARRIAGE LICENSE TAX

G. S. 105-95 levies a State tax of $3 on each marriage license, and authorizes counties to levy a tax of $1 thereon, to be collected by the register of deeds. Chapter 831 (HB 153) repeals this section in its entirety and enacts a new section, G. S. 51-20 which authorizes counties to levy a tax of $4 on each marriage license issued, the entire tax to be retained by the county. The Act provides, however, that nothing therein shall prevent any register of deeds who is on a fee basis from retaining "such fees as heretofore allowed by law due such Register of Deeds for issuing such license." That is, the register of deeds on a fee basis will continue to receive and retain the fee allowed to him heretofore, and the county will get the balance of the tax. It should be noted, however, that the Act does not automatically levy a tax of $4 on behalf of the counties, but merely authorizes the counties to make such a levy up to that amount, and unless the county commissioners act to make the levy there will be no marriage license tax on and after July 1, the effective date of the Act.

Licenses will continue to be issued by registers of deeds, who are required to make quarterly sworn statements to their board of commissioners on the first Monday in January, April, July and October, showing the names of the persons to whom licenses were issued during the preceding three months and the amount of taxes collected or that should have been collected.

## BONDS—EXTENSION OF TIME FOR ISSUANCE

G. S. 153-102, with respect to counties, and G. S. 160-389 with respect to municipalities, provide that bonds may be issued at any time within three years after the date a bond order takes effect, or within five years with respect to funding or refunding bonds. Ch. 402, S. L. 1945 extended the time for the issuance of bonds theretofore authorized to July 1, 1947, notwithstanding the limitation of those sections. This extension was probably occasioned by the fact that, after many local bond issues had been authorized, it was found that because of material and manpower shortages the purposes for which the bonds had been authorized could not then be realized. The extension was intended to save local units the useless expense of paying interest on idle borrowed money or the trouble and expense of going through another bond authorization procedure after the first authorization had lapsed.

Chapter 510 (SB 252) carries the extension forward to July 1, 1949. It specifically provides, by amendments to the statutes cited above, that any bonds authorized prior to July 1, 1946 may be issued at any time prior to July 1, 1949. It also amends G. S. 153-108, which requires county bond anticipation notes to be paid off within three years after the effective date of the bond order, to provide that such notes may be paid at any time on or before June 30, 1949.

## SCHEDULE "B" LICENSES

### 1. Theatres

When the 1943 legislature repealed the State 3 per cent gross receipts tax on moving picture shows and vaudeville shows and substituted a graduated scale of State license fees, it limited cities and towns, by subsection (e) of section 105 of the Revenue Act (G. S. 105-37 (e) ) to a tax "not in excess of the tax levied by such city or town as of and in effect January 1, 1943." (Counties were and still are prohibited from levying any tax upon the businesses taxed under section 105.) At least one thing was wrong with this limitation: if a city or town had inadvertently failed to have in effect a levy on theatres as of January 1, 1943, it was prohibited from putting into effect any levy at all. Also, if a city or town had for some reason levied less than the then allowed maxiumm, the language of the 1943 amendment would prevent it from bringing the levy up to the amount of tax levied by municipalities in the same population group.

Section 2(a) of Chapter 501 repeals the 1943 limitation and gives cities and towns a new maximum theatre tax schedule, as follows:

| Population | Maximum Tax |
|---|---|
| Under 1,500 | $12.50 |
| 1,500 but under 3,000 | 31.25 |
| 3,000 but under 5,000 | 62.50 |
| 5,000 but under 10,000 | 87.50 |
| 10,000 but under 15,000 | 137.50 |
| 15,000 but under 25,000 | 187.50 |
| 25,000 and over | 212.50 |

On shows operated more than 2 miles from the business center (intersection of the 2 principal business streets) in cities and towns of 25,000 or over . . . . . not in excess of $100.00.

On shows known as "neighborhood" or "surburban" theatres (within city limits or within one mile of corporate limits of city with population of 25,000 or over); on shows operated exclusively for colored people in city of 10,000 or over; on shows operated at bathing beaches or resort towns for less than 6 months each year; and on shows operating 3 days or less each week . . . a tax not in excess of one-half the tax shown in the schedule above.

### 2. Other Entertainments

Subsections (f) and (g) of section 105 of the Revenue Act, dealing with other entertainments not taxed as moving picture shows, is rewritten and will become G. S. 105-37.1. It permits cities and towns (but not counties) to levy an annual tax upon every person, firm or corporation engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempt under Schedule "B," for which an admission is charged, for each room, hall, tent or other place where admission charges are made, according to the following schedule:

| Population | Maximum Tax |
|---|---|
| Under 1,500 | $ 5.00 |
| 1,500 but under 3,000 | 7.50 |
| 3,000 but under 5,000 | 10.00 |
| 5,000 but under 10,000 | 12.50 |
| 10,000 but under 15,000 | 15.00 |
| 15,000 but under 25,000 | 20.00 |
| 25,000 and over | 25.00 |

On every person, firm or corporation giving, offering or managing any dance or athletic contest (except high school and elementary school athletic contests) for which an admission fee of more than 50 cents is charged, for each location where such charges are made ..... $2.50.

### 3. Elevator and Automatic Sprinkler Servicing

G. S. 105-56 (section 122¾ of the Revenue Act) sets out a schedule of State taxes based upon population of cities in which the business of repairing and servicing elevators and automatic sprinkler systems is carried on. Cities and towns in which is located a principal or branch office of such business are authorized to levy one-half the State tax. The 1947 amendment provides, as to the State tax, that if a person, firm or corporation engages in the business taxed under the section in two or more cities, the State tax will be based upon the population of the largest city in which the business is carried on. The language pertaining to taxation by municipalities is unchanged, it still providing for a city tax not in excess of one-half the State tax. Apparently, if a small town has in it a branch of a business which also maintains a branch or a principal office in a larger town in the State, the small town's tax would be based upon the population of the larger town, since the maximum town tax is measured not by its own population but by the size of the State tax.

### 4. Bowling Alleys

G. S. 105-64.1 (section 129½ of the Revenue Act) authorizes counties, with respect to businesses carried on outside the corporate limits of municipalities, and municipalities with respect to businesses carried on within their borders, to levy not in excess of the State tax upon "Every person, firm or corporation who shall rent, maintain, or own a building wherein there is a bowling alley or alleys of like kind." The quoted language of the Act did not seem to cover outdoor alleys; so this defect was remedied by the 1947 amendment which inserted after "building wherein" the words "or any premises on which." Thus, outdoor bowling alleys are now clearly covered to the same extent as indoor alleys, and are taxable upon the same basis

### 5. Fireworks and Cap Pistol Dealers

Since Chapter 210 (SB 4) makes illegal the possession, use or sale of fireworks or related articles, with certain limited exceptions, as of July 1, Chapter 501 (HB 25) removes what would soon become an obsolete section by repealing G. S. 105-81 (section 146 of the Revenue Act) which permitted counties, cities and towns to levy

a tax up to $200 upon dealers in fireworks, cap pistols, etc. This constitutes a repeal of the counties' authority to tax but the removal of the limitation on cities and towns, which may still tax such dealers, if they can find them, under G. S. 160-56.

### 6. Morris Plan and Industrial Banks

G. S. 105-94 (section 158 of the Revenue Act) imposes a State tax on Morris Plan or industrial banks on the basis of their total resources as of December 31 of the preceding calendar year. It limits cities and towns to a levy of one-half the amount of the State tax. Chapter 501, however, repealed this section in its entirety; so this limitation on cities and towns as to this type of business is removed and they may now apparently tax without limit other than that of "reasonableness" under G. S. 160-56.

All of the Schedule "B" amendments noted above are effective as of June 1, 1947.

## SCOPE OF LOCAL GOVERNMENT ACT

Article I, Chapter 159 of the General Statutes, known as the Local Government Act, creates the Local Government Commission and designates the State Treasurer as the Director of Local Government, ex officio. The article gives the Local Government Commission extensive powers in supervising the issuance of bonds and in other fiscal matters of local governmental units. G. S. 159-42 provides that the article shall apply to every unit having the power to levy ad valorem taxes, regardless of any provisions to the contrary contained in any special or local Acts enacted prior to the adjournment of the General Assembly of 1941. (The 1941 legislature had brought the provision forward from 1935, and the 1935 legislature had made the article apply regardless of any local Acts to the contrary passed prior to its adjournment.) Chapter 992 (SB 451) brings the provision up to date by providing that the article shall apply to all local units having the power to levy ad valorem taxes, regardless of contrary provisions in any local Acts enacted prior to the adjournment of the 1947 General Assembly.

## DRAINAGE DISTRICTS

G. S. 156-120, dealing with viewers' reports to the clerk of court upon the desirability of issuing bonds to repair or improve a drainage district, is amended by Chapter 982 (SB 391). The former requirements that the viewers change lines which were incorrectly located on the original map, and that they reclassify all land which has been subdivided since the original map was made and which has not been reclassified, are deleted. The clerk of the Superior Court is authorized to order a new map of only that portion of the district which is to be affected by the proposed repairs and improvements and which will be assessed therefor, rather than requiring a new map of the entire district. The chapter also amends G. S. 156-92, relative to assessments for repairs and improvements. It is made clear that assessments for such expenditures are to be made only against that part of the district benefited thereby. The Act sets requirements of notice by the board of drainage commissioners to owners as to proposed assessments and for hearings by the clerk of court upon any objections to assessments.

Chapter 935 (HB 823) amends G. S. 156-81 to provide that the clerk of the Superior Court may, in his discretion, appoint the members of the board of drainage commissioners in lieu of an election as provided by the section. Such appointed members

would have the same powers as if they had been duly elected as provided by the statute. And Chapter 273 (HB 414) amends G. S. 156-79 to provide that vacancies of boards of drainage commissioners shall be filled by appointments of the clerk of the Superior Court, rather than "in like manner" to the original appointments of those receiving the majority of votes in the commissioner election.

## FOREST WARDENS' EXPENSES

G. S. 113-54 before the 1947 amendment, required counties to pay one-half the expenses incurred by forest wardens as certified to the State forester, subject to a provision that the county's share of the expense could not be greater than 5 mills per acre of total woodland area in the county. Chapter 56 (HB 89) relieves counties of the liability for this expense, but provides that counties may assume liability by entering into a written agreement with the State forester. The 5 mill per woodland acre limitation is stricken out.

The Chapter also amends G. S. 113-56 by striking from that section the 30 cents per hour limitation upon the compensation to be paid forest wardens.

## MARRIAGE, DIVORCE AND RELATED MATTERS

### MARRIAGE

Chapter 383 (HB 109) is evidence of the change in social thinking that has taken place in this State in the 20th Century. This Act amends G. S. 14-319 to make a person convicted of marrying a female under the age of 16 a misdemeanor (the prior law had set the age at 14). It also amended G. S. 51-2 to raise from 16 to 18 the age at which persons of either sex may wed without consent. As amended this section permits persons of either sex over the age of 16 and under 18 to marry with a special license issued after written consent has been obtained from one of the parents of each party or from a person standing in loco parentis. Prior to this amendment the special license requirement applied only to females over 14 and under 16. The Act also provides that a special license will be allowed when an unmarried female between the ages of 12 and 16 is pregnant or has given birth to a child if she and the putative father agree to marry, and if written consent to their marriage is given by one of the parents of the female, or by a person standing in loco parentis to her, or by the guardian of her person, or where there is no parent or other qualified person to give consent, by the superintendent of public welfare of the county in which either party resides.

Chapter 383 also amended G. S. 51-3 to make marriages of females as well as males under the age of 16 "void." The proviso in G. S. 51-3 indicating that such marriages are to be "declared void" has been retained, and it is not likely that the courts will alter the course of decisions in this State which have held that the only marriages void *ad initio* under this statute are those between whites and Indians or Negroes and those which are bigamous, and that the other prohibited marriages are merely voidable.

The action of the 1945 legislature in requiring non-residents of the State to apply for marriage licenses 48 hours before issuance and penalizing registers of deeds for issuing licenses in violation of this requirement in fifteen eastern counties has suffered some modification in spite of an unsuccessful attempt (HB 374) to make the provisions of the Act (Ch. 1046, S.L. 1945) apply to residents as well as non-residents and to every county in the State. Apparently feeling that the "marriage mill" scandals had spent themselves, a number of the eastern counties succeeded in having themselves exempted from the 1945 act. Chapters 288 (HB 206), 289 (HB 235), 391 (HB 355), and 538 (HB 776) removed Dare, Currituck, Pasquotank, Gates, Perquimans, Martin and Chowan counties from the prohibition of the Act, leaving only Tyrrell, Washington, Pamlico, Camden, Hertford and Bertie subject to its provisions.

Chapter 929 (HB 623) is an attempt to strengthen the State's defenses against the establishment of any more "marriage mills." Since G. S. 51-9 requires marriage license applicants to secure health certificates and since there is danger in establishing "quick-work" laboratories to make the required tests, this Act amends G. S. 51-9 to require laboratories, before making serological tests, to apply to the State Board of Health for a certificate of approval. The application must be in writing, and must be accompanied by such information and reports as the State Board of Health may require. The State Board is also authorized to suspend or revoke any such certificate in its discretion, and after such a suspension or revocation the operation of such a laboratory as an approved laboratory is made unlawful.

### DIVORCE

In a number of cases husbands and wives enter into separation agreements and effect property settlements before they seek a divorce. Such agreements have gen-

erally been upheld by the courts. At the same time G. S. 50-8 has required that when filing complaint in an action for divorce or for alimony, or for both, the plaintiff must file an affidavit that the facts set forth in the complaint are true to the best of his knowledge and belief "and that the said complaint is not made out of levity or by collusion between husband and wife; and if for divorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint." In the face of the widespread use of the kind of separation and settlement agreements mentioned above, and in the face of the fact that few divorces are sought for reasons other than that of being "freed and separated from each other," it is naive to suppose that the truth has not suffered in making such affidavits. Yet the Supreme Court has consistently held that the requisites of G. S. 50-8 are mandatory and that a failure to make the required averments defeats the jurisdiction of the Superior Court to hear the case. Chapter 165 (HB 167) seeks to remedy this situation. It amends G. S. 50-8 to delete all the language quoted above setting out the requirements of the affidavit. Thus the affidavit now required will take much the same form as the normal verification of a complaint. The Act goes somewhat further and, while specifically not applying to pending litigation, validates "all judgments heretofore rendered in actions for divorce where the affidavit failed to allege that there was no collusion between the husband and wife." It must be noted that this validation does not extend to judgments in which the affidavit failed to allege that the complaint was not made out of levity, nor does it validate those judgments in which the affidavit failed to allege that the action was not for the mere purpose of being freed and separated from each other. As to the purported validation, it is questionable, in view of the decisions holding that defects in the affidavit defeat the Superior Court's jurisdiction, whether an act of the legislature can validate a judgment which, under these decisions, cannot be considered a judgment at all for a lack of jurisdiction shown on the face of the record.

Had HB 79 passed it would have been possible for a spouse to secure an absolute divorce if his or her spouse had been convicted of a felony, and had SB 155 been passed two years separation would have been eliminated as a ground for divorce. Both bills, however, fell by the wayside.

## ALIMONY

Chapter 95 (SB 58) added to G. S. 1-247 a provision specifically permitting judgment by confession to be entered for alimony or for the support of minor children subject to the usual court authority in proceedings for alimony or support to modify such a judgment for proper cause shown. The Act further provides that such a judgment will subject the defendant to such penalties as may be adjudged by the court as in any other case of contempt of its orders. While there had been no authoritative decision to that effect, it was generally assumed that there might be confession of judgment in such cases, so that the most significant addition to the law is that portion of the Act which allows enforcement of such a judgment by contempt proceedings.

## BASTARDY

In proceedings to provide for the support of illegitimate children under G. S. 49-7 the issue of paternity must be determined before determining the issue of whether the defendant has refused or neglected to support and maintain the child. In cases where the defendant has been found to be the father of the child but not guilty of

non-support or refusal to support, the Supreme Court has held that the defendant is not entitled to an appeal on the issue of paternity. Chapter 1014 (HB 739) amends G. S. 49-7 to provide that the defendant in such a case shall have the same right of appeal from an adverse finding of the issue of paternity as he would have had he been found guilty of the crime of wilful failure to support the child.

Chapter 663 (SB 50) relating to the legitimation of children born out of wedlock and the issuance of new birth certificates for legitimated children is discussed in some detail in the section dealing with Public Welfare.

## RELATED MATTERS

For a discussion of the changes in the law of adoptions, see the section dealing with Public Welfare. For proposed changes in the widow's share in her husband's estate, see the section dealing with Civil Procedure.

## MISCELLANEOUS

### COMMISSION ON PUBLIC-LOCAL AND PRIVATE LEGISLATION

Joint Resolution No. 24 (HR 751) created a "Commission on Public-Local and Private Legislation," to study the problem of this type of legislation, which takes up a large portion of each General Assembly's time. The Commission is to have seven members, three appointed by the Speaker of the House from the present House membership, two by the President of the Senate from the present Senate membership, and two by the Governor. Its duties are as follows: to study the whole problem, with particular attention to the report made by a similar commission to the 1939 General Assembly; to recommend such amendment to Art. II, Sec. 29 of the Constitution (which limits the General Assembly's power to enact special or private legislation) as will prohibit local laws on matters adequately covered by general laws; to make such other recommendations as it may deem proper; and to submit its report to the Governor not later than December 1, 1948, for transmittal to the 1949 General Assembly.

### FORM OF ENROLLED BILLS

Chapter 378 (HB 10) adds to G. S. 120-22 the provision that prior to enrolling any bill which has been passed by the General Assembly, the Secretary of State shall substitute the corresponding Arabic numerals for any date or section number (of the General Statutes or of any act of the General Assembly) which is written in words. As originally introduced, HB 10 contained provisions for declaring policy as to the effective date of all acts ratified, but none of these portions of the bill got through the Senate.

### CODIFICATION OF STATUTES

Chapter 150 (HB 186) rewrites G. S. 164-10(c) so as to authorize the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, in its preparation of the general and permanent laws for inclusion in the cumulative pocket supplements to the General Statutes, to: (1) re-arrange the order of chapters, subchapters, articles, sections and other divisions; (2) provide titles for any divisions or subdivisions, and section titles or catchlines when they are not provided by such laws; (3) adopt a uniform system of lettering or numbering sections and subdivisions, and re-letter sections and their subdivisions in accordance with such system; (4) re-arrange definitions in alphabetical order; (5) re-arrange lists of counties in alphabetical order; and (6) make such other changes in arrangement and form, which do not change the law, as may be necessary for an accurate, clear and orderly codification.

### REVISOR OF STATUTES

Chapter 114 (HB 187) provides that the member of the staff of the Attorney General who is assigned to perform the duties prescribed by G. S. 114-9 (which creates and sets out the duties of the Division of Legislative Drafting and Codification of Statutes) shall be known as the Revisor of Statutes, with salary to be fixed by the Governor with approval of the Council of State. The chapter also strikes out the requirement in G. S. 164-14(a)(1) that the appointee of the president of the North Carolina State Bar to the General Statutes Commission be approved by the bar council.

## REGISTRATION OF PROPAGANDISTS

Chapter 891 (SB 353) requires "every person, firm, corporation, association or organization . . . who or which is principally engaged in the activity or business of influencing public opinion and/or legislation in this State . . . " to register with the Secretary of State prior to engaging in such activity or business. The Act specifies the nature of information which must be supplied by the registrant, including names of parties involved, sources of income and financial statement, purposes of the organization, etc. This information is required to be entered into a docket kept by the Secretary of State, and becomes a matter of public record. The Act does not apply to any person, firm, etc., engaged in influencing public opinion on any matter which is applicable to only one county, or to one county and a county contiguous to it. It does not apply to persons, firms, etc., who carry on such activity or business solely through the medium of newspapers, periodicals, magazines, etc., and/or through radio, television or facsimile broadcast operations; nor does the Act apply to any person, firm, corporation, or candidate in any political election, campaign committee, etc., who or which have filed information as required by the Corrupt Practices Act of 1931.

Those covered by the Act were required to register within 30 days after ratification of the Act (April 5, 1947), and thereafter annually on or before January 1 of each year. Failure to comply with the provisions of the Act is a misdemeanor, punishable by fine or imprisonment in the discretion of the court.

## CHEROKEE INDIANS

Chapter 978 (SB 184) provides that the members of the Eastern Band of Cherokee Indians residing in "Cherokee, Graham, Swain, Jackson and other adjoining counties" in North Carolina, and the lineal descendants of *bona fide* members of the Eastern Band, may "inherit, purchase, or otherwise lawfully acquire, hold, use, encumber, convey and alienate by will, deed, or any other lawful means, any property whatsoever as fully and completely in all respects as any other citizen" of the State, subject only to restrictions and conditions imposed under Federal statutes and regulations or treaties, contracts, agreements, or conveyances between such Indians and the Federal government. The Act also provides that any lineal descendant of a *bona fide* member of the Band who is domiciled on the Band's lands is eligible to hold any elective or appointive office in the tribal organization, including the position of chief.

## MEMORIALS

Chapter 782 (SB 141) continues the existence of the commission created in 1945 for the erection of a suitable memorial on the State capitol grounds to Presidents Andrew Jackson, James K. Polk and Andrew Johnson. The Act authorizes the commission to proceed with making plans for the memorial, with its location to be approved by the Governor and the Board of Public Buildings and Grounds, and appropriates a maximum of $75,000 from the General Fund for the purpose.

Chapter 780 (SB 37) authorizes the Governor and Council of State, in their discretion, to allocate $250 from the contingency and emergency fund for the purpose of enrolling the name of the battleship USS *North Carolina* on the honor list of battleships in World War II named for states in the new memorial bell tower at Valley Forge.

## MOTOR VEHICLE LAWS

Anyone reading the daily papers during the first full year following the war could have predicted that 1947 would be a banner year for changes in the laws governing the operation and ownership of motor vehicles. Official statistics released by the State Highway Commission indicated that the expected was happening—traffic was increasing measurably on the streets and highways. Every car that would run was in use, and new cars were beginning to appear in volume. But not only was the amount of traffic increasing; the number of traffic accidents began to grow disproportionately. High speeds in vehicles averaging more than seven years old and needing replacement could result in nothing else. Stories of smash-ups, with accompanying photographs recording the horror of the accident scene took increasingly greater portions of the front pages, and this increase was officially corroborated by the accident rate statistics released periodically by the Department of Motor Vehicles. The highly useful motor vehicle has proven over and over again to be also highly dangerous, and increasingly insistent demands have been voiced that something be done to render the highways of the State at least as safe as a battlefield. How well the legislature has met or can meet those demands remains to be seen, but the Highway Safety Act, together with other measures such as the strengthening of the Highway Patrol, represents a major effort in that direction.

### HIGHWAY SAFETY ACT

Containing the principal provisions of 1947 directed toward promoting safely on the streets and highways is Chapter 1067 (SB 166), known as the "Highway Safety Act," which becomes effective July 1, 1947. This legislation, which is a part of the nationwide safety program growing out of the President's 1946 Highway Safety Conference, is thought to represent the best in safety legislation and is designed to put North Carolina more nearly on a par with the leaders in this field so far as legislation is concerned.

#### Vehicle Inspection

To guarantee as nearly as possible that every vehicle operating on our streets and highways is mechanically fit and safe to operate, thus eliminating mechanical failure as one of the considerable causes of motor vehicle accidents, the Highway Safety Act requires, and sets up the machinery for, periodic inspection of all motor vehicles registered in this State. The Department of Motor Vehicles is given rather wide authority for setting up inspection stations, conducting inspections and issuing certificates of inspection.

The Act calls for only one inspection during the year 1948 and for semi-annual inspections thereafter, failure of a vehicle to meet the required standards or failure to obtain the required certificate to result in suspension of registration. Inspections in 1948 and 1949 will cost the owner $1.00 each and 75c thereafter, these fees to go into a special "motor vehicle inspection fund" and to be used to finance the inspection program. The Act makes an advance of $300,000 from the Highway Fund for the purpose of financing the program in its initial stages, this fund to be expended under the supervision of the Budget Bureau and to be repaid from the inspection fund as it accrues. This money becomes available as of July 1, 1947, in order to enable the Department of Motor Vehicles to prepare for inspections beginning in 1948. Persons who have seen similar inspection programs in operation in other states will appreciate that the "preparation" for such a program will be a major undertaking and that

complete establishment of the program may take years (the New Jersey Motor Vehicles Department reports that it is still having to educate the motoring public to its program after several years of inspections).

### Reëxamination of Drivers

To reduce as much as possible the human element as a cause of motor vehicle accidents, the Highway Safety Act amends our present driver's license law to require the reëxamination of all drivers (with the exception of those who have passed an operator's examination given by the Department of Motor Vehicles subsequent to July 1, 1945, and prior to July 1, 1947, who may be once reissued a license without reëxamination). It will be recalled that when the Uniform Driver's License Act was adopted by the 1935 General Assembly, provision was made for the granting of a license to all operators meeting the age requirements who were operating at the time the Act became effective. The operators' examinations given pursuant to the original Act were none too stringent in the early days of the Act. Consequently, there are many drivers on the roads today who have not demonstrated that they possess the basic qualifications which experience has shown every driver should have. The Commissioner presently has authority to call in for reëxamination drivers suspected of being unqualified, by reason of physical or mental disablement or decline; but he cannot come to know of all such cases. So it is to reach those drivers that this reexamination provision is directed. A fee of $2.00 will be charged thenceforward for an examination or for reëxamination, the fees collected to be placed in a special "Operator's and Chauffeurs' License Fund," the fund to be used for the administration of the licensing provisions. Plans are now being made to double the force of driver's license examiners in order to put into effect these reëxamination provisions and to continue the program in force. (Operators' licenses issued under the Act will automatically expire on the birthday of the licensee in the fourth year following the year of issuance and the operator must pass a new examination. Chauffeurs' licenses will expire June 30 of each year, as at present.)

The Act makes such amendments in the license law as are necessary to eliminate conflicts with the new provisions, and it provides a minimum fine for a violation of any of the licensing provisions of $25 or 30 days imprisonment, or both.

### License Suspensions and Revocations

The Highway Safety Act makes the following changes in the law governing the suspension and revocation of the driving privilege:

(a) It extends the authority of the Department to suspend a license where a driver has, within one year, been convicted of two or more charges of speeding in excess of 55 and not more than 75 miles per hour, or of one or more charges of reckless driving plus one or more charges of speeding in excess of 55 and not more than 75 miles per hour.

(b) It extends the authority of the Department to suspend a license upon conviction of the driver of operating at a speed in excess of 75 miles per hour.

(c) It rewrites G. S. 20-19, governing the period of license suspension or revocation, so that the periods will now be as follows:

1. A suspension under (a), above, will be for not less than 60 days nor more than 6 months.

2. A suspension under (b), above, will be for not less than 6 months nor more than 1 year.

3. A suspension for any other cause will be for a period of not more than 1 year.

4. A revocation because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug will be for a period of at least 3 years (i.e., the Department may not issue a new license within 3 years of such conviction).

5. A revocation for a third or subsequent conviction for driving under the influence of intoxicating liquor or narcotic drugs will be permanent, except that the Department may, after the expiration of 5 years, grant an application for a new license upon satisfactory proof that the applicant has been of good behavior during the 5-year period and "that his conduct and attitude is such as to entitle him to favorable consideration."

6. A revocation for any other reason will, as at present, be for a period of at least 1 year.

(d) It rewrites the penalty provision for operating while license is suspended or revoked other than permanently, to provide a penalty of at least $200 fine or imprisonment in the discretion of the court, or both, and to require that the period of suspension or revocation be extended to *double* the original period. (The law formerly called for only one additional period, and then only in cases of mandatory revocations under G. S. 20-17.)

(e) It provides a penalty of imprisonment for not less than 1 year (although the Act stipulates that the offense shall be a misdemeanor) for operating after the license has been permanently revoked.

### Speed Laws

Always a problem are the speed laws. On the one hand it is desirable to promote the rapid movement of traffic in order to relieve the congestion which slow moving traffic entails, and in order to expedite the many transactions which are tied in so intimately with motor vehicle transportation. On the other hand, it is desirable and increasingly necessary to enact and enforce speed and other traffic restrictions which will halt and substantially reduce the inordinate waste of lives and property resulting from traffic accidents. North Carolina has gone through an odd evolution with respect to speed restrictions, with a resultant hybrid set of speed laws consisting of: (1) a standard of due care to which every driver is subject at all times and in all conditions; (2) a top maximum which could be lawfully exceeded only by certain emergency vehicles: and (3) a set of specific speed restrictions known as "prima facie" speed limits, varying according to the character of the street or road and according to type of vehicle, with the law declaring that, where no special hazard exists, these speeds shall be lawful but that any speed in excess of the stipulated speeds shall be "prima facie evidence that the speed is not reasonable or prudent or that it is unlawful."

The 1947 Act by no means lays the ghost of the uncertainties of the old law. Sometimes more lenient, but usually more stringent, the new speed laws have the following effect: The standard of due care in view of the time, place and condition remains. The top limit for business districts remains at 20 miles per hour but the limit for residential districts is raised from 25 to 35 miles per hour. In places other than business and residential districts, all vehicles other than "passenger cars, regular pas-

senger vehicles, pick-up trucks of less than 1 ton capacity, and school busses loaded with children" are limited to a top maximum of 45 miles per hour, and for passenger cars, regular passenger carrying vehicles and pick-up trucks of less than 1 ton capacity, the top maximum is fixed at 55 miles per hour instead of the former 60 (which was reduced to 35 and then raised to 50 during the war years by gubernatorial proclamation).

Thus, it appears that all "prima facie" limits are eliminated from the speed laws, to the great relief of those who have long puzzled their brains in trying to fathom their meaning, particularly from the standpoint of criminal violations. The result should be a much more uniform and satisfactory enforcement of the speed laws. There remains one big *quaere*, however, which will be of particular interest to municipal authorities: under the present law, which the Highway Safety Act does not change in this respect, a local governing authority does not have authority to reduce the maximum speeds set by the Statewide law *except at intersections*. (In this particular the power of municipal authorities is not as broad as that of the Highway Commission, which is authorized after proper study to reduce the limits fixed by Statewide law "at any intersection *or other place* upon any part of a highway." Since the new limit in residential districts is raised to 35 miles per hour, and cities and towns cannot reduce the limit except at intersections, a large gap in necessary regulatory power is left in congested or hazardous residential areas whose streets are not part of the highway system. With no authority given to the Highway Commission or to municipalities to reduce the limit in such areas, enforcement of reasonable speed limits rests upon the uncertain and feeble reed of "due care under the circumstances"—usually even less reliable as a preventative standard than as a criterion of guilt in a past accident.

### Changes in Penalties

(a) Drunken driving—The penalty for driving under the influence of intoxicating liquors or narcotic drugs (or for driving, being an habitual user of narcotic drugs) will (in addition to license revocations), under the provisions of this Act be progressive: for the first offense, the penalty will be a fine of not less than $100 or imprisonment for not less than 30 days, or both; for the second offense, a fine of not less than $200 or imprisonment for not less than 6 months, or both; and for a third or subsequent offense, a fine of not less than $500 or imprisonment for not less than one year, or both.

(b) Speeding and reckless driving—G. S. 20-180, which fixes the penalty for speeding and reckless driving, is rewritten by this Act to provide that either offense constitutes a misdemeanor and to further provide that any person convicted of operating in excess of 75 miles per hour shall be punished by a fine of not less than $100 or by imprisonment for not less than 30 days, or both. Thus, under the old law (which remains unchanged) fixing the penalty for any violation not otherwise provided for at a fine of not more than $100 or imprisonment for not more than 60 days, or both, the penalty for reckless driving or speeding at *less* than 75 miles per hour will be a maximum of 60 days or $100 or both. This results in a peculiar situation: the maximum punishment for speeding *less* than 75 miles per hour is *greater* than the maximum for speeding 75 miles per hour or more.

### Powers of Highway Patrol

Described as a means of restricting somewhat the general investigative duties of the Highway Patrol so that more emphasis could be placed on its road patrol function,

one section of the Highway Safety Act repeals the 1945 enactment giving members of the Patrol the "right of any peace officer in making arrests when called upon by the sheriff of any county or the chief of police of any municipality." Henceforth, such powers can be exercised only upon the specific order of the Governor.

## THE FINANCIAL RESPONSIBILITY ACT

Ranking in importance with the Highway Safety Act as a major piece of motor vehicle legislation is Chapter 1006 (HB 63), the Financial Responsibility Act. Its provisions are quite lengthy and detailed, and the scope of this summary permits no more than a statement of the principal provisions of the Act.

Like the Highway Safety Act, this measure is a part of the State's campaign to bring itself, so far as legislation can do so, up to the level of the best in the safety field. It has a double-barreled purpose: first, to supplement the Highway Safety Act in keeping off the roads drivers who have demonstrated their inability to drive safely or who have demonstrated a definite tendency toward dangerous driving; and second, to require such drivers to be able to respond in damages for injuries or loss growing out of their actions when they are permitted to drive.

Basic to the philosophy of this legislation is the idea that once a driver has committed an act which has resulted in the revocation or suspension of his driver's license or which has caused injury or loss, he should not again be permitted to drive unless he can give some guarantee that he will be able to pay for any damage resulting from his actions. (Massachusetts is the only state which has carried on a program of compulsory liability insurance as a prerequisite to the initial operation of a vehicle. There have been varying reports as to the success of that program, but the failure of other states to follow suit seems to reflect a general opinion that a somewhat less stringent program such as embodied in the present Act, is either more practical and therefore more successful, or that humans, like dogs, are entitled to a "first bite.") Stated briefly, the Act requires the revocation or suspension of the driver's license for all causes contained in the Driver's License Act, as amended, adds the requirement that the license plus the vehicle registration be revoked or suspended for failure to satisfy an adverse judgment growing out of the licensee's operation of a motor vehicle, and prohibits the re-issuance of the license or registration, for whatever cause withdrawn, until the driver has furnished proof of financial responsibility for future accidents. Additional powers are also given to the Department of Motor Vehicles with respect to the cancellation and revocation of licenses and registrations of mentally incompetent persons.

### Type of Judgment

To require the revocation or suspension of the license and registration for failure to satisfy a judgment, two facts must appear: (1) a judgment must be rendered against the licensee or registrant for more than $50, which judgment must be for damages because of injury to or destruction of property (including loss of its use), or must be for damages (including damages for care and loss of services) because of bodily injury to or death of any person, arising out of the ownership, use or operation of a motor vehicle, and such judgment must have remained unsatisfied for sixty days. (2) The licensee or registrant must fail to establish the required financial responsibility for future accidents. Judgments are deemed satisfied under the following circumstances: (1) when paid in full or when $5,000 has been credited upon any judgment or judgments rendered in excess of $5,000 because of bodily injury to or death of one

person as the result of any one accident; (2) When, subject to the $5,000 limit because of bodily injury to or death of one person, the judgment has been paid in full or when the sum of $10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two more persons as the result of any one accident; or (3) when the judgment has been paid in full or when $1,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

The provisions of the Act allow and set up the procedure to take care of installment payment of judgments.

### Proof of Responsibility

The Act defines proof of financial responsibility, which will be required under the circumstances outlined, as follows: proof of ability to respond in damages for liability thereafter incurred arising out of the ownership, maintenance, use or operation of a motor vehicle, in the amount of $5,000 because of bodily injury to or death of any one person and $10,000 for injury or death to two or more persons in any one accident (subject to the limitation of $5,000 to any one person), and $1,000 property damage. This proof may be made: (1) by filing with the Commissioner the written certificate of any insurance carrier authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility; (2) by filing with the Commissioner proof that a satisfactory bond has been executed; (3) by an adequate deposit of cash or securities; or (4) by filing a certificate of self-insurance.

### Miscellaneous Provisions

The Responsibility Act necessarily contains many procedural provisions designed to enable the Department of Motor Vehicles to effectuate its purposes. Procedure with respect to non-resident drivers is provided, as is the procedure for appeal to the courts by a person aggrieved by any action of the Commissioner of Motor Vehicles.

Vehicles subject to the jurisdiction of the Utilities Commission are not included in the coverage of the Act, nor are vehicles owned by the State or by any political subdivision thereof, although the drivers of any such vehicles are, of course, subject to its provisions.

North Carolina's former law, G. S. Chapter 20, Article 5, entitled "Enforcement of Collection of Judgments Against Irresponsible Drivers of Motor Vehicles," which grants some of these same powers and creates some of these same duties, is repealed by this Act.

This Act becomes effective July 1, 1947.

## OTHER LEGISLATION RELATING TO MOTOR VEHICLES

In addition to the "big" bills governing the ownership and operation of motor vehicles, there were several smaller but, in many cases, none the less important bills enacted. These Acts are as follows:

### Highway Patrol Organization

Chapter 461 (HB 338) amends the law to provide that the Patrol shall consist of a commanding officer (pursuant to authority contained in this act, the Governor fixed the rank of the comanding officer as colonel) and such additional officers and men as the Commissioner of Motor Vehicles shall direct, with the approval of the

Governor and Advisory Budget Commission. Salaries are to be established by the Division of Personnel of the Budget Bureau, and clerical assistance in the various headquarters of the Patrol is to be provided.

### License Suspension

Chapter 893 (SB 372) modifies the authority of the Department of Motor Vehicles to suspend the driver's license on grounds that the driver was obviously negligent in an accident resulting in serious property damage to require that, before suspension can take place, it must be shown that the driver has not compensated for the damage done. This Act also requires the Department to incorporate in its notice of suspension pursuant to G. S. 20-16 the provisions of that section entitling the licensee to a hearing on the suspension, and repeals the authority of the Department to revoke the license after such a hearing.

### Vehicles Hauling Tobacco

Chapter 1094 (SB 137) was designed to eliminate the fear that many motorist have felt as they met or passed a flat-bedded truck loaded high with tobacco hogsheads which appeared none too securely anchored, the fear that one of the hogsheads would come rolling down on top of them (although the law already required that every load be securely fastened). After a somewhat troubled career, the Act was passed to provide that such barrels or hogsheads must be "reasonably securely fastened . . . by metal chains or wire cables or tarpaulins, or manilla or hemp ropes of not less than one-half inch in diameter, to hold said barrels or hogsheads in place under any ordinary traffic or road condition." The law does not apply to trucks on which the hogsheads or barrels are arranged in a single layer nor to trucks engaged in transporting hogsheads or barrels of tobacco between factories and storage houses of the same company "unless such hogsheads or barrels are placed upon the truck in tiers."

### Speed Law Exemptions

Chapter 987 (SB 441) gives agents of the Utilities Commission the same right to exceed the speed limit as police officers, etc., when they are engaged in the performance of the duties of checking traffic and speed of busses and other motor vehicles under the jurisdiction of the Commission.

### Lights

Two acts were passed relating to the lights the law requires motor vehicles to carry. Chapter 526 (HB 510) permits trailers licensed for not more than 2,500 pounds to carry two red reflectors on the rear in lieu of a rear lamp. The reflectors must be not less than 4 inches in diameter, of a type approved by the Commissioner, and must be located and maintained so as to be visible for at least 500 feet when opposed by lawful undimmed headlights at night on an unlighted highway. And Chapter 1052 (HB 1008) permits "vehicles of a voluntary lifesaving organization that have been officially approved by the local police authorities and manned or operated by members of such organization while on official call" to display red lights on the front in the manner presently permitted of certain other emergency vehicles.

### License Plates—Fees

Chapter 1019 (HB 866) relates to the issuance of license plates for automobiles and taxicabs. It strikes from G. S. 20-87 (b) and (c) the tax of $1.90 per 100 pounds on

"U-drive-it" passenger automobiles and for-hire vehicles and substitutes instead a tax of $60 per year for each such vehicle of 9-passenger capacity or less, with vehicles of over 9-passenger capacity to be classified as busses and to be taxed at $1.90 per 100 pounds, and rewrites G. S. 20-87(e) so as to make it provide for annual registration and licensing fees of private passenger vehicles according to the following classification and schedule: vehicles weighing 3,500 pounds or less, $10; 3,501 to 4,500 pounds $12; 4,501 pounds or over, $15. Where models of the same make automobile fall within two or more such classes, average weight based on 1946 and the immediate 4 prior year models will be ascertained, and all models of that make automobile will be taxed according to the schedule above in which the average weight falls. If there are any makes of automobiles in operation with models falling into two or more of the above classes of which no 1946 models were manufactured, the average weight based on the last five years in which such make of automobile was manufactured will be ascertained, and all models of that make will be taxed according to the schedule above in which the average weight falls. Where new make automobiles are produced after 1946 having models which fall into two or more of the above classes, the average weight will be ascertained and all models of that make will be taxed according to the schedule above in which the average weight falls. This Act becomes effective on the date on which 1948 license plates go on sale.

Chapter 220 (HB 94) contains additional requirements as to the information required to be filed by motor vehicle dealers and makes more stringent the requirements as to dealers' tags.

Chapter 914 (HB 91) permits owners of franchise hauler or franchise bus plates who sell their entire fleets and rights to others, who buy licenses for the vehicles in North Carolina, to secure refunds for the unexpired portion of the plates on a monthly basis. It also makes a failure on the part of a franchise bus carrier or franchise hauler to "pay tax due" a ground upon which the Commissioner may assess the amount of tax due the State and apply a penalty of 5 per cent of the tax, and reduces the fee for license for franchise haulers issued from April 1 through June 30 to three-quarters of the annual fee. This act becomes effective January 1, 1948.

### School Bus Law

An extension of the law requiring motorists to come to a stop when approaching from any direction a school bus engaged in taking on or discharging passengers is represented by Chapter 527 (HB 541). This act makes the school bus law applicable to "church and Sunday school busses" in so far as the stopping requirements are concerned.

### Bills That Failed

Several bills relating to the use of motor vehicles on our streets and roads failed of passage. Most of them, however, had the same purpose and intent as other bills which were passed and which have been discussed, or were in the same field as other bills but did not represent the majority feeling of the General Assembly and for that reason fell by the wayside. It is not thought that the interest in these bills would be sufficient to warrant a discussion of them in this summary.

## PUBLIC WELFARE

### APPROPRIATIONS

The 1947 General Assembly appropriated to the State Board of Public Welfare, for administrative purposes, $167,345 for the first year, and $172,645 for the second year of the biennium 1947-1949, exclusive of administrative funds from the Federal government. The State Boarding Home Fund was increased to $17,000 for each year of the biennium. The yearly allotment for old age assistance and aid to dependent children, respectively, was $1,850,000 and $690,000. A total of $180,000 each year was budgeted as aid to county administration of the welfare program. Of note, also, is the allotment of $350,000 to the Medical Care Commission for hospitalization of the indigent. (Chapter 500 (HB 24)).

### ADOPTIONS

**NOTE: After the following section had been placed in the hands of the printer the Supreme Court declared in an advisory opinion that the 1947 adoption statute discussed below was invalid for the reason that the enacting clause had been inadvertently omitted. (In re House Bill 65, Chapter 885 Session Laws of 1947, filed June 9, 1947.)**

*Consent:* (1) Where a court of competent jurisdiction has found that the child has been abandoned, the parent, parents, or guardian of the person of the child are not necessary parties to the proceeding, and their consent is not required. (2) If the child is illegitimate and has not been legitimated, the father need not be made a party to the proceeding and his consent is not required. (3) Where a step-parent petitions to adopt a step-child the petitioner's spouse must consent to the adoption. (4) If the child being adopted is twelve years of age or more or if he attains that age before the final order is signed he must consent. (5) Except in the cases discussed in (1) and (2) above, if living, the parents, surviving parent or guardian of the person of the child must be a party or parties of record in the proceeding and must give written consent to the adoption. One modification of this occurs where such persons have released all rights to the child or consented to its adoption in one of the ways set out below. (6) Cases in which consent may be given by a person other than the parents or guardian of the person of the child: (a) Where such person has surrendered the child to the county superintendent of welfare or to a licensed child-placement agency and at that time consented in writing to its adoption, or (b) Where the court finds as a fact that there is no proper person to give consent, or that the one to do so is mentally incompetent, in which case the court may appoint a next friend to give or withhold consent to the adoption. (7) Parents under the age of 21 are empowered to give binding consent to adoption of their child. (8) Consent to adoption is taken to mean that the person consenting is a party to the proceeding, and such consent is irrevocable after the interlocutory decree has been entered.

*Questioning validity of adoption:* After the final order is signed, no party to the adoption proceedings, nor anyone claiming under such a party, may question the validity of the adoption proceedings by reason of any defect or irregularity therein, jurisdictional or otherwise. No adoption proceeding may be questioned by reason of any procedural or other defect by anyone not injured by the defect, nor may it be attacked either directly or collaterally by any person other than a natural parent or guardian of the person of the child. Failure of an officer or agency to perform any of the acts required by law within the time prescribed will not affect the validity of the adoption. And finally, the final order of adoption is given the force and effect of,

and is entitled, to all the presumptions attached to a judgment rendered by a court of general jurisdiction.

*Effect of final order:* The effect of the adoption proceeding is to establish the relationship of parent and child, and from the date it is signed, the child is entitled to inherit real and personal property in accordance with the statutes of descent and distribution. Once adopted, the adoptive parents shall not be deprived of any rights in the child, at the instance of the natural parents or otherwise, except in the same manner and for the same causes as are applicable in proceedings to deprive natural parents of their children.

*Time regulations:* The interlocutory decree provided for by the Act must be issued within six months of the filing of the petition unless the final order is entered after waiver of the interlocutory order in cases where the child is by blood a grandchild, nephew or niece of one of the petitioners or is a step-child of the petitioner. Unless some appeal is taken, the final order completing or dismissing the proceeding must be entered within three years of the filing of the petition. If an appeal is taken from any court order in an adoption proceeding, the proceeding must be completed by the court entering the final order of adoption or final order of dismissal within three years from the final judgment upon appeal. A final order must not be entered earlier than one year from the date of the interlocutory decree unless the interlocutory decree is waived, or unless the period is shortened by the court on the basis of the time the child has already spent in the home of the petitioner after being placed there by the proper agency, such period in no case to be less than one year.

### Other Legislation Relative to Adoptions

*Inheritance rights arising from adoptions:* Chapter 879 (HB 166) adds two sections to G. S. 28-149 to the following effect: (1) an adopted child shall be entitled by succession, inheritance or distribution of personal property by, through and from its adoptive parents the same as if it were the natural, legitimate child of the adoptive parents; (2) adoptive parents shall be entitled by succession, inheritance, or distribution of personal property by, through, and from an adopted child the same as if the adopted child were the natural, legitimate child of the adoptive parents. (3) In both cases the Act specifically includes the right to recover damages for the wrongful death of an adopted parent or adopted child. Chapter 832 (HB 169) added two sections to G. S. 29-1 to effect the same results with regard to the inheritance of real estate as Chapter 879 did for personalty.

## JAIL STANDARDS

Chapter 915 (HB 112) the provisions of which go into effect January 1, 1948, authorizes the State Board of Public Welfare to consult regularly with an advisory committee of sheriffs and police officers regarding the personal safety, welfare and care of the inmates of county and municipal jails and lock-ups. The Board is required through its officers or agents to inspect all such institutions regularly in order to safeguard the welfare of prisoners, and in this connection to consult with local governing bodies. Should such inspections disclose inadequate care or mistreatment of prisoners, or disclose that prisoners are being confined in violation of the statutes concerning jail heating (G. S. 153-52), bedding (G. S. 153-53), bounds (G. S. 153-54), cleanliness, food and water (G. S. 153-179) or other matters dealt with in Chapter 153 of the General Statutes, the State Board of Public Welfare is required to report those findings in writing to the governing body of the county or

municipality concerned. The governing body is then required to consider the report, consult with the inspector, and take such action "as may be found proper and necessary." Should the governing body fail to correct the conditions reported the State Board of Public Welfare is required to bring the case to the attention of the Superior Court judge presiding at the next criminal court in the county in which the offending jail is located in order for the judge to direct the grand jury to inspect the jail and present its findings and recommendations to the court at that term. If conditions continue not to be corrected within a reasonable time after such notice to the grand jury, then the Superior Court judge in his discretion may without a jury in a hearing that is summary or upon such notice as the court prescribes, require immediate compliance with the grand jury report, and for this purpose the court is authorized to convene at any time and place within the judicial district in chambers or otherwise. Pending substantial compliance with the recommendations of the grand jury, the Superior Court judge is authorized to refuse to allow prisoners to be placed in any jail or lock-up not deemed fit, and he is empowered to direct that any persons convicted before him of criminal offenses be confined only in a jail or lock-up that is deemed a proper place in which to confine prisoners. The Act is silent on whether the judge may order the prisoners sent to a jail in another county, nor does it state upon whom the expense of keeping the prisoners will fall when the judge's order requires that they be confined in a place other than the appropriate county jail or town lock-up.

## SOLICITATIONS FOR CHARITABLE PURPOSES

The 1947 General Assembly made a complete revision of the so-called "begging statute" under which persons and agencies seeking funds for charitable purposes by public donation must be licensed. Prior to this revision licenses were granted for this purpose by the State Board of Public Welfare, and in the case of physically handicapped persons, by several other State agencies. Chapter 572 (SB 46) places upon the State Board of Public Welfare the responsibility of issuing all such licenses, although it must consult other State agencies where the cases are such as to require it. Religious, educational, fraternal and civic organizations located in North Carolina and soliciting entirely among their memberships, or organizations located in and soliciting only in the county in which they operate, are exempt from the licensing requirements of the revised law. The statute makes it clear that the token offering of merchandise for sale will not be sufficient to exempt any solicitor from the provisions of the Act.

## PUBLIC ASSISTANCE

Chapter 91 (SB 21) made certain pertinent changes in the old age assistance law. Within the limitations of the State appropriation for old age assistance, the maximum payment may now be increased not in excess of any amount which may hereafter be matched by the Federal government. The present maximum is $45 per month. If the Federal Social Security Act should be amended to provide a larger percentage of contributions to the old age assistance fund, the percentages provided by the State and counties would be adjusted accordingly.

## SPECIAL FACILITIES FOR EDUCATION OF THE HANDICAPPED

A division of special education for the promotion of special courses of instruction for handicapped, crippled and other individuals requiring special types of instruction was created in the State Department of Public Instruction by Chapter 818 (SB 289).

The scheme is to provide for the operation and supervision of such courses for handicapped children in the public schools; adult classes are to be handled separately.

## YOUTHFUL OFFENDERS AND PROBATION OFFICERS

Segregation of youthful offenders was called for this year to improve their chances of rehabilitation and to prevent association with older and more experienced criminals. Under Chapter 262 (HB 41) a "youthful offender" is described as a male person less than 21 years of age when sentence is imposed and who has not previously served as much as six months in jail or other prison. Since no provision was made for females in this category it is assumed that this will be taken care of by administrative action.

Chapter 94 (SB 52), another statutory change, provides that juvenile court probation officers may become regular employees of the county department of public welfare under the superintendent as chief probation officer. The juvenile court judge and the welfare superintendent must enter into a written agreement to implement this statute.

## LEGITIMATION

Chapter 663 (SB 50) amends certain sections of Chapter 49 of the General Statutes with regard to the legitimation of children born out of wedlock. It provides for a petition by the putative father to legitimate the child in the Superior Court of his residence. In such a special proceeding the mother, if living, and the child are made necessary parties. Proper procedure for indexing the proceedings is set out by the statute. Upon legitimation, the new Act provides that the Superior Court clerk must send a certified copy of the order of legitimation to the State Registrar of Vital Statistics who is required to make out a new birth certificate for the child bearing the full name of the father. An additional provision requires the Registrar of Vital Statistics to issue a new birth certificate should the child be legitimated by subsequent marriage of the parents upon presentation of a certified copy of the marriage license issued to the parents. The new Act makes further provision for substituting the words "born out of wedlock" for the word "illegitimate" in G. S. 49-12.

## GUARDIAN OF THE PERSON OF A MINOR

Chapter 413 (SB 49) adds a new section to Chapter 33 of the General Statutes providing that where there is no natural guardian of a minor or where a minor has has been abandoned, and where, in either event, the minor requires service from the county department of public welfare, then until such time as a guardian of the person has been appointed, the superintendent of public welfare of the county in which the minor resides shall be the guardian of the person of the minor. The Act provides, however, that this provision is not to be construed as changing or affecting the appointment or the powers and duties of any next friend of the minor, or any guardian or trustee of his estate, nor is it to be construed as affecting any existing laws dealing with the handling or disposition of the minor's property.

This Act also removes from G. S. 33-2 the provisions permitting a father (or mother, if the husband is dead) to dispose of the custody of and tuition of his unmarried infant child by inter vivos deed. The Act, however, does not delete those portions G. S. 33-2 permitting the sole surviving parent to make such disposition by will.

## INTERSTATE TRANSFER OF CHILDREN

Chapter 609 (HB 66) rewrites several sections of article 4 of Chapter 110 of the General Statutes to delete certain matters concerning the custody of children that

fall more properly under administrative regulation of the Board of Public Welfar e retaining the requirement that persons or agencies bringing a child into the State for the purpose of giving his custody to some person in this State or of procuring his adoption by some person in this State must obtain written consent from the Board of Public Welfare which would retain the right of visitation and supervision of the child until he reaches 18 or is legally adopted. The bond formerly made mandatory in such cases is made discretionary with the Board, It is further required that the Board's consent be obtained before any child can be taken or sent out of the State for the purpose of placing him in a foster home or in a child-caring institution. An additional provision is inserted to the effect that none of the provisions of the article are to be construed to apply to the interstate transfer of children by the guardian of the person of the child, by a parent, step-parent, grandparent, uncle or aunt, or brother, sister, half-brother, or half-sister 21 years of age or older.

## MISCELLANEOUS SOCIAL LEGISLATION

Chapter 383 (HB 109) raised the minimum marriage age from 14 to 16 for persons of either sex while requiring parental consent up to 18 years of age. (For further discussion of this Act see section dealing with Domestic Relations.)

Chapter 93 (SB 48) makes certain changes calculated to insure that persons receiving aid to the needy blind who move from one county to another miss none of the payments due them.

Chapter 92 (SB 20) provides for the payment of a per diem not to exceed $5 per day and expenses to members of county boards of public welfare in the discretion of the county commissioners.

Chapter 226 (HB 242) revises the statutes governing the organization and jurisdiction of the State Board of Correction and Training and the State's correctional schools. (For further discussion see section dealing with State Departments and Agencies.)

Chapter 388 (HB 342) lowers the minimum compulsory school attendance age for blind and deaf children from seven to six years of age.

Chapter 93 (SB 48) rewrites G. S. 35-44 to require 20 days notice of the presentation of a petition for the authorization of sterilization by the Eugenics Board (prior law required 15 days). It also permits service of this petition on either the guardian or next of kin of the subject (prior law required service on both). Where neither can be found, and where the individual is mentally incapable to conduct his own affairs, the Act provides that he may be represented by a guardian ad litem upon petition of the "prosecutor" (prior law required representation by the solicitor of the county, if any). It further provides that the guardian ad litem must be given at least 20 days notice of the hearing (prior law: 15 days) and permits the court or judge to remove, discharge or replace the guardian in term as well as in vacation as was formerly provided.

Resolution No. 19 (SR 293) continues for two more years the Commission to Study the Domestic Relations Laws of North Carolina which had worked for 18 months in collaboration with the office of the Attorney General and the State Board of Public Welfare, and which had covered about half of the topics originally assigned to it by the time the 1947 General Assembly met. The additional responsibility of reviewing all State laws relating to correctional institutions was assigned to the Commission.

# THE REGULATION OF OCCUPATIONS, BUSINESSES AND AGRICULTURE

## OCCUPATIONS

### A. Nurses

Three Acts of the 1947 General Assembly affect nurses. The first is new legislation concerning the licensing of practical nurses; the second pertains to the fees charged registered nurses and requires annual renewal of their licenses; and the third places nurses' licenses under the uniform revocation of licenses law.

(1) Licensing Practical Nurses.

Chapter 1091 (HB 461) declares that its mission is to promote the education and training of practical nurses. It attempts to accomplish this mission by providing for schools for practical nurses and by declaring that if any person successfully completes the course of study at such a school and successfully passes an examination given by a board of nurse examiners, such person may call herself a Licensed Practical Nurse and may use the initials L.P.N.

This Act does *not* require any practical nurse to obtain a license and in no way, shape or form provides for any control over practical nurses without the wish of the individual nurse. This Act merely sets up machinery whereby each individual practical nurse may work for and win the right to use the title "Licensed Practical Nurse." The Act *does prohibit* the use by anyone of the title "Licensed Practical Nurse" unless such person has been licensed under the provisions of this Act.

(2) Annual Renewal of Licenses and Fees of Registered Nurses.

Chapter 116 (HB 190) strikes out G. S. 90-168 (which dealt with the registration of nurses' licenses by the Clerk of Court) and inserts a new G. S. 90-168 which requires that each registered nurse renew annually his or her license at a cost of one dollar. The section makes provision for reinstatement of any nurse failing to renew, for any nurse in the armed services of the United States and for any nurse wishing to retire temporarily from practice. Also rewritten is G. S. 90-169 to provide that the procedure for the revocation or suspension of licenses shall be in accordance with the uniform revocation of licenses law (Chapter 150 of the General Statutes). The Act also raises the examination fee from $10 to $15 and lowers from $25 to $15 the fee for a license without examination.

(3) Licenses Placed under the Uniform Revocation of Licenses Law.

Chapter 86 (HB 191) amends Chapter 150 of the General Statutes by adding the North Carolina Board of Nurse Examiners to the list of boards affected by the uniform revocation of licenses law.

### B. Barbers

Two Acts were passed dealing with barbering: One provides for certification of certain war veterans without examination and the other provides for the examinations and certification of persons attending barber schools in other states. A joint resolution provides for an investigation of the State Board of Barber Examiners.

(1) Licensing War Veterans Without Examination.

Chapter 941 (HB 908) requires the Board of Barber Examiners to issue, without requiring an examination, a certificate of registration to practice barbering to any honorably discharged veteran of either World War I or II who has been a bona fide

resident of North Carolina for 6 months, who practiced barbering for at least 3 years and who makes a proper application for such certificate.

(2) Examination of Graduates of Out-of-State Barber Schools.

Chapter 1024 (HB 939) adds a new paragraph to G. S. 86-12 to allow any person who is a graduate of a barber school in any other state, having substantially the same standards as are required of barber schools in this state, and who meets the other requirements, to take the examination for a certificate as either a registered barber or registered apprentice.

(3) Barber Board Investigation.

HR 185, which was reported unfavorably by the House Judiciary 2 committee, was intended to provide for an investigation of the barber law and its administration. Another resolution covering the matter, however, was adopted.

Resolution No. 31 (HR 703) directs the Governor to appoint three members of the House and two of the Senate to form a five member commission to investigate activities and practices of 22 named State boards. Included among the 22 listed is the State Board of Barber Examiners. See paragraph G below.

### C. Pharmacy

(1) Injunctive Relief Against Illegal Practice.

Chapter 229 (HB 265) adds a new section numbered G. S. 90-85.1 which provides that if the Board of Pharmacy finds that any person is engaging in illegal practices the Board may, after notice to the person of such violation, apply to the Superior Court for an injunction restraining the person from continuing such illegal practices. This injunctive relief is permitted whether or not criminal prosecution has been or may be instituted.

### D. Contractors

(1) Salary of Secretary-treasurer of State Board.

Chapter 611 (HB 284) amends G. S. 87-4 to increase from $3,600 to $4,800 the maximum annual salary the state licensing board for contractors is authorized to pay its secretary-treasurer.

### E. Lawyers

(1) Solicitation of Legal Business.

Chapter 573 (SB 91) adds a new section, G. S. 84-38, which prohibits anyone from soliciting legal business or any agreement authorizing any one to render legal services in or out of the state. The section also makes it unlawful for anyone, as an inducement for placing in the hands of any attorney a claim of any kind for collection or compromise in or out of the state, to divide with or receive from such attorney any compensation received by such attorney, with the proviso that this does not prohibit agreements between attorneys to divide compensation in matters properly received by them. The Council of the North Carolina State Bar is empowered to investigate and bring actions against such violators in accordance with G. S. 48-37.

(2) Additional Bar Examinations.

Chapter 77 (HB 131) amends G. S. 84-24 to authorize the Board of Law Examiners to accommodate applicants who served in the armed forces of World War II, and

others "by providing for additional regular examinations to be held in Raleigh to commence on the first Tuesday in March of 1947, 1948, 1949, 1950, and 1951 or upon such other date as the Board may determine after consideration of the needs of qualified applicants.

### F. Scale Mechanics

(1) Registration and Regulation.

Chapter 380 (HB 198) rewrites G. S. 81-52 through G. S. 81-58. The Act restates purposes of regulation; redefines terms; requires a $1,000 bond filed with the clerk of the superior court before a scale mechanic may obtain a certificate of registration from the state superintendent of weights and measures; requires scale mechanics to issue "service certificates" to the owners of scales serviced, to send a copy to the state superintendent of weights and measures and to retain a copy himself; and make further provisions as to condemned scales, second-hand scales, exemptions from the Act and penalties for violations of the Act.

### G. Miscellaneous Occupations

(1) Investigation of Certain State Boards.

Resolution No. 31 (HR 703) directs the Governor to appoint 3 members of the House and 2 members of the Senate to form a 5-member commission to investigate activities and practices of the following boards: Accountancy, Architectural Examination and Registration, Barber Examiners, Chiropody Examiners, Chiropractic Examiners, Licensing Board for Contractors, Cosmetic Art Examiners, Dental Examiners, Examiners of Electrical Contractors, Embalmers Licensing Board, Board of Registration for Engineers and Land Surveyors, Law Examiners, Medical Examiners, Nurse Examiners, Examiners in Optometry, Osteopathic Examination and Registration, Pharmacy, Photographic Examiners, Examiners of Plumbing and Heating Contractors, Examiners for Licensing Tile Contractors, Veterinary Medical Examiners and Board of Commissioners of Navigation and Pilotage.

This Commission is empowered to call and conduct hearings, administer oaths, issue subpoenas for witnesses or for production of books, records, etc., and punish for contempt while conducting investigation. The Commission is required to file a report with the Governor prior to the convening of the 1949 General Assembly setting out its findings and recommendations.

The members will receive $10 per day and such necessary traveling and other expenses, including supplies and clerical help, as may be incurred and as may be approved by the Director of the Budget.

## BUSINESSES

### A. Banks

Four Acts directly concern banks and bankers: one deals with the establishment of additional tellers' windows outside of the bank building in different sections of the town; a second repeals the statutory authority for consolidation of banks and insurance companies; a third relates to the fees and commissions of bank directors and officers and the fourth authorizes certain deductions in valuing the bank stock of newly organized banks.

(1) Branch Tellers' Windows

Chapter 990 (SB 445) supplements G. S. 53-63 by providing that the State Banking Commission may authorize the establishment of a teller's window for a bank in the community in which its home office or a branch thereof is located without the allocation of additional capital for said window.

(2) Consolidation of Banks and Insurance Companies

Chapter 696 (HB 603) repeals G. S. 53-15 which permitted the consolidation of banks and insurance companies.

(3) Fees and Commissions of Bank Directors and Officers

Chapter 695 (HB 602) supplements G. S. 53-86 (which prohibits bank officers and employees from receiving gifts, fees and commissions on account of transactions to which the bank is a party) by providing that the prohibition does *not* extend to commissions on insurance and surety bond premiums.

(4) Valuation of Bank Stock of New Banks

Chapter 72 (SB 28) supplements G. S. 105-346 (3) to allow certain deductions in valuation of bank stock for taxation for banks which, although organized on or before January first in any year, had not actually begun business prior to the first day of January.

**B. Insurance**

The General Assembly passed several Acts dealing more or less directly with insurance, insurance companies and employees of insurance companies. These Acts amend, supplement and rewrite different sections throughout the field of insurance law. There are changes in the laws affecting the North Carolina automobile rate administrative office; licenses and license fees of agents, brokers and adjusters; merger, rehabilitation and liquidation; the Firemen's Relief Fund; group life insurance; mutual burial association; and the taxation of insurance companies.

(1) N. C. Automobile Rate Administrative Office.

Chapter 1068 (SB 181) amends G. S. 58-246 by adding a subsection (d) to provide that the N. C. automobile rate administrative office does *not* have authority to maintain regulations or to fix rates for bodily injury and property damage insurance for operators of motor vehicles who are required by law to carry any such insurance. Chapter 1073 (SB 475), ratified on the same day as SB 181, amends SB 181 by adding a proviso to subsection (d) so as to exempt from the operation of subsection (d) private passenger cars and taxicabs required by law to carry bodily injury and property damage insurance.

Thus, the N. C. automobile rate administrative office does have authority to maintain regulations and fix rates for bodily injury and property damage insurance for operators of passenger cars and taxicabs who are required by law to carry bodily injury and property damage insurance but said office does *not* have authority to promulgate regulations or to fix rates for bodily injury and property damage insurance for all other operators of motor vehicles who are required by law to carry any such insurance.

(2) General Amendments to the Insurance Law

Chapter 721 (HB 425) deals with the organization and regulation of insurance companies. This is a blanket Act and amends, rewrites and supplements different sections throughout the whole of Chapter 58 of the General Statutes. The effective date of this Act is July 1, 1947.

(3) Licenses and License Fees of Agents, Brokers and Adjusters.

Chapter 922 (HB 422) defines terms; rewrites qualifications for obtaining licenses; sets up requirement of examination for agents, brokers and adjusters; rewrites the section on revocation of licenses; deals with the issuance of limited and temporary licenses in special cases; deals with the licensing and service of process upon non-resident agents, brokers and adjusters; and contains additional clarifying amendments. Act becomes effective January 1, 1948.

Chapter 1023 (HB 927) amends G. S. 57-12 (dealing with the licensing of agents of hospital service corporations) to provide that where such agents have paid the $10 examination fee prescribed in G. S. 105-228.7 such agents need not pay an additional examination fee under G. S. 57-12. The Act also rewrites a portion of G. S. 105-228.7 to deal with examinations, examination fees and to provide a new schedule of annual registration fees as follows: insurance agent (local), $2.50; insurance broker, $2.50; general agent or manager, $6.00; special agent or organizer, $5.00; insurance adjuster, $3.00; non-resident broker, $10.00. The Act becomes effective July 1, 1947.

(4) Merger, Rehabilitation and Liquidation

Chapter 923 (HB 423) creates a new Article 17A in Chapter 58 of the General Statutes. (In the 1945 Cumulative Supplement to the General Statutes there is already an Article 17A. By G. S. 164-10(c), as amended by Chapter 150 (HB 186) of the 1947 General Assembly, however, the division of legislative drafting and codification of statutes of the department of justice has the power to rearrange the order of Chapters, subchapters, articles and sections and to make such other changes in arrangement and form (that do not change the law) as may be necessary for an accurate codification of the laws.) This new Article defines "merger" and sets out the conditions under which one domestic insurer may merge with another, the grounds upon which the commissioner of insurance may apply for a court order directing him to rehabilitate a domestic insurer and the procedure for the termination of the rehabilitation proceeding.

The grounds for liquidation are set out together with the procedure for same. New sections G. S. 58-155.11 through G. S. 58-155.17 comprise the Uniform Insurers Liquidation Act which covers definitions, conduct of delinquency proceedings against insurers domiciled both within and without North Carolina, claims of non-residents against domestic insurers, claims against foreign insurers, priority of claims and attachment and garnishment of assets.

Following the Uniform Insurers Liquidation Act, new sections provide for venue and commencement of proceedings and for injunctions in certain specified cases. Provision is made for the deposit of monies collected by the Commissioner of Insurance in liquidation proceedings, for borrowing by the Commissioner and for a biennial report by the Commissioner to the General Assembly. Other sections deal with the establishment and priority of claims and with assessments. The effective date is July 1, 1947.

(5) Bond of Treasurer of Local Board of Trustees of Firemen's Relief Fund

Chapter 720 (HB 424) amends G. S. 118-16 to provide that the bond of the treasurer of the local board of trustees of the Firemen's Relief Fund must be filed with the insurance commissioner.

(6) Group Life Insurance

Chapter 834 (HB 426) rewrites G. S. 58-210 to clarify the provisions with respect to who may be policy holders and who may be insured persons, and rewrites G. S. 58-211 to increase and clarify the standard provisions allowed in policies of group life insurance. The Act becomes effective July 1, 1947.

(7) Mutual Burial Associations.

Chapter 100 (HB 168) amends and supplements Article 24 of Chapter 58 of the General Statutes relating to mutual burial associations. The Act: (a) raises the annual operating expense limitation of burial associations from $26,500 to $31,500; (b) changes the limit on soliciting agents to 5 for each funeral home serving an association rather than 5 for each association; (c) raises the limit of annual supervisory expense assessments which the burial association commissioner may levy against associations, from $26,500 to $31,500; (d) repeals G. S. 58-237.3 relating to procedure where a burial association official or employee transacts business fraudently; (e) adds a new section numbered G. S. 58-241.4 which provides for a hearing to be held before the burial commissioner in case of disagreement between an association and a representative of a deceased member.

### C. Building and Loan Associations

Two Acts relate to building and loan associations: Chapter 718 (HB 200) provides for joint shareholders of a single membership in a building and loan association and Chapter 694 (HB 201) concerns the loan and investments of building and loan associations.

(1) Joint Shareholders of Single Membership

Chapter 718 (HB 200) adds a new section, G. S. 54-18(a), to the Chapter on cooperative organizations to provide that a single membership in a building and loan association may be held by two or more persons and that the association, in absence of written agreement to the contrary, may discharge its liability for capital and/or dividends by paying same to one or more of the owners of the membership.

The Act provides that the survivor of the joint shareholders may transfer the membership to himself or to any other person. The Act further expressly negatives any intent to modify any of the provisions of laws relating to inheritance tax and any of the rights and liabilities of the parties having interests in the shares as among themselves. The provisions of the Act are made applicable to members of federal savings and loan associations having principal offices in this state.

(2) Loans and Investments

Chapter 694 (HB 201) adds a subsection to G. S. 54-21 to provide that state building and loan associations may make real estate repair and improvement loans under the National Housing Act when such loan is insured at least partly by the United States or any instrumentality thereof; *except* when principal and interest on

such loans due the association equal or exceed the association's unencumbered contingent reserve plus the insurance reserve accumulated by reason of such loan.

### D. Transportation

Five Acts regulate transportation: Chapter 220 (HB 94) regulates motor vehicle dealers; Chapter 219 (HB 93) amends the motor vehicle act of 1937; Chapter 1008 (HB 121) will be known as the North Carolina Truck Act and writes the law pertaining to motor carriers of property; Chapter 1025 (HB 946) deals with requirements of insurance and equipment inspection for motor vehicles carrying passengers for compensation; Chapter 1075 (HB 667) gives the Utilities Commission power to regulate the switching limits of railroads and terminals.

#### (1) Motor Vehicles

##### (a) Motor Vehicle Dealers.

Chapter 220 (HB 94) amends various sections in Chapter 20 of the General Statutes relating to motor vehicle dealers. This Act redefines "established place of business" as any place actually occupied for motor vehicle dealing purposes and rewrites several sections dealing with registration, fees and the cost and revocation of licenses and plates. The Act sets the fee for license and one set of dealer's plates at $25 and $1 for each additional set of plates.

##### (b) Amendments to Motor Vehicle Act of 1937.

Chapter 219 (HB 93) makes several changes in the Motor Vehicle Act of 1937 (Art. 3, Chapter 20 of the General Statutes). There are amendments to the sections dealing with the duties of the department of motor vehicles, the registration and certificate of title of motor vehicles and the transfer of titles and registration fees. These amendments become effective July 1, 1947.

##### (c) North Carolina Truck Act.

Chapter 1008 (HB 126), ratified on the last day of the 1947 session, is known as the North Carolina Truck Act. This Act amends and restates the provisions of Article 6 of Chapter 62 of the General Statutes in so far as the same applies to motor carriers of property. The Act sets forth in detail the powers and duties of the Utilities Commission to regulate the records, reports and accounts, working hours, equipment, rates, contracts, etc. The Act also provides for the issuance (and revocation) of certificates and permits to carriers; for expediting settlement of claims between shippers and carriers; routes; joint rates between motor carriers and railroad and water carriers; orders, notices and service of process upon motor carriers; penal provisions and use of injunctions to enforce the Act; regulation of joint pick-up, delivery and terminal services; damage suits against carriers and other matters. The Act becomes effective October 1, 1947.

##### (d) Insurance and equipment inspection of motor vehicles carrying passengers for compensation.

Chapter 1025 (HB 946), which provides for the carrying of insurance and for safety inspection and regulation of motor vehicles carrying passengers for compensation, was taken from the table on the 1st of April and with a few changes was ratified on the 5th of April. The Act prohibits issuance by the Department of Motor Vehicles of a license for any motor vehicle for the transportation of persons for com-

pensation until the Department has received a certificate from the Utilities Commission that the required insurance has been secured and the vehicle's equipment has been approved. Exempt from the Act are: (1) motor carriers regulated under Art. 6, Chapter 62 of the General Statutes, (2) taxicabs and (3) motor vehicles used exclusively in the transportation of bona fide employees of an industrial plant to and from the places of their regular employment.

(e) Franchise hauler and franchise bus carriers

Chapter 914 (HB 91) amends G. S. 20-64 (c) by adding a proviso to the effect that if the owner of franchise hauler or franchise bus plates sells out his entire fleet and rights to another who licenses all the vehicles in North Carolina in his name for the same license year, such owner of the franchise hauler or franchise bus plates may secure a refund for the unexpired portion of such plates on a monthly basis beginning the first day of the month following such sale if there is any credit remaining over and above any 6 per cent gross receipts tax due. The Act amends G. S. 20-91 (d) to clarify said section with respect to the assessment and collection of the tax and the penalty due for failure, neglect or refusal by the franchise bus carrier or franchise hauler to pay the tax required by law. The Act also amends G. S. 20-95 to reduce the fee for a license for a franchise hauler issued from April 1 through June 30 to three-fourths the annual fee.

(2) Railroads

(a) Switching limits of railroads and terminals.

Chapter 1075 (HB 667) authorizes and empowers the Utilities Commission to require a railroad company (or terminal served by more than one railroad) to extend or contract the switching limits at any point where the Commission has information that a shipper (or prospective shipper) is being discriminated against or subjected to unreasonable practices or where it would be to the best interest of the shipper (or prospective shipper) to be included in or excluded from the switching limits. The authority of the Commission applies whether traffic moving into or out of the switching limits is interstate or intrastate in character, and failure to comply with the Commission's order subjects the railroad and carrier or carriers serving the terminal to a penalty of $500 for each day of non-compliance.

**E. Miscellaneous Businesses**

(1) Hotels

Chapter 1066 (SB 228) adds a new article, numbered 4, to General Statutes Chapter 69 on Fire Protection. This Act sets out requirements for fire protection in hotels and other buildings of like occupancy. There are requirements as to bells and gongs; watchman service; automatic sprinkler systems; inspections; and closing (and re-opening) of hotels by order of the Commissioner of Insurance for violations of the Act. The Act becomes effective September 1, 1947.

(2) Petroleum Gas

Chapter 822 (SB 346) defines "liquefied petroleum gas" and requires the Commissioner of Insurance to make and file with the Secretary of State regulations governing the design, construction, location, installation and operation of equipment for storing, handling, transporting and utilizing liquefied petroleum gas for fuel purposes.

(3) Cement Blocks

Chapter 788 (SB 416) requires the manufacturers of cement blocks, cinder blocks and other concrete masonry units to furnish acceptable proof to the Board of Agriculture that masonry units sold or offered for sale meet minimum load bearing standards of not less than 700 pounds per square inch of gross bearing area or the minimum load bearing strength approved by the National Underwriters Laboratory or the American Society of Testing Materials, whichever is less. The Act does not prohibit sale of sub-standard units if the invoice bears proper notice that the unit does not comply with minimum load bearing standards.

(4) Laundries

Chapter 975 (HB 1097) permits any laundry or dry cleaning establishment to dispose of any garments (not over $75 in value) if such garments are unclaimed 4 months after completion of laundering or dry cleaning, provided a notice setting forth the provisions of this Act is prominently displayed in a conspicuous place where the garments are taken in and that at the time of receiving the garments the customer is given a ticket on the back of which are set forth the provision of this Act.

(5) Insecticide, Fungicide and Rodenticide Act of 1947.

For discussion of this Act see last subsection under Agriculture below.

(6) Coöperative Associations

Chapter 1056 (HB 1114) directs the Department of Tax Research to make a thorough examination, and study prior to the convening of the 1949 General Assembly, of coöperative associations, their status with respect to the taxing laws, the differences between various types of coöperative associations and the extent to which such associations should be taxed.

To secure adequate information, every coöperative association operating in the state must, on or before September 15, 1947, file with the Commissioner of Revenue all such information, dates and figures with respect to its organization and operation as shall be required by the Commissioner. A similar report may be required by the Commissioner to be filed on or before September 15, 1948. As soon as practicable the Commissioner shall make the information available to the Department of Tax Research. Except as provided by this Act, the Commissioner shall not divulge the information under circumstances other than those permitted by G. S. 105-259 (which deals with confidential nature of income tax returns).

Willful failure to file required reports will constitute a misdemeanor and subject offender to penalties imposed by G. S. 105-161 (which deals with willful failure to file income tax returns).

The Department of Tax Research is directed to make a written report, with recommendations, to the Advisory Budget Commission prior to the convening of the 1949 General Assembly.

(7) Milk Commission.

Under Resolution No. 15 (HR 515), the Governor is authorized to appoint a 17-man commission for the purpose of studying and making recommendations to the 1949 General Assembly concerning laws and regulations affecting the production, processing and distribution of milk in North Carolina. An attempt embodied in SB 224 to take immediate steps to attain uniform sanitary control over the pro-

duction, processing, handling, sale and distribution of milk and milk products through inspection, regulation and control by the State Board of Health was unsuccessful in getting past the Senate committee on Public Health. The only immediate step taken in this direction was in the form of an appropriation of $15,000 for each year of the next biennium to the Department of Agriculture to be used to finance its labeling, inspection and milk standards work. Chapter 999 (SB 477).

### F. Corporate Existence

The General Assembly passed two Acts dealing with the technicalities of corporate existence: Chapter 504 (HB 437) concerns the renewal of a corporate charter and Chapter 1042 (HB 1045) sets a new fee for corporate extension or renewal.

(1) Renewal of Corporate Charters

Chapter 504 (HB 437) provides that where a private North Carolina corporation has continued business as a corporation after the period of existence fixed in its charter, and has thereafter filed with the Secretary of State a charter amendment extending its corporate existence, such amendment is validated. The Act also sets up a one year statute of limitations (to run from date of ratification of the Act, viz, March 25, 1947) on actions attacking (or pleadings defending) the corporation on the ground that the amendnemt was not filed within the period of the corporation's existence.

(2) Fee for Corporate Extension or Renewal.

Chapter 1042 (HB 1045) amends G. S. 55-158 (3) so as to fix a flat fee of $40 for corporate extension or renewal rather than the same fee required for an original certificate of incorporation.

## AGRICULTURE

Ten bills and two joint resolutions relating to agriculture were passed. This legislation dealt with seeds and fertilizer; cotton, tobacco, timber and other farm crops; soil conservation and economic poisons.

### A. Seeds and Fertilizer

(1) Seed Potato Law.

This Act, Chapter 467 (HB 436), defines "certified," sweet and Irish potatoes as those which conform to the standards fixed by the International Crop Improvement Association and defines "U. S. No. 1" sweet and Irish potatoes as those conforming to U. S. Department of Agriculture standards. The Act makes it unlawful for anyone to pack for sale, offer for sale, or ship into this State for such purposes, or sell, any sweet or Irish potatoes or parts thereof for propagation purposes which do not conform to the standards of "certified" and "U. S. No. 1" potatoes.

The Commissioner of Agriculture and his agents are authorized to enter any place where potatoes are being stored and to make an inspection. If the Act is being violated, a "stop sale" order may be issued which would make it unlawful to sell for propagation purposes any potatoes with respect to which the order has been issued. The Act does provide for sale, in case of public necessity, of seed potatoes which are below the "certified" and "U. S. No. 1" standards but which do meet lower standards which the Board of Agriculture may prescribe.

The Act specifically does not prohibit sale of seed potatoes grown within the State when sold by the grower to a planter who has personal knowledge of the conditions under which such potatoes were grown.

(2) Cost of Seed Analysis Tags.

Chapter 928 (HB 612) rewrites G. S. 106-284.3 to raise the cost of seed analysis tags from one cent each to two cents each.

(3) Fertilizer Law of 1947

Chapter 1086 (HB 760) rewrites the North Carolina Fertilizer Law of 1933 as amended (General Statutes Article 2, Chapter 102) and retitles it the North Carolina Fertilizer Law of 1947.

Among other things, the new law provides that the registration of each brand of commercial fertilizer will expire on July 1 of each year instead of on December 1 as at present. The information required to be included in the application for registration of a brand is changed. The sections on inspections and sampling are rewritten, the requirements as to minimum plant food content are tightened and the language is strengthened in the section dealing with the publication by the Board of Agriculture of a list of grades of mixed fertilizers adequate to meet the agricultural needs of the state.

The Commissioner and Board of Agriculture are empowered (upon a hearing) not merely to refuse to register but also to cancel the registration of any brand upon proof that the registrant has been guilty of deceptive practices in the evasion or attempted evasion of the Act or of any regulation made under the Act.

The Act provides for the issuance and enforcement by the Commissioner of "stop sale, use or removal orders." The Act specifically permits an appeal to a court of competent jurisdiction from any assessment of penalty or other final order or ruling of the Commissioner or Board of Agriculture. The Act becomes effective July 1, 1947.

(4) Commercial Nitrogen.

Resolution No. 9 (SR 88) was a joint resolution requesting the North Carolina delegation in the United States Congress to exert efforts to make at least 75,000 tons of commercial nitrogen available to North Carolina farmers within 30 or 40 days from date of ratification of the resolution (which was February 5, 1947).

### B. Cotton

(1) Purchasers of Cotton Ginned Outside North Carolina

Chapter 977 (HB 920) amends G. S. 106-451.1 (dealing with the marketing of cotton) to provide that any person purchasing cotton that has been ginned outside the state must keep only so much of the records demanded by this particular section as purchasers are required to keep by the law of the state where the cotton was ginned.

### C. Tobacco

(1) Tobacco Flue Sheets.

Resolution No. 8 (HR 75) was a joint resolution requesting the North Carolina delegation in the United States Congress to lend their immediate assistance in obtaining tobacco flue sheets for the tobacco growers of North Carolina.

(2) Referendum among Flue-cured Tobacco Farmers.

Chapter 511 (SB 255) provides for a referendum to be held in July, 1947, on the question of whether North Carolina flue-cured tobacco farmers (which includes owners of the farms, tenants and sharecroppers) shall levy upon themselves for the three years 1947, 1948, 1949 an annual assessment of 10 cents per acre of tobacco (in accordance with United States allotments). The referendum is to be held under the regulation of Tobacco Associates, Incorporated. The money is to be used to stimulate the export trade for flue-cured tobacco.

If the assessment receives a favorable vote, the collection of the money shall be in accordance with the regulations of the Board of Directors of Tobacco Associates, Incorporated. The Act further provides that if anyone, who has paid, becomes dissatisfied with the assessment and the results thereof, said person shall have the right to demand and receive a refund from the treasurer of Tobacco Associates, Incorporated, provided that such demand is made in writing within 30 days from the date on which the assessment is collected. The Act further provides that if the plan be voted down (a two-thirds favorable vote of those voting is required to carry the plan) in July, 1947, the directors of Tobacco Associates, Incorporated, are authorized to call another referendum in July, 1948, on the adoption of the plan for the next three years. If the plan receives a favorable vote in July, 1947, said directors are empowered to call another vote in July, 1949, on the question of extending the plan for the ensuing three years.

(3) Tobacco Heating Units.

Chapter 787 (SB 315) supplements G. S. 81-14 by requiring that all flue-cured tobacco heating units offered for sale or sold in North Carolina must bear a seal of approval authorized by the Board of Agriculture and must be accompanied by the manufacturer's instructions as to installation and operation. The Act becomes effective September, 1947.

**D. Other Farm Products (Including Timber).**

(1) International One-quarter Inch Log Rule.

Chapter 400 (SB 128) provides that the standard log rule for determining the number of board feet in a tree or log is the International ¼ inch log rule but that the Act does not apply to contracts entered into before ratification of the Act, does not apply as a measure of damages in tort actions and does not prevent buyers and sellers from contracting that some other log rule shall apply in their contract. The Act was ratified March 20, 1947.

(2) Referendum among Growers of Farm Products.

Chapter 1018 (HB 802) authorizes commercial growers of any farm crop (except cotton and tobacco) to combine through an association to promote the consumption of such crop. The Act provides for holding a state-wide or local referendum among growers or producers of a particular agricultural commodity on the question of levying an annual assessment for three years to finance the promotion of the crop.

Any existing or hereafter created commission, board or agency fairly representative of the growers or producers of any agricultural commodity may make application to the Board of Agriculture for certification and approval for the purpose of conducting the referendum.

The Board of Agriculture is directed to hold a hearing upon this application and if the application is approved the agency is authorized to make regulations pursuant to holding the referendum.

The referendum may be participated in by all farmers engaged in the production of the agricultural commodity on a commercial basis, including owners of farms, tenants and share-croppers. A two-thirds vote of those voting is necessary to approve the plan and the maximum assessment that may be levied is one-half of one per cent of the value of the year's production of the agricultural commodity in question.

The assessment is to be used under the regulations of the agency to stimulate the increased use and sale, domestic and foreign, of the agricultural commodity covered by the referendum.

Anyone who has paid the assessment, if dissatisfied with the assessment and results thereof, may demand and receive from the treasurer of the agency a refund, provided that such demand is made in writing within 30 days from the date on which the assessment is collected.

If the assessment receives a favorable vote, the agency is authorized to hold another referendum in the third year of the period on the question of continuing the assessments for the ensuing three years.

If the assessment does not receive a favorable vote, the agency is authorized to call another referendum in the next succeeding year on the question of an annual assessment for the ensuing three years.

### E. Conservation

(1) Soil Conservation Districts.

Chapter 131 (HB 175) amends several sections of G. S. Chapter 139 entitled Soil Conservation Districts. Among other amendments the Act increases the ex officio membership of the State Soil Conservation Committee by adding the president, vice president and immediate past president of the State Association of Soil Conservation District Supervisors. The Act also provides a $5 per diem for every committee member who does not receive a salary from the State or federal government, together with necessary expenses for all committee members. The Act rewrites the section dealing with the nomination and election of a soil conservation committee in each county in a district and rewrites the first two paragraphs of G. S. 139-7 dealing with the governing body of said conservation district. A new section, G. S. 139-14, is added to provide for the division of large soil conservation districts into two or more smaller districts.

### F. Economic Poisons

(1) Insecticide, Fungicide and Rodenticide Act of 1947.

Chapter 1087 (HB 748) is entitled the Insecticide, Fungicide and Rodenticide Act of 1947. This Act requires as a prerequisite to sale the registration of any "economic poison" (defined as any substance intended for preventing, destroying, etc., insects, rodents, fungi, bacteria, weeds or other forms of plant or animal life or viruses (except viruses on or in living man or other animals) which the Commissioner of Agriculture shall declare to be a pest).

An annual inspection fee of $10 for each brand or grade to be offered for sale must be paid when said brand or grade is registered.

The Act prescribes duties and powers of the Commissioner and specifically grants him the right to seek injunctive relief in enforcement. The Act forbids the distribution, sale or transportation in intrastate commerce of those economic poisons which are: (a) unregistered; (b) below standards claimed; (c) not in unbroken original container properly labelled; (d) adulterated or misbranded.

The Act also makes unlawful the alteration or defacement of labels, tampering with contents, refusal of person charged therewith to disclose records of business dealings in economic poisons; improper revelation of formulas and the interference with the Department of Agriculture in enforcing the Act. The Act becomes effective January 1, 1948.

# RETIREMENT AND PENSIONS

## TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

### Retirement Benefits

Chapter 458 (HB 282) provides for an increase from four to five per cent on employees' contributions to the Retirement System after July 1, 1947. This amount is to be matched by the State. The State assumed responsibility for paying the five per cent that would have been paid had the System been in operation on all service performed prior to July 1, 1941. For retirement purposes this will mean actually a two per cent salary increase for retirement purposes for all members of the System from the first day a member worked up to July 1, 1947, at which time the employee will begin making a five per cent contribution to the system. The retirement benefits will be increased by at least 25 per cent for all members retiring after July 1, 1947, and this is also applicable to those members who have already retired by giving them a 25 per cent increase effective July 1, 1947, over and above what they are now receiving. A further provision of this Act provides that any person with twenty years or more of creditable service who leaves State employment and does not withdraw his contributions will be eligible to receive a retirement allowance upon reaching the age of sixty whether or not he is employed any more by the State. He will have a twelve months period in which to make application after reaching his sixtieth birthday.

### Membership of Board of Trustees

Chapter 259 (SB 158) amends G. S. 135-6 to provide that in addition to the five members of the Board of Trustees of the Teachers' and State Employees' Retirement System now appointed by the Governor that he shall appoint a sixth member. This sixth member must be an employee of the State Highway and Public Works Commission. The first appointee will serve from April 1, 1947, for four years. Appointments will be made quadrennially.

### Beginning Date of Membership

Chapter 457 (HB 281) fixes the beginning date of membership in the Retirement System at ninety days after the date of employment. Persons who enter the service for the first time after attaining the age of sixty will not be permitted to join the System, and no deductions will be made from their salaries. New employees who have never been employed by the State before will not become members of the Retirement System until the beginning of the fourth month of employment. This is designed to eliminate short term employees from having deductions made from their salaries and eliminate the necessity of having to keep books on such short term employees.

### Joining System after Electing Not to Join

The Teachers' and State Employees Retirement System became effective July 1, 1941. At that time teachers and State employees were given a three-months period in which to decide whether they wished to join the System. More than six thousand of them signed statements stating that they did not wish to become members. So long as these persons were continuously employed they were not permitted to come in under the System unless they broke the chain of their employment, resigned and came in as new members. Under Chapter 414 (SB 119) those employees and teachers who signed non-election blanks are given the privilege of applying and being admitted for

membership in the System after July 1, 1947. They will, however, not receive credit toward retirement for the number of years service already performed up to July 1, 1947, but will come in as new members without any credit at all toward retirement.

### Prior Service Credits for Veterans of World War I

Chapter 575 (SB 135) makes provision for giving credit for retirement purposes to those teachers and State employees who served in the armed forces during the first World War for such service (a) if they were employed by the State at the time of going into military service, and (b) if they returned to State employment within two years after they were discharged. The salary paid any such employee immediately prior to entering military service will be deemed the actual compensation rate during the period spent in the armed forces for purposes of the prior service credit.

### Membership of Highway Department Employees

Under its original provisions the Retirement Act provided that teachers and other State employees would be given credit for all work performed prior to the establishment of the Retirement System whether or not, in the case of teachers, they had been paid either by the county or State. The Act limited State Highway employees who had worked on county highways, however, to such service since 1921. Under Chapter 458 (HB 282), discussed in another connection above, provision is made by which the Retirement System may give credit for retirement purposes to Highway Department employees for all work done on county highways, and it eliminates the 1921 limit. This places the State highway employees on the same basis as teachers and other State employees.

### Membership of Employees of the State Employment Service

Chapter 464 (HB 362) provides that present employees of the North Carolina State Employment Service who were employed by the United States Employment Service subsequent to January 1, 1942, and during the period of time during which the State Employment Service was on loan to the Federal Government, may receive credit for this period provided (1) they pay into the Retirement Fund an amount equal to the contributions with interest thereon, which would have been made during this period of time if the individual had been a State employee, and provided (2) that the Federal Government makes available to the Retirement System the employer contributions that would have been made during the same period of time. The Act also authorizes the Board of Trustees of the Retirement Fund to establish and issue the necessary regulations for administering these provisions, and further provides that individuals who were employed by the State Employment Service at the time it was loaned to the Federal Government on January 1, 1942, will be given twelve months from the date of return to the State in which to pay the contributions which they would have paid had they remained on the State pay-roll during the time the Employment Service was operated by the Federal Government.

### Transfer of Membership of State Highway Patrolmen

Chapter 692 (HB 280) provides that members of the State Highway Patrol who are members of the Teachers' and State Employees' Retirement System are to be given the privilege of transferring their time, creditable service, and the contributions

paid into this System plus interest to the Law Enforcement Officers Benefit Fund. Under the Act, such patrolmen are given until August 1, 1947, to make their requests for transfer.

### North Carolina Local Governmental Employees' Retirement System

Chapter 833 (HB 380) extends the benefits of membership in the North Carolina Local Governmental Employees' Retirement System to employees of municipal light and water boards and commissions. The immediate cause for this Act arose from a situation in the city of Concord, a city which does not participate in this Retirement System. The employees of the Concord Board of Light and Water Commissioners, a revenue producing body, desired to participate in the Retirement System but were not permitted to do so because the city itself was not participating. The Attorney General had ruled that only counties and incorporated cities and towns could be recognized for membership, and that single departments or branches of local governmental units were not eligible. Since utility departments usually have their own sources of revenue and are not dependent upon tax levies for operating funds, it was felt that it was proper for the Legislature to amend the law to permit utility employees to join the System when the employer voluntarily elects to be bound by the provisions of the law.

Chapters 15 (HB 49), 943 (HB 961), and 904 (SB 456) made participation in the Local Governmental Employees' Retirement System available to the city of Henderson and to the counties of Lee and Moore. Prior to these Acts these units were exempt from the application of Act creating the system.

## PENSIONS

Chapter 897 (SB 417) amends G. S. 147-32, which provides a $1,200 per year pension for the widows of governors upon a finding by the Council of State that the beneficiary does not have an income adequate for her support, by striking out the requirement that the widow must have attained the age of 65 before she is eligible, and by providing that payment of such a pension will terminate should the widow remarry. Efforts embodied in SB 275 and HB 798 to increase the annual pensions payable to the widows of Confederate soldiers who are blind in both eyes or totally helpless were unsuccessful.

# STATE DEPARTMENTS AND AGENCIES

## CONSERVATION AND DEVELOPMENT

An awakened State interest in the advantages and necessity of programs sponsoring the conservation and development of the State's resources was felt with strong impact in the 1947 General Assembly. The prospect of finding oil in the Eastern counties did not look as imminent as it had in 1945, but the problems attending game birds, fish and animals, rivers, floods, and stream pollution, as well as the State-owned preserves, served to foster a proportionally large amount of legislation in which the Department of Conservation and Development and allied agencies will have a hand.

### The Wildlife Resources Commission

The 1947 General Assembly's interest in conservation and development matters was crystalized early in the session by the introduction on January 29 of companion bills, SB 68 and HB 133, to create the North Carolina Wildlife Resources Commission. Chapter 263 (HB 133) was eventually ratified on March 11 after some amendment. This Act will have the effect of terminating the existence of the Division of Game and Inland Fisheries of the Department of Conservation and Development as of July 1, 1947 and transferring its rights, duties, records and funds to the Wildlife Resources Commission created by the Act. This Commission will have nine members appointed by the Governor to represent nine geographic districts and will be administered by an experienced executive director chosen by and serving at the pleasure of the Commission at a salary to be fixed by the Governor. Upon the establishment of the Commission all monies derived from hunting, fishing, trapping and related licenses will be credited to the Wildlife Resources Fund established by the Act for the use of the Commission. Commercial fish and fisheries and stream pollution control work will not fall within the province of the Commission. Furthermore, State parks and forests are not included in the property transferred to the Commission.

### State Park Facilities

The Department of Conservation and Development's rights regarding the use and management of State parks, forests and lakes were broadened under the provisions of Chapter 697 (HB 610). The primary purpose of the Act is to authorize the Department to build and operate public service facilities and conveniences at these State reservations and to permit it to charge reasonable fees for their use. The Act further permits the Department to grant concessions for operating these public facilities to private individuals and make regulations regarding their use which will have the force of law. The Department is also permitted to charge fees for hunting and fishing in State preserves.

### Forestry Services

Chapter 384 (HB 192) grants the Department authority to render scientific forestry services through the State Forester (grading, marking and estimating timber) for a fee to owners and operators of forest land and to give forestry advice free of charge. The fee for services would not exceed 5 per cent of the sale price or fair market value of the stumpage marked, measured or estimated.

### Shrimp, Oysters and Shad

Shrimp and oysters will become objects of special study by the Department. Chapter 980 (SB 310) creates a 5-man commission to be appointed by the Director of

Conservation and Development whose business it would be to survey shrimping grounds off the North Carolina coast for a maximum period of two years, in the Department's discretion. $50,000 was appropriated to finance the survey. Under Chapter 256 (SB 127) the Department is authorized to enter into reciprocal agreements with neighboring coastal states regarding shrimp-taking by non-residents, but the Act does not abolish the existing prohibition against it. Chapter 1000 (SB 236) requires the Department to conduct a large-scale oyster rehabilitation program and appropriates $100,000 for the purpose. The Act empowers the Department to regulate the depletion of oyster beds, taxes and licenses on oysters and oystering, the importation of new oyster species, and the exportation of North Carolina oysters in the shell. All fees and taxes imposed by this Act and all others relating to shellfish are required to be deposited with the State Treasurer to be used for the purposes outlined by this Act. Under Chapter 485 (HB 629) lessees of oyster beds from the Pender County line up to and including Alligator River allegedly damaged by agencies of the Federal government are relieved of paying rent from April 1, 1947 to April 1, 1949, provided that if they are compensated for damages by the Federal government they will have to pay rent for the exemption period.

Chapter 1039 (HB 1036) permits taking shad and herring with gill and skim nets of not less size bar than 1½ inches on Thursday, Friday and Saturday of each week between March 1 and June 1 in the waters of Tar River between the bridges at Grimesland and Falkland, and in the waters of Chicod Creek.

### Administrative Projects and Changes

Introduction of HR 321 and its companion SR 129 on February 12 produced much oratory and debate. As passed, Resolution No. 16 (HR 321) authorized the Department of Conservation and Development to "coöperate with the United States government through its War Department in the Bugg's Island Roanoke River flood control and hydroelectric development project." This coöperation is to take the form of a study of the project by the Department to determine its effect upon the whole State. From this study the Department is empowered to inform the Army Engineers what is considered desirable in regard to the project for the State of North Carolina.

Chapter 1011 (HB 561) appropriated $50,000 from the Game and Inland Fisheries Fund or out of "any legal successor" to that fund to the Department to be used for the completion of the Table Rock Smallmouth Bass Hatchery, begun under an appropriation of the 1945 legislature.

Certain other administrative matters were also considered. Chapter 118 (SB 41) authorizes the Board of Conservation and Development to spend Department funds to acquire real and personal property desirable and necessary for the performance of the duties and functions of the Department, upon the approval of the Governor and Council of State. The title to property so acquired would be held by the State for the use of the Department.

Under Chapter 699 (HB 756) the present mandatory requirement that the Board of Conservation and Development meet at least four times each year is made permissive.

Chapter 577 (SB 165) empowers the Governor to commission as special peace officers such employees of the Department as the Director may select for enforcing laws and regulations concerning the protection of reservations, lands and waters under the supervision of the Department.

Efforts to have an aerial topographic survey of the State made in coöperation with the U. S. Geological Survey, embodied in HB 429, were unsuccessful.

### Miscellaneous Matters

Chapter 786 (SB 291) grants a $10 per diem plus 6c per mile for official travel to members of the State Stream Sanitation and Conservation Committee created by the 1945 General Assembly. It also permits the Committee to employ personnel and authorizes it to act as a separate State agency or in conjunction with other agencies for the purpose of receiving and administering Federal funds, provided that its program must be limited to that required in order to comply with Federal regulations.

As of July 1, 1947, Chapter 422 (SB 268) terminates the existance of the Committee on Coöperation for Development of Federal Parks, Parkways and Forests, and the North Carolina Park Commission. In their place is created a seven-member North Carolina National Park, Parkway and Forests Development Commission which succeeds to the functions, funds and records of the two abolished agencies. The Act sets as objectives for this Commission promotion of the development of the State's mountain area, completion of the Blue Ridge Parkway, and the development of recreational facilities in the affected area.

Under Chapter 312 (SB 78) the State completes cession of jurisdiction to the United States over lands of the Great Smoky Mountains National Park by extending the cession of exclusive jurisdiction made by the 1929 General Assembly to all lands which may be acquired by the Federal government for the park.

A series of proposed changes in game law penalties, open seasons and the confiscation of instruments used in taking wild birds and animals (HB 552, 553, 554) failed to pass. A statewide bill regulating seasons on foxes and fox hunting also failed to pass, but the usual quota of local bills dealing with foxes passed, leaving the fox's fate in local hands.

## AGRICULTURE AND RELATED MATTERS

Regulation of milk labeling, inspection and standards and the new fertilizer law provisions will be found discussed under the section dealing with the regulation of trades, businesses and professions. There are, however, two measures germane to the field of agriculture that deserve separate attention.

Agricultural fairs will be investigated during the next two years. Under Chapter 1004 (SB 478) a seven-member commission is created, members to be appointed by the Governor. Its mission is to look into the situation with respect to exploitation under the guise of agricultural fairs and report its findings to the Governor before the next session of the General Assembly.

The State Fair was dealt with by Chapter 726 (HB 624). The State Board of Agriculture is authorized to borrow money with which to construct, enlarge and improve State Fair facilities, and to issue revenue bonds for the purpose. The Board is empowered to pledge the revenue derived from operation of the Fair for payment of such bonds or loans, but in no event to pledge the credit of the State, the Department of Agriculture or the Agriculture Fund.

## STATE ART AGENCIES

If the contingencies are met, it is likely that North Carolina may have two new art museums within the next few years. Actuated by the offer of a substantial gift

contingent upon matching State funds, the General Assembly passed Chapter 1097 (SB 395). This Act takes the form of enabling legislation which empowers the State Art Society to purchase, acquire and preserve works of art and to receive gifts. It provides for the creation of a State Art Society Special Fund into which all gifts must be paid. Principal interest in the Act lies in its appropriations provisions.

From any unappropriated General Fund surplus that may exist at June 30, 1947 (a companion House bill fixed the date as June 30, 1949), the Act appropriates $1,000,000, but provides that this appropriation shall not be made available until (a) the sum of $1,000,000 in gifts has been paid into the State Art Society Special Fund and (b) until funds are available to meet all appropriations made for the biennium 1947-1949. Should these contingencies be met, and a State Art Museum erected, the Act requires that it be located in Raleigh.

The second potential museum is designated for the Chapel Hill branch of the State University. To insure that all legal authorities are in order, Chapter 394 (HB 534) approves and confirms the action of the Board of Trustees of the University in offering to accept and in accepting the charitable trust created by the will of William Hayes Ackland. Should the pending litigation concerning this trust be decided in the University's favor, this Act will serve to validate acceptance of the trust, the principal objective of which is to provide for the establishment of an art museum in Mr. Ackland's memory.

Chapter 1049 (HB 1093) also deals with a State cultural agency. It changes the designation of the governing body of the State Symphony Society from "directors" to "trustees" and removes the requirement that there be only sixteen members of the governing body. No new maximum is set.

## SALARY CHANGES

The agitation for salary increases was not confined to teachers and State employees. Several measures were passed to benefit higher State officials within the limits allowed by the Constitution:

### 1. Governor

Chapter 994 (SB 458) fixes the annual salary of the Governor from and after January 1, 1949 at $15,000.

### 2. Council of State

Chapter 1041 (HB 1042) sets the salaries of the Secretary of State, the State Auditor, the State Treasurer, the Superintendent of Public Instruction, and the Commissioners of Agriculture, Labor and Insurance (the Council of State) at $7,000 per year after the expiration of their present terms of office.

### 3. Attorney General

Chapter 1043 (HB 1048) fixes the annual salary of the Attorney-General from and after January 1, 1949 at $8,400.

### 4. Administrative Officers

Chapter 898 (SB 427) authorizes the Governor, subject to the approval of the Advisory Budget Commission, to fix the salaries of administrative officers whose salaries are now fixed by statute. This measure is apparently designed to provide a flexibility

in fixing such salaries sufficient to put the State in a bargaining position in the employment of experienced men that it does not enjoy when salary ceilings are fixed by statute.

Legislation of this nature was not all successful. Efforts embodied in SB 467, SB 474, HB 1030, SB 86 and SB 351 to raise the salaries of justices of the Supreme Court, judges of the Superior Court and solicitors were all defeated or allowed to die in committee. HB 972 and its companion SB 390 designed to permit the Governor to fix the salaries of the Utilities Commissioners with the approval of the Advisory Budget Commission were allowed to die in committee, but it is possible that the purpose of the bill may be achieved under Chapter 898 (SB 427) discussed above.

A related matter that also suffered defeat was the effort made in HB 811 to provide for a five-day forty-hour work week for State employees.

## COMMISSIONS AND INVESTIGATIONS

### 1. Administrative Boards

The theory and practice of administrative boards was the subject of heated argument in the 1947 General Assembly. Although a series of moves designed to strike down one of the existing boards (the barbers') and one attempt to establish a new board (the funeral directors') were defeated, the thinking finally crystalized in Resolution No. 31 (HR 703). This is a joint resolution authorizing the Governor to appoint three members of the House and two members of the Senate to investigate the activities and practices of twenty-two State boards regulating the practice of trades and professions. This commission is empowered to examine witnesses and records and to hold hearings. It is required to report its findings and recommendations to the Governor before the next session of the General Assembly. Two unsuccessful efforts (SB 117 and SB 442) to require wider circulation of board regulations failed to pass, and SB 202 which would have required that a public representative be designated to sit on all the boards died in committee.

### 2. The Educational System

The whole educational system of the State is to be subjected to study under Chapter 724 (HB 548). The Governor is authorized to appoint an 18-member State Education Commission to inquire into organization, curriculum, administration, finance, teacher education, consolidation, transportation, physical plant, merit rating system for teachers, vocational education, and all the related problems of the school system. $25,000 a year is appropriated for this work, and the Commission is charged with presenting its findings and recommendations to the Governor and General Assembly of 1949.

### 3. Administration of Justice

The administration of justice in North Carolina is also to be subjected to special study during the next biennium. Resolution No. 23 (SR 298) provides for the appointment of a 23-man commission for this purpose. The members will be appointed by a number of different officials, groups and institutions, and from a number of different fields. The Commission is specifically charged with making this study with an eye toward proposing legislation in the field to the next legislature.

### 4. Armories

Chapter 1010 (HB 433) creates the North Carolina Armory Commission. Its purpose is described as being to set up and administer a state-wide plan for construction and maintenance of armories and the acquisition of armory sites. The Act authorizes counties and municipalities of the State to lease or convey to the State any actual or potential armory or armory site, to appropriate from year to year for the benefit of National Guard or State Guard units any sum they deem "wise, patriotic and expedient," and to furnish such units utilities services. Such indebtedness or expenditures are declared to be necessary expenses and for a public purpose.

### 5. Aeronautics

The laws relating to the powers and duties of the State Aeronautics Commission underwent some amendment by Chapter 1069 (SB 222). This Act empowers the Commission to make rules of procedure (in conformity with Federal legislation) for the location and minimum safety requirements for airports. While specifically exempting restricted private landing areas, airports or air navigation facilities owned or operated by the United States government, and all airports established on May 1, 1947, it empowers the Commission to insure conformity with minimum safety standards and to insure that they are in the public interest. Upon order of the Commission granting or denying approval of an airport, the applicant is allowed to demand a hearing, and the Commission, after due notice, is required to hold a public hearing either in the municipality applying for the airport or, in the case of a private applicant, at the county seat of the county in which the airport would be located. The Act also sets certain standards to be used in issuing certificates of approval. The Commission is empowered to revoke any certificate temporarily or permanently when it determines that an airport is not being maintained or used in accordance with law or the rules of the Commission. Orders of the Commission are made reviewable in courts in the manner presently provided for orders of the Utilities Commission.

### 6. Local Legislation

Reflecting a sentiment that was by no means confined to the 1947 General Assembly, Resolution No. 24 (HR 751) calls for the appointment of a commission to study and report upon the problem of public-local and private legislation by the General Assembly, legislation that comprises from 60 per cent to 70 per cent of the laws passed in an average session. The joint resolution outlines certain specific objectives for the committee: to study the whole problem of this local legislation with particular attention to the report of the North Carolina Commission on Local Legislation made to the General Assembly of 1939; to recommend general laws on subjects frequently embraced in local laws; to recommend such amendment to Article II, Section 29 of the State Constitution (limiting the General Assembly's power to enact special or private acts) as will prohibit the enactment of local laws on matters adequately covered by general laws; to make any other recommendations that it considers proper; and to submit its report to the Governor not later than December 1, 1948.

### 7. Miscellaneous

The Sir Walter Raleigh Day Commission created by Resolution No. 26 (HR 1094) will have as its function the receipt of donations for the erection of a suitable memorial in Raleigh to the first colonizer of the State.

Chapter 226 (HB 242) rewrites the law setting up the North Carolina Board of Correction and Training and redesignates it the State Board of Correction and Training. This Board is empowered to control all correctional institutions of the State.

Chapter 748 (HB 865) creates the Morehead Navigation and Pilotage Commission to have jurisdiction over the navigation of waters adjacent to Morehead City. Its powers include the licensing of pilots and prescribing the rules for navigating the waters concerned.

## STATE HIGHWAY AND PUBLIC WORKS COMMISSION

At least three measures passed by the 1947 General Assembly have direct bearing on the administrative work of the Highway Commission.

Chapter 530 (HB 637) provides that in settling the claim of a contractor against the Commission, the Commission Chairman will appoint one person, the contractor will appoint one person, and those two will select a third, the three to constitute a board of review in place of the three-man committee of highway commissioners formerly provided to be appointed by the Chairman for this purpose by G. S. 136-29. Provisions of this section granting the right of court appeal from such committee's awards remain unchanged.

Chapter 806 (HB 724) adds a new paragraph to G. S. 40-2 giving the Commission the power of eminent domain for the purpose of acquiring such property as may be necessary for the erection of or additions to its buildings, for storage of supplies and equipment, for housing prisoners, or for any other purpose necessary in its work. While there was some indication that this Act was designed largely to provide for expansion of the Commission's quarters in the city of Raleigh, the effect of it is to give the Commission the power of eminent domain for property necessary for quarters wherever they may be located.

Chapter 1022 (HB 909) rewrites the provisions of G. S. 156-88 to make more specific the liability of the Highway Commission for drainage across public or private ways effected by drainage districts.

## MISCELLANEOUS ACTS AFFECTING STATE DEPARTMENTS

The following Acts covering a variety of subjects have some pertinence to the operation of State agencies, institutions and departments:

Chapter 152 (HB 225) amends G. S. 142-37 to authorize the State Treasurer to keep sinking fund securities in the vault of the Revenue Building, or in bank safety deposit boxes, in his discretion.

Chapter 580 (SB 215) amends subsection (b), Section 2 of Chapter 324, Public Laws of 1937, to authorize the State Board of Health to purchase any bonds authorized by that statute, before due date, and to apply any fees, charges and receipts collected under that statute to the purchase of these bonds. It is specifically provided that such fees, charges and receipts will remain continuously available for this purpose, whether due or not, and that none of them will revert to the General Fund or any other State fund until all these bonds have been liquidated. The Board is authorized to sell, with the approval of the Governor and Council of State, any property, land, timber or equipment acquired with funds derived from the sale of the bonds in question and to use such funds for the purchase of the bonds whether due or not.

Chapter 189 (HB 17) changes the name of the North Carolina College for Negroes to the North Carolina College at Durham.

Chapter 24 (HB 52) empowers the Governor to appoint four special judges, two from each judicial division, with terms running to June 30, 1949; it also empowers the Governor to appoint four more special judges if in his judgment they are necessary.

Chapter 182 (HB 348) amends G. S. 114-4 to authorize the Attorney General to appoint five assistant Attorneys General, instead of only four as formerly, two of them to be assigned to the Revenue Department.

Chapter 184 (HB 365) amends G. S. 105-273 to make the Commissioner of Revenue chairman of the State Board of Assessment, replacing the Director of the Department of Tax Research who, however, would remain on the Board.

Chapter 1031 (HB 999) declares the eastern territorial boundary of the State of North Carolina to be located at a distance of one marine league from the low water marks of the seashore on the Atlantic Ocean and empowers the Governor and Attorney General to take any steps necessary to defend this boundary.

# STATE TAXATION

## REVENUE ACT AMENDMENTS

Following is a summary of the changes made in the Revenue Act. All changes indicated were made by Chapter 501 (HB 25), unless otherwise indicated. No attempt is made here to deal with levies of motor vehicle fees, inspection fees or other regulatory fees, or with provisions which pertain purely to local taxation (such as some of the Schedule B Licenses taxes). For these latter see Local Taxation and Finance. Existing revenue laws are continued in force with respect to all acts and transactions occurring prior to July 1, 1947 which are affected or ought to be affected by their terms or provisions, notwithstanding any express or implied repeal contained in Chapter 501 (HB 25).

### (1) Inheritance Tax Amendments (G. S. Chapter 105, Art. 1, Sched. A).

**Effective July 1, 1947.**

(a) G. S. 105-3(d) is supplemented to allow an additional exemption from inheritance tax in the case of life insurance up to $2,000 payable to Class B beneficiaries (brother, sister, descendants of brother or sister, uncle or aunt) and Class C beneficiaries (all others, including strangers, not more closely related to the deceased), but the exemption is allowed only in the amount by which the exemption to Class A beneficiaries is less than $2,000.

(b) The proportionate exemption heretofore allowed by G. S. 105-13, subsec. 2(b), to a beneficiary of a life insurance policy, where the beneficiary has paid part of the premiums and the insured possessed any of the incidents of ownership in the policy at the time of his death, is removed.

(c) The discount heretofore allowed by G. S. 105-16, for prompt payment of inheritance tax, is discontinued.

(d) G. S. 105-23 is amended to extend from six to twelve months the period within which executors and administrators must file information concerning heirs of a decedent.

### License Tax Amendments (G. S. Chapter 105, Art. 2, Sched. B).

**Effective June 1, 1947.**

(Note that the present Section 192 (G. S. 105-113.1) of the Revenue Act, which will expire May 31, 1947, was not reënacted. This section, first enacted in 1943 and extended in 1945, provided for a reduction, by certain percentages, of privilege license taxes levied by the State on the following "war affected" businesses: bicycle dealers; dealers in cash registers, adding machines, typewriters, refrigerating machines, washing machines, etc.; tourist homes and tourist camps; dealers in securities; soda fountains and soft drink stands; dealers in pianos, organs, victrolas, records, radios, and accessories; outdoor advertising; automobile and motorcycle dealers and service stations; manufacturers of ice cream; and wholesale distributors of motor fuels. These reductions will, therefore, no longer be in effect after May 31, 1947.)

(a) *Film distributors.* G. S. 105-36 is amended to make the license tax on film distributors apply to distributors of films for use in "places at which an admission fee is charged" as well as in moving picture theatres, as heretofore provided, and to make the lower tax on distributors to schools apply also to distributors of films for use in "places where no admission fee is charged." (Chapter 981 (SB 388).)

(b) *Theatres.* G. S. 105-37 (e) is rewritten to permit cities and towns (but not counties) to levy license taxes on operators of moving picture shows, theatres, or

opera houses according to a new schedule. (For discussion of this change, see Local Taxation and Finance.)

(c) *Dances.* The Act rewrites and clarifies G. S. 105-37(f) and (g) and makes them a new section to be numbered 105-37.1. The taxes (both state and local) heretofore levied by G. S. 105-37(f) and (g) on athletic contests for which an admission fee in excess of 50 cents is charged are made also applicable to dances, without excepting high school and elementary school dances.

(d) *Carnivals.* G. S. 105-39 is amended to prohibit carnival companies from playing a "still date" in any county within 30 days (instead of 15 days, as heretofore) of the dates of a regularly advertised agricultural fair.

(e) *Bondsmen.* A new paragraph is added to G. S. 105-41.1, relative to bondsmen, to the effect that those licensed under that section who do not engage in any of the kinds of insurance business described in G. S. 58-78 shall be exempt from licensing or regulation by the Commissioner of Insurance.

(f) *Elevator and automatic sprinkler servicing.* G. S. 105-56 is amended by adding a new subsection providing that a person engaged in the business of repairing or servicing elevators or automatic sprinkler systems in two or more cities or towns shall be required to pay a license tax based on the population of the largest city or town in which he does business.

(g) *Bowling alleys.* G. S. 105-64.1, relating to tax on bowling alleys, is amended to make it also applicable to persons who rent, maintain, or own *premises* on which there is a bowling alley or alleys. (Heretofore the section applied only to those who rented, maintained, or owned a *building* in which there was a bowling alley.)

(h) *Cap pistols, fireworks, etc.* G. S. 105-81, which levies a tax on dealers in cap pistols, fireworks, etc., is repealed.

(i) *Automobile and motorcycle dealers.* G. S. 105-89, relating to automobiles and motorcycle dealers and service stations, is amended by deleting subsection (2) (relating to motorcycle dealers) and making it a separate section, numbered 105-89.1. Subsection (4)(c), which provides that no motor vehicle dealer shall be issued dealers' tags until the license fee levied under the subsection has been paid, is repealed. The remaining subsections of G. S. 105-89 are renumbered and references to the subsections, contained in the body of the section, are made to correspond to the new numbering. However, in the renumbering process, the former exemption of dealers exclusively in motor fuels and lubricants, who have paid the tax levied under G. S. 105-89(1), from taxation under G. S. 105-89(2) (which is made a separate section by the Act) has apparently been eliminated.

(j) *Industrial banks.* G. S. 105-94, levying a tax on Morris Plan or industrial banks and limiting such levy by cities and towns, is repealed.

### (3) Franchise Tax Amendments (G. S. Chapter 105, Art. 3, Sched. C). Effective March 25, 1947.

*Corporate franchise tax.* G. S. 105-122(4) is amended to reduce the franchise or privilege tax on domestic corporations from $1.75 per $1,000 of total capital stock, surplus and undivided profits to $1.50 per $1,000.

### (4) Income Tax Amendments (G. S. Chapter 105, Art. 4, Sched. D). Effective as of January 1, 1947, unless otherwise indicated.

(a) *Deductions.* G. S. 105-147 is amended to permit the following additional deductions in computing net taxable income: in the case of an individual, all ordinary

and necessary expenses paid or incurred for production or collection of income, or for management, conservation or maintenance of property held for production of income; in the case of public school teachers, principals and superintendents, all ordinary and necessary expenses of attending an accredited summer school, up to $250 in any one year, upon presentation of receipts showing such expenditures; in the case of business bad debts, a reasonable addition to a reserve for bad debts, the deduction being allowable in the Commissioner's discretion; and, in the case of individuals, firms, partnerships and corporations contributions to veterans organizations, subject to the 10 per cent and 5 per cent limitations of G. S. 105-147, subsec. 9, if the organization is organized within the U. S. or any of its possessions and no part of its net earnings benefit any private shareholder or individual (Chapter 894 (SB 396)). Deductions for expenses for medical care, accident and health insurance, and dependents' funerals are limited to the amounts actually paid during the income year, and to a total allowable deduction for such expenses of $2,500. The effective date of subsec. 13, relative to amounts paid by employers to employee trusts, is changed from January 1, 1944 to January 1, 1942.

(b) *Exemptions.* G. S. 105-149, Subsec. 2, relating to exemptions of individuals having incomes from sources both within and without the State, is rewritten and clarified, and a provision added to the effect that if no deduction is claimed by reason of the income earned outside of the State and total income is reported, full rather than pro rata exemption will be allowed.

(c) *Installment payment of tax.* G. S. 105-157, relating to time and place of payment of income tax, is amended to provide, if the amount of the tax exceeds $50, for the option of payment in two equal installments, one-half on the date of filing the return, and one-half on or before September 15, with 4 per cent interest on the latter from March 15 until paid (6 per cent from March 15 in case of default in the deferred payment), and if the amount of the tax exceeds $400, payment is permitted in four installments payable on the 15th of March, June, September and December, with 4 per cent interest on deferred payments (6 per cent from March 15 in case of default). (Effective January 1, 1948.)

(d) *Amended returns.* G. S. 105-159, relating to corrections and changes in the taxpayer's federal income tax return, is amended to require the report of such corrected net income to the Commissioner within two years rather than within 30 days, and to remove the provision that if the taxpayer fails to notify the Commissioner of the assessment of additional tax by the federal government the statute of limitations does not apply.

(e) *Limitations.* G. S. 105-160 is amended to make the five-year statute of limitations apply where the taxpayer fails to file notice of additional assessment by the federal government.

### (5) Sales Tax Amendments (G. S. Chapter 105, Art. 5, Sched. E). Effective July 1, 1947.

(a) A new subsection is added to G. S. 105-168 exempting from the sales tax on motor vehicles, sales of used motor vehicles by others than dealers, if the sales or compensating use tax has been paid with respect to such motor vehicle.

(b) *Exemptions.* G. S. 105-169(b) is rewritten to provide that sales of gasoline on which the gallon tax is paid under G. S. 105-434 shall not be subject to the sales tax, regardless of the fact that a refund of the gallon tax is made. G. S. 105-169(q)

is amended to make the exemption from the sales tax provided for in that section apply to sales to educational institutions "not operated for profit" rather than only to those "principally supported by the State," as heretofore.

(c) *Wholesale sales.* G. S. 105-169(t) is rewritten to classify as wholesale sales, sales of lubricants, repair parts and accessories for motor vehicles and airplanes to fleet owners or operators when such articles are to be used in the vehicles or airplanes of the fleet owner or operator.

(d) *Administrative changes.* The reference to "department of revenue" and "commissioner of revenue" in G. S. 105-170(c) (relating to issuance of motor vehicle license plate and certificate of title where sales tax not paid) is changed to read "department of motor vehicles" and "commissioner of motor vehicles," respectively,

(e) *Limitations.* Provision is added to G. S. 105-174(b) placing five-year statute of limitations on the right of the Commissioner to determine the amount of tax due when returns have not been filed.

### (6) Gift Tax Amendments (G. S. Chapter 105, Art. 6, Sched. G). Effective January 1, 1948.

(a) *Method of computing.* G. S. 105-188 is amended by striking out the fifth paragraph and inserting in lieu thereof a paragraph which, as of January 1, 1948, would provide for computing the gift tax by the following method:

1. Total all gifts to the same donee since January 1, 1948.
2. Deduct applicable annual exclusion and specific exemption.
3. Compute tax on the result.
4. Deduct total gift tax paid since January 1, 1948 on gifts for same donee.
5. Resulting sum is gift tax due.

(b) *Interest.* G. S. 105-192 is amended so that 6 per cent interest on tax, penalties, or interest not paid when due will be computed from the due date until the date of payment, rather than from the date of assessment to the date of payment.

(c) *Limitations.* G. S. 105-194 is supplemented by providing that "where a donor dies within three years after filing a return, taxes may be assessed at any time within said three years, or the date of final settlement of state inheritance taxes."

### (7) Intangibles Tax Amendments (G. S. Chapter 105, Art. 7, Sched. H). Effective March 25, 1947.

(a) *Exemptions—bank deposits.* G. S. 105-199 is amended to exempt from the tax bank accounts which have an average of quarterly balances for the year of less than $300, rather than $100 as heretofore, and to change from December 16 to November 16 the date on which banks may recover from depositors the amount of intangibles tax they have paid on the depositors' accounts.

(b) *Rates—bonds and notes.* The tax on bonds, notes, demands, claims and other evidences of debt having a business, commercial or taxable situs in this State as of December 31, levied by G. S. 105-202, is reduced from 50 cents per $100 to 25 cents per $100.

(c) *Rates—shares of stock.* The tax on shares of stock owned on December 31, levied by G. S. 105-203, is reduced from 30 cents per $100 to 25 cents per $100.

(d) *Rates—beneficial interests.* The tax on beneficial or equitable interests owned on December 31, levied by G. S. 105-204, is reduced from 30 cents per $100 to 25 cents per $100.

(e) *Rates—deposits with insurance companies.* The tax on funds on deposit with insurance companies on December 31, levied by G. S. 105-205, is reduced from 25 cents per $100 to 10 cents per $100.

(f) *Employee trusts, etc.* G. S. 105-212 is amended to change from January 1, 1944, to January 1, 1942, the date after which employee trusts are exempt from tax; to strike out in line 19, relating to insurance companies reporting premiums to the Insurance Commissioner, the figures, "105-121" (which G. S. section was repealed by Ch. 752, S. 1, S.L. 1945), and to substitute therefor "Article 8B, Schedule I-B" (taxes upon insurance companies); and to add provision for proportionate exemption of intangible property held by a fiduciary for the benefit of a non-resident individual or organization.

(g) *Distribution of tax.* The percentage of intangibles tax retained by the State under G. S. 105-213 is reduced from 25 per cent to 20 per cent, and the percentage of intangibles tax paid to the counties and municipalities under that section is correspondingly increased from 75 per cent to 80 per cent.

(h) *Administration—costs of collection.* G. S. 105-214, relating to deducting costs of collection, enforcement and administration from the gross tax collected and the amounts paid to the counties and municipalities, is repealed.

### (8) INSURANCE TAX AMENDMENTS (G. S. CHAPTER 105, ART. 8B, SCHED. I-B). EFFECTIVE MARCH 25, 1947.

(a) *Gross premium tax.* G. S. 105-228.5 is amended to change the gross premium tax on annuities and all other kinds of insurance, except workmen's compensation, from 2 per cent to 1 per cent in the case of domestic companies and from 2 per cent to 2½ per cent in the case of foreign and alien companies, the change having become effective upon ratification of the Act (March 25, 1947) and applying to all gross premiums collected during the calendar year 1947 and succeeding years. In the event the change is held unconstitutional, the law as it stood prior to the amendment is to be reinstated.

(b) *License tax.* G. S. 105-228.4 is amended to levy a license tax of $10 on each domestic farmers' mutual assessment fire insurance company or association, and each branch thereof. (Effective as of January 1, 1945, except as to branches.)

(c) *Administration.* G. S. 105-228.5 is further amended by rewriting the first paragraph thereof, defining the liability for gross premiums tax and measurement thereof, and by adding a new provision requiring the reports and tax imposed on self-insurers under the workmen's compensation act to be made and paid to the Industrial Commission as provided by G. S. 97-100.

### (9) GENERAL ADMINISTRATION AMENDMENTS G. S. CHAPTER 105, ART. 10, SCHED. J). EFFECTIVE JULY 1, 1947.

(a) *Corporate charter reinstatement.* G. S. 105-232 is amended to require a corporation whose charter has been suspended for failure to report or pay tax to file with the Secretary of State a certificate of compliance within five days, instead of ten days, as heretofore: and to strike from the section the provision for a $10 penalty to cover costs of reinstatement.

(b) *Refunds.* G. S. 105-266, relating to refund of overpayment with interest, is amended to provide that irrespective of any demand for a refund, an overpayment

may be credited upon taxes against the same taxpayer which shall have become due prior to January 1, 1947, if the taxpayer shall request the credit prior to paying the taxes against which the credit may be made.

### (10) BEVERAGE TAX AMENDMENTS (G. S. CHAPTER 18, ART. 4; SCHED. F OF ORIGINAL REVENUE ACT). EFFECTIVE JULY 1, 1947.

Additional taxes levied by G. S. 18-81 on the sale of beer and wine (as defined in G. S. 18-64) are doubled. (These taxes are payable by the manufacturer, bottler, or wholesaler, and G. S. 18-81 requires such manufacturer, bottler or wholesaler to affix "crowns or lids" to the containers in which the beverage is, as an indication of the tax having been paid.) Cities and counties in which beer and wine may be licensed to be sold under the provisions of G. S. Ch. 18 are to receive one-half of the taxes so collected by the commissioner, this half to be distributed among them on a population basis. (Chapter 1084 (HB 1051).)

### TAX STUDIES TO BE MADE BY DEPARTMENT OF TAX RESEARCH.

(1) *Schedule "B."* Chapter 501 (HB 25 sec. 2(p)) directs the Tax Research Department to make a thorough study of Schedule "B" (privilege license) taxes with a view toward equalizing and making uniform the taxes levied by Schedule "B," dividing on a benefit, service or control basis the objects of taxation as between the several levels of government, and eliminating overlapping and discriminatory taxes. The results of the study and recommendations for any necessary revisions shall be reported to the Advisory Budget Commission on or before July 1, 1948, and to the 1949 session of the General Assembly.

(2) *Sales tax.* Chapter 501 (HB 25 sec. 5(g)) directs the Tax Research Department to make a complete study of the provisions and incidence of the sales tax article of the Revenue Act as it may apply to farmers, industries, and other groups in the State, and to report its findings to the Advisory Budget Commission by July 1, 1948 and to the 1949 session of the General Assembly. This section also authorizes the Governor and the Advisory Budget Commission to take any required action to allot to the Tax Research Department from the contingency and emergency fund such additional amounts as may be deemed necessary in order properly to carry out the studies called for by the Legislature.

(3) *Coöperatives.* Chapter 1056 (HB 1114) directs the Tax Research Department to make a thorough study, prior to the convening of the 1949 General Assembly, of coöperative associations, their status with respect to the taxing laws, the differences between various types of coöperative associations and the extent to which such associations should be taxed. In furtherance of this provision, all coöperative associations in the State are required to make reports to the Commissioner of Revenue on or before September 15, 1947 and again, if the Commissioner requires it, on or before September 15, 1948, containing such information as the Commissioner may require. Willful failure to file reports will constitute a misdemeanor and subject the offender to the penalties imposed for willful failure to file income tax returns. Information received from reports will be held confidential under the same provisions as those applying to income tax returns. The Tax Research Department must make a written report, with recommendations, to the Advisory Budget Commission prior to the convening of the 1949 General Assembly.

## THE INSTITUTE'S LEGISLATIVE SERVICE

Continued from cover 2

troducers, the uncertain leftovers of the press and the uncertain grace of office helpers too busily engaged in tending to their own business to help us tend to ours.

Without precedents to go by they blazed their own paths, during the lengthiest sessions of the General Assembly this generation of North Carolinians has experienced, under more mentally wracking, physically exhausting, and long continuing strains than any single set of staff members of the Institute of Government has ever faced.

Succeeding members of the Institute staff have built on these foundations and every year made this legislative service a little better than it was the session before. Institute staff members through the years have slowly won a genuine ungrudging welcome to the reporters' desks, to the open spaces around the presiding officers' dais, to the offices and records and full cooperation of the chief clerks and their assistants in House and Senate—not as outsiders or intruders but as supplementary participants in the administrative machinery involved in the legislative process. When we say that the legislative service furnished by the present Institute staff in the 1947 General Assembly was the most complete and most effective ever furnished in the twelve years of its history, we are not stepping on the toes of predecessors of the present staff—we are standing on their shoulders.

The 1947 legislative service was conducted and the pages of this book were written by Peyton B. Abbott, William M. Cochrane, Samuel R. Leager, Henry W. Lewis, Clifford Pace, Terry Sanford and David H. Scott, aided and abetted by the members of the Institute staff who stayed in Chapel Hill.