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COVER

Our cover this month shows the House of Representatives in session during the 1957 General Assembly. — Photo by North Carolina News Bureau

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The Institute's Legislative Service - 1957

By PHILIP P. GREEN, JR., *Assistant Director of the Institute of Government*

Since 1933 one of the major services rendered by the Institute of Government has been its reporting of the actions of the General Assembly. Through the years state and local officials throughout the state have come to rely upon the bulletins appearing on their desks each day, setting forth detailed and accurate information as to the contents of new bills and action on old bills. In this special issue of POPULAR GOVERNMENT analyzing legislation of special interest to particular groups of officials, it may be of interest to describe the machinery by which those bulletins are produced.

Objectives

The legislative service grew out of a need for complete, concise, and impartially accurate reporting of legislative action. Although many newspapers provide able coverage of the General Assembly, the bulk of the legislature's work is with reference to bills not of sufficient general interest to be classed as "newsworthy;" consequently, if state and local officials are to have timely information concerning bills affecting them, it must frequently come from another source.

Secondly, busy legislators and officials must have information concerning the provisions of particular bills and their effect upon existing laws in a manageable form—i.e., it must be brief enough that the essentials can be readily grasped.

Third, the information which is presented must not reflect "slanting" by proponents or opponents of a measure, and it must be technically accurate. For the latter reason, it is necessary that trained lawyers, experienced in legislative analysis, do the bulk of the work of explanation.

The need for the service exists among, and the Institute's legislative service is designed to serve, a number of categories of officials. First, the *legislators* themselves cannot be expected (in the midst of daily rounds of committee activity, preparation of their own bills, dealing with constituents, and participating in floor debates) to be familiar with the details of the almost 2,000 bills which are introduced each session.

Next, *state officials* in Raleigh and *local governmental officials* throughout the state must have information concerning the contents of bills in time to take whatever action (in support of or opposition to those bills) seems proper in light of their experience and legislative needs.

The 1957 Legislative Service staff outside its headquarters in the Mansion Park Building—Joseph P. Hennessee, John L. Sanders, Clyde L. Ball, Durward S. Jones, and Philip P. Green, Jr.

Roddey Ligon helped out when the regular staff was snowed under

Mrs. Loradean Mahood, office manager, makes an entry in the journal

Finally, the *citizens* of the state must have the same knowledge of, and opportunity to take action concerning, legislative proposals. The Institute reaches some private citizens directly, through subscriptions to its legislative service. It reaches others indirectly, through the newspapers and newspapermen who receive the service.

Products of the Service

The Institute seeks to attain the objectives set forth above through five major publications: Daily Bulletins, Weekly Summaries, Weekly Bulletins of Local Legislation, a Final Summary, and this issue of Popular Government.

The *Daily Bulletins* are the basic publication of the legislative service. They include digests of every bill introduced in either house, reports of all calendar action taken by either house (i.e., the action which it takes with respect to each bill during any particular day), and lists of ratified bills. The digest shows the number of the bill, the name of the introducer, the title of the bill as introduced, a summary of the major provisions of the bill, and the committee to which the bill is referred. Calendar action includes committee reports, passage of second and/or third reading on the floor, amendments, receipt of a bill from the other house for action and the committee to which it is referred, or the various methods of "killing" a bill through an unfavorable committee report, a motion to table, a motion to postpone indefinitely, or failure to pass second or third reading.

The Daily Bulletins are supplemented from time to time by special

Mrs. Lenny maintains card files for each bill

information, including digests of any messages from the Governor, lists of legislative committees, names of new legislators appointed to replace particular members, periodic recapitulations of general laws passed up to a particular time, and a final bulletin listing the action taken by the General Assembly on every bill introduced during the session.

A cumulative set of Daily Bulletins is kept on every legislator's desk, so that he may have quick access to information concerning any bill which may come up for floor debate or otherwise. In addition, Daily Bulletins are delivered by messenger to approximately 150 state officials in the city of Raleigh each morning and are mailed to approximately 1400 city and county officials over the state. The local governmental officials receiving the bulletins are chosen either on the basis of the particular necessity for them to have information concerning proposed legislation or because of their strategic position (e.g., town clerk or county register of deeds) for making this information available to interested persons.

The *Weekly Summaries* are published each Friday night for distribu-

Mrs. Bertie Lenny checks the chart which determined which counties would receive each Local Bulletin

Clyde Ball and Joseph Hennessee covered activities of the House

tion Saturday and are designed for the reader who wants a quick statement of the highlights of the legislative week. Each Summary consists of a single sheet, mimeographed on front and back. Because it is written in popular style, it is printed regularly by a number of weekly and semi-weekly newspapers around the state. The Weekly Summaries are also mailed to some 8800 state and local officials each week.

The *Weekly Bulletins of Local Legislation* are reports concerning bills pertaining only to particular counties. They consist of digests of local bills, taken from the Daily Bulletins, plus reports of calendar action on such bills. Depending upon the volume of local legislation during a given week, between one and 20 local bulletins may be published that week. The Local Bulletins are mailed with the Weekly Summaries, reaching only officials in the counties affected. At the end of the session a final set of Local Bulletins is published, showing the disposition of every local bill introduced which pertains to any county.

The *Final Summary* is a printed volume published at the end of the legislative session which is designed to bridge the period between adjournment and the publication date of the Session Laws and General Statutes Supplements. It contains digests of all general laws enacted, organized according to the General Statutes chapter and article classifications. It is of particular importance to judges, solicitors, clerks of court, and lawyers who must know of the existence of any modification in the general laws which they are applying in their daily operations. It is distributed to approximately 2,000 officials.

Finally, this issue of POPULAR GOVERNMENT is designed to highlight the legislation of interest to particular groups of officials. In it we have tried to do more than show the major provisions of the new laws. In some cases we have set forth the background which led up to particular acts, plus an analysis of the probable effect of the change. In addition, we have described some of the local bills enacted and some of the bills which failed of passage, in the belief that future legislation may grow out of these seed-beds.

As a by-product of the publications listed above, the Institute's legislative service is able to furnish a great deal of information to legislators, officials, newspapermen, and other interested persons during the session.

John Sanders and Durward Jones covered the Senate

When the stencils were typed, this mimeographing and mailing staff took over

When the mimeographing was done, this staff assembled, stapled, folded and stuffed the bulletins for mailing

Bill Perry ties out a group of envelopes for mailing to a single destination

Barbara Guthrie, at Chapel Hill, runs a supply of envelopes through the addressograph machine

Jack Atwater, at Chapel Hill, kept supplies flowing promptly as needed to the Raleigh office

It maintains journals showing the progress of every bill through the General Assembly. Through the courtesy of the Attorney General's office and of the clerks to the two houses, it has available copies of every bill introduced, together with the wording of any amendments to a bill. It has classification files of public bills (organized according to General Statutes chapters) and of local bills (organized according to counties), so that particular bills may be located quickly. Special reports to the legislature, messages of the Governor, rules of the two houses, etc., are also available.

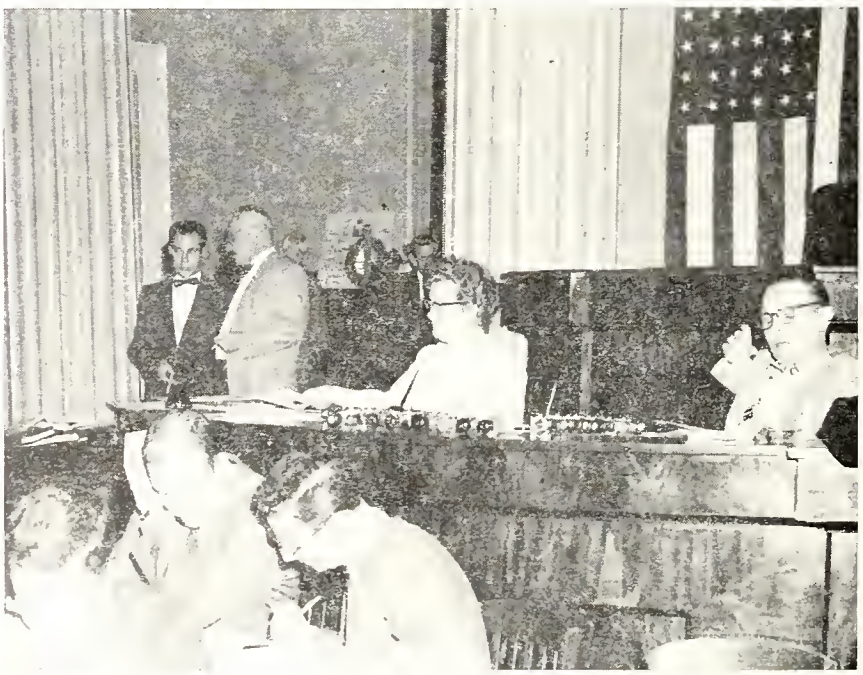
Organization of the Service

In 1933 the Institute's legislative service consisted of one man: Henry P. Brandis, Jr., present Dean of the University of North Carolina Law School. Through the years the staff has gradually evolved, until it has reached what was regarded this year as (at least temporarily) an optimum size.

This year's staff was built around five staff members of the Institute, all of whom were lawyers. In charge was the author of this article, while other members were Clyde L. Ball, Joseph P. Hennessee, Durward S. Jones, and John L. Sanders. They had the responsibility for the basic reporting service. From time to time their efforts were supplemented by those of Roddey M. Ligon, Jr., and John Webb, as the session moved into its final stages and working hours grew longer.

John Pearce punches bulletins so that they may be inserted into binders

The office force was headed by Mrs. Loradean Mahood, a veteran of the 1955 session. It also included Mrs. Bertie Lenny on a full-time basis, and Mrs. J. E. Kirk, office manager in previous sessions, and a number of other part-time typists. W. B. Wilder and Mrs. Candace Wyatt were in charge of operations on the mimeograph machines, and Miss Florine



Immediately following a session, the two staff members covering the House check their records with each other for accuracy and completeness

Staff members preparing digests of bills frequently conferred on doubtful points

Boone and Miss Margaret Shaw each headed a five-person crew charged with assembling bulletins and putting them into envelopes for mailing.

This Raleigh force, whose headquarters this year was located in the old Mansion Park building, was supplemented by members of the Institute's staff in Chapel Hill. Most of the staff has worked on the Legislative Summary and this copy of POPULAR GOVERNMENT. In addition, Mrs. Jean O'Neal, Mrs. Barbara Guthrie, and Lewis Atwater put in many hours handling the billing of private subscribers to the service, maintaining the files of mailing plates, and addressing the envelopes needed for daily mailings of some 1400 Daily Bulletins and weekly mailings of some 8800 Weekly Summaries and Local Bulletins.

Procedures

In the early years of the Institute's legislative service, staff members were handicappd by having to follow legislative sessions as best they could from the far reaches of the legislative chambers. Through the years however, they have become more a part of the legislative process, and members of the House and Senate clerks' offices have on many occasions gone far out of their way to help insure the accuracy of the Institute's reports.

Two staff members are customarily assigned to report the activities of each house. This year Clyde Ball and Joe Hennessee were assigned to the House and Durward Jones and John Sanders to the Senate. While a house is meeting, one man sits at the press table immediately in front of the Speaker and the principal clerks, taking notes of all action which transpires. The other member normally works behind the podium, serving as a check on the reporting of the desk man and also being available to secure copies of amendments, etc., which may have been introduced.

Except towards the end of the session, daily legislative sessions usually begin about noon and last from one to two hours. During this period the staff members receive copies of bills introduced, note down calendar action, and pick up copies of any special reports, committee assignments, or other information. A final check for accuracy is made immediately after adjournment for the day, after which a quick lunch is had.

The heavy part of the Institute's day normally comes during the afternoon. At this time staff members carefully analyze the provisions of each bill introduced, checking the General Statutes or Session Laws to determine the exact nature of any changes which the bill would make. From this examination, they prepare the digest of the bill which is to appear in the Daily Bulletin. As each digest is completed, the head of the legislative service edits and checks it for technical accuracy before turning it over to the typist who cuts the stencils. When all the bills have been digested, the staff members covering each house work as a team in preparing their report of calendar action and of bills ratified. This too must be edited before it is submitted to the typist.

At this stage the process becomes one of mechanical reproduction. Stencils must be cut, after which staff

(Continued on page 33)

As the last step before typing the bulletins, Philip Green wields the editorial pencil on copy received from the other staff members

State Government

By JOHN L. SANDERS, *Assistant Director of the Institute of Government*

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Introduction

The accomplishments of the 1957 General Assembly in the field of reorganization of state government were considerable. It separated the state prison system from the Highway Department, extensively revamped the Highway Commission, and enacted 11 of 14 bills prepared by the Commission on Reorganization of State Government. There were enacted, in addition, several bills—some originated by the agencies affected and a few by individual legislators—concerning the composition, powers, and duties of other state agencies.

The increasing reliance on advance spadework by study commissions was evident in the high degree of acceptance which met the proposals of such groups in the reorganization field. Virtually all of the important bills in the state government area were the product of study commissions, and almost none of the major recommendations of such agencies concerning state governmental reorganization matters were rejected by the legislature.

Reorganization Commission Proposals

The General Assembly of 1953 initiated the work of reorganization by creating a Commission on Reorganization of State Government. The 1955 session adopted many of the proposals of that Commission and created a successor Commission which in turn made numerous recommendations aimed at achieving greater efficiency and economy in the administrative branch of state government.[1] Following is a summary of legislative action on the bills prepared by the Commission to effect its recommendations.

Department of Administration

The major proposal of the Reorganization Commission called for the establishment of a Department of Administration. Chapter 269 (SB 39) created the Department, headed

by a Director of Administration appointed by and responsible solely to the Governor. It consists basically of two divisions, a Budget Division and a Purchase and Contract Division. The Director of Administration is authorized (with the approval of the Governor) to create additional divisions within the Department (including an Architecture and Engineering Division, a Property Control and Disposition Division, an Administrative Analysis Division, and a Long-Range Planning Division), and to modify the divisional structure of the Department. The new General Services Division (discussed below) can be incorporated into the Department of Administration whenever the Governor and Council of State deem it desirable to do so.

Heading each division will be a division head appointed by the Director and removable by him, with the approval of the Governor in each case. The Director is the administrative head of the Department, and appoints all personnel of the various divisions on recommendation of the division heads and in accordance with the State Personnel Act. The Director is empowered to assign and reassign the duties of the Department among its various divisions and officers as he deems advisable.

The functions of the former Budget Bureau and the former Division of Purchase and Contract were transferred to the Department unchanged. To the Director of Administration were transferred the statutory duties formerly assigned to the Assistant Director of the Budget, the latter office having been abolished. New duties given the Department, and not at present performed in a centralized way by any state agency, include the following: (1) preparation and maintenance of an inventory of all land and buildings owned or leased by the state, (2) acquisition and disposition of all land and leaseholds (except highway rights of way) on behalf of the state and its agencies, subject in each instance to the approval of the Governor and Council of State, (3) allocation of land and space in buildings to all state agencies, (4) preparation of preliminary studies of proposed state buildings for use in making capital improvements appropriations requests, (5) studying the organization, methods, and procedures of all state agencies and advising and assisting the agencies studied in making improvements therein, (6) assisting budget authorities in the preparation of short- and long-range capital improvements budgets, (7) collection of basic data on the economy, population trends, etc., of the state, and (8) making special studies of economic trends at the request of the Governor.

General Services

Chapter 215 (HB 72) abolishes the Board of Public Buildings and Grounds and the office of Superintendent of Public Buildings and Grounds, and sets up in their place a Division of General Services, headed by a Director of General Services appointed by and responsible to the Governor. The duties of the Board and Superintendent were (with minor exceptions) transferred to the Division and Director of General Services. The major new function to be performed by the Division is the operation of a central motor pool for Raleigh agencies, a move which is expected to result in substantial savings to the state in reduced expenditures for official travel. The Division is authorized to set up and operate such additional central services (including stenographic and clerical pools, central duplicating facilities, and central records storage facilities) as the Governor may deem advisable. The Governor and Council of State may, whenever they deem it advisable to do so, incorporate the General Services Division into the Department of Administration.

[1] For a discussion of the recommendations of the second Commission on Reorganization of State Government, see POPULAR GOVERNMENT, February, 1957, pages 15-19, 24-25.

Property Control

Chapter 548 (SB 44) requires that all acquisitions and dispositions of real estate (whether by purchase, sale lease, or rental) on behalf of the state and its agencies and institutions be made by the Department of Administration, subject to the approval of the Governor and Council of State in each instance. (Highway rights of way and certain similar interests are exempted from this requirement.) Statutory procedures are established for the initiation by the interested agency and the handling by the Department of Administration of all such transactions, and these procedures may be supplemented by rules issued by the Governor and Council of State. An appeal to the Governor and Council is afforded any agency aggrieved by any Department decision regarding the acquisition or disposition of land. The procedure for execution of deeds to state-owned land is clarified. Every state agency and institution is required to mark the boundaries of all state land under its control, using prison labor where feasible. The Department of Conservation and Development is authorized to cultivate timber (using prison labor where practicable) on unused state lands allotted to it by the Department of Administration. An agency desiring an appropriation for a capital improvement must first submit a statement of its needs to the Department of Administration, which will then prepare preliminary studies and cost estimates for the use of budget authorities in judging the merits of the request.

Occupational Licensing Boards

Every occupational licensing board is required by Chapter 1377 (SB 392) to file with the Secretary of State an annual financial report, and an annual report containing the address of the board and names of its officers and members and giving extensive information with regard to the board's licensing activities. Each board is required to prepare and revise annually a register of all persons currently licensed by that board. An annual audit must be made of the books of each board by the State Auditor, a person designated by the Auditor, or a certified public accountant. Employment of individual members of a licensing board to perform inspectional and other ministerial tasks for the board is limited to 30 days per member per year. Full-time board members and executive secretaries of boards are exempted from this restriction.

Building Regulation and Inspection

An Interdepartmental Building Regulation Committee, composed of representatives of seven state agencies concerned with approving building plans, is established by Chapter 978 (SB 80). Its object is to establish procedures for the expeditious interchange of plans among interested agencies, to the end that no applicant need submit the same plans to more than one state agency for approval.

Chapter 1138 (SB 81) enlarges the Building Code Council to nine members, appointed by the Governor for six-year overlapping terms, and drawn mainly from various professional groups in the building industry. The Council is empowered (after advertized hearing) to adopt and amend a State Building Code. The contents of the Code, the appendices to be attached to it, and the standards to be followed in adopting it are all set out in the statute. No state building permit may be required under the Code for the construction of any private, non-institutional building costing less than $20,000. The Code is otherwise applicable to all buildings in the state, with these exceptions: (1) unless made applicable by action of the governing body of the municipality or county where the building is located, the Code does not apply to dwellings and their outbuildings, apartment buildings for not more than two families, or small, temporary construction sheds; (2) it does not apply to farm buildings located outside municipalities, or to equipment for storing or handling certain liquid fertilizers; and (3) any political subdivision of the state may adopt a building code or building rules and regulations which, if officially approved by the Building Code Council, supersede the State Building Code in that particular political subdivision. The maximum penalty for a Code violation is fixed at a $50 fine; each 30 days' continuation of a violation constitutes a separate offense.

Responsibility for enforcement of certain sections of the Building Code is allocated among designated state and local agencies, and the Insurance Commissioner is given general supervision of the administration and enforcement of all sections of the Code not so allocated. Any person desiring to raise any question under the act or under the Code is guaranteed a full hearing before the appropriate enforcement agency and a written statement of the decision of the agency. Appeal may be taken from the decision of such agency either to the Building Code Council or directly to the superior court, at the option of the appellant.

Water Resources

Two bills were offered to eliminate duplications of authority between agencies concerned with water resources. Chapter 753 (HB 496) gives the Department of Conservation and Development sole responsibility for (1) research as to water resources and (2) maintenance of an inventory of water resources. The Board of Water Commissioners is given sole responsibility for (1) planning and making recommendations regarding laws, policies, and administrative organization necessary for improved conservation and use of water resources and (2) advising the Governor on methods of coordinating water research activities.

Chapter 1267 (HB 1182) was intended to eliminate the necessity of having two separate staffs—that of the State Board of Health and that of the State Stream Sanitation Committee—approve particular types of public and private sewage treatment plans. The act (1) eliminates the separate staff of the Stream Sanitation Committee, (2) makes the State Board of Health the administrative agent of the Stream Sanitation Committee, (3) creates a Division of Water Pollution Control within the State Board of Health to administer the Committee's functions (subject to policies set by the Committee), and (4) directs the Board of Health to delegate to the new Division of Water Pollution Control those Board functions which duplicate the work of the Committee. The net effect of the new arrangement is to consolidate the staffs of the Committee and the Board and thus end dual inspections and approvals.

Personnel Management

In order to give local governments a voice on the Merit System Council, Chapter 1004 (HB 903) requires that at least one member of the Council have had experience in county government. The act also gives local governing boards power to modify rules and regulations laid down by state agencies as to the annual leave, sick leave, hours of employment, and holidays for the local agricultural extension workers, health department employees, and welfare department employees, where necessary to bring the rules for these employees into conformity with rules and regulations applicable to

other local governmental employees. The Merit System Council and the Personnel Council are required to have two common members, and the respective authority of those two agencies is clarified. Chapter 1349 (SB 406) makes clear that the Budget Bureau and not the Personnel Department is to fix the number of allowable positions in each agency and authorizes the State Personnel Director to classify those positions and fix appropriate salary ranges for them. The salaries of some twenty state administrative officials, formerly set in a variety of ways, are now fixed by the Governor and Advisory Budget Commission [Chapter 541 (SB 197)]. Personnel changes are discussed more extensively in the article on "Public Personnel."

Proposals Defeated

Two bills (SB 198 and HB 476) intended to end parallel inspections of food producers and their products by both the Department of Agriculture and state or local health officials, died in committee. The proposal to add an additional appointive member to the Advisory Budget Commission met a like fate (SB 38, HB 70). The House passed HB 1091, creating a Legislative Research Committee as a continuing research and investigative agency of the General Assembly, only to have it reported unfavorably by a Senate committee in the closing hours of the session.

Other Reorganization Proposals

In addition to the bills recommended by the Reorganization Commission, two other reorganization measures of major importance were adopted. One set up the new State Highway Commission; the other separated the state prison system from Highway Commission control. Both were the products of special study commission recommendations; both had strong administration backing; and both aroused appreciable legislative opposition.

Highway Department[2]

SB 28 (enacted as Chapter 65) abolished the State Highway and Public Works Commission and created in its place a State Highway Commission of seven members, appointed by the Governor "from different areas of the State" to serve four-year overlapping terms. The Chairman of the Commission is designated by the Governor for a two-year term. Commission members are required to represent the whole state rather than any particular district. The powers of the Commission are confined to the adoption of general policy for the Highway Department and rules and regulations governing the construction, improvement, and maintenance of a state-wide system of roads and highways. The administrative head of the Highway Department is now the Director of Highways, a career official appointed by the Highway Commission with the Governor's approval, who serves a four-year term. He appoints all subordinate highway personnel (pursuant to the State Personnel Act). The Controller and Chief Engineer are appointed by him with the approval of the Commission. Fourteen engineering divisions, with boundaries coterminous with the old highway districts as they existed on January 1, 1957, were created as the field administrative districts of the highway system; each is headed by a district engineer whose duties are assigned by the Director.

The State Highway Commission is made responsible for establishing standards and criteria (based on service rendered by the roads) for additions of roads to the secondary system, maintenance and construction of secondary roads, and allocation of funds for expenditure by the Department in the several counties for secondary road purposes. Provision is made for the periodic preparation by the Department of a secondary road plan for each county and its submission to the board of county commissioners of each county for approval. Sole responsibility for making any departure from the county commissioners' recommendations rests with the Commission. If the Commission determines to add a road to the secondary system without the recommendation of the county commissioners, the costs may not be charged against that county's share of secondary road funds or otherwise charged to the county. Any change in the secondary road plan after completion requires prior notice to the county commissioners and an opportunity for them to make recommendations thereon. Procedures are also established whereby the county commissioners may request the Director to change or abandon any secondary road.

Citizens are given the express right to petition the Highway Commission (through their board of county commissioners) with regard to road matters, and to discuss secondary road matters with the Commission or its representatives. The Governor and Commission are required to divide the state into geographic areas (without regard to engineering division boundaries) and to make one or more commissioners responsible for public relations generally in each area. At least one full Commission meeting must be held each year in each of the three major geographical regions of the state, and the Commission must provide for public hearings (by Commission members or employees) in each of these regions at which interested persons may air their highway grievances.

Prison Separation

A reform effort stretching over several years reached success with legislative approval of the separation of the state prison system from Highway Commission supervision. The bill (SB 218, enacted as Chapter 349) creating an independent prison system was the immediate result of a two-year study by a commission authorized by the General Assembly of 1955. The measure sets up a State Prison Department and transfers to it all powers regarding prison control and management (together with all prison properties) formerly held by the State Highway and Public Works Commission. For details as to the new Prison Department, see the article on "Penal-Correctional Administration."

Other Reorganization Matters

In addition to the bills proposed by the various study commissions concerned with the organization and activities of different phases of state government, there were several bills considered which affected the structure and function of various state agencies.

Sponsored by the Board of Higher Education, Chapter 1142 (HB 908) rewrites the statutes affecting the nine state colleges outside the University system. The act remodels the nine separate college boards of trustees after a uniform pattern (12 members, appointed for eight-year staggered terms by the Governor, subject to the approval of the General Assembly in joint session), and defines the mission of each of the nine institutions and the powers and duties of its board of trustees and president. For details see the article on "Higher Education."

[2] For a discussion of the proposals of the commission which prepared SB 28, see the February, 1957, issue of POPULAR GOVERNMENT, pages 14, 27.

The Board of Conservation and Development is enlarged from 15 to 18 members by Chapter 1428 (HB 1257), and is required by Chapter 248 (HB 262) to hold one meeting a year "at some coastal area in the State" (rather than at Morehead City). Chapter 996 (HB 400) authorizes the Director of Conservation and Development (with the approval of the Board) to create within the Department a Division of Community Planning. The Director of Hurricane Rehabilitation will serve *ex officio* as Commissioner of Planning. The Director is given power (which he may delegate to the Planning Commissioner) to provide planning assistance to municipalities, receive and expend federal and other funds for planning assistance to municipalities and contract with the federal government therefor, provide appropriated state or non-federal funds in the amount of one-half of the estimated cost of planning work for which federal funds are requested, perform planning assistance directly or by contracting with other agencies, assume responsibility for proper execution of planning programs for which state or federal funds are used and for carrying out the terms of federal grant contracts, cooperate with other planning agencies, and accept and expend funds granted the Department for planning assistance.

The Salt Marsh Mosquito Study Commission, established in 1955, is made a permanent agency by Chapter 831 (HB 1003) under the title, "The Salt Marsh Mosquito Advisory Commission." Its purpose is to advise the State Board of Health on all aspects of the salt marsh mosquito problem in the state. Joint Resolution 27 (SR 325) would add to the Board of Control for Southern Regional Education one member appointed by the Governor from the legislature.

A few other measures affecting the organization of state agencies or creating new ones were unsuccessful. They include HB 1190, dividing the Department of Motor Vehicles into six divisions; HB 1267, providing for the 100 University trustees to be apportioned one to each county; HB 978, setting up a three-member Personal Loan Authority with responsibility for licensing and regulating small loan agencies; and HB 1214, creating a State Racing Commission and authorizing the holding of referenda at the county level on whether to permit racing and parimutuel betting.

The General Assembly

Legislative Representation

The 1957 General Assembly, like its predecessors of 1951, 1953, and 1955, heard much talk but saw no action on the matter of reapportionment of the House and redistricting of the Senate. The session received nine bills and one resolution on the subject. Only three of these bills got to the Senate floor for debate, and the issue never got to the House floor.

After disposing of several reapportionment and redistricting bills, the General Assembly of 1955 established a commission to study legislative representation and report back to the 1957 session. The Commission brought in two proposals, embodied in bills introduced early in the session.

SB 47 would have submitted to the people amendments to Article II of the State Constitution (1) increasing the membership of the House of Representatives from 120 to 130, and (2) retaining Senate membership at fifty, but (a) limiting any county to a maximum of two Senators, and (b) limiting the maximum size of any Senatorial district to four contiguous counties, the latter limitation being given priority in case of conflict between the two.

SB 48 offered a long-range solution of representation readjustment difficulties by a constitutional amendment transferring the duty of redistricting and reapportioning to an *ex officio* Legislative Reapportionment Commission composed of the Lieutenant-Governor as chairman, the Speaker of the House of Representatives, the Attorney General, the State Treasurer, and the Secretary of State. The Commission would have met shortly after each federal census and, by majority vote, reapportioned House members and redrawn senatorial districts according to the constitutional formula. The state Supreme Court was given original jurisdiction to compel the Commission to act.

In the course of Senate consideration of SB 47, it was amended to limit any county to a maximum of one Senator, irrespective of population, and to retain House membership at 120. In that form it passed its second reading in the Senate, only to be defeated the following day on third reading, with most of the advocates of reapportionment voting against the bill and most of the supporters of inaction voting for it. SB 48 then met a quick death.

Bills to reapportion the House (SB 155, HB 389) and redefine the senatorial districts (SB 982) under the present constitutional formula got nowhere. HB 629, calling for a 60-member Senate and a 100-member House, never got out of committee. A late-session measure (SB 385) enlarging the Senate to 100 members (one per county) and the House to 160 members, and making the Governor responsible for reapportionment, was defeated in the Senate. So ended the reapportionment controversy for the session.

Miscellaneous

Implementing a constitutional amendment approved by the voters in 1956, legislators voted themselves a subsistence allowance not exceeding that granted state boards and commissioners generally (currently $7 per day), plus a travel allowance for one round trip from home to Raleigh [Chapter 8 (HB 2)]. Chapters 5 and 1432 (HB 3 and HB 1298) gave pay increases to employees of the General Assembly.

HB 1365, shifting back to a mid-January convening date, won the favor of the House but not that of the Senate. An effort to end the necessity for the largely formal Saturday legislative sessions by amending the Constitution to require only five daily meetings per week (HB 1197) died young. The Senate rejected House-passed measures calling for air-conditioning the legislative halls (HR 1011) and a commission to plan for the location and construction of a building to house the legislative and executive branches of state government (HR 1100). Perhaps the shortest-lived bill of the session was SB 358, barring appointment of any legislator to any state job for two years following adjournment of the session in which he served. It was tabled on motion of its introducer.

Conservation and Development

Considerable legislative attention was given to the subject of conservation and development of our natural resources. Measures enlarging the Board of Conservation and Development from 15 to 18 members (Chapter 1428), requiring one Board meeting annually in the coastal area (Chapter 248), and authorizing the creation within the Department of Conservation and Development of a Division of Community Planning (Chapter 996) have already been noted in the discussion of governmental reorganization legislation.

Water Resources

In an effort to obtain more complete information about water and other resources of the state, well drillers using power equipment are required by Chapter 1218 (HB 263) to register with the Department of Conservation and Development and (on specific request of the Department) to furnish it with samples of cuttings from wells drilled by them, plus information as to the size, depth, yield, casing, and other features of wells they drill.

A second member representing agriculture was added to the State Stream Sanitation Committee by Chapter 992 (HB 110). Silt, soil, and their natural contents, when discharged into a stream, may now be construed as "waste," "industrial waste," or "other waste" for pollution control purposes [Chapter 1275 (HB 1241)]. The same act authorizes the State Stream Sanitation Committee to fix the effective date (after which a permit from the Committee is required in order to discharge waste into a stream) at any time following classification of the stream, rather than 60 days after classification. Neuse River basin residents were successful with their bill [Chapter 264 (SB 22)] forbidding the pollution of the Neuse or its tributaries after January 1, 1962; yet an identical bill (HB 429) to bar pollution of the Tuckaseigee River and its tributaries after January 1, 1962, was disapproved by the House Committee on Conservation and Development. HB 1426 (which died in the Senate) would have required the filing of detailed reports with the Director of Conservation and Development as to use of water from a stream or lake for irrigation.

Navigation

The increasing popularity of motorboating and the resultant hazards produced bills regulating boat traffic on portions of the Deep, Haw, Cape Fear, and Tar Rivers within certain counties (HB 1008, HB 1186, and SB 312, enacted as Chapters 1010, 927, and 590 respectively). Anticipating growing demand for such regulation in future years, the General Assembly created a three-man study commission and directed it to make an exhaustive study of the operation of motorboats on the waters of the state and bring to the 1959 session its recommendations for general legislation on the subject [Joint Resolution 38 (HR 1101)].

Coastal representatives sponsored Chapter 1424 (HB 1188), which gives the Department of Conservation and Development responsibility for promoting the use of the navigable waters of the state (including the establishment of inland ports and safe harbors, control of floods and shore erosion, and dredging of inlets), and for investigating, planning, reporting, and recommending legislation to that end.

Wildlife

Hunting and fishing license fees were increased by Chapter 996 (HB 358). The Wildlife Resources Commission is authorized by Chapter 841 (HB 124) to license the operation of controlled shooting preserves and fix bag limits for birds taken on such preserves. The Commission is also authorized to declare open season on doe deer, under Chapter 386 (HB 16). Fishermen may now take catfish (but only catfish) by means of electrical devices from a portion of the lower Cape Fear River [Chapter 1056 (HB 164)]. A game warden has the power to arrest a person without a warrant when the warden has reasonable grounds to believe game or fish laws are being violated in his presence [Chapter 1423 (HB 1179)]. The Department of the Interior has been asked by Resolution 44 (HR 1256) to clarify its migratory waterfowl anti-baiting regulations.

Highways

Although Chapter 65, creating the new State Highway Commission (discussed under reorganization legislation, above) was unquestionably the most significant piece of highway legislation of the 1957 session, there were several other bills of importance on the subject.

Controlled-Access Highways

Legislative sanction was given controlled-access highways by Chapter 993 (HB 123). The act authorizes the State Highway Commission to designate, establish, construct, maintain, and regulate controlled-access facilities as part of the state or federal highway system whenever it determines that traffic conditions (present or future) justify such facilities. Either new highways or existing streets or roads may be so designated. Access to such a facility may be had only at designated points. Abutting owners are not entitled, as a matter of right, to access to such facilities, but denial of their access rights must be taken into consideration in determining general damages. No street or road which is not a part of a controlled-access facility may intersect it at the same grade. The Commission and the governing body of any county or municipality are authorized, after public hearing in the county affected, to enter into agreements with each other respecting the financing, planning, establishment, maintenance, use, or abandonment of controlled-access facilities in their respective jurisdictions. The Commission may also enter into similar agreements with the federal government. Local service roads may be established and regulated by the Commission in connection with controlled-access facilities, but once established, may not be abandoned without the consent of abutting landowners. Neither the Commission nor any municipal governing body may operate any commercial enterprise on property designated as a controlled-access facility. Driving onto, across, or off of a controlled-access facility other than at a proper place, making an improper turn, or using an improper lane are made unlawful, and penalties are fixed for violations.

Miscellaneous

Under Chapter 1088 (SB 430), municipalities need pay only 20% (they formerly paid one-third) of the cost of rights of way for new streets or the widening of old streets forming a part of the state highway system within the municipality; where the federal government pays as much as 90% of the total cost of the highway, apparently the municipality need pay nothing. Any municipality called on to pay part of highway right of way acquisition costs is declared to be a proper party in any court proceeding relating to the acquisition of such right of way. HB 180 (killed by a Senate committee) would have authorized municipalities to expend Powell Bill funds to provide shelter for municipal street construction and maintenance equipment.

Chapter 1194 (SB 491) permits the State Highway Commission to let contracts for engineering and similar professional or specialized services after taking and considering bids from three responsible bidders, without public advertisement. After January 1, 1958, the State Highway Commission must give personal notice to all known property owners who will be affected by any proposed change, alteration, or abandonment of any road, under Chapter 1063 (HB 952). The Commission is forbidden by Chapter 1002 (HB 635) to plant any seed along a highway right of way

unless such seed has been inspected by the State Department of Agriculture.

G.S. 14-128, which prohibits the cutting of vegetation or depositing of trash on the property of another without his consent, is modified by Chapter 754 (HB 558) to delete the restriction that such cutting or depositing must occur within 100 yards of a public road. A proposal (HB 680) to make any person or agency (including the Highway Commission and its employees) civilly liable for damage done to the property of another by diversion of or interference with the natural flow of water was killed by a House committee. HB 1178, which would have made it unlawful for the Highway Department to open to public use any highway crossing a railroad at grade level until electrical warning devices had been installed, died in the Senate.

Occupational Licensing Boards

Chapter 1377 (SB 392), which requires every occupational licensing board to make an annual report on its licensing activities, keep an up-to-date register of licensees, and have its books audited annually, has already been discussed among the proposals of the Reorganization Commission.

Undaunted by previous failure, the real estate dealers again sought—and got—a licensing board of their own. The act [Chapter 744 (SB 277)] creates the North Carolina Real Estate Licensing Board of five members (only two of whom may be licensed realtors), appointed by the Governor for staggered three-year terms. The Board is authorized to examine and license realtors, regulate their professional conduct, and revoke their licenses for cause. Any person acting as a real estate broker or salesman is required to have a license from the Board; however, all persons having a realtor's license on July 1, 1957, will be licensed without examination. Licensees may not render any legal service for their clients. Lawyers are not required to have a license from the Board, irrespective of their activities in real estate.

Physicians are required by Chapter 597 (HB 627) to register every two years with the State Board of Medical Examiners; failure to register during January, 1958, may result in a suspension of license.

Extensive amendments are made to the dentists' licensing act by Chapter 592 (SB 323). The embalmers and funeral directors obtained a complete rewrite of their licensing act by Chapter 1240 (HB 930). Minor amendments were made to the licensing acts of the barbers [Chapter 813 (SB 326)] and the cosmetologists [Chapter 1184 (SB 384)].

A plumbing and heating contracting license may (after January 1, 1958) be issued in the name of a corporation or partnership or in a trade name, under Chapter 815 (SB 388), provided an owner, officer, partner, or employee of the firm who is himself a licensed plumbing and heating contractor executes contracts for the firm and exercises general supervision over the work done thereunder. Chapter 794 (HB 791) amends the architects' licensing act to broaden the definition of architectural practice and increase certain fees chargeable by the renamed North Carolina Board of Architecture. The engineers' and land surveyors' act was amended by Chapter 1060 (HB 744) to permit increased fees and make other changes. Proponents of a new State Board of Examiners in Psychology won the favor of the House for HB 643, but the Senate was not persuaded that such a board is needed.

New Studies Authorized

Legislators indicated their recognition of the values of interim study commissions by the generally favorable reception they gave the recommendations of such groups in the recent session, and by the creation of ten new commissions to make studies over the next two years.

Commissions were established to investigate and make recommendations to the Governor and the 1959 General Assembly concerning the revision of the state constitution [Resolution 33 (SR 372)], the state's revenue system [Resolution 41 (SR 528)], the reorganization of state government [Resolution 47 (HR 1370)], public school finance [Resolution 45 (HR 1273)], the problems of municipal government [Resolution 51 (HR 1434], the selection of University trustees [Resolution 43 (SR 526)], the operation and licensing of nursing and convalescent homes [Resolution 50 (HR 1430)], the adoption of a uniform map law for the state [Resolution 46 (HR 1276)], the cause and control of cancer [Resolution 34 (HR 974)], and the operation of motorboats on the waters of the state [Resolution 38 (HR 1101)]. A special committee of the North Carolina Bar Association was asked to bring in its recommendations with regard to the tenure, pay, work load, and advisability of full-time employment of superior court solicitors [Resolution 52 (HR 1442)]. And the Wildlife Resources Commission is authorized to determine ways of reducing hazards to residents and property from the use of deer rifles in Scotland County [Chapter 1028 (HB 1181)].

Taxation

Tax Study Commission Proposals

The General Assembly of 1955 created and the Governor appointed a nine-member Commission for the Study of the Revenue Structure of the State. The Commission made numerous proposals for statutory revisions looking to the removal of tax inequities and the modernization of the state's tax structure and administration, and to these proposals the administration gave vigorous support. This year the Budget Revenue Bill (SB 7), in addition to its normal function of presenting the views of the Director of the Budget and Advisory Budget Commission with regard to state revenue requirements for the biennium and needed changes in the tax laws, did additional service as the vehicle for presentation to the General Assembly of the statutory changes recommended by the Tax Study Commission. Following are some of the major changes proposed by that Commission and effected by SB 7 as enacted (Chapter 1340).

Income tax: The method of determining the proportion of the net income of corporations taxable by North Carolina was revised to (1) limit the levy of tax to corporate net income reasonably attributable to operations in North Carolina; (2) provide that corporations manufacturing, producing, selling, or dealing in tangible personalty are to use the arithmetic average of ratios of property, payrolls, and sales in allocating their income for taxation in North Carolina; (3) eliminate the distinction based on whether the corporate taxpayer's principal business in this state is manufacturing or selling; (4) redefine the "sales" and "property" factors, define the "payrolls" factor, and eliminate the "cost of manufacturing" ratio; and (5) make special provision for income allocation by common carriers and telephone and telegraph companies. The Revenue Act was modified to follow the federal Internal Revenue Code of 1954 on several points, including (1) non-recognition of capi-

tal gain on sale of a residence if the proceeds are used in the purchase of another residence; (2) reporting of income from installment sales as received; (3) tax treatment of income from annuities and pensions; (4) exclusion from the employee's gross income of the value of food and lodging furnished him solely for the convenience of his employer; and (5) availability of the optional standard deduction to all taxpayers, regardless of sources of income. Several other modifications were made in the individual income tax laws to the general advantage of the taxpayer including (1) exclusion of Social Security benefits from gross income; (2) increasing the maximum deduction allowed for medical expenses from $2,500 to $5,000; (3) exclusion from the gross income of an employee of the amount of premiums paid by his employer for group insurance for the employee's benefit; (4) deduction of up to $800 expenses for the care of an institutionalized dependent of the taxpayer; and (5) the use of the short-form return by all taxpayers, irrespective of income sources.

Franchise tax: The method of determining the franchise tax payable by corporations manufacturing, producing, or selling tangible personalty was revised to (1) provide for the allocation to North Carolina of that proportion of a corporation's capital stock, surplus, and undivided profits represented by the arithmetic average of property, payrolls, and sales ratios; (2) eliminate the distinction based on whether the corporate taxpayer's principal business activity in this state is manufacturing or selling; and (3) redefine the "sales" and "property" factors, define the new "payrolls" factor, and eliminate the "cost of manufacturing" ratio.

Intangibles tax: The state is now required to distribute to the counties and municipalities under the existing formula 100% (rather than 80%) of the net collections from the intangible personal property tax.

Gift tax:The gift tax provisions were modified to permit an annual exclusion of $3,000 (formerly $1,000) in gifts to any one donee.

Banks: In order to equalize the state tax impact on state and national banks, an excise tax measured by 4½% of the entire net income of all banks (state and national) was substituted for the share tax, franchise tax, income tax, intangibles tax, and local *ad valorem* personal property tax previously paid by banks.

Savings and loan associations: Savings and loan associations are relieved of the share tax and income tax, and are subjected instead to (1) a privilege tax of 6¢ per $100 of the capital stock liability of the association, and (2) an excise tax of 6% on the net income of the association less dividends on outstanding capital stock.

Miscellaneous: Amendments adopted in the course of legislative consideration of SB 7 (1) exempted from the retail sales tax sales of parts and accessories for farm machinery, and sales of broadcasting equipment and parts to commercial radio and television stations; (2) reduced the franchise tax on bus companies; (3) reduced the license taxes on indoor and outdoor movie theaters; and (4) reduced the gross premiums tax on domestic life insurance companies.

Proposals rejected: Among the proposals made by the Tax Study Commission but not adopted by the General Assembly were the following: (1) that the wholesale sales tax of 1/20th of 1% be repealed; (2) that where a used article is taken in trade for a new one, the retail sales tax be levied on the price of the new article less the credit allowed for the article traded in; (3) that the Schedule B privilege license tax structure of the state and the licensing power of the cities and counties be replaced by an occupational license levy based mainly on gross receipts, the subjects of such levies being divided between the state and local governments so that no business would have to pay more than one tax, to one unit of government; and (4) that municipalities be granted the power to levy a motor vehicle tax of up to $10, and a tax of up to $10 on every person earning a salary or wages within the city.

Sales tax: One feature of SB 7 which was not a product of the Tax Study Commission was a complete rewriting of the sales tax article, Schedule E. As rewritten, the article (1) permits the use of sales and use tax proceeds for "other necessary uses and purposes," in addition to support of the public schools; (2) codifies much of existing administrative practice and regulations; (3) relieves the Commissioner of Revenue and the Attorney General from the duty of following existing administrative interpretations, policies, and practices not codified; and (4) requires the retailer to pay over to the state his total sales tax collections (less a 3% compensatory discount), rather than 3% of his gross taxable sales.

Other Bills

In addition to SB 7, there were several measures introduced to alter the state tax laws in some manner. They include the following:

Generally: Chapter 839 (HB 103) amends G.S. 143-166 to provide that the monies in the Law Enforcement Officers' Benefit and Retirement Fund, and the right of any person to benefits, allowances, refunds, etc., therefrom, are exempt from state or local taxation, and from attachment, garnishment, and other civil process.

Privilege taxes: Itinerant photographers are made subject to an annual state privilege license tax of $100 in addition to all other applicable taxes, and counties and municipalities are authorized to levy upon them a license tax in the same amount, under Chapter 1256 (HB 1126). Every junk dealer who does not maintain an established place of business in North Carolina, but who buys and/or sells junk purchased or collected in this state, is subjected by Chapter 949 (SB 251) to the state license tax and also to the license taxes which counties, cities, and towns are authorized to levy on him, on the same basis as if he maintained a place of business in each county or municipality where such activity is carried on. "Faith healers" who are adherents of established churches or religious organizations and who confine their healing practices to prayer or spiritual means are exempted from the payment of privilege license taxes by Chapter 1064 (HB 961), even though they practice for a fee or reward.

Income tax: A former teacher or state employee of another state who now lives in North Carolina may exclude from his gross income amounts received in lump sum or monthly payments from retirement or pension systems of another state, if such other state (1) grants similar exclusions or exemptions for individual tax purposes to retired members of the North Carolina Retirement System for Teachers and State Employees or (2) levies no income tax on individuals [Chapter 1224 (HB 397)].

Gasoline tax: Chapter 948 (SB 201) establishes a penalty of $25 for driving a motor vehicle on the streets or highways of the state (except to remove it to a storage or parking place), where the tax payable

by carriers using motor fuel purchased outside North Carolina has not been paid. Under Chapter 1226 (HB 424), the State Highway Commission, counties, and municipalities are entitled to be reimbursed 6¢ a gallon on taxes levied under G.S. 105-434 (gallonage tax on motor vehicle fuels). A generally applicable procedure is established by Chapter 1236 (HB 762) for obtaining a refund of 6¢ per gallon on tax paid on motor fuels, where such fuel is not used in the operation of a motor vehicle on the highways.

Excise taxes: Chapter 1041 (SB 283) levies on each business development corporation an annual excise tax of 4½% of the entire net income of the corporation, in lieu of intangible personal property taxes, the state franchise tax, and the state income tax.

Miscellaneous

State Funds

Since 1949, G.S. 147-69.1 has required that state funds in excess of current needs be deposited at interest or invested at the highest rate of return obtainable from permitted investments. Under the terms of this statute, the Governor and State Treasurer, with the approval of the Council of State, have invested excess state funds in six-month certificates of deposit issued by in-state banks, a practice which has earned the state over $20,000,000 in interest in eight years. Last fall, when the interest rate on federal treasury obligations exceeded the rate which federal reserve regulations permitted banks to pay on certificates of deposit, the Governor and State Treasurer began transferring excess state funds into treasury obligations. By mid-July, the state had $131,000,000 invested in this manner.

HB 589, introduced in an effort to keep these excess state funds in North Carolina banks, proved to be one of the most controversial bills of the session. As it finally emerged from the legislative mill (as Chapter 1401), the act provides that excess state funds may be invested in certificates of deposit issued by state banks, so long as the interest the banks are permitted to pay on them is within one-half of 1% of the yield available from other permitted investments. But to qualify for deposits of state funds, a bank must have a ratio of total loans to total deposits of 39% or more, and must further certify that the money sought is needed to make loans to farmers and domestic industries and will not be invested by the banks themselves in federal obligations.

Public funds of the state and its agencies and political subdivisions may now be invested in federal farm loan bonds issued by federal land banks, federal intermediate credit bank debentures issued by federal intermediate credit banks, and debentures issued by the Central Bank for Cooperatives, Regional Banks for Cooperatives, or by any such banks [Chapter 507 (HB 498)].

Public Contracts

Every officer or agency charged with the duty of approving plans and specifications (or awarding or entering into contracts involving the expenditure of public funds in excess of $20,000) for the construction or repair of public buildings must now require that such plans and specifications be prepared by a registered architect or engineer (or by both), and that the work done be inspected and approved by such architect or engineer before the designer or contractor can receive final payment [Chapter 994 (HB 271)]. Chapter 862 (HB 851) raises the limits on public contracts which may be let without the necessity of advertisement, receipt of competitive bids, and certain other formalities. It also amends G.S. 14-249 to make unnecessary the approval of the Governor and Council of State where motor vehicles costing more than the limit prescribed by that section are purchased by counties or municipalities pursuant to G.S. 143, Article 8. G.S. 14-249 was further amended by Chapter 1345 (SB 239) to provide that no motor vehicle purchase by state agencies or counties requires approval by the Governor and Council of State unless the vehicle costs more than $2,000 (formerly $1,500). Neither the old nor the new limits apply to the purchase of trucks.

Public Property

State agencies and institutions may now obtain extended coverage, use and occupancy, and interruption-of-business insurance on their property which is insured by the State Property Fire Insurance Fund [Chapter 67 (SB 77)]. Private parties are authorized by Chapter 514 (HB 396) to bring legal action against the state or its agencies to determine controversies between the plaintiffs and the state as to title to land not acquired by condemnation.

National Guard

Numerous minor changes are made in the statutes affecting the National Guard by Chapter 136 (HB 22). The age range for officers is lowered to 18 to 62, and changes are made with respect to the convening of courts-martial and the penalties they may impose. Under Chapter 1083 (SB 414), the Governor may organize the State Guard at any time.

Civil Defense

The State Director of Civil Defense is now *ex officio* State Disaster Coordinator [Chapter 950 (SB 331)]. The same act authorizes the Governor to establish (directly or through the Director of Civil Defense) a local civil defense organization where the local government unit fails to do so. The state, its political subdivisions, and civil defense workers are relieved of liability for harm resulting from authorized civil defense activities.

Minimum Wages

No less than five minimum wage bills were introduced (SB 157, SB 470, SB 475, HB 49, and HB 1443) and two were passed by the Senate (SB 157 and SB 470), but none of the four bills which were referred to the House Committee on Manufacturers and Labor ever came out of it. The principal measure (SB 157) called for a 75¢ minimum wage. Though backed by the administration and passed by an overwhelming vote in the Senate, it was blocked in the House by the rare device of tabling it in committee. In a late effort to force some action by the House, the Senate passed SB 470 (providing for a 70¢ minimum wage), but it too died in the House committee.

Miscellaneous

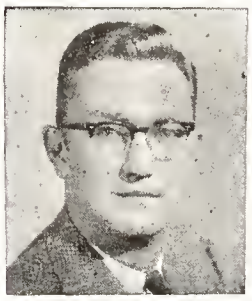
The Governor is authorized by Chapter 1202 (SB 512) to accept from the federal government retrocession (return to the state) of jurisdiction over land held by the United States. The North Carolina Utilities Commission can now enact and its Chairman can administer rules governing the internal affairs of the Commission [Chapter 1062 (HB 767)].

The Senate rejected by a two-to-one margin a proposal for submitting to the voters the question of calling a state constitutional convention (SB 289), and adopted instead the Governor's suggestion that the job of constitutional revision be done by a study commission and the General Assembly

(Continued on page 31)

Legislation of Interest to County Officials

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.



By
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[County officials will also find items of interest in the articles on "Property Taxes," "Election Laws," "Public Welfare," "Domestic Relations," "Public Health." "Courts, Judges, and Related Officials," "Public Personnel," "Public Schools," and "Law Enforcement."]

The 1957 General Assembly passed a substantial body of legislation affecting county government. This legislation is discussed below under convenient topical headings, together with passing reference to bills of interest that did not meet with favorable legislative action.

Commissioners' Legislative Program

There were nine items in the legislative program of the North Carolina Association of County Commissioners. Seven were enacted without change or with only minor change, one was enacted with a large number of counties excluded, and one was not reported out of committee.

Perhaps the most significant item was Chapter 317 (HB 383) repealing the statutes creating the "State Association of County Commissioners." These statutes provided for the officers, meetings, and internal organization of the Association. The North Carolina League of Municipalities and other organizations of officials, like the sheriffs', registers of deeds', and clerks' associations, were not created by statute, and hence the members of those associations are free to set up and modify their associations as changing circumstances necessitate. The commissioners' association now has the same opportunity.

Thus the repealing act does not abolish the commissioners' association; rather it leaves the counties free to provide for the kind of association they deem advisable. The new constitution of the North Carolina Association of County Commissioners, adopted at the recent annual convention, is a result of this legislation.

Six items of the legislative program are designed to improve and simplify county government:

(1) Chapter 213 (HB 52) authorizes the use of signature machines and signature stamps, to simplify check signing procedures. To authorize such use, a board of county commissioners must adopt a resolution, fixing the responsibility for custody and use of the machines and stamps. The officers and employees on whom responsibility is fixed are made liable for improper use. Counties wishing to use machines or stamps should consult the act in drafting the necessary resolution.

(2) Chapter 1249 (HB 1034) authorizes the alternative use of a replica of the county seal to mark county-owned vehicles. The law previously required that the name of the county be set forth on the vehicle with three-inch letters. Now the county can choose either the letters or the seal.

(3) Chapter 594 (HB 114) provides that the optional kennel tax, which may be paid by the operator of a kennel or owner of a pack of dogs in lieu of the tax on individual dogs, is to be $1.50 per dog. Previously a flat rate tax was imposed which varied with the number of dogs in the kennel or pack. (This chapter does not apply to Wayne County.)

(4) Chapter 862 (HB 851) amends the competitive bid law. Contracts for construction and repair work of $3500 or more must now be awarded on sealed bids; the limit used to be $2500. And contracts for the purchase of supplies and equipment costing $2000 or more must now be awarded on sealed bids; the old limit was $1000.

The same act requires that contracts between $200 and the new limits must be awarded to the lowest responsible bidder after informal bids have been secured. Previously informal bids were required only "when practical," but the obtaining of bids and the award to the lowest responsible bidder is now mandatory.

The act also provides that in case of contracts for purchase of supplies and equipment, the performance bond may be waived. The bond is still required, however, for construction and repair contracts.

Finally, the act eliminates the requirement that the approval of the Council of State be obtained in every case where a car would cost more than $1500, provided the car is bought in accordance with the Competitive Bid Law and either formal or informal bids are obtained (whichever is required within the limits described above).

The new bid limits do not apply to counties and municipalities where charters or local acts set other limits.

(5) Chapter 1253 (HB 1085) authorizes service by publication in tax foreclosure suits brought under G.S. 105-414, where persons cannot be located and their addresses are unknown.

(6) Chapter 1109 (HB 385) requires that justices of the peace use pre-numbered warrants and pre-numbered receipts issued by the clerk of superior court at the county's expense. In addition, the board of county commissioners must require each justice of the peace to be audited at least once a year, either by the county accountant or by a certified public accountant as the board may determine.

Though introduced as a state-wide bill, the act as passed applies only to 23 counties: Ashe, Burke, Cabarrus, Cherokee, Chowan, Cumberland, Davidson, Graham, Guilford, Haywood, Hoke, Johnston, McDowell, Montgomery, Nash, Onslow, Pitt, Polk, Richmond, Rowan, Rutherford, Swain, and Union.

The last item of the program authorizes boards of county commissioners to designate the names of roads and streets in unincorporated areas [Chapter 1068 (HB 1033)]. The bill was amended after introduction to add authority to assign street numbers as well. Before taking action, the board is to make certain that the new name will not duplicate or be confused with the name of a nearby road or street, and after taking action the board is to notify the local postmaster, the State Highway Commission, and any nearby municipality.

The 1956 convention of the commissioners' association also endorsed the appropriation request of the Commissioner of Insurance for $20,000 for

a training program for rural and other volunteer firemen. The General Assembly granted a substantial portion of this request.

One item failed of passage. HB 949 would have made it clear that all county and municipal officers and employees are covered by workmen's compensation except those elected by the people. The present law provides that officers appointed by local governing bodies for fixed terms and "who act in purely administrative capacities" are not covered, but there is much doubt as to just which officers fit into this category. Though the bill passed the House, it was never acted upon by the Senate committee to which it was referred.

Accountants' Legislative Program

The county accountants had two items in their legislative program:

(1) Chapter 840 (HB 115) provides that in counties under the dog warden law, dog tax proceeds remaining after paying the salary and expenses of the warden and after paying all dog damage claims at the end of a fiscal year, may be paid into the General Fund.

The bill was amended after introduction to provide that the county would, however, have to wait six months after the end of the fiscal year before making payment to the General Fund. During the six months waiting period, claims could presumably be presented for payment under G.S. 67-34, but the damage would have had to have occurred before the close of the fiscal year.

(2) The accountants were also interested in legislation authorizing counties to buy on state contract. HB 307 would have accomplished this end, though it was not introduced at the request of the accountants. It was killed in committee.

Supervisors' and Collectors' Legislative Programs

Action taken on the tax supervisors' and collectors' legislative programs is discussed in the article on local property taxation, together with other tax legislation of interest to county officials.

County Finance Legislation

Four acts of the 1957 General Assembly with regard to finance contained good news to the county officials:

(1) Chapter 1340 (SB 7), the Revenue Bill, provides that the entire proceeds of the intangibles tax, less only the costs of collection and the franchise tax credit, will be returned to counties and municipalities, instead of the 80% returned heretofore. This will have the effect of increasing intangibles tax receipts of each county by approximately 20%, beginning with the receipts in fiscal year 1958-59. Partially offsetting this increase in intangibles tax receipts, however, will be a reduction in the property tax base. Counties will no longer be able to tax the personal property of banks, and will no longer receive a certification of valuation of bank stock from the State Board of Assessment.

In addition, the act as finally passed left the privilege license tax pretty much as it has been, although authority to levy a $100 tax on itinerant photographers was added. The act abandoned those recommendations of the Tax Study Commission which would have put licenses on a gross receipts basis and would have limited county tax jurisdiction to areas outside cities and towns.

(2) Chapter 1226 (HB 424) authorizes a refund of six cents of the 7-cent gasoline tax to counties and municipalities for gasoline purchased for county and municipal use. The act is effective June 10, 1957.

(3) Chapter 988 (SB 362) will give the counties 10 per cent of the proceeds of certain timber sales from state-owned lands.

(4) Chapter 682 (HB 33) provides for a system of driver education in the public schools, financed by the addition of $1 to the motor vehicle license. This will relieve the counties from the pressure of financing driver training.

Six acts were concerned with the power of counties to spend money:

(1) Chapter 266 (HB 462) authorizes counties to acquire, construct, maintain, and lease water and sewer systems, and to issue bonds to provide money therefor.

(2) Chapter 1098 (HB 761) authorizes counties to issue bonds to build facilities for community colleges, which would offer two years of college work. Annual support would come from a tax approved by the voters of the county.

(3) Chapter 436 (HB 551) authorizes boards of county commissioners to appropriate money to pay counsel fees to defend county election boards or election officers against suits growing out of official acts of such boards or officers.

(4) Chapter 182 (SB 11) increases the pay of members of county boards of election and registrars from $10 to $15 per day, and the pay of judges from $7 to $10.

(5) Chapter 1006 (HB 922) and Chapter 1335 (HB 1424) authorize county and municipal alcoholic beverage control boards to spend five per cent of their total profits for education as to the effects of alcohol and for rehabilitation of alcoholics.

(6) Chapter 562 (HB 653) has an adverse effect on some counties. It forbids counties from charging a fee for collecting and disbursing drainage district funds where the county officers handling the money are on a salary basis. In the counties affected, the fee had previously been used to pay the county for fiscal services rendered to the district.

One bill failed which would have been helpful. HB 287 would have required the state to pay the expenses of returning a fugitive felon in cases where the felon waived extradition as well in cases where extradition is issued. The failure means that counties must continue to pay such costs unless the formal extradition process is followed.

Personnel Changes

The most important personnel change came in Chapter 1004 (HB 903). Where a county has rules and regulations governing leaves and hours of employment of regular county employees, health, welfare, and agricultural extension employees may be required by action of the board of county commissioners to follow those regulations. Before doing so, of course, a county may want to assure itself that its action will not have an adverse effect on the procurement of health, welfare, and agricultural extension workers.

The same act requires that one member of the Merit System Council have experience in county government, and that the Merit System Council and State Personnel Council have two members in common. The latter requirement is designed to assure coordination between the two councils in areas where their jurisdiction touches.

Two acts may have an indirect effect on county government. Chapter 358 (SB 87) provides machinery for banks to adopt a 5-day work week, and Chapter 350 (HB 399) authorizes banks in cities over 85,000 to close on Saturday. These acts may increase

the pressure on boards of county commissioners to adopt the 5-day week, in those counties where they have not already done so.

School Legislation

County officials will generally be interested in the articles on "Public Schools" and "Higher Education" elsewhere in this issue. Of particular interest are Chapter 1098 (HB 761) providing for the establishment of community colleges, Chapter 1100 (SB 88), Chapter 1271 (HB 1217), and Chapter 1066 (HB 996) dealing with the organization and territorial jurisdiction of local administrative school units.

Welfare Legislation

County welfare officials will be interested in the articles on "Public Welfare" and "Domestic Relations" elsewhere in this issue. Among the acts of particular interest are those discussed below.

Chapter 1342 (SB 9), the Appropriations Bill, increased the appropriations for the pooled fund for the hospitalization of public assistance recipients and for welfare administration, the former substantially and the latter only slightly. One of the reasons for the difference lay in local support. The pooled fund increase received state-wide support. The administrative increase, though supported by the commissioners' association, received lukewarm support from some counties and even was opposed by a few. (The exact effect of these increases was not as yet determined by the State Board of Public Welfare when this was written.)

Three acts will help welfare administration:

(1) Chapter 540 (SB 124), the Work-Release Law, provides machinery whereby minor offenders may continue to work and support their families while in jail. This support will be administered through county welfare departments.

(2) Chapter 369 (HB 384) makes it a misdemeanor for fathers or mothers not to support their children, whether they abandon the children or not.

(3) Chapter 1246 (HB 995) repeals the provision that an indigent person with tuberculosis must have a legal settlement before he can be admitted to a state tuberculosis sanitorium.

SB 54, which would have provided a simplified guardianship procedure for public assistance recipients, failed of passage. Though it passed the Senate, it was killed in the House.

Chapter 674 (HB 417) provides that applicants for aid to the blind shall apply to the county of their residence, rather than to the county of their legal settlement. This will simplify the blind aid application process.

For acts affecting the old age assistance lien law, see the article entitled "Public Welfare."

Bills aimed at the problem of illegitimacy in the program of aid to dependent children, and bills providing for the sterilization of indigent mothers of illegitimate children, were apparently considered wide of the mark or as raising more problems than they attempted to solve. All were killed, including SB 321, SB 449, SB 416, HB 228, and HB 229.

Health Legislation

Chapter 1357 (HB 48) rewrites the health law, G.S. Chapter 130. It generally leaves the local health setup unchanged, except that (1) the board of county commissioners, rather than the county board of health, is to elect the county physician; the county health director may be elected; (2) the board of county commissioners may impose the duty of certifying cause of death in cases of death without medical attendance on the coroner, instead of the health director, if the coroner is a licensed physician; and (3) expenditures of local health departments are to be made in accordance with the County Fiscal Control Act. For other changes made by this bill, see the article entitled "Public Health."

Highway Legislation

Chapter 65 (SB 28) reorganizes the State Highway Commission and provides a voice for boards of county commissioners in decisions affecting secondary roads. These decisions are to be made by a representative of the Highway Department after consultation with the board of county commissioners and in accordance with statewide standards adopted by the State Highway Commission. Boards of county commissioners may make recommendations following the consultation, and these recommendations are to be followed if possible; if the recommendations are not followed, the board of county commissioners is to be notified in writing. No road may be taken over for maintenance by the Highway Department unless the board of county commissioners recommends it. Citizens may present road petitions to boards of county commissioners, and through such boards to the State Highway Commission, and citizens may discuss any matter with personnel at all levels of the Highway Department at any time.

County Buildings and Jails

Chapter 909 (SB 189) amends G.S. 153-9 (9) to provide for specific notice in case of change of location of a county building.

Chapter 994 (HB 271) requires that plans for public buildings costing more than $20,000 must be prepared by a registered architect, registered engineer, or both. The act should be consulted by all officers considering the erection of a public building.

Chapter 1353 (SB 490) authorizes boards of county commissioners to dispose of county tuberculosis sanitorium property after need for sanitorium operation has ceased.

Chapter 1396 (HB 216), as introduced, would have required boards of county commissioners to provide space for hearings by the Industrial Commission in workmen's compensation cases. After objection by county commissioners, this requirement was deleted.

Three acts concerned jail operation:

(1) Chapter 1439 (HB 1357) requires county jailers to accept prisoners brought in by municipal law enforcement officers, if the municipality has no jail, and prisoners brought in by state officers, if the arrest was made in the county.

(2) Chapter 1265 (HB 1173) provides machinery for transfer of a prisoner by the resident judge, when necessary for the safety of the prisoner, from the county jail to the jail of another county or to the state prison system. The county from which the prisoner is transferred is to pay the cost of keep of the transferred prisoner.

(3) Chapter 1373 (SB 314) repeals the statute requiring boards of county commissioners to provide an exercise yard for the use of jail prisoners. The old statute, which had been in existence for over 200 years, had outlived its usefulness and was no longer adhered to.

Administration of Justice

Four acts are concerned with the administration of justice:

(1) Chapter 1441 (HB 1367) authorizes boards of county commissioners in counties over 40,000 people to establish a county court, with civil jurisdiction up to $3,000 and criminal jurisdiction covering all misdemeanors.

(Continued on page 26)

Legislation of Interest to Municipal Officials

Legislation of interest to municipal officials is difficult to discuss in the confines of a single article. In addition to the legislative program of the League of Municipalities, there were many other laws which in some significant way affected municipal organization and procedure. Furthermore, 1957 brought an unusually large number of local acts, most of them important only to individual municipalities but many of them of significance to other cities and towns. For comparison it is of interest that in 1951 the General Assembly enacted 220 local acts pertaining to city government. The 1957 General Assembly enacted 388.

Because of the variety of subject matter of interest to city officials, reference should be made to other articles in this issue. See, in particular, the articles on "Property Taxes," "City Planning," "Public Purchasing," "Public Personnel," "Election Laws," "Law Enforcement," "Motor Vehicles and Highway Safety," "Courts, Judges, and Related Officials" and "Public Schools."

By GEORGE H. ESSER, JR. *Assistant Director of the Institute of Government*

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

A record of solid, if unspectacular, achievement—that is the best judgment of the way municipalities fared in the 1957 General Assembly.

They enjoyed some small revenue gains but their major revenue problems were not solved.

They secured necessary legislation to engage in urban redevelopment and to encourage planning.

They secured desirable improvements in tax collection, purchasing and fiscal control procedures.

They succeeded in fighting off any attempts to weaken municipal government.

If some major, long-term objectives were not attained, neither had they been actively sought. Although recommendations of the Tax Study Commission promised some fiscal relief in the form of new permissive sources of revenue, most city officials had little hope that these measures would be approved. They were not.

1959 is a year of promise, however, for the General Assembly took a most important step in the latter days of the 1957 session. Faced with a bill asking for a basic change in annexation procedures and alert to the fiscal problems faced by rapidly-growing cities in the state, the legislature established a Commission of the North Carolina General Assembly to Study Problems of Municipal Government [Resolution 51 (HR 1424)]. The Commission, to be composed of three senators and six representatives, was given a broad assignment, but emphasis seems to have been placed on the study of new annexation procedures and better methods of financing municipal functions. If, in the twelve-month period assigned to it for study, the Commission can come up with sound recommendations on these issues, municipal officials may have a most important program to present and vigorously support in the 1959 General Assembly.

There was talk but no action on the question of "home rule" in 1957. The volume of local legislation applying to cities and towns was much higher than in recent sessions. For a brief picture of the subject matter covered, see Table 1. Only a small percentage of these acts can categorically be said to be unnecessary, however. There are isolated examples, such as the nine acts creating bird sanctuaries in almost exactly the same language already found in G.S. 160-166.1 and 166.2, but most of the legislation had to go through the General Assembly. Whether most of it should, as a policy matter, have had to go through the General Assembly is another question indeed, but as in 1955 there seems to be little real sentiment for the type of constitutional home rule authority that cities in other states hold. In most cases, city officials, citizens and legislators alike seem to prefer the assembly-line smoothness of action in the General Assembly, and only in isolated instances have legislators in recent years stepped on local interests back home or aroused any ire through "high-handed" action.

POPULAR GOVERNMENT will carry an article during the winter commenting on the "home rule" question as it relates to the volume and subject matter of local legislation affecting municipal government.

Organization, Procedure and Officers

There were no state-wide laws passed concerning municipal organization and officers. Important legislation covering major management procedures such as tax collection, purchasing, and fiscal control are discussed elsewhere in this article or in other articles.

General law provisions concerning municipal organization have been unchanged for the most part since they were placed in the general law in 1917 at a time when most legislators thought that Article VIII, Section 4, of the Constitution had prohibited charter amendments by special act. In recent years, only the provisions of the Plan D form of goverment have been utilized by any North Carolina city. Even then a majority of city-manager cities have relied on special legislation to make minor or even major changes in the Plan D form of organization.

1957 brought more than the usual number of local acts making basic changes in the form and composition of municipal governing boards. All of these reflect study and discussion at the local level, and it is perhaps a healthy sign that so many changes were made.

Local Acts

Three more new towns were incorporated by the 1957 General Assembly: Goldpoint in Martin County, Emerald Isle in Carteret County, and Danbury in Stokes County. In addition Chapter 1288 (HB 1297) authorized to Carteret County board of elections to call an election prior to September 1, 1957, to determine whether the town of Harkers Island should be incorporated. The towns of Cove City in Craven County, Swanns in Lee County, Jefferson in Ashe County,

Castalia in Nash County, and Aurora in Beaufort County were reactivated by the appointment of governing boards, or by direction that the county hold elections for new officers. The Town of Cherryville's name was officially changed to the City of Cherryville. This gain in new incorporations was reduced by repeal of the charter of the town of South Mills in Camden County. Finally, voters in Linville were directed to vote on whether to reactivate the town.

Continuation of the trend toward city-manager form of government in smaller North Carolina cities was evidenced in four bills. A charter amendment now requires the board of aldermen of Spencer to appoint a town manager. The Beaufort board of commissioners was authorized to appoint a town manager who will also serve ex officio as town clerk. Other legislative acts authorized elections on the city-manager form of government in Clinton and in Ahoskie, both of which have carried.

Perhaps more important were the bills making basic changes in the composition and term of office for municipal governing boards. The trend, already noted in 1955, towards staggered terms for members of governing boards picked up in 1957. Staggered four-year terms were adopted for ten North Carolina cities: Ramseur, Red Springs, Burlington, Graham, Star, Troy, Mount Gilead, Whiteville, Clinton, Scotland Neck, and Tabor City. In all of these towns, the mayor will serve for a two-year term. Gastonia and Bessemer City were authorized to submit the question of four-year staggered terms to a vote of the people.

In other legislation concerning terms of office, the terms of office for members of the boards in Sylva and Murphy were increased to four years. The terms of office for board members in Aberdeen, Jefferson, Teachey, Castalia and Lewiston were increased from one to two years. The term of office for the mayor in Conover was increased from one to two years.

Several cities moved from election of councilmen from wards to election at large. Beginning in 1959 Wilson will elect board members at large instead of by wards. New Bern and Jacksonville voters must determine whether the board members should be elected at large beginning in 1959. The Rocky Mount board was authorized to submit to the people a proposition whereby the number of aldermen would be reduced from 13 to 7, with one board member nominated from each ward and elected by the voters at large. Board members would serve for staggered two-year terms. The election has not yet been called. A bill submitting to the voters of Valdese the question of whether the board members should be elected from wards was not passed.

A change in number of board members was provided for in several cities. For the period 1957-59, Greensboro will add two members to its seven-member council to provide representation from the annexed municipalities of Hamilton Lakes and Bessemer Sanitary District. The size of the council will revert to seven in 1959. The number of board members in Sharpsburg, Jefferson and Chadbourn was increased from three to five, and in Granite Quarry from four to five while in Wagram and Hope Mills, the number of board members was reduced from five to three. The number of board members in Graham was reduced from six to five effective in 1959. Grimesland aldermen will henceforth select one of their members as mayor instead of having an elected mayor, and the alderman will elect a recorder's court judge to exercise criminal jurisdiction instead of the mayor.

Two resort cities, faced with the familiar dilemma of wanting nonresident property owners to help elect municipal governing boards, secured changes in the method of appointing boards. Beginning in 1957 the Governor will no longer be *required* to appoint the Long Beach board from the list of persons elected by the freeholders and legal residents of the town, but is merely required to *consider* the list of candidates recommended in making his appointments. Yaupon Beach in 1959 will move from election of the board to appointment by the Governor, in somewhat the same manner provided for in Long Beach. The act, Ch. 899 (HB 1107) is somewhat ambiguous in requiring the Governor to appoint six commissioners biennially and later providing that the three commissioners receiving the highest number of votes are to serve for four-year terms thus setting up a four-year staggered term provision beginning in 1961.

Municipal election provisions came in for a considerable amount of attention. A total of 49 cities changed primary or general election procedures in some fashion. Twenty of these cities made merely minor changes in general election procedures. Eight cities rewrote their general election procedures. Three cities changed primary election procedures. Three cities changed the time for the municipal election, the town of Webster changing the time for its municipal election to the time for the general election in November of even-numbered years. Six cities secured legislation changing ward lines.

There were a number of miscellaneous charter amendments of interest. Raleigh, after some difficulties with its present charter provisions on initiative and referendum, rewrote its charter provision to clarify the procedure for citizen initiation of ordinances and citizen referendum on ordinances passed by the city council [Chapter 970 (HB 1189)]. Few cities in this state have similar provisions or exercise the privilege when they have them. Raleigh also amended its charter (1) to provide that the city manager need only report to the council the appointment or removal of any department head instead of any employee, a logical provision in a city of Raleigh's size, and (2) to permit the council to delegate to the director of public safety the power to make rules for government of the police department.

Greensboro secured authority to purchase public liability insurance to protect city employees engaged in occupations found to be hazardous to the public, to lease a tract to the federal government for construction of a permanent structure, and to sell real and personal property conveyed to the city for recreational purposes.

Goldsboro secured authority in Chapter 586 (SB 245) to adopt by reference any provisions of recognized standard codes prepared by technical trade associations and which deal with technical subjects within the power of a municipality. This is a provision which other cities might consider. Other amendments to the Goldsboro charter permitted recodification of the city ordinances, required publication of general ordinances, and amended the condemnation law as it applied to the city.

Concord's charter was amended to provide that all appointive city officials shall serve at the pleasure of the board rather than for the term of office of the board and to delete the requirement that a tax collector be appointed as such. Pine Level's charter was amended to make the general municipal law apply to the town in all respects and to eliminate the $100-000 charter limitation on the value of property which the town could own.

Several other towns made changes in the method of choosing officers. Henceforth the town boards in Conetoe and Speed will choose the town constable rather than having him elected by the voters. Appointive officers in Fairmont will henceforth serve at the pleasure of the board and they need not be residents of the town at the time they are appointed. A section of the Lexington charter requiring that the city clerk-treasurer be a member of the town board was repealed, as was language concerning board responsibility for appointment and pay of other officials. A general statement authorizing appointment and pay of a clerk and treasurer and other necessary officials was substituted.

In addition to basic changes made in these municipal charters, nine cities had thoroughgoing revision and consolidation of their charters. These cities were Greenville, New Bern, Southern Pines, Gibsonville, Mayodan, St. Pauls, Micro, Teachey and Yaupon Beach. In view of the many archaic and obsolete provisions now cluttering the charters of many North Carolina cities and towns, every town would be well sdvised to review its charter and secure a complete revision at an early session of the General Assembly.

The unusually large number of acts providing for pay increases for mayors and governing board members is discussed under "Public Personnel."

Annexation

The pressure of continued urban growth in major North Carolina cities brought the question of city boundary extension in the state to a slow boil in 1957. While no major action was taken by the General Assembly with respect to annexation procedures, local legislation introduced and passed indicates intense concern with problems of growth in most of the state's largest cities. Furthermore, that legislation indicates continued dissatisfaction on the part of the cities with the general law annexation procedure which gives residents in the area to be annexed a controlling voice in determining whether an annexation shall be effective.

A study of annexation procedures and other statutory provisions governing the extension of municipal services and controls to new development in outlying areas is one of the two major assignments given the newly-created Municipal Government Study Commission. The Commission's recommendations will be watched carefully by city officials and city residents throughout the state.

Some legislation dealt with annexation problems on a statewide basis, though in each case there was local impetus for the legislation. Chapter 527 (HB 395) authorizes the governing board of any sanitary district annexed to a city to contract with such city for the transfer of property owned by the district to the city on such terms as the sanitary district board may deem to be to the best interests of the inhabitants of the district. This legislation was passed to assist the merger of the Bessemer Sanitary District with the City of Greensboro. It is worth noting that there is no general law authority at the present time under which a city may annex a continguous sanitary district. The Greensboro annexation was also responsible for Chapter 526 (HB 393) which authorizes a fire protection district to contract with a city to which part or all of the district has been annexed concerning furnishing fire protection and the acquisition by the city of any property owned by the district.

Chapter 1375 (SB 348) takes a first step toward solving a problem which has concerned and annoyed city officials for years. At the present time school bus transportation is not available at state expense for children living inside the corporate limits of a city, and some annexations have been discouraged by parents who did not want to assume responsibility for transporting children to school as a result of being brought into the city limits. Under the new legislation, stemming from a situation in Hickory, school bus transporation which was being provided to an area prior to February 6, 1957, cannot be discontinued for the sole reason that that area has been annexed to a municipality subsequent to that date. As a result the threat of losing school bus transportation will not be a major obstacle to annexation by cities in the future. The question of bus service for children already living in cities and having a long distance to travel to schools is still to be solved.

Local Acts

A marked inclination to rely on legislative action rather than the general law annexation procedure was evidenced in 1957. Since 1947, 49 cities have secured annexations through legislative action, out of a

TABLE 1

LOCAL LEGISLATION AFFECTING CITIES AND TOWNS

Subject	No. of New Laws	No. of Bills Introduced but Not Passed
Organization and Procedure		
Incorporation or reactivation	11	
Forms of city government		
Providing for city manager	4	
*Changes in number and term of mayor and council	21	2
Municipal election procedures	41	3
*Pay of governing board members	29	1
Qualifications and appointment of officials	8	
Retirement and civil service	10	
Charter revisions	16	
Sale of property	40	2
Municipal Finance and Fiscal Control		
Taxation and revenue	21	4
Expenditures	9	3
Property tax collection	10	
Special assessments	15	
Planning, Zoning and Extension of Limits		
Planning and zoning	22	1
Annexation	28	3
Miscellaneous		
Streets, traffic and parking	4	1
Regulatory powers, other	20	
Police jurisdiction	15	1
Local courts	27	3
Sale of wine, beer and liquor	7	3
Other municipal functions	17	
Miscellaneous	3	
Grand total	388	27

* Seven other laws made changes in the number and terms of office of governing board members. Thirteen other laws provided for increases in the pay of governing board members. These laws are classified under some other heading.

total of 160 annexation actions. In 1957 alone, 14 cities had their boundaries extended by legislative action and six more secured modifications in annexation procedures though retaining requirements for electoral approval. The fourteen were Greensboro, Monroe, Rockingham, Farmville, Cleveland, Garland, Salemburg, Princeton, Sanford, Robersonville, Mount Pleasant, Lake Waccamaw, Tabor City, and Wallace. Greensboro's case was of unusual interest. As a result of legislation in the 1957 General Assembly, Greensboro brought the Town of Hamilton Lakes, Bessemer Sanitary District and a large unincorporated area within the city limits. The total extension increased the area of the city by almost 31 square miles and brought in a population of about 25,000. At the moment Greensboro is the largest city in area in the state, but when Charlotte's most recent annexation of about 30 square miles, approved by the voters in July, becomes effective on Dec. 31, 1959, that city will regain its place as the largest city in area as well as population.

The six acts modifying annexation procedures are of interest because of the nature of the changes they impose.

1. Pilot Mountain and Fairmont were simply authorized to call an annexation election, and the annexation will be effective if the votes of city residents and residents of the area to be annexed are in favor, all votes being counted together. A similar measure applying to Red Springs received an unfavorable report from a House committee.
2. Charlotte received permission to extend its boundaries upon a favorable vote of inside and outside residents voting together, but the effective date of the annexation was fixed at Dec. 31, 1959, and the city was authorized to proceed in the meantime to install public facilities in the area which will be annexed.
3. Thomasville was authorized by Chapter 399 (SB 85) to annex additional territory following a similar vote. The act, however requires the city council, prior to giving notice of intention to consider an annexation, to make a finding that the city will be able to and will furnish (from and after December 31 of the year in which the election is held) the same services to the area annexed as are afforded other comparable parts of the city at the time the territory is annexed. This provision is similar to the charter provision under which Winston-Salem has extended its corporate boundaries since 1947. Later in the session Chapter 1072 (HB 1164) established the same procedure for Mount Airy.

A somewhat different concept was embodied in Chapter 1099 (HB 1032) concerning the City of Durham. Under the provisions of the act Durham may annex any or all of a six-mile tract defined in the act prior to Jan. 1, 1959, by simple ordinance. The city council may not pass the ordinance, however, until it has made a detailed study of the services to be provided the annexed area, the cost of providing such services, and the time within which the services can be provided, and has made an affirmative finding that the city will be able to and will furnish the same general services and benefits to the area annexed as are provided in other comparable parts of the city. The statute specifically sets forth service standards with respect to major services which the council must be satisfied can be attained.

In addition to these acts, Bessemer Sanitary District and the Town of Hamilton Lakes were merged with the city of Greensboro as of July 1, 1957; Longview and Hickory voters were authorized to vote (separately) on the question of merging those two municipalities; Lumberton and Concord secured legislation making city school administrative boundaries coterminous with city boundaries now and in the future; and validating acts were passed confirming new boundary lines for Greensboro and Winston-Salem.

Chapter 1307 (HB 1385) directs the Durham County commissioners and the Durham city council to appoint a commission to study the joint functions of the county and city and the sources of income therefrom. Two members would be appointed by the county and three by the city, and expenses would be shared on a 40%-60% basis. The commission would be authorized to employ assistance and to report its findings and recommendations to the 1959 General Assembly.

In trying to get perspective, three comments can be advanced. Dissatisfaction with the general law procedure whereby fringe area residents can defeat an annexation effort by a city is more and more in evidence as urban development spreads, and the whole concept of whether annexation should depend on approval by all areas concerned or whether some set of standards should govern municipal annexation will surely be examined carefully by the newly-created study commission.

Secondly, this annexation legislation, considered in conjunction with planning and zoning legislation adopted at this session, indicates that cities are more and more aware of the effect that present development outside their corporate boundaries has on future development of the city.

Finally the size of annexations in Greensboro (27 square miles) and Charlotte (30 square miles) demonstrates the extent to which urban development is spreading in North Carolina cities and the manner in which the cities concerned want to keep both services and controls moving forward into areas undergoing rapid development.

Municipal Finance and Fiscal Control

The Tax Study Commission recommendations to the General Assembly included several bearing on municipal revenues. One would have revised the state and local privilege license tax system and have introduced a system of taxation by gross receipts which would have placed a ceiling on the total license tax which any business would have had to pay to all units of government—state, county and city. Another proposed to help cities alleviate their revenue problems by permitting the levy of a tax of up to $10 on the privilege of earning salaries and wages in the city during the year and permitting cities to increase the motor vehicle license tax from $1 to $10 per year. All of these recommendations were disapproved by the General Assembly.

Some others were approved. Instead of retaining 20% of all intangibles tax collections the state (beginning in 1958) will return to cities and counties all of the net proceeds from this tax, retaining only a sufficient amount to pay for the cost of collection. As a further result of Commission recommendations, all banks (state and national) will henceforth pay a state excise tax based on income, and as a result the tax on bank shares heretofore collected by cities and counties was removed. The Department of Tax Research has estimated that cities as a whole will enjoy a net gain of $446,000 a year from the intangibles tax change and a net loss of $300,000 a year from the

bank shares change, or a net gain state-wide of at least $146,000 per year. This will not be an average gain or loss. Some cities may experience a small net loss because of the incidence of bank shares. Other cities will derive more than a proportionate gain.

A more substantial return to cities will result from Chapter 1226 (HB 424) which (1) raises the gasoline tax refund for non-highway users from 5c to 6c per gallon and (2) permits cities and counties to obtain a 6c per gallon rebate on all fuel purchased regardless of use. The first change will mean a very small gain to cities; the second will provide about $350,000 per year for cities and counties combined. All claims for refunds must be filed with the Commissioner of Revenue on or before the last day of January, April, July and October for the fuels used during the quarterly period immediately preceding the month in which the claim is filed.

Further relief for municipal budgets is found in Chapter 1088 (SB 430) which reduces the share that a municipality must contribute for acquiring rights-of-way for state highways being constructed through the municipality from 33⅓% to 20%. Cities will not be obligated for any payment for rights-of-way needed for those interstate highways where the federal goverment will pay 90% of the total costs.

Finally, the Municipal Government Study Commission, in being directed to study the costs of municipal services and the methods of financing such services, will undoubtedly restudy the problem of municipal revenue sources to determine if further changes should be recommended in the municipal tax structure.

Two new pieces of legislation concern capital improvements. The most important does not directly affect cities but is of great indirect interest. Chapter 266 (HB 462) amends the County Finance Act to permit counties to issue bonds for water and sanitary sewer systems and further amends G.S. 153-9 to permit counties to acquire, construct, operate and lease such systems and to contract for the operation and lease of such systems. The motive for this legislation is to permit counties to provide such services to industrial developments removed from municipalities, but it will also permit counties to serve any type of user where the need for such systems for commerical or residential uses is established.

Chapter 856 (HB 710) amends the Municipal Finance Act to permit municipalities to issue general obligation bonds to refund revenue bonds previously issued by municipality.

Two items on the legislative program of the League of Municipalities which represent goals sought by municipalities for several years were adopted. The first is the Municipal Capital Reserve Act. Under the provisions of Chapter 863 (HB 855), municipal governing boards are authorized to make appropriations from the general fund to a capital reserve fund which may be accumulated to pay for water and sewer capital improvements, improvements to electrical and gas systems, the construction or enlargement of garbage disposal facilities, the construction or reconstruction of roads, highways and bridges, the elimination of grade crossings, the acquisition of fire fighting equipment and fire and police alarm systems, the development of cemeteries and the construction of municipal buildings. The ordinance establishing the fund may specify the purposes for which the moneys are to be used or the purposes may be determined at the time withdrawal is made so long as the purposes are within those defined by the act. The act contains authority for investment of the moneys in the fund pending their use.

Chapter 864 (HB 856) amends the Municipal Fiscal Control Act to specifically authorize the investment of cash balances (other than sinking funds) in specified securities or on deposit with specified types of agencies on condition that the money be available to the city on 30 days' notice.

By amendment to G.S. 153-248, the city's power to appropriate non-tax funds to historical socities was amended to permit appropriation of any non-ad valorem tax funds.

Several changes were made in the city's power to levy and collect license taxes. The most important is Chapter 859 (HB 779) which makes all the provisions of the Revenue Act concerning procedures for the collection of delinquent license taxes by the state and the county apply to the city. Heretofore cities could enforce payment of delinquent license taxes by (1) levying penalties and (2) swearing out a warrant for committing a misdemeanor under G.S. 14-4. Now city tax collectors may levy on property owned by delinquent businesses and sell such property to satisfy unpaid license taxes.

Other changes (1) eliminate sales of lubricating oil or grease from the tax imposed under G.S. 105-72, (2) bring the repair and service of musical instruments and accessories, the sale of TV sets and accessories, radio repair parts and automobile radios under the maximum $10 tax imposed by G.S. 105-82, and (3) make junk dealers who do not have an established place of business in the state and who buy or sell or dispose of junk to licensed junk dealers and manufacturers in the state subject to the muicipal license tax. Changes (1) and (2), of course, limit the license tax authority of cities.

Finally Chapter 1256 (HB 1126) attempts to solve a problem which is a source of concern in many cities. Up until this time itinerant photographers coming into a city to solicit the making of photographs have not been subject to taxation. The new law would make such photographers subject to taxation both by the state and local governments. Cities could impose a tax of $100 on each itinerant photographer, employee or agency engaged in the soliciting or making of pictures. For purposes of the act, a photographer is an itinerant if he does not maintain in the town an established place of business which is open to the public at least two days a week for at least four hours daily with at least one person in charge and which business is designed to remain open for at least six consecutive months.

Local Acts

State policy in North Carolina has not been to give local units of government special sources of revenue but rather to give all units of government basically the same sources. Since 1947 all municipalities have had the power to levy a general fund tax rate of $1.50, notwithstanding any local acts to the contrary unless passed subsequent to that date. As in the past five sessions, two cities in 1957 amended their charters to bring these obsolete charter provisions into line with the general law. Salemburg amended its charter to raise its general fund tax rate to $1, with the net effect of limiting its tax rate authority to less than it would have been by general law. Linville went ever farther and reduced its maximum general fund tax rate to 30¢. But it remained for Winston-Salem to be the first city to breach the $1.50 tax rate limit. A charter amendment granted the city power to levy a general fund tax rate of $1.60 for the fiscal years beginning in July, 1957,

and 1958. The authority to levy this higher rate expires in January, 1959.

Three local bills deal with special tax authority in or for cities. One gives Kure Beach the power to levy a special tax of up to 10¢ per $100 property valuation for the purpose of advertising the town. The tax must be approved by the voters in a special election. Another measure authorizes the Rockingham County commissioners to call special elections on the questions of (1) eliminating the present county-wide library tax and (2) establishing separate library systems for Reidsville and for the remainder of the county. Each separate system would have authority to levy a special tax of up to 10¢ for library purposes if the voters approved. A third measure establishes the Henderson Township Recreation District which would operate a supervised recreation program in the township. The voters may approve a special tax of up to 10¢.

Industrial development continues to creep into the tax picture. Both Robeson and Rowan Counties and the municipalities within each county sought authority to issue bonds for the purpose of purchasing property for industrial purposes and to lease such properties to industries. Both bills were reported unfavorably in the Senate.

A bill pertaining to Martin County amended a 1955 law to provide that the proceeds of a county fire department tax were to be distributed to Williamston in the proportion that property valuation in the town and Fire District No. 1 bore to the county's total valuation, with the remainder distributed among other organized departments in the county.

Five cities secured special acts authorizing the establishment of capital reserve funds. The Tarboro and Thomasville acts are similar to the general law enacted during this session. Highlands secured permission to set aside electrical revenues to expand and improve its hydro-electric plant and distribution system. Sylva secured permission to establish a reserve fund from nontax revenues alone. Roxboro secured permission to establish a reserve fund for construction or expansion of its sewer system and sewage disposal plant only.

Two cities secured special authority to issue bonds. Elon College was authorized to issue street bonds in an amount of $50,000 notwithstanding the debt limitation provision of the Municipal Finance Act. Asheville was authorized to issue bonds in an amount of $1,200,000 for construction of a new airport notwithstanding the same debt limitations.

Acts pertaining to the revaluation of property in a number of municipalities are discussed in the article on property taxes, as are those acts concerning property tax collection.

Distribution of profits from liquor control stores in Durham County was amended by an act which reduced the City of Durham's share from 50% to 30% [Chapter 1097 (SB 485)].

A number of cities received special permission to spend funds for purposes not specifically authorized in the general law. The Town of Boone was authorized to buy 35 acres of land to insure a permanent home for the drama "Horn in the West." and to pay for the land over a period of 30 years. Asheville was authorized to join Buncombe County in appropriating enough from nontax funds so that total local contributions could equal but not exceed state appropriations to Asheville-Biltmore College for operating and capital expenditures. The maximum amount Graham could contribute to the local public library was increased from $1200 to $4000. Rocky Mount was authorized to increase its annual expenditures from the electrical fund for advertising the city from $6,000 to $25,000. Ayden was authorized to increase its annual nontax appropriation for recreational purposes from $500 to $2,000. Brevard was authorized to appropriate nontax funds to the Transylvania County historical commission. Governing boards in Guilford County were given authority to create organizations for emergency life saving and rescue services or to contract for such services.

Six cities secured legislation either validating past street assessments or amending the method of payment of payment of already levied assessments. Eight cities secured legislation amplifying their authority to levy special assessments or to make improvements and to assess the cost against property owners.

Two of the counties in which the city still retained some financial responsibility for public health activities made changes in the statutory basis for such responsibility. Chapter 1192 (SB 486) removes any responsibility on the part of the City of Durham and places the county under the general law for health purposes. A new board of health, to be appointed under the provisions of G.S. 130-18, will take office on Jan. 1, 1958. Chapter 470 (HB 609) amends a local act to reduce Wilmington's share of the expenses of the board of health for the city and New Hanover County from ⅓ to 1/6. These acts move the state even closer to a system of county responsibility for health activities. Charlotte and Rocky Mount are the only cities which continue to have primary responsibility for public health within corporate limits.

Streets, Traffic and Parking

There was no major legislation touching on municipal responsibility for streets, traffic and parking with the exception of the act reducing a city's share of right-of-way costs on state highway construction in the city from 33⅓% to 20%. Several minor pieces of legislation were introduced but they all failed. Briefly they would have (1) permitted municipalities to use Powell Bill funds to provide shelter for city street equipment, (2) authorized the State Highway Commission to pay the entire cost of rights-of-way through towns of less than 5,000 when the Commission determined that the town was unable to pay its share of the cost, and (3) amended G.S. 136-37 to change the basis of apportionment of certain funds now used by the State Highway Commission for construction within municipal limits.

Local Acts

Probably the most interesting piece of local legislation in this area is Chapter 658 (SB 341) which grants the Durham board of aldermen the power to enact ordinances for regulating the use by vehicles of (1) municipally owned off-street parking areas, (2) off-street publicly owned parks, outdoor recreation areas and areas occupied by public buildings, and (3) privately owned areas permissively used by the general public for street purposes. There is nothing unusual in these provisions. What is unusual is the further power delegated to the board "to make and provide criminal penalties for violations of such ordinances, not exceeding the penalties provided by general law for the violation of city ordinances . . . ." The act also permits the board to provide by ordinance for towing away vehicles illegally parked either on the streets or on off-street facilities and to make the owners of such vehicles responsible for towing and storage charges.

City officials should watch this legislation with interest. Traditionally

city governing boards have not been given the power in North Carolina to fix criminal penalties and there is some question whether this power can be delegated by the General Assembly. Furthermore, the provision authorizing criminal penalties for violation of off-street parking regulations seems to conflict with the decision of the Supreme Court in the *Britt* case in which the court held that off-street parking violations could not be enforced by criminal process, at least under the facts in that case where the off-street facility was held to be operated as a proprietary function. Finally, the towing authority would seem to be essential if cities are to clear their streets and off-street parking facilities, of illegally parked vehicles.

Chapter 549 (HB 474) pertaining to Gaston County is of similar interest. It is one of the first acts to give counties the power to operate off-street parking facilities and to use parking meters. As in the Durham act, violations of off-street regulations would be criminal violations, but the Gaston act declares violations to be misdemeanors punishable by a fine of not more than $10 or imprisonment for not more than 10 days.

Chapter 860 (HB 810) grants to the Kinston parking authority the right to issue notes not exceeding $50,000 in amount and payable in not more than five years to acquire real property for off-street parking purposes. The notes may be refunded by bonds issued under Article 38, GS Chapter 160.

G.S. 136-41.2 now authorizes municipalities to enter into street contracts in amounts not exceeding 90% of Powell Bill funds received during the preceding fiscal year, in anticipation of funds to be received during the next fiscal year. Chapter 1181 (SB 327), applying to Henderson County only, permits municipalities in that county to contract for improvements in an amount of 90% of funds received during the preceding five fiscal years in anticipation of funds to be received during the next five fiscal years.

Water, Sewer and Electrical Systems

One basic change was made in the general laws governing municipal construction and operation of utility systems. G.S. 160-255 and 160-256, giving general authority to cities and towns to acquire, construct and maintain water and electric systems, was amended to include sewer and gas systems. This change makes a city's power with respect to these systems more flexible, and makes the same operational provisions of these statutes apply to sewer and gas systems as well as to water and electrical systems.

The power granted counties to issue bonds for construction and operation of water and sewer systems and to either operate or contract for the operation of such systems has been noted.

Local Acts

Chapter 1094 (SB 463) relieves the Town of Pembroke of a prior obligation to furnish free sewage service to Pembroke State College and authorizes the town to charge sewer fees to the college in amounts not greater than those charged other town citizens. Chapter 1322 (HB 1396) repeals a local act which required a vote of the people before the board of commissioners in Wilson could grant public utility franchises. Chapter 894 (HB 1083) renames the municipal power board in Murphy, appoints board members, and authorizes the issuance of revenue bonds to finance construction of a building to house board activities.

Alcoholic Beverages in Municipalities

Three communities secured authority for special elections on the question of legal sale of alcoholic beverages and one community was turned down. Voters in the town of Clinton were authorized to vote on the question on call of the town board or a petition by 15% of the registered voters. The voters have already voted for ABC stores. The town ABC board will be appointed by the town commissioners. From net profits, the board is directed to pay as much as 15% for law enforcement and for the treatment and hospitalization of alcoholics. From the amount remaining, 20% will go to the Clinton education board, 20% to the trustees of Sampson County Memorial Hospital, 5% for industrial development, and 55% to the town general fund, of which 3% must be used for recreation and 2% for fire protection.

Net profits from ABC stores in Southport, where voter approval has already been given, will be distributed as follows: Southport general fund, 45%; Southport debt service, 10%; Southport recreation, 5%; hospital, 5%; industrial development, 5%; high school, 10%; county board of education, 20%.

As introduced, Chapter 1360 (HB 1105) would have given 15% of any net profits from ABC stores in Lee County, should the voters approve such stores, to Sanford with another 5% for recreation in Sanford, but as passed, all net revenue if the stores are permitted will go to the county general fund.

A bill authorizing an election on the establishment of liquor control stores in Wilkesboro failed to pass second reading in the Senate.

Chapter 693 (SB 199) changes the method of allocating profits from ABC stores in Martin and Chowan Counties to permit up to 20% of total profits to be spent for law enforcement purposes and to permit payments to municipalities in those counties to assist in paying salaries of officers enforcing provisions of the ABC law. The Asheville ABC board was also authorized to spend up to 5% of its law enforcement funds for education as to the effects of the use of alcohol.

Regulatory Functions

There was no statewide legislation amending municipal regulatory powers except as otherwise noted in other sections of this issue.

Local Acts

As in the past few sessions of the General Assembly, a number of local acts extended the authority of municipal police to include an area outside the town limits. Ten cities were given such authority for one mile in all directions from their corporate limits, two for a mile and a half, one (Winterville) for two miles, and one for an area specified by metes and bounds. Beaufort police officers were given authority on vessels in named waterways adjacent to the town, and Raleigh was authorized to appoint special officers to enforce laws and ordinances on the watersheds of its public water supply reservoirs.

Bird sanctuaries were created in ten more municipalities. Perhaps no other legislation is so typical of the failure of many governmental units to use existing legislation, for G.S. 160-166.1 and 160-166.2 permit any municipality to create and establish a bird sanctuary within the corporate limits. In short, some screening of existing general legislation would make some local legislation unnecessary.

A number of miscellaneous acts were passed. Chapter 743 (SB 206) makes it unlawful to discharge firearms within one quarter of a mile out-

(Continued on page 32)

City Planning

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

By Philip P. Green, Jr. *Assistant Director of the Institute of Government*

The General Assembly made 1957 a banner year with regard to planning legislation. Foremost among its achievements in this field were acts to make the state's urban redevelopment legislation workable, to authorize the state to embark upon a local planning assistance program, to authorize local units to enact flood zoning ordinances, and to clarify the state's building laws.

Urban Redevelopment

Since 1949 federal assistance has been available to American municipalities desiring to undertake a program of urban redevelopment—clearing slum areas and making the land available for other use. North Carolina's cities over 25,000 were empowered in 1951 to take advantage of this program (see G.S. 160-454 to 160-474), but the cities (Charlotte, Fayetteville, Greensboro, and Winston-Salem) which attempted to do so found that the state act had been rendered unworkable by a proviso that no individual tract within a redevelopment area could be taken by eminent domain unless it "substantially contributed" to the conditions rendering the area blighted. A 1953 bill to cure this defect was defeated, and there was sufficient legal question with regard to a local act for Guilford County enacted in 1955 that nothing was done under that act.

This session, with substantial help from eastern legislators desirous of qualifying municipalities in their districts for hurricane-relief assistance available under the federal act, Chapter 502 (HB 317) was enacted. It eliminates the hampering proviso and substitutes one specifying that no area may be subjected to eminent domain unless it is determined by the local planning commission that at least two-thirds of the number of buildings within the area are substandard and substantially contribute to the conditions blighting the area. Provision is made for taxing the property owner's counsel fees as part of the costs of any condemnation suit, to be paid by the Redevelopment Commission.

The act also removes the minimum population limitation of 25,000 on municipalities coming under its terms, so that any town within the state may now embark upon such a program, and it broadens the definition of "redevelopment" to include "a program of repair and rehabilitation of buildings and other improvements." The latter amendment would qualify the programs undertaken by a number of cities under the state's "minimum housing standards law" (G.S. 160-182 to 160-191) for federal assistance if undertaken under the broadened "urban renewal" program.

Because of the importance of this act, further explanations of the whole urban redevelopment program will appear in Popular Government this fall. Our readers will recall earlier articles in the November, 1949, and March, 1955, issues.

Another measure, supplementing the cities' powers in some degree in this field, amended G.S. 160-200 (28) to specify that a city may condemn and order removal of "partially destroyed" buildings [Chapter 1182 (SB 342)]. For dealing with particular structures, municipalities will still find this old nuisance-elimination statute preferable in some cases to use of their powers under the "minimum housing standards law" and the "urban redevelopment law."

Local Planning Assistance

A second type of federal assistance was made available by Chapter 996 (HB 400). The Housing Act of 1954 provided for federal planning grants (a) directly to metropolitan or regional planning agencies and (b) to state planning agencies, for furnishing assistance to municipalities under 25,000 population. In 1956 this act was broadened to authorize grants to cities and counties having populations of 25,000 or more which had suffered flood, fire, hurricane, earthquake, or storm damage in substantial amounts. All grants are on a matching basis.

Because North Carolina has had no state agency authorized to extend planning assistance to localities, its towns under 25,000 have been unable to secure the federal funds available under (b) above. Chapter 996 fills this gap by creating a Division of Community Planning within the State Department of Conservation and Development, which is authorized to handle this program on behalf of the state's smaller communities. The federal funds will be available for "surveys, land use studies, urban renewal plans, technical services and other planning work" but not for detailed plans for "specific public works." Although the funds will be channeled through the state department, it is contemplated that the municipality will be responsible for furnishing all of the money required to match the federal grant.

This program too will be explained in greater detail during the fall.

Western North Carolina communities will be encouraged and guided in their use of this assistance by a new Western North Carolina Regional Planning Commission, created by Chapter 1427 (HB 1233). Composed of representatives from 12 western counties and municipalities therein, the commission is expected to have a professional staff which will (a) prepare a regional development plan, (b) perform local planning assistance for particular localities, and (c) advise localities as to use of the federal assistance now available to them.

Flood Zoning

The prospect of federal assistance also lay behind the enactment of a third measure, Chapter 1005 (HB 912), which authorizes flood zoning. In order to qualify for the federal flood reinsurance benefits provided by the "Federal Flood Insurance Act of 1956," it is necessary that localities within the state have (and exercise) power to zone areas subject to flooding. It is contemplated that this zoning would prohibit development of such areas by types of uses which could suffer serious damage as the

result of flooding (leaving the areas available for agricultural, recreational, and similar uses).

Chapter 912 is rather indefinite as to the types of regulations which may be enacted and as to the procedures for doing so. It authorizes both counties and municipalities to establish districts in "areas deemed subject to seasonal or periodic flooding or other natural disaster" and to apply regulations designed to "minimize danger to life and property" and "secure to the citizens of the area affected eligibility for flood insurance" under the federal act. The local governing body is also empowered (but not required) to designate a zoning committee with authority to make such regulations, subject to the approval of the governing body.

Building Regulations

For many years the building laws of North Carolina have been, in the words of the Commission on Reorganization of State Government, a "tangled maze." Chapter 1138 (SB 81), an act proposed by the Commission, takes a long step toward untangling these laws. First, it clarifies a legal situation by ratifying and adopting the current State Building Code (adopted by the Building Code Council and Insurance Commissioner in 1953). Second, it reorganizes the Council so as to give it broader representation (including a "municipal building inspector") and to regularize its procedures in adopting, amending, and enforcing the State Building Code. Third, it specifies enforcement agencies for various regulations within the Code. Fourth, it requires the Council to study the entire range of building laws of the state and make recommendations to the General Assembly as to desirable changes and simplification. Fifth, it requires that the Code include references (by way of appendices) to all other pertinent state regulations which should be consulted by the builder.

Of particular interest to municipalities are provisions (1) authorizing local governing bodies, by resolution, to make the Code applicable to dwelling units within their jurisdiction; (2) authorizing local units to adopt building codes, subject to the approval of the Council, which will supersede the provisions of the State Code within those units; (3) providing for automatic distribution of a copy of the Code and each amendment thereto to the city clerk of each incorporated municipality.

A companion act [Chapter 978 (SB 80)] provides for the creation of an Interdepartmental Building Regulation Committee to coordinate the activities of all state agencies in the field of building regulation. Its principal duty is to devise procedures whereby a builder can secure permits from all interested state agencies without having to make separate applications to each one.

Local building officials will also be interested in Chapter 817 (HB 790), which provides that no local building permit may be issued unless the name and address of the author are shown on the plans, along with the North Carolina seal of a registered architect or registered engineer (unless the building is specifically excepted by the provisions of G.S. Chapter 83 or 89). A related bill [Chapter 994 (HB 271)] requires that plans for public building projects involving more than $20,000 be prepared by a registered architect or engineer and supervised by him. For projects involving $20,000 or less, the local governing body awarding the contract must require a certificate of compliance with the State Building Code from the city or county building inspector.

Miscellaneous

Chapter 993 (HB 123) empowers the State Highway Commission to establish controlled-access highways, to regulate their use, and to enter into contracts with the federal government and with local governing bodies as to their financing. Some of the necessity for this act was removed by the Supreme Court's ruling last fall that the Highway Commission already had this power. *Hedrick v. Graham*, 245 N. C. 249 (1957).

Chapter 416 (HB 386) provides procedures for the establishment by the county commissioners of planning and zoning areas in the unincorporated parts of any county having more than one city with a population exceeding 35,000. Although the act presently in actual effect applies only to Guilford County, population growth may bring other counties within its scope.

Local Acts

Increasing recognition of the problems posed by fringe-area development led to a number of measures authorizing municipalities to regulate construction beyond their limits. Elizabeth City, Goldsboro, Greensboro, Salisbury, Snow Hill, and Spencer were added to the list of 12 other municipalities which had previously been empowered to zone for a mile or more outside their limits. A portion of the territory over which Chapel Hill had been given zoning jurisdiction in 1953 was transferred to Carrboro.

Another approach was taken in an effort to protect the environs of the new college outside Fayetteville; Chapter 1455 (HB 1449) authorizes the Cumberland County commissioners to zone this area. Guilford County's special 1955 zoning enabling act providing for creation of zoning areas in unincorporated parts of the county was repealed following enactment of Chapter 416 described above, which is generally similar to it. Perquimans County commissioners were granted zoning powers by Chapter 1435 (HB 1339), a very well drafted act.

The procedures under Charlotte's 1955 extraterritorial zoning act were modified to provide that recommendations of the Charlotte-Mecklenburg Planning Commission with regard to amendments of the perimeter zoning ordinance may be overridden by the city council only upon a two-thirds vote of its membership.

Both Chapel Hill and Greensboro were given authority to adopt building regulations as well as zoning ordinances for the areas included in their extraterritorial jurisdiction.

Acts dealing with zoning inside city limits were highlighted by four exempting Clinton, Morehead City, Statesville, and Wallace from the controversial proviso to G.S. 160-173, which requires that two corners of an intersection be rezoned (on petition of their owners) whenever the other two corners are zoned in a different way. A highly unusual act prescribes the complete zoning regulations of Robersonville, subject to being modified by local ordinance.

The state's subdivision-control enabling act was greatly improved by Chapter 1334 of the 1955 Session Laws, but half of the counties were exempted from its coverage. This year municipalities in Guilford County and the town of Davidson were added to its coverage. In addition, Durham County was authorized to regulate subdivisions in unincorporated portions of the county, by an act almost identical in its terms with the municipal act. A special act requires that plats of land within Salisbury's subdivision-control jurisdiction bear a surveyor's certificate showing approval by the city council prior to filing by the register of deeds.

Although many municipalities in the state have adopted setback ordinances regulating the location of buildings along their streets, an enabling act secured by Chapel Hill this year is one of the few on the statute books which authorize this type of ordinance.

Legislation of Interest to County Officials

(Continued from page 16)

(2) Chapter 359 (SB 128) clarifies the juvenile judge situation. The clerk of superior court is to serve as juvenile judge, unless he requests the board of county commissioners to relieve him of the duty, or consents to their appointment of some other qualified person. See article entitled "Domestic Relations."

(3) Chapter 1380 (SB 445) requires justices of the peace to furnish $1,000 bond before entering upon the duties of their office. The act, however, does not apply to Alleghany, Ashe, Bertie, Bladen, Cabarrus, Caldwell, Caswell, Chatham, Clay, Columbus, Davie, Duplin, Franklin, Granville, Guilford, Harnett, Haywood, Hertford, Hoke, Jackson, Johnston, Lee, Lincoln, Mitchell, Montgomery, Northampton, Onslow, Pamlico, Pender, Perquimans, Person, Randolph, Robeson, Rowan, Scotland, Transylvania, Tyrrell, Vance, Yadkin, and Yancey counties.

(4) Chapter 503 (HB 328) requires the coroner to file with the clerk of superior court a written report of his investigation of a death. Presumably, the report would show the reason why the coroner believed an investigation was necessary, that is, why he believed death was caused by the criminal act or default of some person.

Three bills failed: SB 301, which would have provided for the appointment of justices of the peace by the resident judge, with salary fixed by the judge on recommendation of the board of county commissioners; SB 444, requiring an annual audit of justices of the peace; and SB 129, creating a system of state-supported district family courts with domestic relations, divorce, and adoption jurisdiction.

Miscellaneous Legislation

Chapter 81 (SB 72) authorizes the board of county commissioners to appoint more than one county dog warden.

Chapter 1219 (HB 286) provides automatic exclusion of annexed property from a rural fire protection district organized under Article 3A, G.S. Chapter 69, when the property is annexed to a municipality providing fire protection.

Chapter 526 (HB 393) provides for contracts between a rural fire protection district and a municipality which annexes and absorbs property which had been within the boundary of the fire district.

Chapter 1420 (HB 1112) creates a firemen's pension fund. The fund will make monthly payments of from $36 to $50 to retired firemen after thirty years of service and after age 55. The fund will be financed by monthly payments of $5 by members of eligible fire departments, plus a 1% assessment against the premiums of fire insurance companies.

Chapter 947 (SB 131) amends G.S. 153-9 (40) to provide that county planning boards may have a membership of not less than three nor more than the number of townships in the county.

Chapter 1005 (HB 912) provides for the creation of flood area zoning districts to qualify citizens for federal flood insurance. A zoning committee is to be appointed to make regulations, subject to the approval of the board of county commissioners, to reduce danger of flood and other natural disasters.

Chapter 1239 (HB 893) provides that petitions calling for elections are to become void one year after the issuance of the petition, and that after the year is up no election can be called on the petition.

Chapter 950 (SB 331) provides that the Governor may establish local civil defense organizations in any local governmental unit whose governing body fails to do so.

Chapter 1427 (HB 1233) creates the Western North Carolina Regional Planning Commission for twelve western North Carolina counties. The commission is to encourage the development of the region and its resources, and to provide planning assistance to counties and municipalities in the region.

One bill of interest failed of passage: HB 1125, which would have given boards of county commissioners authority to regulate things detrimental to the health, safety, and welfare of the inhabitants of the county.

Study Commissions

Not only did the 1957 General Assembly pass a substantial number of acts affecting county government, but it set in motion machinery to provide additional legislation in future years. Seven study commissions whose studies may well have a definite effect on county government were created. County officials throughout the state will want to keep abreast of the studies of these commissions, and make their ideas and suggestions available to the commissions.

Resolution 33 (SR 372) creates a commission to review the Constitution of North Carolina and make recommendations for amendments thereto.

Resolution 45 (HR 1273) creates a commission to study school finances. Three of the nine members are to be experienced in local government or in business finance. The commission is to study public school finance generally and the utilization of school buildings.

Resolution 51 (HR 1434) creates a commission to study municipal government. Particular attention is to be given to the question of municipal finance and the annexation of suburban areas.

Resolution 47 (HR 1370) creates a state government reorganization commission to continue the studies of the commissions of the past two bienniums.

Resolution 41 (SR 528) creates a second tax study commission, to continue studies of the tax structure of the state. Part of the tax structure of the state, of course, is the tax structure of local governments, and attention may well be given to their problems.

Resolution 50 (HR 1430) creates a commission to study the operation and licensing of nursing and boarding homes.

Resolution 46 (HR 1276) creates a commission to study the advisability of a uniform map law. The resolution requires that one member of the study commission is to come from the membership of the commissioners' association.

In addition to the legislatively-created study commissions, there is a special committtee of the North Carolina Bar Association studying the improvement of the administration of justice in North Carolina. The findings and recommendations of this commission, which will undoubtedly be made available to the General Assembly of 1959, may well affect county government.

Property Taxes

By
HENRY W. LEWIS
Assistant Director of the Institute of Government

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

General Tax Changes Affecting Local Ad Valorem Taxation

New Revenue Act

Amendments to the Revenue Act passed by the 1957 General Assembly [Chapter 1340 (SB 7)] repeal the former tax on bank shares imposed by local units of government on the basis of valuations certified by the State Board of Assessment. Those amendments also exempt the personal property of state banks from local property taxes. The power of counties and municipalities to impose ad valorem taxes on the real property of both state and national banks remains unchanged.

For the locally-imposed tax on bank shares the Revenue Act of 1957 substitutes a 4½% excise or franchise tax on all banks to be measured by net income (including interest from federal and other governmental obligations except North Carolina state and local bonds). The revenue from this new tax will go to the state, not to the counties and cities.

A change in the state-imposed tax on intangible personal property will, however, it is estimated, more than make up for the local revenue lost by the bank tax changes. The new Revenue Act directs that the entire take from the Intangibles Tax be returned to the counties and municipalities (rather than 80% as heretofore), subject only to a deduction for the costs of collection.

It should be noted that the bank and intangibles tax changes will not become effective until next year.

Study Commissions

The General Assembly has authorized continuance of the Commisssion for the Study of the Revenue Structure of the State [Resolution 41 (SR 528)]. It is entirely possible that this Commission will turn its attention more directly to the property tax than it did prior to the 1957 session. It will be recalled that the first Commission report dealt with this tax in passing and said: "When the need for a comprehensive property tax study arises, it should be made on an intensive and extensive basis with proper staff and proper financing."

Under Resolution 51 (HR 1434) the Governor is to appoint a Municipal Government Study Commission to make recommendations on solutions for the problems of municipal government in the state, including the capacity of cities and towns to finance needed services and functions. While not directly affecting counties, the fact that the property tax is the principal source of municipal revenue and the fact that municipalities are concerned with assessment procedures and policies make it likely that the property tax will be considered by this commisssion, and that the counties will be concerned with that consideration.

Listing and Assessing Property For Taxation

The Office of County Tax Supervisor

Only one statewide enactment of the 1957 General Assembly deals directly with the office of tax supervisor. Chapter 202 (HB 284) rewrites G.S. 105-286 [Machinery Act §403] to authorize supervisors to hold the required instruction for list takers at any time between the time the list takers are appointed and the date on which they begin work, but not later than the week preceding January 1. This change was sponsored by the North Carolina Association of Assessing Officers. While the amendment gives the tax supervisor much wider authority to pick a date for instruction than has been true heretofore, it must be kept in mind that G. S. 105-289(1) [Machinery Act §406] requires township list takers to post their listing notices "at least ten days before the date as of which property is to be assessed," and since it is customary for tax supervisors to distribute these notices to the list takers at the instructional session, it may be that most supervisors will hold their training sessions earlier than in the past.

Listing Procedures

The Oath

The Assessors' Association was unsuccessful in its attempt to secure legislation changing the form of oath to be used on the tax listing abstract. HB 283 embodying the Association's ideas was never reported by the committee to which referred upon its introduction.

Penalties for Failure to List

The Association was more successful in its efforts to eliminate confusion about the criminal penalty for failure to list property for taxation. Chapter 848 (HB 285) sets the penalty for the misdemeanor of willfully failing or refusing to list property for taxation within the time allowed by law at a fine not to exceed $50 or imprisonment not to exceed thirty days. The same penalty is set for the misdemeanor of aiding or abetting removal or concealment of property for purposes of evading taxation. The effect of theso changes is to place these offenses clearly within the jurisdiction of justices of the peace. The former requirement that county commissioners present the names of offenders to the grand jury has been deleted from the law. The amendment became effective on July 1.

Listing Personal Property

Motor Vehicles

Legislation designed to carry out ideas of the North Carolina Association of Assessing Officers and the Tax Collectors Association concerning the listing of motor vehicles was not introduced in the 1957 General Assembly, although one bill (SB 238) with a similar objective was introduced. That bill failed. A similar fate met SB 443, a measure to require the Motor Vehicles Department to furnish the lists whether requested by the counties or not. Duplin County did, however, obtain legislation making it mandatory that the Department furnish it lists without request [Chapter 160 (HB 78)].

Inventories of Multi-County Businesses

HB 291, a bill designed to have owners of business property located in more than one county file with the State Board of Assessment a complete breakdown of property owned in

each county, had an unusual legislative career. It received a favorable report from the committee to which it was referred upon introduction; it was re-referred to the same committee and again received a favorable report; and for the second time it was returned to the same committee. Upon the third review the committee gave the bill an unfavorable report.

Tax Maps

The use of maps in tax listing and assessing work is on the increase in North Carolina. County and municipal tax officials may find it advantageous to acquaint themselves with the work of the Commission for the Study of a Uniform Map Law to be appointed under Resolution 46 (HR 1276).

Exemptions

The General Assembly's treatment of proposals for property tax exemption in 1957 must be described as spotty. While the legislature cannot be said to have followed the policy recommended by the local officials—that no more exemptions be granted on a statewide basis, and that no additional subjects be granted exemption on a local basis—neither can it be said that it ignored the sentiment embodied in that recommendation. Significant efforts were made to reduce the spread of exemptions, and some of them were successful.

Real Property

The General Assembly has never exercised its constitutional authority to exempt from taxation "not exceeding one thousand dollars ($1,000.00) in value of property held and used as the place of residence of the owner," but an effort was made in the recent session to have county referendums called on whether this should be done. The bill (HB 1415), however, received an unfavorable report. A local measure framed in identical terms was passed [Chapter 1330 (HB 1414)]. Under its terms the Bertie County commissioners are empowered to call such a referendum if they so desire. Interestingly, if the vote is in favor of the exemption, its duration would end if the state ever levied an ad valorem tax on real property.

Two new local exemption acts are so drafted as to make it plain that their sponsors were eager to obviate questions of constitutionality. Both declare the object of exemption to have one of the characteristics justifying exemption under the Constitution. Chapter 748 (SB 374) declares a certain church in Richmond County to be a religious organization and then exempts its real property for the year *1955* and all subsequent years. Chapter 661 (HB 135) declares women's clubs, garages, and other civic organizations in Rowan County to be charitable and exempts their real property for 1957 and subsequent years.

It is interesting to note that an act extending the territory of the city of Monroe as of April 3 specifically exempts the newly-annexed territory from Monroe's 1957 taxes [Chapter 185 (HB 112)].

Tangible Personal Property

As already pointed out, the new Revenue Act [Chapter 1340 (SB 7)] exempts the personal property of state banks from local taxation. This puts state and national banks on the same footing. The proposal of the local officials to repeal the 1955 exemption of cotton "while subject to transit privileges under Interstate Commerce Commission Tariffs" was never introduced in the 1957 legislature. An effort to broaden the motor vehicle exemption for disabled veterans received an unfavorable committee report (HB 439).

Chapter 748 (SB 374), referred to above, grants exemption to the personal property used in connection with a particular Richmond County church for 1955 and all subsequent years. Chapter 661 (HB 135), also referred to above, exempts from taxation in Rowan County the personal property used in connection with women's clubs, granges, and other civic organizations.

Proposals for exemption of agricultural products claimed a great deal of the General Assembly's attention. A bill to exempt redried tobacco on a statewide basis failed (SB 400). A similar fate met SB 525, a bill designed to repeal all local personal property tax exemption legislation, but it may be significant that this bill passed the Senate before it met its death in the House at the end of the session.

Nash and Edgecombe counties secured permission to grant exemption to redried tobacco if stored in those counties for shipment to foreign countries. The exemption applies only for the year following the year in which grown, and begins in Nash with the 1956 crop and in Edgecombe with the 1957 crop [Chapter 1151 (HB 181)].

A bill granting a similar exemption to redried tobacco stored in Stokes County (HB 353) was the center of much discussion and ultimately failed to pass. It was in connection with this bill that the issue of constitutionality was so pointedly raised and reported in the press.

Effective with the 1958 tax year Chapter 1140 (HB 606) will grant exemption for the year following the year in which grown to all agricultural products stored in Johnston County in an unmanufactured state. Harnett County's new exemption applies to peppers, beans, and all other vegetables for the year in which produced and the next succeeding year if they are held by the producer or purchaser for curing or processing. This exemption begins with 1957 taxes [Chapter 1139 (HB 434)]. Under Chapter 1187 (SB 423) grain grown in North Carolina and stored in Iredell County in an unmanufactured state is exempt from taxation for the year following the year in which grown, if it is owned by one other than a processor and if money has been borrowed on the grain and the grain has been pledged to secure the loan. This exemption goes into effect in 1958.

Intangible Personal Property

For a number of years it has been assumed that counties and municipalities had no power to tax intangible personal property, that the tax imposed on such property by the state pre-empted the field. The recent case of *Investment Company v. Cumberland County*, 245 N.C. 492, raised serious questions about this assumption. Apparently in an effort to settle the issue, a bill was introduced to prohibit local taxation of intangibles (SB 474), but it failed to pass. Thus, whatever intangible property local units were entitled to tax before the 1957 General Assembly met is still taxable by them.

Chapter 839 (HB 103) exempts from taxation money in the Law Enforcement Officers' Benefit and Retirement Fund as well as rights in and benefits from that fund.

Poll Tax Exemptions

Under rulings of the Attorney General, tax officials began in January, 1957, to refuse poll tax exemption to servicemen under G.S. 105-341 (4) [Machinery Act §1402] on the ground that the exemption period had expired. Chapter 842 (HB 138) cut this practice short. It grants poll tax exemption (from and after January 1, 1957) to members of the armed forces of the United States who are on active duty elsewhere than in the counties of their residence on January 1. It

should be noted, however, that the exemption does not apply specifically to members of the United States Merchant Marine.

Valuation of Real Property

Quadrennial Revaluation

Time for Revaluation. Originally G.S. 105-278 [Machinery Act §300] required all real property to be reassessed in 1941 and quadrennially thereafter. This general policy has been whittled away by subsequent amendments which, in effect, have made it possible for counties to coast along without revaluation for years with full legal sanction. These biennial amendments have invariably taken the form of allowing any board of county commissioners, in its discretion, to postpone revaluation "for the years" specified in the amendment. Thus, for example, meeting in the quadrennial year 1953, the General Assembly permitted postponement "for the years 1953 and 1954." In 1955 the General Assembly permitted postponement "for the years 1955 and 1956." To permit postponement "for the years 1955 and 1956" would seem to mean that the boards of commissioners need not conduct revaluations effective as of January 1, 1955, nor effective as of January 1, 1956, but that they had no authority to defer the quadrennial revaluation scheduled for January 1, 1957. Chapter 1453 (HB 1451) was designed to fill this need. It authorizes boards of county commissioners in their discretion to postpone revaluation of real property "for the years 1957 and 1958." By its own terms the act does not apply to Bertie and Wake counties, and an added section specifies that it is not to be considered as repealing any local acts on the subject. This last is a significant provision in view of the fact that prior to enactment of the general act a large number of counties had already secured special legislation concerning the time for revaluation. If the interpretation already suggested is correct, the 1957 statewide act has the effect of allowing postponement of the scheduled 1957 revaluation for 1957 and 1958, but without further legislation, the 1957 revaluation must be held and made effective not later than January 1, 1959.

Methods of Revaluation. Six counties obtained from the 1957 General Assembly special authority to employ engineers, appraisers, experts, firms, and assistants considered by the county commissioners to be necessary to carry out the work of revaluing real property for taxation.

Financing Revaluation Five counties received special authority from the 1957 General Assembly to levy special taxes to finance the expense of revaluing real property.

In addition to the authority to levy a special tax of 10¢, Halifax County obtained authority to spend capital reserve funds for revaluation financing [Chapter 99 (SB 10)]. Bertie County, rather than obtain special tax levying authority, obtained legislative approval to issue up to $35,000 in bonds or notes under the County Finance Act for the same purpose [Chapter 441 (HB 579)]. It is interesting to note that this act pointedly states that the Bertie commissioners "shall have no power to make a horizontal raise in the tax *rates*, before the date of such revaluation or reassessment, of more than ten per cent (10%)."

In authorizing certain counties to contract for professional services in conducting revaluation, the pertinent special acts specifically authorize the boards of county commissioners to enter into contracts extending beyond the terms of office of members of the contracting boards. Three of these acts state that the contracts may be entered into before sufficient funds are accumulated to discharge the obligations of the contracts.

Annual or Continuous Revaluation

The most far-reaching local act proposals concerning listing and assessing of property were those looking to the elimination of the quadrennial system. They would replace it with a system under which all real property would be subject to revaluation and reassessment every year. Four special acts treated the subject and each should be considered separately.

Under Chapter 974 (HB 1216), "All taxable property, both *real* and personal, in Alleghany County shall *annually* be listed and *assessed* for ad valorem taxes." Thus, in Alleghany the act is mandatory, and the system is to be started at once. It is singular that such a system would be installed without first requiring a complete revaluation. "It shall be the duty of the tax commissioner [i.e. tax supervisor] to adjust the assessed valuation of real or personal property in order to correct any inequities." The only provision anticipating possible administrative difficulties in changing from a quadrennial to an annual system of real property assessment reads as follows: "Whenever the assessed valuation of any real property is increased by the tax commissioner, he shall make a report thereof to the Board of County Commissioners and he shall also mail a written notice of such increase to the property owner at his last known address. The notice shall contain a statement to the effect that if the property owner feels aggrieved by the increase in the assessed valuation of any item of property, he may apply in writing to the Board of County Commissioners for a hearing at which hearing he may produce any evidence bearing upon the value of the property involved. Upon receipt of application for a hearing, the Board of County Commissioners shall set a time and place for such hearing and shall notify the taxpayer thereof . . . . Appeals may be taken from the action of the Board to the State Board of Assessment . . ."

The other local acts on this subject are somewhat more conservative. In each instance they start by requiring revaluation of all real property in the county. Once revaluation has been completed, they place in the boards of county commissioners discretionary power to adopt a system for the annual, continuous, or perpetual revaluation and reassessment of real property comparable to that already in use for personalty. Two of these acts carry identical provisions:

"Upon the completion of the reassessment as herein provided, the Board of County Commissioners . . . is hereby authorized in its discretion to adopt a system of annual listing and assessing of both real and personal property for ad valorem taxes.

"Upon the adoption of a system for the annual assessing of property for ad valorem taxes, the provisions of the Machinery Act and the General Statutes relative to the quadrennial assessment of property shall not apply to . . . [the county concerned]. However, in any system of annual assessment of property adopted, the provisions of G.S. 105-294 shall apply"* [Durham, Chapter 745 (SB 284); Onslow, Chapter 885 (HB 1064)].

The act giving Forsyth County similar authority takes a slightly different approach [Chapter 975 (HB 1222)]. As soon as the required re-

*The statute referred to is Machinery Act §500. It requires uniform "true value" valuations and specifies certain improvements, etc., that are not to be considered as justifying revaluation of real property in a non-revaluation year.

valuation is complete (as of January 1, 1959, or as soon thereafter as the county commissioners deem practicable), upon passage of a resolution finding that the proposed system "will promote economy and efficiency, and will be in the public interest of Forsyth County," the commissioners are empowered to "establish in the Office of the Forsyth County Tax Supervisor, and as a part thereof, a department which shall have the responsibility of conducting a *continuous* appraisal of *real* and personal properties. Upon the completion of appraisal of all taxable properties by said department, the Tax Supervisor, with the approval of the Board of County Commissioners, may revalue and reassess all taxable properties for ad valorem tax purposes in Forsyth County based upon the appraisals made by the department. Upon the adoption and use of a system of *continuous* appraisal of taxable properties, the provisions of the Machinery Act and the General Statutes relative to the quadrennial assessment of property shall not apply to Forsyth County, but the provisions of G.S. 105-294 shall apply." While this act contains more detailed administrative provisions, the essential elements are identical with those in the Durham and Onslow acts. Unlike the Alleghany County act first mentioned, none of the others contains provisions anticipatory of procedural problems incident to a shift in systems. Since adoption of the annual system must await revaluation and even then remains optional, it is likely that the draftsmen felt that procedural problems might best be considered when the system is better defined.

In conjunction with the local acts already discussed it may be prudent to refer to several less unusual measures giving boards of equalization and review authority to sit as such for unlimited periods of time. It may be that some of them have the practical effect of authorizing continuous revaluation by indirection.

Assessing Procedures

Chapter 1247 (HB 1002) establishes a procedure for setting up mosquito control districts. When established, such a district is empowered to levy an ad valorem property tax up to 35¢ "upon the adjusted one hundred dollars ($100.00) assessed valuation." If the district lies wholly within a single county it will use the assessments fixed by that county, but if the district lies in two or more counties "the commissioners of the mosquito control district shall horizontally equalize the assessed valuations of the property in the several counties in which the district lies by adjusting the ratio of assessed valuation in the several counties to the true values of the taxable property in the several counties. From such adjusted and equalized valuations, any board of commissioners of any county may appeal to the State Board of Assessment as in the case of an appeal by a property owner from a county Board of Equalization and Review. . . ."

Collecting Property Taxes

The Office of Tax Collector

Chapter 537 (HB 780) gives county and municipal governing boards discretionary authority to appoint deputy tax collectors and to set their pay and the amount of their bonds. Unless the scope of their authority is limited by the appointing board, deputies thus appointed are empowered to perform, under the tax collector's direction, any act the collector might perform. This seems to settle the question of the power to name deputy tax collectors and thereby accomplishes one of the objectives of the North Carolina Tax Collectors Association.

Four counties secured legislation looking toward relieving the sheriff of responsibility for county tax collection. In each instance the work is to be transferred to a tax collector to be named by the county comissioners.

Beginning in 1958 Graham County will be added to the small group of counties in which the person (other than sheriff) serving as tax collector will be elected by the people rather than appointed. In this situation he will be elected for a two-year term [Chapter 245 (HB 187)].

Payment of Taxes

In-Lieu Payments

For a number of years G.S. 113-34 has provided that state forests are subject to county ad valorem property taxation, the taxes to be paid from state funds not otherwise appropriated. The same section has also provided that, in lieu of paying these taxes, the Department of Conservation and Development might elect to pay a severance tax. From the counties' point of view this statute has been unsatisfactory, and the portion of it concerned with taxation has now been repealed by Chapter 988 (SB 362).

Effective January 1, 1958, the same act inserts a new section in the Machinery Act requiring state agencies (other than the Hospitals Board of Control) administering, leasing, controlling, or owning timberlands to pay into the general fund of each county in which timberlands are situated an amount equal to 10% of the proceeds of the gross sales of trees, timber, pulpwood, and other forest products therefrom. Proceeds received by the following agencies, however, are excluded: State Board of Education, all state educational institutions, and the Department of Agriculture (with respect to proceeds from research stations and experimental farm lands). The Prisons Department and the Department of Conservation and Development (as to forests held under G.S. 113-34, the section referred to above) are allowed to elect to subject their timberlands to regular county ad valorem taxation in lieu of making the prescribed 10% payments, but, should they so elect, fire towers and other permanent improvements remain exempt.

Discounts for Prepayment

Six local acts of the 1957 General Assembly dealt with the problem of discounts for prepayment. The most interesting one, Chapter 223 (HB 290), provides that no discounts are to be allowed in Guilford County and the City of High Point unless the governing bodies of those units pass resolutions permitting discounts, setting rates in their discretion. And should they do so, 2% is the maximum they may allow.

The Property Tax Lien

Chapter 1414 (HB 948) completely rewrites G.S. 105-340 [Machinery Act §1401], the statute setting out when the lien for taxes attaches to real and personal property, what property it attaches to, and what items are included in the amount of the lien. The rewritten section makes no substantive changes in the law except as follows: A new provision is inserted to the effect that the lien of taxes levied on the stock of goods of a wholesale or retail merchant (as those terms are defined in the Sales Tax statutes) attaches to such property in the taxing unit as of the day it is to be removed from the taxing unit or transferred to another person, or as of the day the owner quits business.

Remedies against Personal Property

As just indicated, Chapter 1414 (HB 948), a measure sponsored by

the North Carolina Tax Collectors Association, is a pioneer effort to close one of the obvious loopholes in the collection statutes. As a part of the pattern the same act broadens the provisions of the Machinery Act dealing with the use of levy.

Time for Levy and Subjects of Levy

Without disturbing the collector's powers to levy *after* taxes are due, Chapter 1414 (HB 948) rewrites G.S. 105-385 (a) and (c) [Machinery Act §1713] to enable the tax collector to use levy at any time between the listing date (January 1) and the due date (first Monday in October) to collect taxes *to become due* on that date as follows:

(1) If the collector has reasonable grounds for believing that the taxpayer is about to remove his personal property from the taxing unit (formerly this power was limited to instances in which he was about to remove it from the state).

(2) If the collector has reasonable grounds for believing that the taxpayer is about to transfer his personal property to another person.

(3) If the property subject to taxation is the stock of goods or fixtures of a wholesale or retail merchant (as those terms are defined in the Sales Tax law); if the owner sells his business, quits business, or sells his stock of goods or fixtures between the listing date and the tax due date; *and* if taxes due and to become due thereon on the following first Monday in October are not paid within thirty days of such action. In this third instance the collector may levy on any personal property of the seller *or purchaser*, but the levy must be made within sixty days of the transfer or quitting of business.

Exemption from Garnishment

Under the terms of Chapter 839 (HB 103) rights to and benefits from the Law Enforcement Officers' Benefit and Retirement Fund are exempted from garnishment, attachment, levy and any other process. The same exemption already applies with respect to the Teachers' and State Employees' Retirement System.

New Method of Tax Collection

Tax collectors are limited to the methods of collection provided by statute—levy, garnishment, and foreclosure. But Chapter 1414 (HB 948) provides an additional method of collection in one limited factual situation. Paralleling provisions in the Sales Tax statutes, it adds a provision to G.S 105-385 [Machinery Act §1713] to require any wholesale or retail merchant (as those terms are defined in the Sales Tax law) who sells his stock of goods and fixtures, sells his business, or goes out of business to notify the *county tax supervisor* within thirty days thereafter. The objective is to see to it that the news of this change reaches official tax circles before the assets have disappeared. The act then provides that the purchaser in such a situation must withhold enough of the purchase price to cover the amount of the taxing unit's lien against the property until the seller produces a receipt showing payment or a certificate from the collector that no taxes are due. (The lien referred to is that created by the same act, which has already been discussed.) If the purchaser fails to withhold the funds as required, and if the taxes are not paid within thirty days after the sale, the purchaser becomes *personally* liable for the amount of the tax lien. The inference is that the collector may bring a civil action against the purchaser to collect this tax, a method of collection ordinarily denied. It should be noted that this remedy is in addition to the collector's right to levy on the purchaser's personal property in such cases.

Adjustment, Compromises, and Rebate of Principal, Penalties, and Interest

The 1957 Revenue Act contains a disturbing provision that may have some effect on what has been assumed to be the only procedure by which a dissatisfied taxpayer might establish a legally enforcible claim for a tax refund. G.S. 105-406 has long made it plain that one claiming a tax to be illegal: (1) must pay the tax; (2) at the time of payment, he must inform the tax collector in writing that he is paying *under protest;* and (3) within thirty days of the time he pays he must file with the treasurer of the county or municipality a written demand for a refund. In the section of the Revenue Act dealing with general administration of state taxes there has for some years been a companion statute requiring substantially the same procedure, including the requirement of payment under protest. This section, G.S. 105-267, explicitly covers payment of local taxes as well as state taxes. Thus, when the 1957 Revenue Act [Chapter 1340 (SB 7)] amended G.S. 105-267 to delete the requirement that the payment be under protest, it is proper to ask whether that will have any effect on the local tax situation in view of the fact that G.S. 105-406 was not amended. It is impossible to answer this question without judicial assistance.

Foreclosing for Property Taxes

Service and Notices

Two statewide acts dealing with procedural matters in connection with foreclosure were passed by the 1957 General Assembly. Chapter 1253 (HB 1085) authorizes service by publication in foreclosure actions under G.S. 105-414 for persons who have disappeared or cannot be found, for persons whose names and whereabouts are unknown, and for all possible heirs or assignees of such persons. General descriptions are permitted in drafting the notice of publication.

Taking advantage of developments in the United States postal system, two acts [Chapter 91 (SB 96) and Chapter 1262 (HB 1152)] authorize use of certified mail as an alternative to registered mail in sending the letters and notices required under the summary method of foreclosure provided for in G.S. 105-392 [Machinery Act §1720].

State Government

(Continued from page 13)

[Resolution 33 (SR 372)]. Bills creating sinking funds to retire state permanent improvements and mental institutions bonds issued under 1953 acts (HB 14 and HB 15), and calling for a constitutional amendment requiring application of 90% of end-of-biennium surpluses to payment of the state debt (HB 134) were all killed by House committees. A similar fate befell HB 307, which would have authorized counties and municipalities to make purchases through the State Division of Purchase and Contract.

Election Laws

By HENRY W. LEWIS, *Assistant Director of the Institute of Government*

Chapter numbers given refer to to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Registration Qualifications

Conscious of the problem's sensitivity, the 1957 General Assembly made one major change in the means for determination of eligibility to register. Chapter 287 (SB 210) restates the constitutional requirement that every person seeking to register must be able to read and write any section of the North Carolina Constitution in the English language, but it deletes "satisfaction of the registrar" as the criterion. The registrar, nevertheless, remains responsible for making the initial determination. All references to registration under the "Grandfather Clause" are deleted.

The same act opens up new and clearer channels of appeal from decisions of precinct registrars on the subject of qualification to register. Not only with respect to literacy, but with respect to denial of registration by the registrar for any other reason, the act authorizes an appeal to the county board of elections. The period within which the appeal must be noted closes at 5 p.m. on the day following denial of registration.

Without defining the words "prompt" and "promptly" the act states that when the registrar receives written notice of an appeal he must promptly turn it over to the county board of elections, and that the board is bound to give the appellant a prompt and fair hearing *de novo*. A majority of the board is made a quorum for hearing the appeal, but decisions must be made by a majority of the total membership. The board may order the registrar to register the applicant if it so decides. If the applicant is denied registration by the county board, the new act permits him to institute an appeal to the superior court of his county within ten days after issuance of an order by the board denying registration. The hearing in the superior court is *de novo*, and the court is empowered to order registration if it so determines.

Defense of Election Officials

Chapter 436 (HB 551) authorizes boards of county commissioners to appropriate funds to pay reasonable fees for attorneys employed to defend election officials or boards in actions brought (or already pending) against such persons on account of orders, acts, or decisions rendered in administering the election laws of the state. This is a broad authority and may need considerable interpretation in the future.

Pay of Election Officials

Under the terms of Chapter 182 (SB 11) the pay of members of

(Continued on page 50)

Legislation of Interest to Municipal Officials

(Continued from page 23)

side the corporate limits of Greenville. Chapter 1188 (SB 452) prohibits the operation of junk yards within the corporate limits of any municipality in Northampton County. Chapter 830 amends a similar act applying to Graham to permit junk yards in some specified areas in or within one mile of the corporate limits.

Chapter 900 (HB 1108) authorizes Southport to establish daylight saving time for any period between the first Sunday in April and the last Sunday in October of each year. This legislation follows on the heels of action in Wilmington adopting daylight saving time this year. Onslow County secured legislation authorizing submission of the question of adopting daylight saving time to the voters at the primary election in 1958, contingent on the Camp Lejeune Marine Base continuing to use such time.

Chapter 1168 (HB 1293) amended the charter of White Lake to clarify the authority of the Department of Conservation and Development to continue to make rules and regulations concerning the public use of lake waters and to enforce such regulations. White Lake also secured legislation providing for limited approval of bingo, with the maximum value of any gift awarded to be $10.

Study Commissions

The postwar emphasis in North Carolina upon the use of study commissions to explore complicated questions and make recommendations to the General Assembly continued in 1957. For the first time in history, moreover, the overall problems faced by cities and towns were recognized as important to the development of the state and a special legislative study commission was established to make a comprehensive study of the problems of cities and towns.

Under the provisions of Resolution 51 (HR 1434), a 9-member commission has been directed to make this study, and the agenda of the Commission may include but is not limited to a study of

"(1) The procedures, powers and authority which are granted by the General Assembly and are available to municipalities that govern and limit the ability of municipal government to provide for orderly growth, expansion and sound development.

"(2) The governmental services and functions provided and the increased or additional services and functions needed to meet the requirements for orderly growth, expansion and sound development of cities and towns and the capacity of municipal government to finance such services and functions."

In short, the resolution seems to emphasize a study of annexation and planning procedures and of sources of revenue and the relationship of revenue to service levels.

It is perhaps worth noting that the Commission is to be appointed by the Governor on recommendation of the President of the Senate and the Speaker of the House, six members to be members of the 1957 House and three members to be members of the 1957 Senate. At least three members of the Commission must represent counties having a municipality with a population of 50,000 or more at

the time of the last federal census. Financing of the Commission's work may include contributions from municipalities by appropriation from nontax funds and may include grants from the Contingency and Emergency Fund.

Municipalities may also be affected by the studies and findings of the Tax Study Commission, for the General Assembly authorized the Governor to appoint a new 9-member commission to continue the work of the commission created by the 1955 General Assembly and whose recommendations formed such a vital part of the legislation enacted in 1957 [Resolution 41 (SR 52)]. Since this commission was originally granted very broad authority in 1955, it is conceivable that in the next biennium it may tackle the property tax question in whole or in part. It will be remembered that the 1955 commission largely avoided the questions raised in the property tax field, but some of these property tax questions were raised by the legislature in 1957 and will need careful study.

More indirectly but still vital may be the effect on municipal finance of the recommendations of the committee established to make a comprehensive study of public school financing [Resolution 45 (HR 1273)]. Any major change in the method of financing public education would be bound to have an effect on municipal financing problems, even though municipalities have no direct responsibilty for financing schools.

Finally, the General Assembly established a commission to study land mapping problems in North Carolina, to identify the problems arising from the absence of minimum mapping standards, and to recommend to the 1959 General Assembly a procedure for establishing minimum mapping standards throughout the state, if such minimum standards shall be found by the Commission to be desirable and enforceable.

Institute's Legislative Service

(Continued from page 5)

members read proof—once again checking for accuracy as well as for typing errors. Mimeograph operators come in about supper time and begin running the stencils which have been cut. Assembling crews appear later in the evening and start to assemble pages, staple them together, and stuff them into envelopes for mailing. Finally, the envelopes destined for each town must be tied together, in order to comply with postoffice requirements, and the envelopes must be carried to the postoffice for mailing. Depending upon the length of the day's session, the volume of bills introduced, and similar factors, the legislative service staff's day ends somewhere between 7:00 P.M. and 6:00 A.M. the following morning.

The following morning is devoted to preparation and filing of cards giving the digests of each bill, noting calendar action taken on the cards of bills introduced earlier, making appropriate entries in the journals, and handling requests for information from private subscribers and others.

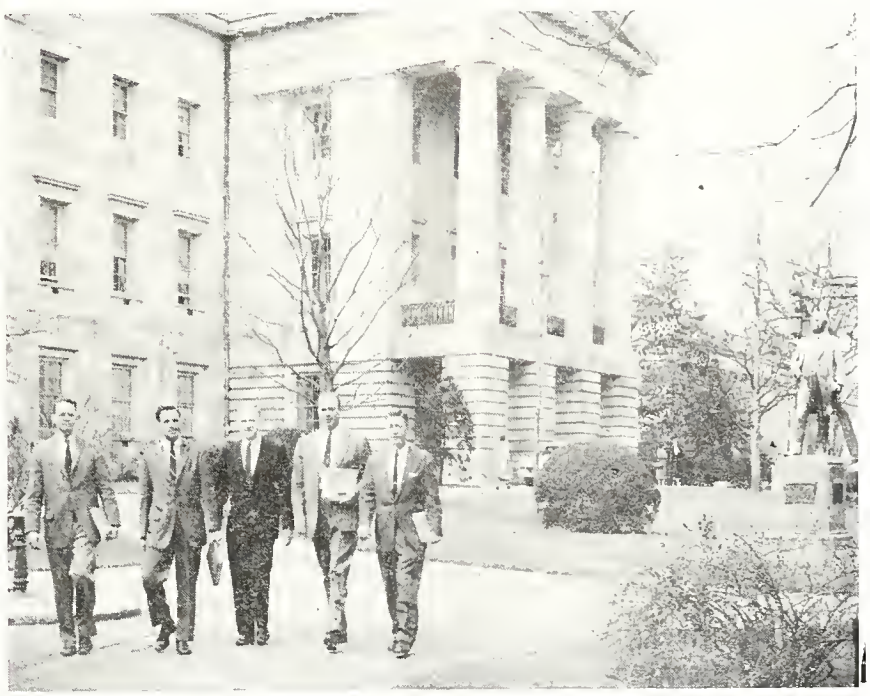
This daily routine is modified on Friday, when in addition to the Daily Bulletin the Weekly Summary must be written and mimeographed. The 8800 copies of this Summary require two complete sets of stencils, and the process of running this number of copies through the machine takes some six hours.

On Saturday morning extra typists are brought in to cut stencils for the Local Bulletins. As many as 40 stencils may have to be cut, proofed, and run. As each is completed, copies of the Local Bulletins and of the Weekly Summary must be assembled, stuffed into envelopes, and tied for mailing. Both assembling crews take part in this process, which usually is completed by mid-afternoon Saturday.

Following final adjournment, all records have to be checked against the journals maintained by the clerks of the two houses and against each other. Copies of any missing bills or amendments must be obtained. When we are sure as we can be of the accuracy of our records, the legislative service staff returns to Chapel Hill, and there the copy is prepared for the Legislative Summary and this issue of POPULAR GOVERNMENT.

From the time the first envelopes and other supplies are ordered in the fall until the last report is issued, the better part of a year elapses. In the meantime the Raleigh office force and mimeographing and assembling crews have been hired, places have been found to house the service and the staff members during the session, and a publishing operation producing some 1500-2000 pages of legislative information has been completed.

With this publication, we bring our 1957 legislative service to a close. Planning will now begin for the 1959 session of the General Assembly.



The session completed, the legislative service staff heads for home

PUBLIC PURCHASING

By
WARREN JAKE WICKER
Assistant Director of the Institute of Government

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

A number of improvements in purchasing procedures by local governments are made possible as a result of legislation enacted by the 1957 session of the General Assembly. Restrictions have been removed, procedures have been changed to meet present-day needs, and possibilities for savings and greater revenue have been provided. In addition, some 45 local bills were passed to meet the special problems of particular local governments.

Discounting minor changes in a few bills, all the proposals endorsed by the Carolinas' Chapter of the National Institute of Governmental Purchasing and the North Carolina League of Municipalities were passed except the one which would have allowed local governments to make purchases on state contracts. And on this proposal the purchasing agents and the League were not in agreement.

The purchasing agents favored legislation to allow local purchasing on state contracts without following the normal bid procedure provided (a) the state contractor would sell at the state price and (b) the local government wanted to buy at this price. The whole arrangement would thus be optional with both the state supplier and with each local government.

The League's proposal, on the other hand, was designed to permit local governments to buy only automobiles through the state.

The bill introduced on this subject, HB 307, would have authorized local governments to make purchases on contracts negotiated by the state. Thus, buying under state contracts was optional with local governments. It is not clear that state suppliers would have had the same leeway. This question, however, is now a moot one since the bill died in committee.

Auto Purchase Limitation Removed

For more than a quarter of a century it has been necessary for local governments to secure the approval of the Governor and the Council of State before buying an automobile at a cost of more than $1,500 (G.S. 14-249 and 14-252). For much of this period most automobiles cost less than $1,500 and the requirement had little practical effect. In recent years, however, prices have been so high that almost every automobile purchase was subject to these statutes. The result was additional paper work for purchasing officials, the Governor, and the Council of State.

Section 6 of Chapter 862 (HB 851), amending G.S. 14-249, has abolished the requirement for approval by the Governor and the Council of State for local governments when the automobile purchases are made under either the formal or informal purchasing procedures outlined in Article 8 of G.S. Chapter 143. And these two procedures cover all purchases of $200 or more.

State agencies are still covered by the old statute, except that another act [Chapter 1345 (SB 239)] raises to $2,000 the amount which a state agency may expend without approval of the Governor and the Council of State.

Formal Purchasing Procedure Changed

Chapter 862 (HB 851) makes four significant changes in the requirements for contracts let under the formal bid procedure. All these changes were effective as of July 1, 1957.

Coverage

Prior to the passage of this new legislation, G.S. 143-129 required the use of the formal procedure—involving advertisement for bids, taking of sealed bids with bid deposits, awarding the contract to the lowest responsible bidder, and securing a performance bond from the successful bidder—in two situations:

(1) in the case of purchases of apparatus, supplies, materials, and equipment when the expected cost was $1,000 or more, and
(2) in the case of construction and repair contracts when the anticipated cost was $2,500 or more.

These minimum expenditure limits have been increased by $1,000 each, so that the formal procedure now applies to purchasing contracts involving as much as $2,000 or more and to construction or repair contracts when the expected cost is $3,500 or more.

It should be noted that these changes are in the general law and apply only to those local governments which operate under the general law provisions. The changes do not affect cities and counties which have formal contracting limits set by special act or by charter.

Waiving of Performance Bonds

Another important change made by Chapter 862 is the addition to the eighth paragraph of G.S. 143-129 of the following proviso:

> "Provided, that in the case of contracts for the purchase of apparatus, supplies, materials, or equipment the board or governing body may waive the requirement for the deposit of a surety bond or securities as required herein."

Thus in purchasing contracts under the formal procedure, performance bonds may be waived by the governing board. Affirmative action by the governing board in the form of a resolution is necessary. It appears that such a resolution might provide for the waiving of performance bonds on a particular purchase, on stated classes of purchases, or on all purchases. In the case of contracts for construction and repair work, performance bonds (or securities) must be obtained as before.

Advertisement by Posting

Bids on proposals subject to the formal contracting procedure must normally be invited by advertisement in a newspaper having general circulation in the city or county concerned. In the past, however, cities and counties were permitted to advertise by posting notices in public places when the amount of the contract was less than $2,000, if no newspaper having gen-

eral circulation in the unit was published locally. Section 2 of Chapter 862 has amended G.S. 143-129 to allow advertisement by posting under the same circumstances when the contract involves no more than $3,000.

Rejection of Surety Bonds

For the past two years state agencies and the Budget Bureau have had authority to reject the surety bonds of any surety company if there was an outstanding claim or complaint against the surety company which had been pending for six months or more. The 9th paragraph of G.S. 143-129 has been rewritten by Chapter 391 (HB 402) to grant the same authority to the governing boards of any county or city. A further modification changes from six months to 180 days the time which the complaint or claim must have been outstanding before authority to reject the bonds is in effect.

Changes in Informal Purchasing

Two important changes were made in G.S. 143-131, the informal bid statute, by the passage of Chapter 862 (HB 851). As noted above, the minimum expenditure requiring the use of the formal bid procedure has been raised to $2,000 for the purchase of apparatus, supplies, materials and equipment and to $3,500 for construction and repair contracts. The first change in G.S. 143-129 makes these sums the maximum limits for contracts under the informal procedures. The minimum expenditure requiring the informal procedure remains at $200.

Thus the new informal contracting limits are as follows:

(a) For the purchase of apparatus, supplies, etc: $200 to $2,000.
(b) For construction and repair contracts: $200 to $3,500.

Contracts involving less than $200 may be made as the purchasing officer thinks best.

Prior to the second change in G.S. 143-129, the statute read in part as follows:

> "All contracts [to which this statute applies] made by any officer, department, board or commission of any county, city, town or other political subdivision of this State, *when practical*, shall be awarded to the lowest responsible bidder after informal bids have been secured. . . ." (emphasis added)

The second change struck the words "when practical" from the statute. Whatever the statute meant before, it is clear that it now means:

(a) Informal bids (or formal bids—see below) must be secured on contracts of the size noted above, and
(b) The award must be made to the "lowest responsible bidder."

There is no authority for making the award to other than the lowest bidder without finding the lowest bidder "not responsible." Nor does it appear that such factors as quality, performance, and the time for completing the contract may be considered even though these factors are proper considerations in making the award under the formal contracting procedure. Thus there is more room to consider factors other than price under the formal bid procedure than under the informal procedure stipulated by the amended statute.

Purchasing officials should keep in mind this difference when deciding upon which procedure to use. If it is thought that quality, performance, or the time of completing the contract will be important considerations, the bids should be secured by formal advertisement rather than through informal channels. The formal procedure may be used for any size purchase or contract even though it is required only for those of a given size.

Sale of Surplus Property

City purchasing officials for some time have wanted authority to sell surplus property by sealed bids as well as at public auction. Chapter 697 (HB 781) amends G.S. 160-59 to provide that municipalities of the state may sell surplus, unused, or obsolete *personal* property by sealed bids. As in the case of sales at public auction, a notice of the sale 30 days in advance is required. In addition, the notice must state the time and place for the opening of the bids and reserve to the governing body the right to reject all bids.

Disposal of real property must, in the absence of special approval by the General Assembly, continue to be at public auction.

Gasoline Tax Refunds

North Carolina counties and municipalities will save from 25 to 30 percent on expenditures for gasoline as a result of the enactment of Chapter 1226 (HB 424). This act provides that local governments (and the State Highway Commission, also) may secure a refund of six cents per gallon on the state gasoline tax paid on gasoline purchases. The refund is available on all gasoline purchased and used after June 10, 1957.

In the past local governments have been eligible for a refund of five cents per gallon on all fuel consumed in vehicles not used on the highways (G.S. 105-446). Now the larger refund applies to all gasoline used.

In outline form, the new statute provides as follows:

(1) Counties and municipalities are eligible for the refund.
(2) The amount of the refund is six cents per gallon.
(3) The refund applies to all gasoline purchased and used after June 10, 1957.
(4) Claims for the refund must be submitted to the Commissioner of Revenue on forms prescribed by him.
(5) Claims must be filed by (a) the chairman of the board of county commissioners or other county officer designated by the board in the case of a county, or (b) by the mayor, city manager or other municipal officer designated by the governing body in the case of a municipality.
(6) Claims must be filed each year during the months of January, April, July and Oct. for fuel used during the quarter preceding the month of filing. If a claim is not presented within the month following the end of each calendar quarter, all right to the refund is lost.

Design and Inspection of Public Buildings

G.S. 133-1.1 was enacted by the 1953 General Assembly, providing that "in the interest of the public health, safety, and economy" certain state officials could require the use of registered architects and engineers in the design and inspection of public buildings. All buildings erected solely from the funds of local governments were exempted from the provisions of the act.

Chapter 994 (HB 271) has rewritten this statute so that it now applies to local governments and has made other changes as well. The section now provides as follows:

(1) Plans and specifications for public buildings must be prepared by a registered architect or engineer (or both) when the construction or repair involves the expenditure

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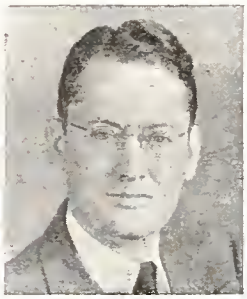
PUBLIC PERSONNEL



By

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Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Compensation

Ten per cent of the bills passed by the 1957 General Assembly concerned the compensation of state, county, or local employees. Of the 1507 bills which were ratified, 158 affected the salary or travel allowance of one or more public employees. The 158 compensation acts represented 92 per cent of the 171 compensation bills introduced. An analysis of the ratified bills reveals that eight bills affected state officers or employees, 103 were applicable to county employees or members of county boards, and 47 concerned municipal governing boards or employees.

State Employee Compensation

Chapter 8 (HB 2) concerned the subsistence allowance of members of the General Assembly. Authorized by the constitutional amendment adopted by the voters last November, Chapter 8 provides that members of the General Assembly shall be paid a subsistence allowance equal to actual expenses while in Raleigh or a maximum of $8 a day plus a travel allowance of one round trip per session for each member from home to Raleigh. Legislators directed by the legislature or a legislative committee to travel outside Raleigh were authorized to receive a travel allowance as established for other state boards and commissions.

Chapter 1 (SB 2) increased the annual salaries of the Secretary of State, State Treasurer, State Auditor, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance to $12,000 a year. The salary of the Attorney General was increased to $13,500.

Chapter 541 (SB 197) amends G.S. 138-4 as recommended by the Reorganization Commission to provide that the salaries of all state administrative officers not subject to the Personnel Act (except constitutional officers, their chief administrative assistants, and certain officers of occupational licensing boards) shall be set by the Governor subject to the approval of the Advisory Budget Commission, after considering the recommendation of the board or commission involved. This act was designed to bring some order into the salary setting procedure by substituting a single procedure for varied procedures which had developed over a period of many years.

Teacher and State Employees Pay. Most discussed of all salary acts was the bill affecting the salaries of teachers and state employees. The appropriation act, Chapter 1342 (SB 9), increased the maximum rate of pay applicable to each job classified by the State Personnel Department by three and one-third annual salary increments applicable to such position. This had the effect of increasing the pay of these state employees an average of 11 per cent.

Funds equal to 11 per cent of salaries paid instructional and research personnel employees in the institutions of higher learning were appropriated to those institutions with the provision that the distribution of such salary increase funds be left to the judgment and discretion of the respective administrative officials of each institution, subject to the approval of the Director of the Budget.

The appropriation act provided a 15 per cent pay increase to public school teachers and added a contingent 1.09 per cent to be paid at the end of each year of the ensuing biennium if revenues are sufficiently high. Revenues for each year must be sufficient to pay the total appropriation for the year, including $5 million to be paid on bond anticipation notes. If there is additional revenue, it will then be applied to payments to teachers up to a maximum of 1.09 per cent.

Subsistence Allowance. The appropriation act and Chapter 1394 (HB 211) both provided for a $40 a month subsistence allowance for each officer and member of the uniformed State Highway Patrol.

Other compensation legislation affecting state employees raised the salaries and expense allowances of superior court justices and district solicitors, and the pay of employees of the General Assembly. For the provisions of the justices and solicitors salary bills see the article entitled "Courts, Judges, and Related Officials."

County Employee Compensation

The 1957 General Assembly passed 103 county compensation acts. This total exceeded the number of acts passed by any General Assembly since 1951 when 135 county salary acts were ratified. The 1957 total was a sharp increase over the 54 county salary acts passed by the 1955 General Assembly which passed fewer salary acts than any General Assembly in the last 40 years.

The sharp increase in county salary acts seems to have been the result of two conditions. The first was the general increase in the cost of living which caused the General Assembly to grant salary increases to teachers and state employees. The second was a general awareness that the salaries paid county commissioners and members of county boards of education were inadequate.

Fifty-eight of the acts concerned the salaries or travel allowance of one or more employees or full-time officials. Thirty of these acts fixed the salary of an employee or official. Nine increased the authority of the board of county commissioners over the salaries of county employees or officials. Two set a minimum salary. Five set a maximum salary. Two provided that the county commissioners might set salaries within a minimum and maximum. Four provided that the board of county commissioners might vary salaries of certain officials within a percentage range. Five acts used two or more of the above methods, and one reduced the salaries of the full-time elected officials of a county.

More Pay for Commissioners. Only in 1951 have more salary acts been passed increasing the compensation of county commissioners. In contrast to 1955 when only 13 counties increased the compensation of county commissioners, the 1957 General Assembly increased the compensation of the chairman and/or the members of the board of county commissioners of 34 counties. Twenty-four of the acts provided that the chairman would be

paid at a higher rate than the other commissioners. Seventeen of the acts provided that board members would receive a monthly salary in the future. The new salaries ranged from $20 to $125 a month. Five acts provided for a salary of $50 a month and three for $100 a month. Two counties increased the commissioners' pay to $10 a day and five counties increased their pay to $15 a day.

Counties increasing the compensation of the chairman and/or the members of the board of commissioners included the following: Alleghany, Bertie, Buncombe, Carteret, Chatham, Clay, Cleveland, Currituck, Dare, Davie, Duplin, Edgecombe, Forsyth, Graham, Guilford, Halifax, Harnett, Haywood, Hoke, Madison, Montgomery, New Hanover, Northampton, Pasquotank, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Transylvania, Watauga, Wayne, and Wilkes.

The county salary acts included nine acts that increased the compensation of members of a county board of education and eight acts that increased the compensation of employees of the county recorder's court. The county acts either fixed or authorized the county commissioners to fix within limits the compensation of 15 clerks of court, 12 registers of deeds, and 16 sheriffs.

Local Authority Reduces Number of Local Acts. The sharp increase in the number of county compensation acts might be interpreted as a reversal of the trend of recent years to delegate salary setting authority to county commissioners. An analysis of the county salary legislation indicates that the efforts to encourage local self government by delegating salary setting authority to county commissioners has reduced materially the number of county salary acts.

For example, there were only 10 local county compensation acts from the 28 counties where the county commissioners may now set the salaries of elective and appointive officials. All 10 acts pertained to the salaries of county commissioners, boards of education and recorder's court officials. The 12 counties where the commissioners may set the number and compensation of all appointive employees had only 12 salary acts. Eight of these acts concerned the compensation of elected full-time officials. Together these 40 counties were responsible for only 22 of the 103 county salary acts or an average of .55 acts per county.

Eighty-one county compensation acts affected employees of one of 45 of the remaining 60 counties. Thirty-one acts concerned the compensation of county commissioners, boards of education, and court officials. The other 50 acts affected county elective and appointive officials in the counties where the county commissioners have less authority over the number and compensation of county employees. These 60 counties had an average of 1.35 salary acts per county. These percentages would indicate that the growing trend within the General Assembly of delegating greater authority to the board of county commissioners reduced the number of county salary bills introduced this year by at least one-fourth.

Local Authority Increased. Prior to the 1957 General Assembly, 28 boards of county commissioners had authority to set the salaries of both elective and appointive officials and employees; and the boards of county commissioners of 12 other counties had the authority to set the salaries of all appointive officials and employees.

As a result of the 1957 legislation, 33 boards of county commissioners have the authority to set the salaries of elective and appointive officials and employees, and the boards of county commissioners of 11 other counties have the authority to set the salaries of all appointive officials and employees. The number of counties in the latter group was reduced from 12 to 11 as the county commissioners of Hoke County were given salary setting authority for elected officials. Commissioners in Hoke had set the salaries of appointive officials since 1953. Other counties in which the board of county commissioners were given authority over both elected and appointive officials by the 1957 General Assembly were Bertie, Bladen, Columbus, and Hertford.

Election Officials Pay. Chapter 182 (SB 11) will be of interest to election officials as it increased the compensation of registrars and members of county boards of election from $10 to $15 a day and of judges of elections from $7 to $10 a day.

Compensation of Municipal Officials

Forty-seven acts ratified by the 1957 General Assembly contained provisions affecting the compensation of municipal officials. Forty-two of these acts increased the compensation of the mayor and/or city council of a city or town. Thirty-three of the acts concerned pay exclusively; nine included provisions making other charter changes. Four of the remaining bills increased the salaries of municipal court officials. Only two municipal compensation bills did not pass the General Assembly, and the provisions of both were enacted in other bills during the session.

More Pay for Mayors and Councilmen. The number of acts increasing the salaries of mayors and/or city councils was a new high for the state. This increase appears to be a continuation of a trend noted in the 1955 article on "Public Personnel." It is the result of a widely scattered concern for the lowly paid governing officials of cities and towns.

Service on a municipal governing body (or board of county commissioners or board of education) has long been recognized as primarily a labor of love. Population growth has multiplied the policy decisions which a council is required to make. It has accordingly increased the number of nights, mornings, and afternoons which must be devoted to the city's business either in formal session, in listening to concerned citizens on the street corner, or in interpreting municipal policies to interested friends and neighbors.

For many an alderman, what started as the exercise of a civic responsibility has become an expensive avocation. The higher compensation voted by the 1957 General Assembly for mayors and councilmen and for county commissioners appears to be more than a recognition of the higher cost of living. Rather, it appears to be a growing conviction that if honest, conscientious, and diligent governing bodies are to be retained, the counties and municipalities must compensate their governing boards in part for the expenses involved in accepting positions of civic responsibility.

The 1957 salary acts at least doubled the municipal compensation of most mayors and councilmen affected. Several of the acts amended charter provisions which had been unchanged for 40 or 50 years. For at least one small town, the 1957 act provided compensation for the aldermen for the first time. New salaries of part-time mayors ranged from $3,600 in Charlotte to $120 a year in Vass. The salaries of 10 mayors were increased to at least $1,200 a year. The new salaries of eight mayors were set within the range of $450 to $600 a year.

New salaries of councilmen ranged from $1,200 a year in Charlotte and

Salisbury to $50 a year in Coats. The average councilman's salary provided by the 1957 acts for cities above 5,000 was $583 a year. Salaries of councilmen in six towns under 5,000 were set at $300 a year and in 12 towns at either $10 per meeting or $10 per month.

Residence of Police Officers

Four local acts provided that police officers need not be qualified voters of the employing municipality. These acts, Chapters 161, 649, 1096, and 1211 (HB 152, HB 872, SB 483, SB 530), are applicable to the towns of Burnsville, Bakersville, Weldon, and the city of Statesville respectively.

These acts raise again two questions: (1) can non-residents be appointed as municipal policemen, and (2) if the answer is no, can the General Assembly exempt police officers from this residence requirement? The opinions of the Attorney General have frequently answered both questions with a resounding "No!"

The reasons the Attorney General has given for answering the first question in the negative are as follows: Policemen are public officers. The North Carolina Constitution requires that public officers be qualified electors in the political subdivision which they serve. To be a qualified elector of a municipality, a policeman must be a resident. Hence the conclusion, non-residents may not be municipal policemen.

Concerning the second question, as the requirement that municipal policemen must be municipal residents is established by provisions of the North Carolina Constitution, those provisions can only be changed by formal constitutional amendment adopted by a vote of the people. It is therefore a constitutional problem for which acts of the General Assembly offer no solution.

Until the state constitution is amended, more and more cities will adopt administrative procedures to circumvent the practical problem which these provisions create. When resident police applicants are not available in the future, more police departments will hire North Carolinians living outside their municipalities as police trainees or cadets for 30 days and require them to move within the city limits upon entering on duty. Thirty days later after they have completed a training course and established their residence, the trainees may take their oath of office as policemen and assume their regular duties.

Civil Service

The General Assembly ratified five acts pertaining to state and local merit or civil service systems. One act which had been recommended by the Reorganization Commission concerned the Merit System Council; one established a civil service commission for the rural police in Gaston County; one repealed the Cumberland County Civil Service Commission subject to a referendum; one rewrote the New Bern Civil Service Commission act; and one increased the salary of the secretary of the High Point Civil Service Commission.

Chapter 1004 (HB 903) changed the membership of the Merit System Council by requiring at least one member of the Merit System Council to have had experience in county government and by requiring that two members of the Merit System Council shall also serve as members of the State Personnel Council. A second provision of the act repealed the authority of the merit system supervisor to prepare job descriptions and specifications for state merit system employees. A third provision empowered city councils and boards of county commissioners having rules governing annual leave, sick leave, hours of employment and holidays for other city or county employees to modify the rules and regulations of the Merit System Council pertaining to such matters to conform to the rules applicable to other local employees.

Chapter 1004 also amended G.S. 153-9 to provide that the rules of the North Carolina Agricultural Extension Service governing leave and hours of employment may be modified by a board of county commissioners having such rules governing other county employees.

Chapter 16 (SB 35) established the Gaston County Civil Service Board to be appointed by the resident judge of superior court for three-year overlapping terms. The board is empowered to appoint a chief of rural police and to test, appoint, and discharge the members of the rural police force. The board is to adopt rules for the operation of the rural police department, and officers and employees of the department may be summarily dismissed if they engage in any political activity.

Chapter 1281 (HB 1266) rewrote the New Bern city charter to delete the provision which designated the chief of police as one of the members of the three-member civil service board.

Workmen's Compensation

Chapter 95 (HB 128) amended the definition of "employee" and "employer" to bring deputy sheriffs in Ashe County under the Workmen's Compensation Act. Deputy sheriffs in 14 counties are still exempt from this act.

One bill which would have clarified the coverage of the Workmen's Compensation Act failed to pass. HB 949 would have made it clear that all county and municipal officers and employees are covered by workmen's compensation, except those elected by the people. The present law provides that officers appointed by local governing bodies for fixed terms and "who act in purely administrative capacities" are not covered, but there is considerable doubt as to just which officers fit into this category.

Retirement and Social Security

Of the 36 acts relating to retirement and social security ratified by the General Assembly, 14 affected state officers or state retirement systems, 12 were applicable to counties, and 10 affected municipal employees.

State Retirement and Pension Acts

Attorney General. Chapter 2 (SB 3) amends the judicial retirement act to permit the Attorney General (and justices and judges) to retire on two-thirds of annual salary if he (1) has served 24 years as a justice, judge of superior court or Attorney General, (2) has served 12 consecutive years on the supreme court, (3) is 65 and has served 15 years on the supreme court, (4) is 65 and has served 15 years on the superior court, (5) is 65 and has served 15 years on the supreme court and superior court combined, or (6) is 65 and has served 15 years as Attorney General.

Judicial Officials. Two acts made it easier for some judicial officials to qualify for disability benefits. Chapter 336 (SB 246) makes disability retirement payments of two-thirds of annual salary available to justices of the supreme court who are totally and permanently disabled and who have served eight years on the supreme court or on the supreme court and superior court combined. Chapter 1141 (HB 712) makes disability retirement payments of two-thirds of annual salary available to justices of the supreme court and judges of superior court who have served eight years as

superior court judge and district solicitor.

Teachers and State Employees. When the Teachers' and State Employees' Retirement System was established in 1941, only persons employed as of July 1, 1941, were eligible for credit for prior service. A number of teachers and state employees with long years of service were not employed as of that date and were accordingly declared ineligible for credit for prior service. To reduce the inequity resulting from the use of a single date to determine prior credit, disabled classroom teachers without adequate means of support who were 65 years of age and who had 20 years of service were given pensions beginning in 1943. Since 1943 this provision (G.S. 135-14) has been amended to waive the need requirement for teachers 70 years of age in 1955 if they had 25 years of service, to extend the provision to all teachers, and to provide a minimum pension of $50 a month.

The 1957 General Assembly ratified four acts pertaining to G.S. 135-14. Chapter 1408 (HB 812) and Chapter 852 (HB 559) amended this section but Chapter 1412 (HB 933) effective July 1, 1957, rewrote the entire section.

Chapter 1412 amended the section to (1) provide that state employees with 20 years of service as well as teachers were eligible for pension payments, (2) delete the provision requiring a determination of need, (3) lower the age requirement to 65, (4) increase the pension to $60 a month, (5) restrict the payments to residents of North Carolina, and (6) make payments contingent upon the former teacher or state employee not being eligible for OASI benefits as a result of the coordination of the Teachers' and State Employees' Retirement System with Social Security.

Chapter 1431 (HB 1292) created G.S. 135-14.1 which authorizes a retirement benefit (equal to the minimum paid under G.S. 135-14) to superintendents and assistant superintendents 65 years of age who have had 20 years of service and five years of membership credit even though they were not state employees when the Teachers' and State Employees' Retirement System was established.

Chapter 855 (HB 646) amended both the Teachers' and State Employees' Retirement Act and the Local Governmental Employees' Retirement Act to permit members of each system to select a retirement option after age 65 and prior to retirement. The option would become applicable when the member retired or died.

Local Employees. Members of the Local Governmental Employees' Retirement System have coveted for many years the 30-year retirement provision and the 20-year vesting provision of the Teachers' and State Employees' Retirement Act. Chapter 954 (HB 645) makes retirement easier for local governmental employees by adding both provisions to the local governmental employees retirement act.

Chapter 846 (HB 234) eased the restriction on the investment of the funds of the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, and the Law Enforcement Officers' Benefit and Retirement Fund to permit investment in the obligations of certain U. S. and North Carolina corporations.

Pension is Tax Exempt. Two acts exempt certain retirement allowances from state and local taxes and garnishment. Chapter 839 (HB 103) exempts retirement allowances paid by the Law Enforcement Officers' Benefit and Retirement Fund from garnishment and from state and local taxes. Prior to the passage of this act, the retirement allowances received from the law enforcement officers' fund were the only allowances paid by a statewide public retirement fund which were subject to state taxes and garnishment.

Chapter 1224 (HB 397) amended G.S. 105-141 (2) to exempt income received from pension systems in other states by teachers and state employees of other states residing in North Carolina from North Carolina state income taxes if the state paying the pension grants a similar exemption to retired members of the Teachers' and State Employees' Retirement System or levies no individual income tax.

Firemen's Pension Fund. On the day of adjournment the 1957 General Assembly ratified a bill establishing a new statewide pension system for firemen. The new fund is a pension system rather than a retirement system in the usual sense of the word as no attempt was made to make the fund actuarially sound and the system will be financed in the main by a tax or assessment on the premiums paid on fire and lightning policies in the state.

Chapter 1420 (HB 1112) established the North Carolina Firemen's Pension Fund. The fund is to be administered by a five-member board of trustees consisting of the Governor (or a person designated by him), the Insurance Commissioner, the secretary of the N. C. Firemen's Association and two members elected by the Firemen's Association. The board is directed to appoint a secretary at an annual salary not to exceed $8,000.

All firemen employed by the state or political subdivisions thereof are eligible for membership (1) if they belong to a fire department which operates fire equipment valued at $5,000 or more and which is recognized by the Southeastern Underwriters Association as not less than a class "8" or rural class "A" department, and (2) if the department drills not less than four hours monthly and eligible firemen drill 36 hours each calendar year. The number of volunteer firemen eligible in a department is limited to 25 volunteers per department plus one for each 100 persons served by the department.

Members of the fund who have served 30 years as firemen may become eligible for a pension of $36 a month at age 55 or as much as $50 a month if they wait until 60 or after to retire. Pension payments will not begin until January 1, 1959, but firemen who retire prior to that date may receive a pension commencing as of that date if they have contributed to the fund for not less than 12 consecutive months. No fireman who has retired prior to August 15, 1957, shall be eligible for a pension. No person shall be eligible for a pension until his official duties as a fireman have terminated.

Firemen now eligible for membership have until August 15, 1959, to apply for membership. All persons who subsequently become firemen have 12 months in which to apply. Firemen not now eligible but who become eligible within five years may become members and receive full credit for all service if they contribute $5 for each month since the effective date of the act.

The act states that the pension will be financed by a one per cent tax or assessment on the premiums received from property located in areas where fire protection is available. All fire insurance companies except Farmers Mutual Fire Associations must pay the tax. Each fireman must pay $5 a month to the fund to be a member. When funds become insufficient to pay

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Public Schools

By JOSEPH P. HENNESSEE, *Assistant Director of the Institute of Government*

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

North Carolina's public school laws, revised in 1955 along the lines laid down by the Commission on the Revision of the Public School Laws created by the 1953 General Assembly, and further changed in 1956 to reflect the thinking of the Pearsall Committee, have come in for further revision this year. These changes, which (like the changes in 1956) are largely substantive, reflect the thinking and recommendations of the State Board of Education after two years' operation under the 1955 revision, which was largely a matter of recodification rather than of substantive change.

Major changes in existing provisions of the school law this year dealt with enlarging city administrative school units, school curricula, special school tax elections, acquisition of sites, trade school licensing, powers and duties of boards of education, and school bus routing. New provisions deal with the insurance of school buildings and equipment, protection of buildings, pupils, and employees from the hazards of fire, a voluntary payroll deduction plan for the purchase of United States savings bonds by school employees, and a training program for mentally retarded children. These changes and additions are discussed separately below. In addition, since proposals that are rejected one session may be enacted in a subsequent session, some consideration is given to major proposals which failed to be enacted into law. These include proposals to (1) elect county boards of education, (2) permit county and city boards of education to operate schools on 4-quarter basis, and (3) furnish free school bus transportation within city administrative units.

Enlarging City Administrative School Units

Prior to 1955 the law provided that petitions for an election to enlarge a city administrative unit were subject to the approval and endorsement of both county and city administrative

boards of education affected. This provision was carried forward into the 1955 revision, with the addition of a proviso that when the petition is endorsed by the city board of education and signed by a majority of the voters in the affected area the election must be called. This was the law in the fall of 1955 when the Durham city board of education received a petition requesting that an election be called to ascertain the will of the voters in the area designated by the petition (the Lakewood-Rockwood section of the Durham County Hope Valley School District) regarding the enlargement of the Durham city administrative unit. After due consideration the city board of education gave its endorsement to the petition. The petition, thus endorsed, was presented to the county board of education, which after due consideration refused to approve and endorse it. The Durham County board of commissioners received the petition in October, and after due consideration passed a resolution calling for a special election (as requested in the petition) to be held on May 29, 1956, in the affected area. In an action begun in the Durham County superior court by A. C. Jordan, for and on behalf of himself and other residents and taxpayers of the Hope Valley School District, an order enjoining the holding of the election was issued. Upon appeal to the State Supreme Court, this was held to be in error, the restraining order was dissolved, and the action was dismissed.

In a dissenting opinion, Mr. Justice Rodman stated that the amputation of the Lakewood-Rockwood area from the county unit and skin grafting the area to the city administrative unit would create problems for the body from which the limb was to be severed. But, stated Mr. Justice Rodman, if the decision upholding the proviso in question, carries hazards for our school system, and particularly the rural school, it is in the province of the General Assembly to correct the situation. Evidence that the proviso did, in fact, carry hazards for our school system, in that it permitted the dismemberment of a county administrative school unit without its consent, even in the face of its expressed objection, is contained in Chapter 1100 (SB 88), which expressly repeals the proviso. Thus once again, the law requires that petitions for an election to enlarge a city administrative school unit must have the approval of both the county and city boards of education before the election may be called.

Curriculum

Three additional courses are required to be offered in the public schools beginning with the 1957-58 school term, and a fourth course may be offered. Chapter 1101 (SB 90) requires that county and city boards of education provide for efficient teaching of courses in state and federal government. Chapter 845 (HB 233) adds "fire prevention" to the list of required subjects to be taught. Chapter 682 (HB 33) adds an additional $1 to the annual registration fee for motor vehicles to provide funds for financing a program of driver training and safety education in the public high schools. Standards for such a course are to be established by the State Department of Public Instruction, and funds derived from the additional registration fee are to be allocated to the various administrative school units by the State Board of Education in proportion to each unit's current annual enrollment of eligible pupils, irrespective of whether or not driver training and safety education is being offered in such schools. Funds allocated for driver training and safety education must be used for that purpose only, and are cumulative. That is to say, they are to be paid over to the unit, and may be held until such time as the administrative unit es-

tablishes a program of driver training and safety education.

School Unit Tax Elections

Chapter 1066 (HB 996) authorizes the holding of a county-wide supplemental tax election prior to the consolidation of all city administrative units within a county with the county administrative unit, where all such boards of education have petitioned the county board of education for consolidation. If the county-wide election fails to carry, the petition for consolidation may be withdrawn, and any existing supplemental tax in the city administrative units will remain in force. If the county-wide supplement carries, this tax may not be levied within the county until the consolidation of the city administrative units with the county administrative unit is completed.

Chapter 1271 (HB 1217) makes several changes in the law relating to special school tax elections. One significant change provides for elections to enlarge existing city administrative units rather than for elections to levy a special tax of the same rate as that levied in the city administrative unit. Other changes (1) limit the prohibition against holding a new election within six months to elections for the same purpose and exclude any election held in a larger or smaller area than the one in which the previous election was held; (2) permit the use of a "legally sufficient" description of an area in the election petition instead of requiring that the area be described by metes and bounds; (3) specify that enlargement of a city administrative unit is to become effective on the July 1 following a favorable vote thereon, with the same tax rate to apply to the entire unit from that date; (4) provide that election notices must be published at least once a week for three weeks; and (5) require that county and city boards of education agree to the disposition of school property located within an area sought to be added to a city administrative unit before any election to enlarge the unit may be called.

Acquisition of School Sites

Prior to the 1955 school law revision, county and city boards of education were permitted to acquire up to a maximum of 30 acres for any one school site through condemnation. This applied to additions to existing school sites as well as to new school sites. Under the law as revised in 1955, the authority to acquire up to 30 acres was retained as to new school sites, but additions to existing school sites were limited to a total of 20 acres. The result of this limitation was to freeze the size of existing school sites and to require the acquisition of new sites and the construction of new schools rather than expansion of existing facilities. Chapter 683 (HB 316) amends these provisions so as to again permit the acquisition of 30 acres for enlargement of or addition to existing school sites. In addition, administrative units within a county having a population of 150,000 or more are permitted to acquire up to 40 acres. Detailed condemnation procedures have been deleted from the law and the condemnation procedures contained in Article 2 of G.S. Chapter 40 made applicable.

Board of Education Powers

Under provisions of the old law, boards of education were permitted, but were not required, to make rules and regulations for conducting extra-curricular activities in the schools and for the use of school buildings for community and other non-school purposes. Under provisions of Chapters 262 and 684 (HB 366 and HB 506) it is now mandatory that boards of education make necessary rules for conducting extra-curriular activities and promulgate rules for the use of school buildings for other than school purposes.

School Finance Study Commission

Public school financing will be the subject of intensive study during the next two years by a commission to be appointed by the Governor. Authorized by Resolution 45 (HR 1273), the commission is to be composed of nine members, three of whom must have legislative experience, three experience in the public schools, and three with local governing bodies or business finance experience. The commission is authorized to make a study of all problems of public school financing, and doubtless will appraise the future role of the state and local units in support of the public schools. The commission is required to finish its work by November 15, 1958, and to make a report of its findings and recommendations to the Governor, the General Assembly, and to the people.

Trade School Licensing

During the 1955 session of the General Assembly the law as to the licensing of commercial and trade schools was strengthened. Chapter 1000 (HB 597) extends the control of the state over these and allied schools by expanding the 1955 provisions so as to require a license from the State Board of Education before business, trade, or correspondence schools (as well as commercial colleges and business schools) may be operated in this state. This act authorizes the State Board of Education to adopt regulations to insure a satisfactory program of instruction and to require that such schools meet the Board's standards and regulations as to professional, financial and moral qualifications as a condition to issuance of a license. In addition, the State Board is authorized to require solicitors for such schools to file such instructional materials as will enable the Board to evaluate the school's instructional program and sales methods as a prerequisite to the issuance of a solicitor's license.

The license fee for the operation of such schools in North Carolina has been increased from $10-$25 to $25-$50 and the fee for solicitors has been increased from $2 to $5. Out-of-state correspondence schools are required to post a bond as a condition to the licensing of solicitors in the state. A penal provision has been added that provides for imprisonment for up to 30 days for operating a school without a license or for soliciting without the requisite bond. An unusual provision makes any contracts, notes, or other evidence of indebtedness between students and unlicensed schools or solicitors, void. In cases where a licensed school fails to comply with a contract made with a student, or his parent or guardian, the state, on relation of the student, parent, or guardian, is authorized to begin an action against the school and its sureties on its license bond.

School Busses

The public school law as it existed prior to and following the 1955 revision recognized the existence of activity school busses but made no provision for their ownership by school districts or administrative school units. As a result there was considerable confusion as to the legal status of such busses, and as to the liability, if any, of school units for damages arising out of their operation. Further confusion centered around whether or not they were school busses, within the contemplation of the general school law, and therefore subject to the 35 miles per hour speed limit, and driver license requirements as school busses. Confronted with these questions the

General Assembly acted to clarify the general status of such busses. Chapter 685 (HB 594) authorizes county and city boards of education to take title to activity school busses and extends the provisions as to liability insurance and waiver of tort immunity, originally applicable only to regular school busses, to them. Chapter 139 (HB 96) permits activity school busses that are painted a different color than regular school busses to travel at a maximum speed of 45 miles per hour; regular school busses being used for activity purposes will continue to be governed by the 35 mile per hour speed limit. Chapter 595 (HB 512) will permit any person who holds either a school bus driver's certificate or a chauffeur's license to operate a school activity bus.

Chapter 1375 (SB 348) prohibits the discontinuance of school bus transportation within an area solely because the area was taken into the corporate limits of a municipality after February 6, 1957. Chapter 1103 (SB 281) clarifies the provisions of the law relating to the use of school busses for extra-curricular purposes by specifying that boards of education may permit their use for transportation of pupils and teachers to health clinics, to concerts by the North Carolina Symphony Orchestra, and in evacuations ordered jointly by state and county or city civil defense directors, as well as for necessary field trips and from agricultural, home economics, and other vocational demonstrations. In addition, this act permits a maximum round trip of 50 miles (was 25 miles) for extra-curricular use.

Insuring School Buildings

Chapter 1040 (SB 232) requires that the board of education of every administrative school unit insure and keep insured each of its buildings (together with the contents and equipment of the building) against fire, lightning, and other perils embraced in extended coverage. Buildings are required to be insured for at least 75 per cent of their current insurable value, and local tax levying authorities are required to appropriate funds necessary to pay for such insurance. Wilful failure to comply with the requirement is made a misdemeanor punishable by a maximum of $50 fine or 30 days' imprisonment, and each 24 hours without insurance is made a separate offense. In order to give boards of education and tax levying authorities time to comply with the provisions of the act, it is not made effective until January 1, 1958.

Fire Prevention

Seeking to prevent a recurrence of a tragedy such as the recent Surry County school fire, the General Assembly enacted a series of three measures.

The first of these, Chapter 843 (HB 231), requires that each school principal hold a fire drill within a week of school opening and at least monthly thereafter, under rules and regulations to be prescribed by the Insurance Commissioner, State Superintendent of Public Instruction, and State Board of Education. In addition, the principal is required to make a minimum of two inspections per month of the school premises under his control for fire hazards and to make a written report on drills and inspections to the appropriate local board of education. Failure of the principal to comply with the requirements of the act is made malfeasance in office rather than a misdemeanor, subject to a $500 fine.

Chapter 844 (HB 232) sets forth detailed provisions for the reduction of fire hazards and the protection of life and property in the public schools. Major provisions require that (1) corridors and stairways used as exits be kept clear for orderly exit; (2) electrical wiring be installed or altered only by a qualified electrician; (3) wiring be kept in manner prescribed by National Electrical Code and inspected monthly; (4) combustible material be stored in safe manner, with supplies likely to cause spontaneous combustion stored in a well ventilated place; (5) the electrical inspector or county fire marshal make monthly inspections and make written reports to the principal on conditions in the schools, and (6) superintendents see that defects are corrected. Wilful failure to perform the duties required by this act is made a misdemeanor punishable by a fine of up to $500.

The third act of this series, Chapter 845 (HB 233), requires (1) the Commissioner of Insurance, the State Superintendent of Public Instruction, and the State Board of Education to provide an instructional pamphlet for conducting fire drills and to provide for teaching fire prevention in colleges and schools, with a text book for such courses, and (2) principals to conduct monthly fire drills under regulations of the Insurance Commissioner, State Superintendent, and State Board of Education.

School Employee Bond Purchase Plan

A new provision of the law, contained in Chapter 751 (HB 173) permits the State Board of Education to authorize county and city boards of education to establish and administer, within their respective administrative units, a voluntary payroll deduction for the purchase of U. S. Savings Bonds by school employees. Under such plan employees could enter into a written agreement with the board of education authorizing the board to deduct a designated sum monthly to be invested in the bonds. Until such time as enough has been deducted to purchase a bond, funds deducted are required to be held in a depository authorized by the U. S. Treasury Department. The purchase agreement may be cancelled by the employee or by the board of education, and upon cancellation or termination, funds held for employees must be returned.

Training Retarded Children

For many years mentally retarded children have been the forgotten children in the North Carolina public school system. Chapter 1369 (SB 151) recognizes the problem which these children present and charts a new course in North Carolina public school education by providing a training program for mentally retarded children. Eligibility for attending this training program is to be determined under rules to be formulated by the State Superintendent of Public Instruction, on the basis of psychological, sociological, and medical evaluations and other related factors (residence within an administrative unit may not be a factor in determining whether or not a child may attend a training center). Training centers for these children may be set up by county and city administrative units or jointly by adjacent administrative units. Financing of such programs is provided by a state appropriation and by authority given to local authorities to levy a tax for this purpose. State funds are to be allocated uniformly on a per capita basis, not to exceed $300 per year for each eligible child enrolled in the program.

Miscellaneous

Chapter 600 (HB 829) limits the authority of a school attendance officer to reporting rather than prosofficer to reporting, rather than prosecuting for, violation of school attendance laws. He is still permitted to swear to necessary criminal warrants. Chapter 541 (SB 197) authorizes the Governor, with the approval of the Advisory Burget Commission, to

fix the annual salary of the Controller of the State Department of Public Instruction. Chapter 545 (SB 280) deletes the requirement that the bond of the treasurer of school funds be in an amount not less than one-half of the total amount of money received by his office during the preceding year. Chapter 1220 (HB 325) provides that the estimated cost of school sites together with other facilities and buildings is to be included in the Capital Outlay Fund; no contract for the purchase of any school site may be made, nor funds expended therefor, without the approval of the county commissioners.

Bills That Failed

School Bus Routes

SB 163 and HB 415 (identical bills) would have required that school busses be routed so as to pass within one-half mile of the residence of each pupil who lives one and a half miles or more from the school to which he is assigned. Under the present law, busses are required to be routed so as to pass within one mile of the residence of each pupil living more than one and a half miles from the school to which he assigned.

Four-Quarter School Term

Burgeoning school enrollments, creating ever-increasing demands for additional school rooms and buildings, pose a serious problem of financing and planning. Critics of the present school system call the usual 9-months' school term wasteful, in that existing school facilities lie empty and unused for three months out of every year. They point out that utilization of existing facilities throughout the calendar year would increase the pupil capacity of existing school facilities by one-third without the cost of an extra dime for capital outlay, and would at the same time provide additional income for public school teachers by providing an extra three months' employment each year. Proponents of the present 9-months' school term point out that the present school term is so integrated with the summer vacation plans of most families that parents would never consent to a system in which their children would be required to attend school during the summer months, and that no plan has been devised to decide which pupils should be required to attend school during the summer vacation period. In addition, they point out that the employment of teachers for a 12-months school year would make it impossible for them to deepen their well-springs of knowledge or improve their teacher's certificate through summer school attendance.

HB 350 would have defined a year of school work as three successive quarters totalling 180 days, the same as the present school term, and sought to authorize county and city boards of education, with the approval of the local tax levying authorities, to operate the public schools for four quarters each calendar year, to equalize the number of pupils attending school in each quarter so as to utilize school facilities to the maximum extent, and to contract with teachers and other school personnel for a 12-month term on the same monthly rate of compensation as for a 9-month term. Although this plan was permissive only, it was rejected by an unfavorable report by the House Education Committee. SR 158 and HR 381 (identical resolutions) which would have authorized the appointment of a commission to study the feasibility of extending the present 9-month term, were never reported from committee.

Boards of Education Election

Popular election of county boards of education, the subject of agitation during past sessions of the General Assembly, came up again. HB 699 would have provided for the nomination and election of county boards of education by the voters rather than by the General Assembly, as now provided by law. It was reported unfavorably. Local bills to require the election of county boards of education in particular counties likewise failed to pass.

Public Personnel

(Continued from page 39)

all pension benefits all benefits will be reduced for such time as the deficiency exists.

Monthly contributions received from firemen may be refunded (1) to firemen who are 60 and not eligible for a pension, (2) to survivors of deceased firemen, (3) if a retired fireman dies before receiving an amount equal to his contribution, and (4) when a member withdraws from the fund.

Chapter 1420 directed the fire insurance companies paying the tax to increase their fire insurance premiums one per cent to cover the cost of the Firemen's Pension Fund tax.

County Pension and Retirement Acts

Nine of the county acts pertained to local peace officers' pension funds. Counties establishing such funds for the first time were Brunswick, Columbus, and Johnston.

Two acts authorized county commissioners to pay retroactive social security payments or tax for law enforcement officers. Chapter 408 (HB 255) authorized Rowan County to pay officers' contributions for a six-January 1, 1956. Chapter 1362 (HB 1363) authorized Cabarrus County to pay officers' contributions for a 6-month period.

Chapter 827 (HB 832) rewrote the Union County retirement act.

Municipal Pension and Retirement Acts

Concord [Chapter 300 (HB 265)] and Raleigh [Chapter 4 (HB 7)] secured legislative authority to pay officers' retroactive contributions to social security. Concord's authority was for a six-month period, and Raleigh's authority was to make payments back to January 1, 1956.

Four cities amended their firemen's pension funds. Chapter 102 (SB 71) established a supplementary pension fund for Albemarle firemen. Chapter 111 (HB 107) amended the Gastonia firemen's supplementary pension fund to substitute a maximum pension of 14 per cent of the average monthly salary for the last 12 months of service for a maximum of 14 per cent of the salary at time of retirement. Chapter 877 (HB 1046) rewrote the High Point firemen's pension fund provisions.

Miscellaneous Personnel Acts

As recommended by the Reorganization Commission, Chapter 1349 (SB 406) clarified the State Personnel Act by providing that the state personnel director and the state personnel council shall classify and set salary ranges for all employees subject to the personnel act. Chapter 1349 repealed the authority of the state personnel director and the state personnel council to determine the number of allowable positions and employees in each agency. Under the executive budget act, the director of the budget has these powers.

Although several local bills restricting the political activity of local employees were enacted by the General Assembly, the restrictions on political activity recommended by the Highway Study Commission and originally appearing in SB 28, and SB 113 which would have restricted the political activity of all state employees, both died quietly in the Senate.

Higher Education

By JOSEPH P. HENNESSEE, *Assistant Director of the Institute of Government*

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Historically the major developments in the creation of a unified system of state-supported institutions of higher learning have been the creation of the Consolidated University in 1931 and of the State Board of Higher Education in 1955. A third major development in the creation of a unified system of state-supported institutions of higher learning was the passage of an act by the 1957 General Assembly to provide for a plan of organization and operation for a statewide system of community colleges.

Other significant legislation in the field of higher education strengthens the law of escheats, creates a college revolving fund for the construction of self-liquidating projects at state-owned colleges, authorizes boards of trustees of the University and other state-owned colleges to issue revenue bonds to finance student housing, provides a unified plan of organization and operation of state-owned teacher colleges, and establishes a revolving fund for teacher loan-scholarships.

The University of North Carolina

The General Statutes provide that there shall be 100 trustees of the University, at least ten of whom shall be women, who shall be elected by the General Assembly by joint ballot of both houses. Dissatisfaction with this method of election of University trustees was evidenced in the debates on a proposal to require that each county in the state be represented on the board of trustees. Although this proposal did not pass, questions raised in the debates resulted in the passage of Resolution 43 (SR 526) creating a 5-member commission, to be appointed by the Governor, to re-examine the manner in which the trustees are selected and make a report to the 1959 session of the General Assembly.

An increasingly important source of revenue for the University is the proceeds from escheats of both real and personal property. At feudal law, escheat was the right of the feudal lord of a fee to reenter upon the land whenever the blood line of the tenant became extinct. In American law, escheat means a reversion of property to the state in the absence of any individual competent to inherit, and it applies to personal property as well as to land. In this state the right of succession by escheat to all property (both real and personal), where there are no heirs to inherit under the statutes of descent and distribution, is conferred upon the University by the State Constitution. The manner in which the property escheats to the University is controlled by statute, and these statutes were the subject of considerable change by the 1957 General Assembly.

G.S. 116-21 provided that where land situated in this state is claimed by the University by right of escheat, all that was necessary to make out a prima facie case was to prove that the land had originally been granted by the state, that the grantee or subsequent owner had died without having disposed of it by will, and that for fifty years subsequent to his death no person had appeared to claim it as devisee, grantee, or heir. G.S. 116-22 provided that funds in the hands of decedent's personel representative which have remained unclaimed for five years must be paid to the University. Chapter 1105 (SB 354) repealed these sections and substituted in their place provisions to specify that when an owner dies without having disposed of all of his real or personal property by will, and without leaving any survivors entitled to inherit the property, it escheats to the University, and to require that the administrator of an estate (including the administrator of the estate of a missing person) must pay over to the University as escheats, any unclaimed money or other personal property upon the final settlement of the estate. Chapter 1049 (SB 355) changes the law to provide that all personalty, except as otherwise provided for, which is unclaimed for three years (formerly five years) is to be paid or delivered to the University. Chapter 1050 (SB 356) expands the definition of "unclaimed funds," found in the section on unclaimed funds held or owing by life insurance companies, to include monies payable under annuity contracts and all dividends payable to holders of policies. Chapter 1051 (SB 357) provides that all salaries and wages due any person from a firm within North Carolina employing 25 or more persons, unclaimed at the end of two years from the end of the calendar year in which they became due, are to be paid to the University. The original provision applied only to construction firms in North Carolina, with no minimum number of employees.

Teacher Colleges

In the past each of North Carolina's teacher colleges has been an independent entity, set up and administered under its own statutory authority, without reference to any other such institution, and with little if any uniformity of statutory provisions. Upon the recommendation of the State Board of Higher Education, a uniform plan of organization has now been provided, and all state-owned teacher colleges except for the Indian Normal School have been brought under the supervision of the State Board of Higher Education. This has been accomplished under Chapter 1142 (HB 908), which repeals Art. 2 (Western Carolina College), Art. 3 (East Carolina College), Art. 4 (Appalachian State Teachers College), Art. 5 (Pembroke State College), Art. 6 (Vocational and Normal School for Indians), Art. 7 (A. & T. College), Art. 8 (North Carolina College), and Art. 9 (Negro State Teachers Colleges) of G.S. Chapter 116, and substitutes a new Article 2 spelling out the primary purposes of each college and providing a uniform plan of operation and government. Under this plan each college is to have a 12-member board of trustees, appointed for staggered 8-year terms by the Governor, subject to confirmation by the General Assembly in joint session, with members subject to removal by the Governor and the Council of State for cause.

College Revolving Fund

Chapter 1252 (HB 1081) establishes a revolving fund for the construction, renovation, and equipping of college dormitories and other self-liquidating facilities at state-owned institutions. The fund is to consist of sums appropriated to it by the General Assembly and monies received from other

sources, including repayment of principal and interest on loans. Loans from this fund are to be made to state-owned institutions of higher learning by the Advisory Budget Commission, in accordance with priorities determined by the State Board of Higher Education, but no loans may be made for any project not previously approved by the General Assembly. Loans are to be repaid from rents and charges in connection with the facilities constructed, and to this end the borrowing institution and the Advisory Budget Commission are required to fix rents and charges so as to insure proper maintenance of the building and repayment of the loan.

Student Housing Revenue Bonds

A General Assembly hard pressed for enough dollars to provide for the building needs of state-owned institutions and departments turned to a revenue bond plan for financing the construction of dormitories on state-owned college campuses. Chapter 1131 (HB 1330) authorizes the boards of trustees of the University of North Carolina, Agricultural and Technical College of North Carolina, Appalachian State Teachers College, East Carolina College, Elizabeth City State Teachers College, Fayetteville State Teachers College, North Carolina College at Durham, Pembroke State College, Western Carolina College, and Winston-Salem Teachers College, with the approval of the Advisory Budget Commission, to issue revenue bonds for acquisition or construction of student housing projects that have been approved by the Budget Commission and the State Board of Higher Education. These revenue bonds are not to constitute a debt of the state or pledge the state's credit in any way, but are to be payable solely from rentals from buildings erected by the bonds, together with increased rentals on existing facilities. To this end, the boards of trustees are required to fix the rentals of dormitory rooms furnished by the bond issue and the rentals on other dormitory rooms so that rental revenues together with any other available funds will be sufficient to operate and maintain the dormitories and pay the principal and interest on the bonds.

Teacher Loan-Scholarships

With more teachers leaving the profession annually than there are qualified replacements, and with increasing school enrollments calling for more and more teachers, the teacher shortage is becoming acute. To meet this problem the General Assembly, acting upon the recommendation of the Board of Higher Education, enacted Chapter 1237 (HB 844) to provide for a system of student loan-scholarships to encourage students to prepare for and enter into the teaching profession. Under the provisions of this act the State Board of Education is authorized to make up to 300 loans of up to $350 each for the first year, and up to 600 such loans for the second year of the biennium, plus up to 200 summer school loans worth $75 each for each year, to qualified residents of North Carolina for study in any school within the state approved by the State Board of Education, which offers teachers' training courses. Scholarship loans may be renewed upon completion of satisfactory work until a bachelor's degree is obtained (with a maximum of four years) and may be repaid in money or by teaching in the public schools of the state. If repaid through teaching, each full school year taught will discharge a $350 note with accrued interest, but the discharge of the obligation by teaching is limited to the seven years immediately following the completion of the requirements for teacher's certificate. In granting scholarship loans the State Board of Education is directed to give due consideration to "aptitude, purposefulness, scholarship, character, financial need, and areas or subjects of instruction in which demands for teachers are greatest." Public school teachers who wish to take further undergraduate courses are eligible for summer school loans, but no loans are provided for study on a graduate level.

Community Colleges

A tentative step into the field of state support of community colleges was taken in 1955 when the General Assembly approved limited appropriations for Asheville-Biltmore, Carver, Charlotte, and Wilmington Colleges—the rationale being that these four municipal colleges relieved the demands for dormitories and teachers and prepared North Carolina students for advanced study at regular state-supported universities and colleges, and that these small grants-in-aid would accomplish the same results as larger appropriations for the regular four-year institutions. In what may well be the most significant step in the field of state-supported colleges since the formation of the Consolidated University in 1931, the 1957 General Assembly provided a plan of organization and operation for community colleges throughout the state. Under the provisions of Chapter 1098 (HB 761), community colleges are defined in essence as junior colleges organized under this act, dedicated primarily to the particular needs of a community or an area.

In order to come under the provisions of the Community College Act the governing board of an existing college must pass an appropriate resolution (a) electing to come under the act and to have this act serve as the charter of the college in lieu of any existing charter, (b) giving the name by which the community college is to be known, (c) providing for the transfer of all assets owned or used by the existing college to the community college, (d) petitioning the state to approve it as a community college, and (e) providing that such resolution was adopted subject to approval of such institution by the state and subject to the approval of an annual tax levy by a vote of the people of the county in which the county is located. In counties not having a college supported by public funds which would be eligible for establishment as a community college, the county board of education may petition the State Board of Higher Education for authority to establish a community college in the county. Upon approval of a petition by the state, an election must be called to authorize the levy of a special tax to support, equip, and maintain the college.

State funds appropriated for grants-in-aid to community colleges for operating expenses are to be paid on the basis of a specified sum per student quarter-hour of instruction in a limited freshman and sophomore curriculum, not exceeding the total of local public or private funds (exclusive of student fees and charges) that is made available annually to such college for operating expenses. Appropriations by the state for capital or permanent improvements are to be strictly on a matching basis.

Miscellaneous

Chapter 541 (SB 197) authorizes the Governor, with the approval of the Advisory Budget Commission to fix the salary of the Director of Higher Education. Under the original plan, as enacted in 1955, the salary

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Public Health

By

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[For other items of interest in the public health area, see articles on "Domestic Relations," "Legislation of Interest to County Officials," and "Public Personnel."]

Complete Rewrite of Health Laws

One of the most voluminous bills to be passed by this General Assembly [Chapter 1357 (HB 48)] completely rewrites the public health laws of North Carolina, effective January 1, 1958. This constituted the first major revision of the public health laws, some of which date from the 1700's. Some of the major changes made by this bill are listed under the appropriate article headings below.

Administration. The new law requires that one of the members of the State Board of Health appointed by the Governor be a licensed dentist and one a licensed veterinarian; increases the per diem of the State Board of Health members from $4 to $10; changes the designation of the "State Health Officer" to "State Health Director" and requires that he be trained and experienced in public health work; authorizes the State Board of Health, with the approval of the Governor, to appoint a full-time assistant State Health Director; changes the term of the President of the State Board of Health from six to two years; provides for the appointment of a Vice-President of the State Board of Health; requires four (rather than one) meetings of the State Board of Health annually; combines several rule making sections into one which authorizes the State Board of Health to determine the general policies for the administration of the public health work and to adopt regulations to carry out the provisions and purposes of public health act; adds requirement that the regulations of the State Board of Health be published before becoming effective, and requires public hearings before regulations may be adopted; authorizes the acceptance of federal grants-in-aid for public health purposes; authorizes the appointment of special advisory committtees to serve without pay; combines in one section the functions of the administrative staff of the State Board of Health, and authorizes such staff to enforce the health laws and regulations, control diseases affecting public health, develop and carry out necessary health programs with the approval of the State Board of Health, make health investigations and conduct health research, receive gifts and acquire equipment and supplies for health purposes, keep health records and disseminate health information, and, in general, be the health advisors of tho state; and deletes the creation of divisions within the State Board of Health organization by statute and authorizes the State Health Director, with the approval of the State Board of Health, to establish organizational units.

Local Health Departments. The new law combines the present provisions relating to county and district health departments into one article; authorizes the mayor of any non-county-seat incorporated city (within the county) having a population in excess of 15,000 to be an ex-officio member of the county board of health; authorizes the establishment of district health departments (composed of two or more counties) when funds for a county program are insufficient to provide a specified minimum department, or when the State Board of Health determines that special problems or projects can be better handled by a district department (present law requires that both of these conditions be met); requires at least one public member of a district department to reside in each county in the district, but limits any one county to ½ of the public membership on the board; authorizes each county within a district to have a separate board of health as the policy making body for that county; increases the authorized per diem of local board of health members from $4 to $8, and authorizes reimbursement for necessary travel expenses; authorizes the local boards to make regulations more stringent than those of the State Board of Health when a public health necessity so requires, but otherwise the regulations of the State Board of Health are to prevail in case of a conflict; provides that the regulations of the local boards will prevail over conflicting municipal ordinances, except that the municipal ordinance may be more stringent if a public health necessity so requires; provides that expenditures of local departments are to be made in accordance with the County Fiscal Control Act (rather than each expenditure being approved by the board of county commissioners); requires the regulations of the local boards to be published before becoming effective; changes the designation of county and district health officers to county and district health directors, and makes clear that they are subject to merit system provisions; deletes the present sections dealing with the appointment and duties of a county quarantine officer, and gives the local health directors general quarantine and sanitation authority; amends the present section concerning the abatement of nuisances by setting out a procedure to be followed when a person ordered to abate a nuisance contests the order, and by authorizing injunctive relief; and provides for the employment of a county physician (who may also be the local health director) by the county commissioners rather than by the local board of health, authorizes the commissioners to prescribe his duties, and provides that such employee shall not be deemed to be holding public office.

Incorporation of Health Codes by Reference. The new law authorizes state and local boards of health to adopt by reference, as a part of their regulations, codes or related documents; requires the filing of the adopted code with the Secretary of State or clerk of the superior court of the county, and provides that changes in such code will not affect the regulations until such regulations are changed.

State Laboratory of Hygiene. The new law defines a public water supply as one furnishing potable water to ten or more residences or businesses or a combination thereof; authorizes the laboratory to examine waters other

than those specified when a specimen is sent in by a local health director or licensed physician, or when the public health requires; authorizes the State Board of Health to order cessation of the supplying of water found to be contaminated when necessary in the interest of the public health; requires the payment of water inspection fees by all persons supplying (rather than selling) water, and sets out a method of determining the amount of the fee when water is supplied without charge; and subjects one who fails to file an affidavit as to the gross amount received from sales of water for the prior year to the maximum fee.

Vital Statistics. The new law authorizes the state registrar to provide for the issuance of burial-transit permits without a complete death certificate having been filed with the local registrar; requires a burial-transit permit to be obtained before the fetus of a stillborn child may be removed from or into a registration district; places the duty of filing a death certificate upon any person disposing of or removing a dead body (rather than only the undertaker); requires a burial-transit permit for disinterment as well as interment; authorizes (rather than requires) the local registrars to withhold burial-transit permits when there are defects in the death certificates; changes the offense of disposing of a dead body without a burial-transit permit from a felony (punishable by fine or 10 years' imprisonment, or both) to a misdemeanor, and makes violations of the article a misdemeanor punishable within the discretion of the court; and makes it a crime to alter copies (as well as originals) of birth and death records.

Infectious Diseases Generally. The new law requires the reporting of diseases declared by the State Board of Health to be reportable (rather than preventable) to the local health director (rather than county quarantine officer, which office is deleted) by persons standing in loco parentis (in absence of parent, guardian, or householder); deletes the provisions concerning the method of disposal of bowel discharges of persons sick with cholera or typhoid fever, and substitutes the requirement that householder comply with the instructions of a physician or local health director when persons in the home are sick with diseases transmissible by water; and authorizes the State Board of Health to regulate the encasement of the remains of persons who died of reportable diseases (rather than requiring disinfection in all cases).

Immunization. The new law combines the present articles concerning immunization against smallpox, diphtheria, and whooping cough, and adds a provision requiring immunization against tetanus.

Venereal Disease. The new law adds to the list of venereal diseases declared to be contagious and dangerous to public health granuloma inguinale and lymphogranuloma venereum; makes it unlawful for one with a venereal disease to expose another to infection; authorizes agents of licensed physicians acting under the immediate supervision of a licensed physician (as well as physicians) to make examinations for venereal disease; authorizes local health departments (in addition to the State Board of Health) to require persons suspected of having a venereal disease and who purchase drugs or remedies which may be used in the treatment of a venereal disease to appear before a physician (rather than county quarantine officer) for examination for such disease; places a duty upon a pregnant woman and any attendants to a pregnant woman to see that a blood sample for syphilis is taken; deletes requirement that the State Treasurer pay $.50 to each person or hospital reporting inflammation of the eyes of the newborn to a local health department; changes the requirement that an attendant instill "two drops of a solution" approved by the State Board of Health into the eyes of a newborn to a requirement that an attendant instill "a solution or medication prescribed or approved" by the State Board of Health; makes it the duty of a local health director to investigate contacts necessary to trace the source of inflammation of the eyes of the newborn, and to carry out regulations of the State Board of Health concerning inflammation of the eyes of the newborn; and deletes the provision that persons violating the article are subject to civil suit if possessed of the required amount of property (but retains provision making it prima facie evidence of negligence to fail to give the notice or treatment required by the article).

Tuberculosis. The new law makes clear that the provision authorizing imprisonment upon failure of a tuberculosis patient to take treatment applies to persons under 16, but requires that they be committed to a sanatorium other than the prison division of the state sanatorium; and deletes the requirement that prisoners examined by the county physician or local health director (within 48 hours after admission) be given an X-ray.

Sanitary Districts. The new law authorizes non-resident (as well as resident) freeholders to petition for the formation of a sanitary district; authorizes a joint hearing by county commissioners and a representative of the State Board of Health (rather than separate hearings) when a petition for the creation of a district is filed; authorizes the State Board of Health to make minor deviations from the boundaries proposed in a petition when advisable in the interest of the public health; provides that the regulations of a sanitary district board are not to conflict with those of the State Board of Health or a local board of health having jurisdiction over the same area; increases from $5 to $8 the per diem authorized sanitary district board members when engaged in the business of the district; establishes procedure whereby a portion of a district with no outstanding indebtedness may withdraw from the district (requires petition of 51% of resident freeholders of portion desiring to withdraw and approval of sanitary district board, county commissioners, and majority of voters within entire district); authorizes the dissolution of a district with no outstanding indebtedness even though it has not been in existence for three years; and brings validation sections up to April 1, 1957.

Water and Sewer Sanitation. The new law authorizes the State Board of Health to enact regulations governing the location, construction, and operation of public water and sewer facilities; deletes the present privy laws; and requires that residences and businesses provide a sanitary system of sewage disposal under regulation of the State Board of Health.

Meat Markets and Abattoirs. The new law makes clear that poultry establishments are subject to the sanitation requirements of this act.

Private Hospitals and Educational Institutions. The new law includes within the sanitation regulations of the State Board of Health private nursing and convalescent abodes and de-

fines private institutions as those not operated exclusively by the state.

Regulation of Manufacture of Bedding. The new law changes several of the definitions; requires the apparatus or process used for sanitizing bedding to conform to regulations of the State Board of Health; requires bedding tags to carry a registration number designated by the State Board of Health; clarifies license issuance and revocation provisions; and authorizes manufacturers and sellers to purchase stamp exemption permits (in lieu of tax stamp for each item of bedding) under certain conditions and upon compliance with the regulations of the State Board of Health.

Cancer Control Program. The new law authorizes the State Board of Health to enact regulations to carry out cancer control programs, and to establish minimum standards for cancer clinics located in health departments (as well as hospitals) if the clinics are state-sponsored.

Midwives. The new law transfers G.S. 90-172 through G.S. 90-178 (concerning regulation of midwives) to Chapter 130, and authorizes regulation by the local boards of health as well the State Board of Health.

Surgical Operations on Inmates of State Institutions. The new law deletes the requirement that the Governor and State Health Officer approve operations on inmates of state institutions, and substitutes the approval of the chief medical officer of the institution and the superintendent on advice of the medical staff.

Remedies. The new law combines many penalty sections and makes violation of the provisions of Chapter 130 a misdemeanor punishable in the discretion of the court and violation of any regulations adopted thereunder a misdemeanor punishable by a fine not to exceed $50 and imprisonment not to exceed 30 days; combines many right-of-entry provisions and authorizes entry to enforce the provisions of Chapter 130 or the regulations adopted thereunder; and authorizes injunctive relief.

Present articles in G.S. Chapter 130 concerning special tax sanitary districts, state housing law, privies, used plumbing fixtures, hydrophobia, health of domestic servants, maritime quarantine, voluntary inspection of poultry, transportation of foodstuffs, and infants prematurely born, are deleted.

In addition to the bill completely rewriting the public health laws as contained in Chapter 130 of the General Statutes, the General Assembly enacted other laws affecting public health. These are discussed below.

Mosquito Control

Three bills passed which are designed to combat the mosquito menace in this state. One of the bills [Chapter 1247 (HB 1002)] authorizes the creation of mosquito control districts. A district may be composed of one or more contiguous counties or contiguous parts of one or more counties. The procedure for establishing such districts is similar to the procedure for the establishment of sanitary districts. The districts are authorized to take necessary steps to prevent the breeding of mosquitoes and to destroy adult mosquitoes and other arthropods of public health significance within the district. To do this, the districts are authorized to levy taxes, issue bonds, etc.

The second of these bills [Chapter 832 (HB 1004)] authorizes the State Board of Health to conduct research, develop programs, and do such other things (within the limits of funds and personnel which are made available for this purpose) as may be necessary to control the mosquito menace in the state. All of the funds, facilities, and property allocated to the Salt Marsh Mosquito Study Commission created by the 1955 General Assembly are transferred to the State Board of Health for mosquito control purposes. Funds received by the State Board of Health for mosquito control purposes may be utilized to aid mosquito control districts or other local governmental units engaged in mosquito control undertakings in accordance with rules and regulations established by the State Board of Health.

The third mosquito control bill enacted by the General Assembly [Chapter 831 (HB 1003)] creates a six-member Salt Marsh Mosquito Advisory Commission to advise the State Board of Health concerning all aspects of the Salt Marsh Mosquito problem in North Carolina. All members appointed by the Governor initially to this advisory commission are to be from the membership of the Salt Marsh Mosquito Study Commission created by the 1955 General Assembly.

Mental Health

Four bills were passed concerning the broad area of mental health. Chapter 1257 (HB 1130) provides that neither the institution of a proceeding to have an alleged mentally disordered person committed for observation (as provided in G.S. 122-46) nor the order of commitment by the clerk of court is to have the effect of creating a presumption that such person is legally incompetent for any purpose. But, if a guardian or trustee has been appointed for an alleged mentally disordered person (under G.S. 35-3), the procedure for restoration to sanity is to be the same as is now provided in G.S. 35-4 and G.S. 35-4.1. Chapter 1258 (HB 1131) makes the same change with respect to alleged inebriates, except that the procedure for restoration to sobriety in case a guardian or trustee has been appointed is to be in accordance with the provisions of G. S. 35-4 only. Chapter 1386 (SB 472) authorizes the state's mental hospitals to treat a former resident of this state who marries a non-resident, becomes mentally disordered, is committed to a mental institution in the state of residence, is thereafter divorced (or his or her spouse dies), and has a family in the patient's former county of residence who files an application for commitment with the clerk of the superior court.

Chapter 1232 (HB 756) makes numerous changes in Chapter 122 and Chapter 35 of the General Statutes concerning mentally disordered, mentally diseased, and incompetent persons. The major changes made include the following: adding the State Hospital at Butner to the list of institutions for the care and treatment of white patients; giving persons legally adjudged to be mentally disordered a right to be admitted (where space is available) to Butner, as well as to the hospitals at Morganton, Raleigh, and Goldsboro; adding Butner Training School, and Goldsboro Training School to the list of institutions in which persons admitted are required to pay the actual cost of care; amending G.S. 122-7 to bring the State Hospital at Butner, Butner Training School, and the Goldsboro Training School within the management of the unified Board of Directors known as the Hospitals Board of Control; amending G.S 122-46 and G.S. 122-46.1 to authorize the clerk of superior court to order commitment for 60 days (now 30) for observation, and for four months for a second period of observation; amending G.S. 122-62 to provide that a patient voluntarily committed is entitled to discharge

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Public Welfare

By RODDEY M. LIGON, JR., *Assistant Director of the Institute of Government*

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

[Many public welfare matters are of interest to county officials generally and have been included in the article on "Legislation of Interest to County Officials." Likewise, the articles on "Domestic Relations," "Public Health," and "Public Personnel" will be of interest to readers of this section.]

In 1945, the General Assembly changed the name of the state administrative agency responsible for public welfare matters from the "State Board of Charities and Public Welfare" to the "State Board of Public Welfare." This change was not made, however, throughout all the chapters and sections of the General Statutes. Chapter 100 (SB 40) makes that change throughout the General Statutes.

The present law requires that reports be made to the State Board of Public Welfare concerning the condition of county jails and the inmates of such jails. G.S. 108-5 was amended [Chapter 86 (SB 61)] to require that reports also be made concerning municipal jails and the inmates of such jails. These reports are to be made by the chiefs of police and other municipal officers.

Three bills concerning the old age assistance lien law were considered by the General Assembly. Two of these bills passed, and the third failed to pass. The bill which failed to pass (HB 969) would have repealed the old age assistance lien law effective July 1, 1957, but would not have affected the validity of liens created between October 1, 1951, and July 1, 1957. One of the bills which passed [Chapter 1107 (SB 376)] authorizes a recipient of old age assistance to pay (or have paid on his behalf) an amount equal to the assistance he has received since October 1, 1951, into the office of the clerk of the superior court. The clerk is authorized, after giving reasonable notice to the county attorney, to accept such payment and to cancel the lien of record. The clerk is to hold or disburse the funds so received as provided by law. The other bill which passed [Chapter 1273 (HB 1225)] provides that if it appears to the clerk of the superior court that the personal property of the estate of a deceased recipient of old age assistance does not exceed $100, a personal representative of such deceased recipient is not to be a necessary party to an action to enforce the old age assistance lien against the recipient's realty. Any funds remaining after the satisfaction of such lien are to be paid into the office of the clerk of the superior court.

A study commission was authorized by Resolution 50 (HR 1430) to study the operation, licensing, and supervision of nursing homes, convalescent homes, boarding homes, and homes for the aged. The Commission is to consist of seven members, five of whom are to be appointed by the Governor. The Commissioner of Public Welfare and the Chairman of the North Carolina Medical Care Commission are to serve as members of the Commission. One of the Governor's appointees is to be an operator of a nursing home licensed by the Medical Care Commission and one an operator of a boarding home licensed by the State Board of Public Welfare. The Commission is to make recommendations to the 1959 General Assembly.

Three bills relating to eugenical sterilization failed to pass. One (SB 416) would have appropriated $100,000 for each year of the biennium to the Eugenics Board in order to increase the effectiveness of the eugenical sterilization program. Another (SB 449) would have authorized eugenical sterilization of mentally defectives; persons with disabling handicaps; and, persons who have, by long-time dependance upon public or charitable support, demonstrated an inability to provide for any children they may procreate. The third (SB 321) would have authorized the eugenical sterilization of persons "grossly sexually delinquent." Birth of two or more children (other than by multiple birth) out of wedlock by a woman would have been *prima facie* evidence that such woman was grossly sexually delinquent.

Other bills of public welfare significance which failed to pass included HB 229, which provided that no illegitimate child of a physically fit mother was to be considered a dependent child for aid to dependent children purposes; HB 593, which provided that no child who was otherwise a dependent child was to lose his status as a dependent child because of any compensation he might earn; and HB 230, which provided that compensation earned by a minor child or the minor children of an individual was not to be considered a resource of that individual for general assistance purposes.

Public Purchasing

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of public funds in excess of $20,000.

(2) All such plans and specifications must carry the seal of the architect or engineer (or both).

(3) All projects subject to the section must be inspected by the architect or engineer (or both).

(4) A certificate of compliance is to be given the awarding authority when the architect or engineer (or both) finds that the contractor has fulfilled all obligations of the contract.

(5) Neither the designer nor the contractor may receive final payment until the awarding authority has received the certificate of compliance.

(6) Where the construction or repairs cost $20,000 or less, the certificate of compliance may be made by state, city, or county inspectors for the specific trade or trades involved, or by a registered architect or engineer.

(7) Certain structures, such as barns and temporary buildings, are exempt from the requirements of the section.

Local Acts

Of the large number of local acts of interest to purchasing officials, all but three were concerned in some manner with the disposal of property. The exceptions were all local amendments to G.S. 143-135, which provides that the formal and informal bidding procedures shall not apply to any construction or repair contract if both (a) the cost of work is less than $15,000 and (b) the work is performed or accomplished by or through duly elected officials or agents.

The Franklin County act, Chapter 288 (SB 211), the broadest of the three, applies to the county, all school boards in the county, and all municipalities in the county, and raises to $50,000 the amount which may be expended without taking bids when the work is done by the agencies themselves.

The Halifax County act, Chapter 803 (SB 377), secured the same authority, except that municipalities in the county were excluded.

In Moore County [Chapter 779 (HB 583)] the act applies only to school boards, and the limit which may be expended is set at $40,000.

As noted before, most of the special acts involved the disposal of property. Eighteen acts provided for the sale of certain real property to private individuals at private sale. In many cases the price was set, and in most cases the reason for the private sale was given. In eight bills authority was granted for one local government to convey property to another government, while in three cases prior sales were validated or authority to change the terms of deeds was given. Other acts granted authority for lease of property at private sale and provided for the sale of a city hall, the sale of cemetery lots, the exchange of lands with private individuals, and the sale or lease of property to private individuals at public auction.

A new and significant approach to the disposal of surplus property was marked by the passage of bills affecting Rockingham, Robeson, and Hoke counties. These acts provide that in Hoke and Robeson counties, any governmental unit within the county may convey at private sale to any other governmental unit within the county any real or personal property not needed for governmental purposes. [The Hoke act is Chapter 231 (HB 377), the Robeson act is Chapter 211 (SB 178), and the Rockingham act is Chapter 132 (SB 62).]

The key provision of the Hoke County act, introduced by Representative Hostetler, reads as follows:

> "Any political subdivision or agency of or in Hoke County, including the County of Hoke, the Board of Education of Hoke County, the Boards of Education of the several city administrative school units within the county, and any incorporated municipalities within the County, is authorized to sell at private sale, to any other of such political subdivisions or agencies of or in Hoke County, any real or personal property owned by it, which, in the judgment of the governing board of the owning political subdivision or agency is no longer needed by the said political subdivision or agency for governmental purposes. Such sale may be made for such consideration and upon such terms as, in the judgment of the governing board of the owning political subdivision or agency, shall be for the best interests of the public at large of Hoke County."

The Robeson act is identical with the above, while the Rockingham act provides that such sales may be made by the Board of County Commissioners and the Board of Education only. These two Rockingham units, however, may sell unneeded property to any other governmental unit in the County.

Election Laws

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county boards of elections is raised from $10 to $15 per day. No definition of a day is supplied. The same act raises the per diem compensation of registrars from $10 to $15 for services on primary day, election day, and on each Saturday during the registration periods that they attend the polls to conduct registration. The pay of judges of elections and assistants on primary and election days is raised from $7 to $10.

Ballots and Voting

Chapter 1264 (HB 1171) provides that a candidate's legal name must be printed on the ballot in the way it appears on the notice of candidacy he is required to file. Married women for the first time are permitted to have their names prefixed with "Mrs." (and single women with "Miss") on the printed ballot if they so desire.

Apparently in an effort to prevent abuses of the write-in privilege in general elections, Chapter 1263 (HB 1169), as a prerequisite to election, requires that a write-in candidate must receive votes in a number equal to 5% of the number of votes cast for the Congressional candidates in the jurisdiction in which he is running. Otherwise he cannot be declared to have been elected.

In 1955 seventeen counties obtained what is generally called "anti-single-shot" voting legislation. Chapter 1383 (SB 457) makes the provisions of that special legislation inapplicable to general elections.

Vacancies among Candidates

In those situations in which candidates are required to file notices of candidacy with county boards of elections, Chapter 1242 (HB 947) provides that, except in case of death, substitution of candidates after the primary or convention can be made only upon the order of the proper county board of elections "for good cause shown." There is an implication that in the absence of such showing the first nominee is retained.

Life of Petitions for Elections

Effective on July 1, 1957, Chapter 1239 (HB 893) limits the life of any petition calling for an election to one year from its issuance for circulation and prohibits calling or holding an election pursuant to a void petition. The act further requires that the date of issuance of every such petition must be registered with the proper elections board. It should be noted that the act applies to petitions issued prior to its effective date as well as to those issued in the future.

Higher Education

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of the Director was fixed by the Board of Higher Education, subject to the approval of the Governor.

Chapter 1433 (HB 1302) and Chapter 1434 (HB 1303) permit the boards of directors and the superintendents of the North Carolina School for the Deaf at Morganton and the State School for the Blind to change the names of their respective schools so as to eliminate any reference to the handicap of the students attending them.

Resolution 27 (SR 325) amends the Southern Regional Education Compact so as to increase the number of members of the Board of Control for Southern Regional Education from each state from four to five and to specify that one member from each state must be appointed by the Governor from among the membership of the state legislature. This change will not become effective until at least eight of the states which are parties to the compact have approved it.

Domestic Relations

By RODDEY M. LIGON, JR., *Assistant Director of the Institute of Government*

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

[Readers interested in this section should also check the articles on "Public Welfare," "Public Health," and "Legislation of Interest to County Officials."]

As usual, the field of domestic relations occupied a considerable portion of the legislators' time. At least 35 bills were introduced which affect this area of law directly, many more indirectly, and about two-thirds of those introduced were enacted into law.

Abandonment and Non-Support

A gap which has existed in the statutes relating to abandonment and non-support has been filled by Chapter 369 (HB 384). Prior to this amendment, G.S. 14-322 was so worded that our Supreme Court held that it was not a crime for a husband, not living with his wife, to fail to provide adequate suport for his children if he had not abandoned them. *State v. Outlaw*, 242 N. C. 220 (1955). The 1957 amendment makes it a misdemeanor for the father or mother to wilfully fail to support his or her natural or adopted child or children, irrespective of whether or not the failure to support was accompanied by abandonment.

Chapter 1442 (HB 1372) amends C.S. 101-2 to authorize the change of the name of the minor without the consent of a parent who has abandoned such minor.

Bills failing to pass included HB 358, which would have authorized the prosecution of the reputed father of an illegimate child within five years (rather than three years) after the birth of such child; SB 146, which would have provided for a determination of the issue of paternity in all prosecutions of a man under the bastardy statutes, irrespective of a dismissal or verdict of not guilty (the finding would be res judicata as between the parties and the defendant would be authorized to appeal on the question of paternity); and SB 42, which would have amended the Uniform Reciprocal Enforcement of Support Act (1) to authorize a county furnishing support to an obligee under the act to invoke the act for purpose of obtaining continuing support for the obligee and (2) to make it the duty of the solicitor of a domestic relations court to represent the plaintiff when an action under the act was initiated in the county in which the court is located.

Adoption

Chapter 90 (SB 41) makes clear that if a juvenile or domestic relations court has declared a child to be abandoned, the parent, parents, or guardian guilty of such abandonment is not to be a necessary party to the adoption proceedings and his consent to the adoption is not to be required.

Chapter 778 (HB 225) makes several changes in the adoption statutes. They include amending G.S. 48-2 (3) to provide that a child may be wilfully abandoned by his or her natural or legal father, for adoption purposes, if the mother of the child had been wilfully abandoned and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth (the child must be between the ages of three months and 18 years at the time of the institution of the action to declare the child to be an abandoned child); amending G. S. 48-3 to make clear that any minor child, whether or not a citizen of the United States, may be adopted in accordance with the provisions of Chapter 48 of the General Statutes; amending G. S. 48-5 (b) to provide that if the child is under the jurisdiction and control of a domestic relations or juvenile court, that court only has jurisdiction to determine if an abandonment has taken place for adoption purposes; adding G.S. 48-6 (b) to provide that if a husband and wife are divorced on the grounds of separation, the consent of the husband shall not be required for the adoption of a child of the wife begotten during such period of separation; amending G. S. 48-7 (b) and G.S. 48-11 to eliminate the necessity of serving process on any agency or the parent, parents, or guardian of the child sought to be adopted if such agency or person has given a duly acknowledged written consent to the adoption; amending G. S. 48-25 (b) and deleting G. S. 48-27 (b) to make it unlawful for any person having charge of the adoption record or file to disclose any information concerning the contents of any papers other than the final order of adoption (except as provided by G. S. 48-26 and G. S. 48-27); and adding G.S. 48-25(c) to provide that no superintendent or employee of a public welfare department or agent of a licensed child-placing agency is to be required to disclose any information (other than reports required by statute) relating to any child or its parents acquired in contemplation of the adoption of the child, except on order of the clerk of court with jurisdiction over the adoption proceedings, approved by a judge of that court.

Failing to pass was a bill (SB 460) which would have authorized proposed adoptive parents residing in another state to adopt a child which had resided in North Carolina for six months next preceding the filing of the adoption petition.

Custody

There are presently several statutes relating to jurisdiction to determine child custody controversies [see G. S. 50-13, 50-16, 17-39, 110-21 (3), and 7-103 (c)]. Thus, there are several methods of getting the controversy before the court, depending upon the status of the parties. Chapter 545 (HB 280), while not changing any of the existing methods of getting the case before the court, does provide an alternative method which may be used (in the discretion of the judge) irrespective of the status of the parties. It authorizes the superior court judge having authority to determine matters in chambers in the district to issue a writ of habeas corpus requiring the minor child to be brought before him or any other qualified judge. Upon return of the writ, the judge is authorized to make such custody order as will best promote the welfare of the child.

Failing to pass was HB 357 which would have required (rather than authorized) a judge entering a divorce decree to make provisions in the decree concerning the care, custody, tuition, and maintenance of any minor children of the marriage.

Divorce

Beginning January 1, 1958, it will be much easier to obtain information concerning divorces in North Carolina. By Chapter 983 (SB 320) North Carolina joins several other states which provide for central registration of divorces. A record of every divorce or annulment is to be transmitted by the clerk of the court granting the divorce to the Office of Vital Statistics in the State Board of Health. True copies of such records may be obtained, and such true copies are to be admissible in evidence to the same extent as the originals.

Chapter 394 (HB 542) authorizes a woman to petition in her complaint or cross bill for divorce (and the court to decree) that she resume her maiden name, the name of a prior deceased husband, or a name composed of her given name and the surname of a prior deceased husband.

Four divorce bills which failed to pass were SB 174, which provided that no court inferior to the superior court could grant a divorce without personal service upon the defendant; SB 411, which provided that residence on a military installation by a plaintiff or defendant to a divorce action for a period of one year next preceding the institution of such action would be sufficient to satisfy the residence requirement of the divorce statutes, and that six months residence on a military installation would be sufficient if there were personal service on the defendant within or without the State of North Carolina; SB 522, which would have authorized the trial of uncontested divorce cases in which an answer had been filed admitting all of the material allegations of the complaint (as well as those in which no answer is filed) at any time after the time of filing an answer had expired, regardless of when the term began; and HB 757, which would have authorized a wife to bring an action for alimony without divorce if the husband and the wife were living separate and apart either under a deed of separation or otherwise.

Domestic Relations and Juvenile Courts

Prior to 1955, G.S. 110-22 provided that the clerk of the superior court was to serve as judge of the county juvenile court. This section was amended in 1955 to provide that the board of county commissioners of each county must appoint the clerk of the superior court of such county, or some other competent and qualified individual, to act as judge of the juvenile court. Apparently some of the clerks of the superior court continued to act as judges of the juvenile courts without an actual appointment by the board of county commissioners. Chapter 1042 (SB 287) remedies their failure to be actually appointed by providing that all of the acts and judgments of the clerks of the superior court while serving as judges of the juvenile courts of their counties since May 18, 1955, are in all respects validated. Chapter 359 (SB 128) amends the section again to provide that the clerk of the superior court is to be judge of the juvenile court; but, if the clerk of the superior court consents or makes a request in writing, the board of county commissioners may then appoint some other competent and qualified person to serve as judge of the juvenile court. Thus, if the board of county commissioners fails to appoint someone, the clerk of the superior court is the judge of the juvenile court for the county.

The statutes authorizing the establishment of domestic relations courts provide for the appointment of a judge, substitute judge, clerk, and probation officers. No other personnel are specifically provided for. Nevertheless, three of the six existing domestic relations courts in this state have a solicitor or counselor. Two of those six counties clarified their authority at this session of the General Assembly. Chapter 1397 (HB 293) authorizes the Guilford County domestic relations court judge to appoint additional substitute judges and assistant and deputy clerks. Another act [Chapter 875 (HB 1036)] authorizes the board of county commissioners of Buncombe County to appoint a counselor for that court.

The jurisdiction of the juvenile courts is enlarged by Chapter 778 (HB 225), which amended G.S. 110-36 to authorize the juvenile court, upon petition by any interested person, to determine if a child under the court's jurisdiction is an abandoned child for adoption purposes. The jurisdiction of the domestic relations courts is enlarged by Chapter 366 (HB 294), which amends G.S. 7-103 to authorize the domestic relations courts to exercise jurisdiction over all cases in which an adult is charged with a failure to support a parent (the 1955 General Assembly made it a misdemeanor for one of full age and with sufficient means to neglect or refuse to support his parents if they were unable to work and without means to support themselves). This chapter also gives the domestic relations court jurisdiction over all cases in which a husband or wife is charged with an affray with the other. This is probably not a substantial enlargement of the court's jurisdiction, as it already has jurisdiction over cases in which a husband or wife is charged with an assault or assault and battery on the other.

Failing to pass was a bill (SB 129) which would have authorized the creation of 18 state-supported district family courts. The courts would have been on the superior court level, and would have had jurisdiction over all matters which presently fall within the jurisdiction of the domestic relations courts, plus jurisdiction over divorce and alimony matters and adoptions.

Husband and Wife

Chapter 1229 (HB 672) makes the provisions of G.S. 52-12 (a) (which requires a contract between a husband and wife to be in writing and acknowledged before a certifying officer who makes a private examination of the wife) inapplicable to the personal estate of the wife. It also makes clear that separation agreements must comply with the provisions of G.S. 52-12. There have been many cases [see *Daughtry v. Daughtry*, 225 N. C. 358 (1945) and cases there cited] holding that such agreements are subject to the provisions of G.S. 52-12. Thus what has been case law in this respect now becomes statutory law.

The 1955 General Assembly passed a statute providing that contracts or conveyances between husband and wife coming within the provisions of G.S. 52-12 would not affect the property of the wife unless the wife was privately examined by a certifying officer. Chapter 1187 (SB 143) validates all such contracts and conveyances made between the dates of July 1, 1955, and June 10, 1957, wherein the only defect is the failure of the wife to be privately examined.

Chapter 1260 (HB 1143) provides that if a husband and wife execute a contract but fail to comply with the requirements of G.S. 52-12 and subsequently a decree of absolute divorce between said husband and wife is

(Continued on page 56)

Law Enforcement

Chapter numbers refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

By
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Assistant Director of the Institute of Government

Criminal Law

The Obscene Literature Bill, HB 505

One of the most comprehensive measures passed in recent years in the field of the criminal law by our General Assembly was enacted during the past session. Before it was approved, two other bills were before the legislature on the same subject: one (HB 503) died in a House committee and the other (HB 504) received an unfavorable report in the Senate. The former would have forbidden the furnishing to a minor of any written or printed matter which "is obscene, lewd, lascivious, filthy, indecent, or disgusting or which is manifestly offensive or loathsome to the moral sense or which describes or presents [perverse or obscene acts or representations]"; the latter would have prohibited requiring a purchaser or consignee of periodicals or books, as a prerequisite to sale or consignment, to receive for resale any other publication "believed by the purchaser or consignee to be obscene, lewd, lascivious, filthy, indecent or disgusting."

The third bill (HB 505) became Chapter 1227 of the Session Laws (to be codified as GS 14-189.1) and provides that it shall be unlawful to purposely, knowingly, or recklessly disseminate, publish, or make available obscenity in the form of writing, picture, record, play, dance or other representation or performance embodying obscenity. The act adopted verbatim the definition of "obscenity" found in the Model Penal Code, §207.10 (2), Tentative Draft No. 6 (1957): "a thing is obscene if considered as a whole its predominant appeal is to the prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or presentation of such matters. Obscenity is to be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audience if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such an audience." Preparation for unlawful dissemination or promotion of sale of obscenity is also made a misdemeanor by the act. The dissemination, creation, purchase, procurement or possession of obscenity gives rise to a presumption of knowledge of its obscene nature. Some of the exclusions from the statute's operation and exceptions to its coverage are both interesting and perplexing: it does *not* apply to public or *private* libraries or art galleries, and its language excludes dissemination, not for gain, (1) to *personal associates* over 16 years of age, or (2) by an *actor* under 21 years of age to a child not more than five years younger, or (3) to institutions or individuals having scientific or special justification for possessing it.

If the constitutionality of the statute is called into question it shall in all probability be because of its exceptions and exclusions, since the United States Supreme Court cited with approval the definition of obscenity found in the Model Penal Code (and used in the new North Carolina act) in the recent case of *Alberts v. State of California*, 77 S.Ct. 1304(1957). The real socio-legal problem in enforcing obscene literature statutes arises not in connection with literature, pictures, etc., which are pure pornography (often called "filth for filth's sake"), but in connection with books such as Erskine Caldwell's *God's Little Acre*, Edmund Wilson's *Memoirs of Hecate County*, a book entitled *Married Love*, or James Joyce's *Ulysses*, which contain obscene passages or language in "poor taste," aside from the book's general theme or "message"; the books listed have all been, at one time or another, accused of being obscene literature and have been the subject of court decisions thereon.

Larceny

A bill (HB 244) which would have given peace officers, merchants, or employees of merchants authority to take into custody for a reasonable length of time, suspected shoplifters (if there was probable cause for believing goods were unlawfully taken by the suspect) and to permit peace officers to arrest without warrant those committing larceny in wholesale or retail establishments (again with the probable cause requirement) received an unfavorable House committee report and did not become law. However, HB 275 (GS 14-72.1) was enacted into law; this makes wilful concealment of unpurchased goods on the premises of any store a misdemeanor punishable by a maximum fine of $100 or imprisonment for six months or both for the first offense, and punishable in the discretion of the court for second or subsequent offenses; it also provides that if unpurchased goods or merchandise are found concealed on or about the person a prima facie case of wilful concealment is made out. It does *not*, however, give store owners or their employees the right to detain and search suspected shoplifters.

Arson and Other Burnings

A 1952 decision of the Supreme Court of North Carolina, *State v. Cuthrell*, 235 N. C. 173, ruled that the defendant, who procured another person to burn an unfinished beach pavilion (all of the fixtures had not been installed and some painting and the installation of bannisters remained to be done), was not guilty of a violation of GS 14-62, since the structure burned was not a "building . . . used in carrying on any trade . . ." within the meaning of the statute. Chapter 792 of the 1957 Session Laws (SB 332) creates GS 14-62.1 and provides that the wilful and intentional burning of a building under construction, in the possession of either the incendiary or other person, shall be a felony punishable by fine or imprisonment or both, in the discretion of the court. Chapter 815 of the 1953 Session Laws had included in GS 14-62 the words "structure" and "or intended to be used," but apparently it was believed that the 1953 amendment still did not cover a building under construction which had not reached that advanced state of construction to allow it to be used for the purpose for which it was intended.

In a 1955 case, *State v. Long*, 243 N. C. 392, the North Carolina Supreme

Court ruled that the defendant, who had set fire to and burned a house unfit for human habitation because of a previous fire, could not be prosecuted under either GS 14-67 (prohibiting wilful attempts to burn uninhabited houses or GS 14-144 (prohibiting the burning or attempted burning of any uninhabited house) because a house unfit for human habitation could not be considered an "uninhabited house". The court in its opinion pointed out that GS 14-144 made the *burning* of such a structure a *misdemeanor*, while GS 14-67 provided that the *attempted* burning of an uninhabited house was a *felony*, and suggested that this inconsistency was a "subject fit for legislative consideration". Chapter 250 of the 1957 Session Laws (HB 268) eliminates this inconsistency by amending GS 14-67 to apply to both the wilful burning *and* attempts to burn uninhabited houses (a felony) and by amending GS 14-144 to remove from that statute the burning or attempted burning of any church, uninhabited house, outhouse, etc. This does not mean to say that the Legislature provided that a house unfit for human habitation was nevertheless an "uninhabited house," and the decision of the Supreme Court in *State v. Long* is still the law.

Two bills pertaining to this area of the criminal law and which got nowhere are perhaps worthy of mention: SB 121 would have made the wilful and intentional burning of *any property* having a value lower than $100 a misdemeanor, and having the value of $100 or more a felony; HB 264 would have provided that anyone intentionally, negligently or carelessly starting a fire which burned forest, brush or wasteland should be liable for all expenses incurred by the state in extinguishing it.

Miscellaneous

In a 1956 prosecution for violation of GS 14-202 (secretly peeping into any room occupied by a woman), the Superior Court of Chatham County dismissed the case when the evidence disclosed that the defendant was peeping into a room occupied by a female child approximately 11 years of age, on the ground that she was not a "woman" within the meaning of the statute. The representative from Chatham County introduced a bill (HB 250) which became law (Chapter 338) and which changes the word "woman" in the statute to the words "female person". An interesting sidelight to this change in the law might be mentioned: after HB 250 was introduced it was amended to provide "any person" instead of "female person," but this amendment was later rejected and the words "female person" were reinstated before passage into law.

Chapter 369 (HB 384) made a long-needed change in the law relating to abandonment and non-support of dependent children—GS 14-322 was amended to remove the element of abandonment from the crime of non-support, and a father or mother who wilfully neglects or refuses to provide adequate support for his or her child or children (whether they have been abandoned or not) is now guilty of a misdemeanor.

Chapter 1437 (HB 1348), which was enacted into law on the last day of the 1957 session, increases the punishment for those violating GS 14-135 ("Cutting, Injuring, or Removing Another's Timber") to fine or imprisonment in the discretion of the court. This means that justices of the peace no longer have jurisdiction over violations of this statute, which formerly set the punishment at a maximum of $50 or 30 days.

GS 14-128 was amended by Chapter 754 (HB 558). This statute formerly condemned depositing trash, cutting plants, etc., within 100 yards of any state highway or other public road or highway. Now the acts of despoliation condemned by GS 14-128 apply to anyone committing the acts on lands other than his own or without the owner's consent. State Highway and Public Works Commission personnel discharging their duties within the right of way or easement of the State Highway Commission are exempt from the operation of the statute.

Chapter 334 (SB 208), which emancipates the Venus fly-trap, certainly should be mentioned. Anyone with a permit from the Department of Conservation and Development may, barter, sell, or export the insectivorous sundew *Dionaea muscipula* to his heart's desire, secure in the knowledge that he is free from the threat of criminal prosecution if the plants have been cultivated domestically from lawful stock.

Chapter 984 (SB 338) makes it a misdemeanor to manufacture, cause to be manufactured, or to possess counterfeit ABC Stamps (amends GS 18-48).

A bill which would have amended GS 14-107 to increase the punishment for third violations of the worthless check law (to a minimum of six months imprisonment) died in a Senate committee.

Uncodified Criminal Law Provisions

Damaging sand dunes or vegetation on land between the intercoastal waterway and the ocean in Brunswick, New Hanover, and Onslow Counties is now [Chapter 995 (HB 337)] punishable by a maximum fine of $50 or 30 days imprisonment.

Another measure designed to protect the slowly vanishing Outer Banks is HB 336, which was enacted into law in early June (Chapter 1057). Any person, firm, or corporation allowing livestock to run free along the outer banks of this state is guilty of a misdemeanor punishable by $100 fine or a maximum of 30 days imprisonment. The act also provides for the impounding of livestock violating the statute but does not apply to "marsh ponies" or "banks ponies" on Ocracoke Island or on Shackelford Banks between Beaufort Inlet and Barden's Inlet in Carteret County, or to banks ponies not exceeding 35 in number owned by the Boy Scouts of America, on Ocracoke Island. The Director of the Department of Conservation and Development is given authority to remove all ponies from Ocracoke Island and Shackelford Banks if he determines this in necessary to prevent damage to the island, or he may direct that they be corralled to prevent damage. "Outer Banks" is defined as "all of that part of North Carolina which is separated from the mainland by a body of water, such as an inlet or sound, and is in part bounded by the Atlantic Ocean."

Chapter 1241 (HB 936) provides that it shall be a misdemeanor punishable by fine or imprisonment in the discretion of the court for a manufacturer of household cleaners, capable of producing toxic effects when used as intended, to fail to label his product "CAUTION" or with words of similar import, and to include directions for safe and proper use. The act authorizes the State Board of Health to apply for injunctive relief in the superior court to prohibit the sale or offering for sale of products which do not comply; this was necessary because it is extremely unlikely that such manufacturers would be subject to criminal prosecution in North Carolina.

Several local bills were passed regulating equipment, operation, and use of motor boats, powered boats, and motor vessels upon portions of the Roanoke, Cape Fear, Deep, Haw, and Tar rivers, continuing a growing

tendency to approach this subject piecemeal.

Criminal Procedure

Forfeitures

Two important measures relating to forfeiture and confiscation of property used in violation of the criminal laws of the state were passed during the 1957 session of the General Assembly. Chapter 501 (HB 214) amends GS 14-299 (confiscation of property used to allure persons to gamble or used in the conduct of any game of chance) to provide that motor vehicles used in conducting a lottery (GS 14-291.1) shall be subject to forfeiture; before the proceeds of the sale of the confiscated property shall be turned over to the county treasurer, the costs of storage and sale shall first be deducted and the holders of liens created in good faith without knowledge that the motor vehicle was being used or to be used in conducting a lottery shall be paid the value of their liens. The second measure, Chapter 1235 (HB 759), adds to GS 18-6 (and declares as contraband) "equipment or materials designed or intended for use in the manufacture of intoxicating liquor," the transportation of which works forfeiture of the vehicle in which it is being transported in violation of the Turlington Act; before this amendment, only the transportation of intoxicating liquor worked forfeiture of the motor vehicle in which it was being transported in violation of law.

One thing deserves mention in connection with these forfeiture provisions of our law: The Supreme Court of North Carolina has not yet passed on the question whether the vehicle may be forfeited in the absence of the arrest and conviction of the driver or owner, although there is some language in the Court's opinions to the effect that forfeiture is dependent upon conviction of the driver or owner. The federal courts have long since ruled that property could be forfeited under the federal tax and prohibition laws, not only before the driver or owner is arrested or tried, but even if the owner is acquitted of the charge for which the vehicle was declared forfeited (since in the criminal proceeding against the individual guilt must be proved beyond a reasonable doubt, whereas in the forfeiture proceeding, which is in the nature of a civil proceeding, only a mere preponderance of the evidence is necessary). It is likely that, since the state prohibition law forfeiture provisions are patterned after the Federal Alcohol Tax forfeiture laws, the North Carolina Supreme Court may at least rule, when the issue is squarely presented to the Court for decision, that the vehicle can be forfeited even if the driver-defendant has not yet been apprehended.

Chapter 1235 (HB 759) also added to GS 18-6.1 "Equipment or materials designed or intended for use in the manufacture of intoxicating liquor," so that this statute now requires all members of the State Highway Patrol and other state and local law enforcement officers to refer to the courts of North Carolina all cases involving seizure of vehicles used for unlawful transportation of intoxicating beverages or for transportation of equipment or materials designed or intended for use in the manufacture of intoxicating liquor.

Arrest

GS 15-21, which establishes geographical limitations for the execution of warrants of arrest, is amended by Chapter 436 (SB 183). The officer serving the warrant must (1) note on the warrant the date of its delivery to him, and (2) deliver a copy of it to each defendant served; failure to do these things, however, shall not invalidate the arrest.

A bill (HB 385) pertaining to control over JP warrants applicable only to 23 counties was enacted into law and became Chapter 1109 of the Session Laws. The clerks of superior court must provide the JPs in their counties with pre-numbered registered warrants, register sheets and receipt books, printed at the county's expense; the JPs are required to issue the warrants consecutively, and to record the number in the register provided by the clerk, and shall issue receipts for each warrant issued. The receipt books, when filled, shall be returned to the clerk of superior court. Annual audits of the JP's records are provided for, and every law enforcement officer serving criminal process must submit, each year, a list of warrants in his possession as of June 30. Violation is made a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court. The 23 counties to which this act applies are: Ashe, Burke, Cabarrus, Cherokee, Chowan, Cumberland, Davidson, Graham, Guilford, Haywood, Hoke, Johnston, McDowell, Montgomery, Nash, Onslow, Pitt, Polk, Richmond, Rowan, Rutherford, Swain, and Union.

Chapter 1423 (HB 1179) grants authority to the Commissioner of Game and Inland Fisheries, and to the Commissioner of Commercial Fisheries, and their deputies, to arrest without a warrant upon reasonable grounds to believe that any person is committing a violation of the fish and game laws in the presence of the officer. Formerly GS 113-91(d) and GS 113-141 authorized only arrests when the defendant was actually committing said violations in the presence of the officer.

Search Warrants

Chapter 1235 (HB 759) amends GS 18-13 to provide that search warrants may be issued for "equipment or materials designed or intended for use in the manufacture of intoxicating liquor"; the statute formerly authorized issuance of search warrants only for liquor possessed for the purpose of sale.

GS 15-25 authorizes the issuance of search warrants for the following: (1) narcotic drugs, (2) stolen property, (3) property used in connection with operating lotteries or in gambling, (4) false or counterfeit coins or equipment for making such coins, (5) counterfeit bills or securities or the equipment used for making such counterfeit. GS 15-25.1 adds to this list barbiturate drugs. Chapter 496 (SB 122) provides that warrants issued for liquor kept for purpose of sale or warrants for equipment or materials designed or intended for use in the manufacture of intoxicating liquor (that is warrants issued under GS 18-13) shall be subject to the provisions of GS 15-25, 15-26, and 15-27, which establish the general provisions governing the issuance of search warrants. Chapter 496, however, did not amend GS 15-27; it set up a new section designated GS 15-27.1, and it specified that "No facts discovered or evidence obtained by the use of an illegal search warrant, or without a valid search warrant, in the course of any search made under conditions requiring a search warrant, shall be competent evidence in the trial of any action." This merely repeats what was included in GS 15-27 by the 1951 Legislature. The Supreme Court held in *State v. Ferguson*, 238 N. C. 656 (1953) that this did not rule out evidence obtained during the search of an automobile where the officer either saw or had "absolute personal knowledge" that there was intoxicating liquor in the vehicle (GS 18-6); certainly a search incident to lawful arrest which nets

evidence or "facts" is likewise not contemplated by the evidence rule stated in either GS 15-27 or GS 15-27.1. However, a problem may arise in the case of searches without a warrant for property for which there is no authority to issue a search warrant, for example, a murder weapon. If the murder weapon is found in the defendant's home as a result of search without a warrant, would it be admissible into evidence? The officers could not have obtained a search warrant for a murder weapon since there is no authority in the statutes; on the other hand, it is well established that one's home cannot be searched without a warrant when there is no arrest involved! Such a search would certainly be "under conditions requiring a search warrant," but if such a warrant had been issued, it would not have been valid!

Appearance Bonds

As a result of the enactment of Chapter 782 (HB 668) a justice of the peace or the spouse of a JP cannot become bail for any prisoner for money or property, nor can they do so as agents for any bonding company or professional bondsman; violation of the statute (GS 15-107.1) is a misdemeanor punishable by fine or imprisonment in the discretion of the court (and is therefore not within the jurisdiction of a justice of the peace.)

A fresh approach to the procedure in forfeited bond ("*Sci.Fa.*") cases is created by Chapter 332 (SB 153), which amends GS 15-113; *sci. fa.'s* are now returnable to the next term of court commencing within 30 days after the writ is served on the surety and the defendant; the defendant and the bondsman or sureties may file an answer as in civil law suits and the forfeiture is to be tried at the term to which the *sci. fa.* was returnable.

Conduct of Court Proceedings

One minor change in the laws of evidence relates to the competency of husbands and wives to give evidence against each other; Chapter 1036 (SB 25) amends GS 8-57 so that in bigamy or criminal cohabitation prosecutions either spouse may be required to give evidence against the other with respect to facts tending to show the absence of divorce or annulment proceedings between them. Formerly, in bigamy and criminal cohabitation cases, they could only be required to give evidence proving that they were married. The remainder of GS 8-57, relating to the competency of the wife to testify against the husband in assault and battery cases, abandonment, and non-support cases, was not changed.

For other changes in the laws of evidence in criminal prosecutions, see the summary of the obscene literature bill and the new shoplifting law, above.

The courts may now require, as a condition of probation, that the employment of the probationer be "gainful" employment and that he save any excess of his earnings over necessary living expenses, depositing it as a savings account with the clerk of court; he may also be required to give a bond for periodic appearance. This change in GS 15-199 was brought about by Chapter 1351 (SB 442).

A prisoner not in a unit maintained for mentally ill or mentally disturbed prisoners, against whom a detainer has been lodged, who desires to have the charge(s) covered by the detainer tried and disposed of, may now notify the solicitor, and it is mandatory that he be tried within 8 months after giving the notice [Chapter 1067 (HB 1030)]. The bill did not specify a General Statutes section designation, and is uncodified. The apparent purpose of the bill is to allow prisoners to remove from their records the cloud that a detainer provides, a cloud which in most cases prevents time off for good behavior or parole.

A bill which was given much publicity because of a murder trial in the western part of the state during the session of the General Assembly was HB 844 (Chapter 601). G.S. 1-84 ("Removal for fair trial") is amended to provide that whenever a case has been removed to another county for trial on motion of the solicitor, the defendant may object to trial in the county to which the case was transferred and move that the case be sent to some other county next to the county from which it was transferred.

Duty of Jailer to Receive Prisoners

Chapter 1439 (HB 1357), which became law on the last day of the 1957 session, imposes the duty upon county jailers with available facilities to receive, incarcerate, and retain prisoners arrested within the county who are brought to him by any law enforcement officer (county or state), unless the officers be officers of a municipality that has its own jail. Violation of the act is a misdemeanor punishable by fine or imprisonment in the discretion of the court.

Expenses of Return of Extradited Prisoners

One bill, (HB 287) which failed to pass, would have required the state to pay the expenses of a sheriff or his deputies incurred in travelling to another state and returning a person charged with felony in this state.

Coroners

The only measure passed by the Legislature concerning the office of coroner was Chapter 503 (HB 328). This bill amended GS 152-7(1), and 152-7(10) to require that the coroner file with the clerk of superior court a written report of his personal investigation of homicide, and that he also file a transcript of all testimony given at the coroner's inquest.

Domestic Relations

(Continued from page 52)

rendered, no action may be maintained by the wife or anyone claiming under her for recovery of any property described in the contract unless such action is commenced within seven years after the decree of absolute divorce has become final or unless such action is commenced before May 1, 1958, whichever date is later.

The case of *Wollard v. Smith*, 244 N. C. 489, decided in 1956, held that a husband owning land may create an estate by the entireties by deeding the land to himself and to his wife. Chapter 598 (HB 669) makes that decision a statutory proposition unless the conveyance expresses a contrary intent. This chapter also makes it clear that a conveyance from one spouse to the other of an interest in realty places such interest in the grantee (without the joinder of the spouse of the grantor). This is consistent with the holding in the case of *Perry v. Stancil*, 237 N. C. 442 (1952) to the effect that a wife could convey a good fee simple title to her husband without the husband joining in the conveyance. In addition, Chapter 598 makes it clear that a husband or wife holding realty as tenant by the entirety may convey his or her interest to the other spouse (without the joinder of the other spouse) and thereby dissolve the tenancy by the en-

tirety in the interest conveyed and place such interest formerly held by the entirety in the grantee. This chapter does not, however, eliminate the requirement that the provisions of G.S. 52-12 be complied with in order to make the conveyances of the wife discussed above effective.

Chapter 1426 (HB 1232) provides that when one of the spouses holding realty as tenants by the entirety is presumed to be dead as the result of his or her having been missing and unheard from for a period of seven years, the other spouse is to become the sole owner of the property. Provisions are made for restoration of the tenancy by the entirety upon the return of the spouse presumed to be dead, subject to the rights of purchasers and encumbrancers during the period of presumed death.

When one is charged with bigamy or bigamous cohabitation under G.S. 14-183, the present law will permit such person's spouse to give evidence to prove the fact of marriage only. Chapter 1036 (SB 25) amends G.S. 8-57 to allow the spouse to also give evidence tending to show the absence of any divorce or annulment proceedings wherein the husband and wife were parties.

Marriage

Present G.S. 51-17 subjects the register of deeds to a forfeiture of $200 if he issues a marriage license to an applicant who is under age without having made a reasonable inquiry into such applicant's age. Chapter 506 (HB 448) authorizes the register of deeds to require the applicant (if it appears that either party to the proposed marriage may be under 18 years of age) to submit with the application a certified copy of his or her birth certificate. The act provides that requiring the party to submit a certified copy of his birth certificate shall constitute a reasonable inquiry into the matter of the age of such party.

G. S. 51-6 has provided that a minister or officer may not perform a marriage ceremony until a marriage license signed by the register of deeds of the county in which the marriage is intended to take place has been delivered to the minister or officer. Chapter 1261 (HB 1150) amends this to authorize the ceremony to be performed if the license is issued by the register of deeds of the county in which the marriage is to take place or the county of residence of either of the parties to the marriage.

Miscellaneous

Among the bills falling within the general domestic relations area which failed to pass were SB 54, which would have amended the statutes relating to the appointment of guardians for incompetents so as to establish an alternate (and cheaper) procedure for the appointment of a guardian of an incompetent person with limited income and property; HB 1440, which would have amended G. S. 14-320 so as to authorize the clerk of the superior court (as well as the county superintendent of public welfare) to consent to the separation of a child under six months of age from its mother; and HB 588, which would have made a parent or guardian of a child under 16 years of age liable in damages up to a maximum of $500 for the malicious destruction of property by such child.

Public Health

(Continued from page 48)

after 10 days' notice to the superintendent unless involuntary commitment proceedings are begun; adding G.S. 122-66.1 to spell out when and under what circumstances the superintendents may discharge or recommend discharge of patients; and amending G.S. 122-91 to spell out the provisions for commitment of alleged criminal persons for observation.

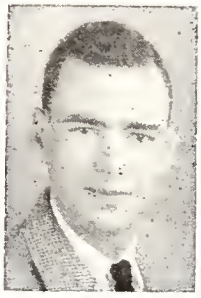
Miscellaneous

Chapter 170 (HB 310) authorizes the North Carolina Cerebral Palsy Hospital to admit for treatment patients with neuromuscular and skeletal disabilities who are in need of rehabilitation, if such admission does not deprive qualified cerebral palsied children of admission to said institution. Chapter 1246 (HB 995) amends G.S. 131-54 (relating to the admission of indigent patients to state sanatoria for tuberculosis) by repealing a provision that nothing in the section shall permit admission of an indigent patient until such patient has acquired a settlement in this state, and by repealing a provision that persons living on property under the exclusive or concurrent control of the federal government may be admitted to such sanatoria on a cost basis under regulations of the directors of the sanatoria. Chapter 1267 (HB 1182) makes the State Board of Health the administrative agent of the State Stream Sanitation Committee for the purpose of administering that committee's duties and functions in accordance with the provisions of Article 21 of Chapter 143 of the General Statutes. Chapter 1425 (HB 1200) extends the statutes relating to the granting of loans to students who will agree to serve on the staff of one of the state's mental institutions following graduation so as to make such loans available to graduate students in sociology and psychology. Chapter 81 (SB 72) amends G.S. 67-30 so as to authorize the appointment of more than one county dog warden. Resolution 34 (HR 974) requires the Governor to appoint ten persons chosen from the medical profession and ten persons not associated with the medical profession as a commission to study the control of cancer in North Carolina; the commission is to report its findings and recommendations to the Governor and the 1959 General Assembly. Chapter 1241 (HB 936) requires manufacturers of household cleansers which contain volatile substances capable of producing toxic effects to label such cleansers with a warning as to their contents and with directions as to their safe use. Chapter 1214 (HB 47) amends the statutes relating to the sanitation of food handling establishments so as to require that such establishments obtain a permit from the State Board of Health (showing compliance with sanitation regulations) prior to beginning operation, to authorize injunctive relief, and to provide that food and drink stands operated by church, civic, or charitable organizations for a period of one week or less must meet minimum sanitation requirements but are not to be subject to grading.

Among the bills of public health significance which failed to pass were SB 160, which called for an appropriation of $125,000 to the State Board of Health for the purpose of vaccinating against polio indigent and medically indigent persons 20 years of age or older; and SB 462, which called for the appointment by the Governor of a commission to survey and study the scope and proper fields of practice of osteopathy and to make recommendations with respect thereto.

Courts, Judges, Related Officials

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.



By
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Supreme Court Justices and Officers

Justices

Qualification for the retirement benefits provided by G.S. 7-39.15 (enacted in 1955) has been made easier by Chapter 336 (SB 246), which permits a justice to count service on the Superior Court bench, in addition to years on the Supreme Court, in computing the eight years required for the prescribed retirement salary.

The retirement salary provided by G.S. 7-39.15 is "the annual salary herein provided for emergency justices of the Supreme Court," and that salary, in turn, is "two-thirds of the annual salary from time to time received by the justices of the Supreme Court" (G.S. 7-39.8). This amount is identical with that prescribed as retirement salary for "every justice of the Supreme Court" by G.S. 7-51.1 (which also covers Superior Court judges), and qualification for retirement is essentially the same under both statutes. Under the latter act, however, as amended by Chapter 1141 (HB 712), a justice is required to select his period of service for the purpose of qualifying for the retirement salary provided, from either (a) his time on the Supreme Court bench, (b) his time on the Superior Court bench, or (c)—under the new amendment—his combined years of service as district solicitor and Superior Court judge. (Perhaps this amendment was intended to affect only Superior Court judges, but the statute is not so limited.)

It would appear desirable to have all of the retirement provisions for Supreme Court justices codified in the article devoted to the Supreme Court (Article 6A, which includes G.S. 7-39.15) and all of the retirement provisions for Superior Court judges in the article devoted to the Superior Court (Article 7, which includes G.S. 7-51.1)

Judicial Council

The $4000 maximum limit on the salary of the executive secretary of the Judicial Council was removed by Chapter 1417 (HB 1045), which also deleted the words, "he shall act as law clerk and research assistant to the Chief Justice," from the 1949 act (G.S. 7-456). However, "when not actively engaged in the discharge of duties assigned to him" by the Council, the executive secretary is still required to "perform such duties as the Chief Justice may assign to him."

Administrative Assistant

The duties of the administrative assistant to the Chief Justice have been extended beyond those connected with the administration of Article IV, Section 11 of the Constitution (relating to the assignment of Superior Court Judges) to include such other duties as the Chief Justice may assign to him. [Chapter 373 (HB 469), amending G.S. 7-29.1(3).]

Clerk

The Supreme Court clerk's staff may be increased by one or more deputies, under the authority of Chapter 312 (HB 259), their duties to be prescribed by the clerk. In addition, the schedule of fees set out in G.S. 7-26 has been substantially revised by this act, providing fees for duties not previously listed in the statute as well as increases in fees for duties now prescribed.

Superior Courts

Terms

The adaptability of Superior Court terms to the needs of the counties has been increased by an amendment to G.S. 7-70, following a proposal of the Judicial Council [see February, 1957, POPULAR GOVERNMENT at page 6]. The new act [Chapter 333 (SB 175)] gives the Chief Justice of the Supreme Court authority to change the designation of Superior Court terms from civil to criminal, from criminal to civil, or from either civil or criminal to mixed, upon the request of the local bar or the resident judge presiding over the courts of the district. Such request "in either case" must be approved by the local bar of the county. Such court term changes must be made at least ten days prior to the time for the convening of the term.

Judges

Salaries of Superior Court judges were raised from $11,000 to $12,000, and each judge was given an allowance increase from $2,500 to $3,500, by Chapter 1416 (HB 1041), amending G.S. 7-42. The retirement provisions provided by G.S. 7-51.1 have been made available to more judges by Chapter 1141 (HB 712), which permits the addition of years of service as a district solicitor to the time served on the Superior Court bench in computing the eight years of service required for qualification for these benefits.

Solicitors

The annual salaries of district solicitors were raised by Chapter 1389 (SB 499) from $7,150 to $7,936, and their expense allowances were raised from $1,500 to $2,000.

[For other new legislation of interest to Superior Court officials, see the article on "Law Enforcement" elsewhere in this issue.]

Other Courts

Domestic Relations

The jurisdiction of the domestic relations court established under the authority of G.S. 7-101 has been increased by an amendment to G.S. 7-103 which adds (1) "all cases where an adult is charged with failure to support a parent," and (2) "all cases where husband and wife are charged with an affray between each other." [For a discussion of other new legislation on the subject of domestic relations, see the article with that title elsewhere in this issue.]

New County Court

With the enactment of Chapter 1441 (HB 1367), yet another inferior court with countywide jurisdiction has been added to the already extensive list of such courts provided by the General Statutes. The new act, originally providing for another "General County Court," inserts a new Article 31A to G.S. Chapter 7, entitled "With civil jurisdiction not to exceed three thousand dollars ($3000); with criminal jurisdiction of offenses below the grade of felony." With civil jurisdiction comparable to that of the "Civil County Court" provided for by Article 33, and with criminal jurisdiction the same "as provided by

G.S. 7-222" (Article 25, County Recorders' Courts), the "paste pot and scissors" approach to the establishment of a lower court "system" continues unabated. By an amendment making the act applicable only to counties having a total population "in excess of 40,000 according to the latest federal census," only 39 counties are eligible for the new hybrid. Of these, only one does not already have county court or some combination of county, municipal, or township courts. With eleven types of inferior courts already provided for by the General Statutes, including courts with civil jurisdiction, with criminal jurisdiction, and with both civil and criminal jurisdiction, the need for the new "county court" is not readily apparent.

Justices of the Peace

In spite of continuing criticism from many sources, the justices of the peace apparently are needed components of the state's local judiciary. About 700 of them were appointed by the 1957 legislature. These justices were selected from 73 counties [Chapter 913 (HB 879), as amended by Chapter 1390 (SB 502)]. Furthermore, the General Assembly would be empowered to raise the civil jurisdiction of justices of the peace to include causes in which the value of the property in controversy does not exceed $200 (now $50), if the majority of the votes cast at the 1958 general election is in favor of an amendment to Article IV, Section 27 of the State Constitution [Chapter 908 (SB 118)].

With the enactment of Chapter 1380 (SB 445), however, perhaps the office became somewhat less attractive. This bill requires every justice of the peace, before exercising any of the functions of his office, to furnish a $1000 bond conditioned upon the faithful performance of his duties and upon a correct and proper accounting for all funds coming into his hands by virtue of his office. Justices are required to pay the premiums on such bonds themselves. Any justice who exercises any of the official functions of his office without having first obtained such a bond, and otherwise complying with the act, is subject to a penalty of $100 for every violation, recoverable in a civil action "by any taxpayer of the county in which such violation occurred." The act does not become effective until August 1, it does not apply to police magistrates (those who serve as justices only to sign warrants and accept bonds), and the magistrates in forty counties escaped the provisions of the act through county exemptions.

Neither justices of the peace nor their spouses can act as bail bondsmen "for any prisoner for money or property," nor may they become bail "as agents for any bonding company or professional bondsman," under the provisions of Chapter 782 (HB 668), which provides a penalty of fine or imprisonment, in the discretion of the court, upon conviction.

Justices of the peace in 23 counties may find their criminal business more closely supervised under the provisions of Chapter 1109 (HB 385), which requires the use of printed warrants, warrants-issued registers, and receipt books. These records are to be provided by the clerk of superior court, at the expense of the county, and are to be audited annually and at such other times as the board of county commissioners may direct. Such audits cover not only the criminal records described in the act, but "all criminal records," and "such other records as the board of county commissioners may direct." The printed warrants are to be pre-numbered consecutively in duplicate and the receipt books are to be made up in triplicate, also pre-numbered. The act provides that these forms and records shall be used in all criminal cases by justices of the peace, warrants to be issued consecutively, with an entry on the warrants-issued register for each warrant issued. Voided and unserved warrants must be retained by the justice and reported to the clerk of superior court, along with filled-up receipt books, and a report indicating issued warrants not in his possession, at the same time that his docket is filed with the clerk in accordance with G.S. 7-132. In using the triplicate receipts, the justice issues the original to the person paying the fine or other costs, keeps one copy for himself, and leaves one copy in the receipt book to be filed with the clerk of the superior court. As a cross-reference for auditing purposes, every law enforcement officer serving criminal process in the 23 counties subject to the act is required to submit to the clerk of the superior court a list of the warrants in his possession as of June 30, or at such other times as the board of county commissioners may direct. Any person violating any of the provisions of the act is punishable by a fine or imprisonment, or both, in the discretion of the court.

Civil Procedure

Parties

The Judicial Council proposal to amend G.S. 1-65.1 was enacted [Chapter 249 (HB 267)], providing that the fee of a guardian ad litem will be taxed as part of the costs in an action or special proceeding in which any of the defendants are infants or persons non compos mentis who have no general guardian.

Venue

With the effective date of the Business Corporation Act (G.S. Chapter 55) arriving on July 1, 1957, the legislature brought the terms of the venue provisions pertaining to domestic corporations (contained in G.S. 1-79) more in line with the terms of the new act by re-writing it to provide that the residence of a domestic corporation, for purposes of suing and being sued, shall be (1) where the registered office of the corporation is located, or (2) if the corporation does not have a registered office, having been formed prior to July 1, 1957, then its residence is in the county where such corporation's principal office is said to be located by its certificate of incorporation or legislative charter [Chapter 492 (SB 271)]. The reference to the registered office of the corporation presumably was inserted in order to simplify the venue problem, since all domestic corporations are required to have such an office after July 1, 1957, in accordance with G.S. 55-13 of the new corporation act.

The legislature also simplified the venue problem as to military personnel by an amendment to G.S. 1-82 [Chapter 1082 (SB 412)], providing that any person residing in or stationed at a military installation within the state for a period of one year or more preceding institution of an action is considered a resident of the county within which such military installation is situated. When such persons live in the adjacent county, however, they are deemed to be residents of that county. This section applies to the spouses and dependents of military personnel as well. Although this act is intended to resolve the many problems arising in the past in connection with transient military personnel and applies to suits by and against such personnel, it should also support the arguments of such persons who desire to establish residence in North Carolina for other purposes.

The opportunity for "hedge hopping" criminal cases, and for extended delay in the trial of such cases, has been substantially increased by an

amendment [Chapter 601 (HB 844)] to G.S. 1-84, the "removal for fair trial" statute. [For a full discussion of this amendment, see the article entitled "Criminal Procedure" elsewhere in this issue.]

Commencement of Actions

When the rules of service of process by publication (G.S. 1-98) were rewritten in 1953 (G.S. 1-98 through 1-98.4), the provision was omitted for service by publication upon a defendant who (a resident of this state) left the state or kept himself concealed within the state with intent to defraud his creditors or to avoid service of summons. G.S. 1-98.2 was amended by Chapter 553 (HB 543), which adds subsection (6) re-enacting this provision.

Drainage districts have been added to those who are exempt from the provisions of G.S. 1-109, requiring plaintiff's prosecution bond [Chapter 563 (HB 654)].

Pleadings—Demurrer

The procedure for appeal from a decision on a demurrer is now subject to the rules of the Supreme Court [Chapter 142 (HB 282)].

Judgment-Condemnation Proceedings

The proposals of the Judicial Council [see February, 1957, POPULAR GOVERNMENT at page 6] that the petitioner in a condemnation proceeding who abandons the proceeding be taxed with a reasonable fee for respondent's attorney, and that the petitioner in a condemnation proceeding may take a voluntary non-suit, were passed as submitted, adding new section G.S. 1-209.1, and 1-209.2 [Chapter 400 (SB 145)].

Special Proceedings-Commissioner's Bond

The "rewrite" of G.S. 1-407 contained in Chapter 8 (SB 12) divides the section into three paragraphs. The first pargraph omits the words "for any other purpose" which appeared in line four of the old section 1-407, and the words "or otherwise" in line six of the old section, so that it applies only to sales of real estate for the purpose of reinvestment of proceeds. The second paragraph provides that in the case of any sale of real estate, the court may in its discretion require a good and sufficient bond to protect the interest of any infant or incompetent. Paragraph three merely contains the provisions in the old section 1-407 to the effect that (a) the court may waive the requirement of such bond in cases where the court requires the funds or proceeds of sale to be paid directly to the court, and (b) the premiums for such bonds shall be paid from the corpus of the funds intended to be protected thereby.

Incidental Procedure in Civil Actions—Pre-trial Examination

"Any officer, agent, or employee of a party or parties to the action, or any landowner, adjoining landowner, or predecessor in title in any suit or special proceeding relative to real property," have all been added to the list of persons who may be examined before trial under the authority of G.S. 1-568.4 [Chapter 1384 (SB 466)].

The rule pertaining to cross-examination and impeachment of a witness whose deposition has been introduced in evidence [contained in G.S. 1-568.25 (b)] has been reversed as to adverse parties whose depositions are introduced in evidence, and who thereafter testify in person, by Chapter 695 (HB 327). The new rule states that when a party introduces in evidence any part of the deposition taken by him of an adverse party, and that party testifies at the trial in his own behalf or in behalf of his principal, the party who introduced the deposition may thereupon cross-examine, contradict, and impeach the credibility of such witness.

Time

G.S. 1-593 has been amended to provide that Saturday, as well as Sunday or a legal holiday, must be excluded in the computation of time within which an act is to be done, if it is the last day of the period computed [Chapter 141 (HB 278)].

Legal Advertising

G.S. 1-600 has been amended by adding managing editors to the list of persons who may prove publication of notice [Chapter 204 (HB 352)].

Clerks, Superior Court

[Although the following article is intended to cover all legislative acts of interest to clerks of superior court, regardless of the General Statutes section amended, readers are referred to the discussion of "Courts" and "Civil Procedure" appearing elsewhere in this article, and to the articles on "Domestic Relations", "Legislation of Interest to County Officials," and "Law Enforcement" elsewhere in this issue.]

Although the only 1957 act applying to Chapter 2 of the General Statutes ("Clerk of Superior Court") effected the ratification of "all of the acts and judgments" of the clerks of the superior court while serving as judges of juvenile courts since May 18, 1955 [Chapter 1042 (SB 287)], many other acts, amending sections of 25 different chapters of the General Statutes, affect the clerk's duties or office. For simplicity, these acts will be taken up in the order of the chapters they amend. [For other new legislation affecting domestic relations and juvenile courts, see the article entitled "Domestic Relations," elsewhere in this issue.]

G.S. Chapter 15—Criminal Procedure

The procedure upon forfeiture of bail, contained in G.S. 15-113, was amended by the addition of a paragraph directing the clerk to issue a writ of "*sci. fa.*" in such cases, and allowing defendant and his sureties to file answer as in civil actions [Chapter 332 (SB 153)]. The supervision of probationers was brought further under the responsibility of the clerk by an amendment to G.S. 15-199, providing for deposit of an appearance bond with the clerk (or payment of cash bond in installments) and deposit with the clerk of a savings account, to be deposited by the clerk in a Federal Reserve bank, to be paid over to the probationer upon discharge, or earlier by order of the court [Chapter 1351 (SB 442)]. [For a further discussion of these amendments, see the articles entitled "Law Enforcement" and "Penal-Correctional Administration" appearing elsewhere in this issue.]

G.S. Chapter 28—Administration of Estates

Administrators of the estates of missing persons have been given more specific authority by an amendment to G.S. 28-2.1 [Chapter 513 (HB 308)]. The new amendment to the first paragraph of this statute directs such administrators to take into their possession and to administer all of the personal property, as well as the proceeds of sale of real property or interests in real property sold by a mortgagee, trustee, commissioner or other person, found in the hands of any clerk of superior court, mortgagee, trustee, commissioner, or any other person holding for the benefit of the missing person.

The validation of foreign executors' conveyances contained in G.S 28-39.1, was brought up-to-date (from 1945) by Chapter 320 (HB 427), which validates conveyances of North Carollna real property by non-resident executors prior to January 1, 1957.

The estate assets provisions, contained in Article II of Chapter 28 were changed slightly by the following provision: Under the 1955 provision (G.S. 28-66.1) overpayment of income tax filed under a joint federal in-

come tax return could be refunded and administered as provided in the section only in case one of the spouses died after the filing of the joint return. Chapter 986 (SB 349) extends this refund provision to include cases where one of the spouses dies *prior* to the filing of the joint return which included an overpayment of income tax.

The clerk's direction to pay the balance of an intestate estate fund remaining in his hands (when no administrator has been appointed) to the surviving spouse, now applies to balances as high as $250 (was $50) as the result of an amendment to G.S. 28-68.2 [Chapter 491 (SB 247)].

Executors, administrators and collectors are given 30 days after the expiration of one year from the date of qualification in which to file an annual account, under Chapter 1059 (HB 687) amending G.S. 28-117, which formerly required the annual account to be filed "within twelve months."

The long list of special proceedings has been increased by Chapter 1248 (HB 1022), which adds new section G.S. 28-160.1, providing that an executor or administrator is authorized to institute such a proceeding in those cases where there "may be" other heirs or next of kin, before distributing an estate. The new paragraph provides for summons by publication and the appointment of guardians ad litem for the unknown heirs. The section provides that, if the prescribed procedure is followed, any payment or distribution by the executor or administrator under order of the court fully discharges him and his sureties, and that any judgment entered by the court in such proceedings shall be binding upon the unknown heirs or next of kin.

Executors, administrators, and other fiduciaries who are also licensed attorneys may now be compensated for professional services which they render on behalf of the estate, beyond the routine duties of administration, under Chapter 429 (HB 484), inserting new section G.S. 28-170.1. Such professional fees are allowed in the discretion of the clerk of superior court.

The not infrequent North Carolina practice of having widely separated statutes bearing on the same subject matter has often created interesting problems of statutory interpretation. Such a situation was created in 1949 with the enactment of Article 22, G.S. Chapter 28 (G.S. 28-193 to 28-201) entitled, "Estates of Missing Persons." This statute overlapped G.S. 28-2.1, enacted in 1947, thus providing two sources of guidance for clerks of superior court in connection with their supervisory powers over the administration of estates. (For criticism of this practice, and of these statutes see 25 N.C. Law Rev. 423; 27 N.C. Law Rev. 410.) Both statutes have been amended by the 1957 legislature, neither amendment making reference to the other or to the other General Statutes section. (The amendment to G.S. 28-2.1 was Chapter 513, noted above.)

The amendment to Article 22 provides that the real estate held by a missing person (as defined in the statute) as a tenant by the entirety, "shall become the sole property of the surviving spouse," who thereupon has the right to dispose of such property as the "sole and absolute owner thereof." There are other provisions contained in the amendment for the protection of the missing person, in the event of his reappearance. There can be little doubt that the North Carolina Supreme Court will eventually have to reconcile the two statutes, but until that time it might not be inappropriate to point out that the 1947 act (G.S. 28-2.1) as amended, charges the administrator, appointed by the clerk, with the authority and duty of administering the estate of a missing person, including both real and personal property, while the later act (G.S. 28-197.1) provides that certain of the real property of such a missing person (that held as tenant by the entireties) shall vest in the surviving spouse and may be disposed of as her or his own property.

Chapter 31—Wills

G.S. 31-24 and G.S. 31-25 were both amended by Chapter 587 (SB 250), sponsored by the Clerks' Association. G.S. 31-24 was changed to permit examination of subscribing witnesses to the will of a resident testator outside of the county in which the will is being probated, by the clerk of superior court of such foreign county as well as by a notary public. The affidavits obtained under such an examination must be transmitted by the clerk taking them, under his hand and official seal, to the clerk before whom the will was filed for probate, in the same manner as notaries are required to do.

G.S. 31-25 was amended to permit the clerk to issue a commission to take the deposition of witnesses to a will when they reside outside of the county in which the will is to be probated, rather than "more than 75 miles from the place where the will is to be probated," as was formerly required.

Chapter 34—Veterans Guardianship Act

G.S. 34-13 received a new subsection (d) under Chapter 199 (HB 215), providing an additional group of investments for guardians affected by this chapter. The new sub-paragraph permits the investment of funds in a savings account or saving-share account, etc., or stock of any federal savings and loan association or of any building and savings and loan association, organized under the laws of the United States and licensed under the laws of this state and located in this state, to the extent that such investment is insured by the Federal Savings and Loan Insurance Corporation.

Chapter 35—Art. 6, Inebriates

The words "narcotic drugs" were changed to read "narcotics, or drugs" in the definition of inebriate contained in G.S. 35-30 [Chapter 1232 (HB 756)]. The definition of inebriates contained in G.S. 35-1 was not changed. G.S. 35-32 was amended by Chapter 1258 (HB 1131), sponsored by the Clerks' Association, to provide that neither the institution of proceedings to commit an alleged inebriate for treatment nor the clerk's order of commitment creates a presumption of legal incompetence for any purpose. When a guardian or trustee has been appointed for an inebriate under G.S. 35-2 or 35-3, however, restoration procedure shall be the same as provided in G.S. 35-4.

Chapter 36—Trusts and Trustees

Under Chapter 508 (HB 499), fiduciary funds of executors, trustees, guardians, etc., may now be invested in federal farm loan bonds issued by federal land banks, federal intermediate credit bank debentures, and debentures issued by central banks for cooperatives and regional banks for cooperatives, unless such fiduciary funds are required to be otherwise invested by will, deed, order of court, gift, grant, or other instrument creating the trust.

Chapter 47—Probate and Registration

Air Force officers have been added to the list of officials of the United States, foreign countries, and sister states authorized to take acknowledgments

and to validate instruments required by law to be acknowledged [Chapter 1084 (SB 420), amending G.S. 47-2].

The statute regulating the place of registration of mortgages of personal property, as far as domestic and foreign corporation mortgagors are concerned [G.S. 47-20.2 (b) (3) and (4)], has been amended to conform to the new business corporation act (G.S. Ch. 55, 1955) and the new non-profit corporation act (G.S. Ch. 55A, 1955), which became effective July 1, 1957. The amendment was effected by Chapter 979 (SB 272), which provides that if the mortgagor of personal property is a domestic corporation, the mortgage must be registered in the county where the registered office of the corporation is located when the mortgage is executed; but if the corporation was formed prior to July 1, 1957, and has no registered office, the mortgage must be registered in the county where the principal office is said to be located by its certificate of incorporation, etc. The new act further provides that if the mortgagor of personal property is a foreign corporation, the mortgage must be registered in the county where the registered office of such corporation is located when the mortgage is executed; but if the corporation, having been domesticated prior to July 1, 1957, has no such registered office in the state, the mortgage must be registered in the county where the principal office is said to be located by the statement filed with the Secretary of State. If the foreign corporation mortgagor has not been domesticated in this state, the mortgage must be registered in the same county or counties as a mortgage executed by a non-resident individual. [See G.S. 47-20.2 (b), (1)b.] The act does not affect mortgages registered prior to July 1, 1957.

The form of certificate of a married woman's acknowledgment of an instrument falling within the provisions of G.S. 52-12 (contracts between husband and wife affecting the wife's estate) has been amended by Chapter 1229 (HB 672) to add, among other things, a statement of the private examination of the wife and a statement that the conveyance or contract is not unreasonable or injurious to her. The 1945 statute which attempted to repeal all laws requiring the private examination of married women (G.S 47-14.1), has been repeatedly ignored by subsequent legislatures. For example, the major repudiation of G.S. 47-14.1 was contained in the 1955 revision of G.S. 52-12, which rewrote the latter statute, reinserting the requirement for private examination. The 1957 amendment to G.S. 47-39, discussed above, merely carries the intention of the legislature as expressed in G.S. 52-19 (1955) over into the certificate of acknowledgment contained in the former statute. It seems apparent that North Carolina will have a private examination provision for some time to come.

G.S. 47-42, which seemed to state that banking corporations have no secretaries, and to require their cashiers to attest deeds and conveyances executed by them, has been amended by Chapter 783 (HB 687) to provide that the proof and certificates for deeds and conveyances executed by such corporations may be attested by either the secretary or the cashier.

Two registration validation acts were passed by the 1957 General Assembly. Deeds and other instruments executed prior to March 3, 1949, which were registered without probate and order of registration by the clerk of superior court, have been validated by Chapter 314 (HB 354). The act amends G.S. 47-50 to provide that when the register of deed's records show that an instrument was executed prior to March 3, 1949, and was authorized or required to be registered, that it was duly *signed and* acknowledged, but that the clerk *or other authorized officer* failed to *pass upon the acknowledgment or* to order registration, *or both*, the registration is valid for all purposes. The amending act inserted the italicized provisions.

G.S. 47-71.1 is a new section added by Chapter 500 (HB 170), providing for the validation of corporate deeds made prior to January 1, 1957, which are defective only because of the omission of the corporate seal.

The effective date of validation of acknowledgments and privy examinations taken by notaries public and justices of the peace has again been moved up, this time from January 1, 1951, to January 1, 1957, by Chapter 1270 (HB 1208), with the effect that such acts by notaries and justices performed prior to the latter date are now declared to be sufficient and valid. (The validation date was moved up from 1939 to 1951 by the 1955 amendment, Chapter 696.)

The ever increasing list of validation statutes contained in G.S. Chapter 7, Article 4, gained a new paragraph (G.S. 47-108.15), this time validating all deeds, mortgages, etc., which have "heretofore" been accepted for filing and registration by registers of deeds on a date preceding the date of the clerk's order of registration [Chapter 1430 (HB 1286)]. It is probable that this statute will subsequently have a history similar to that of G.S. 47-95, being brought up to date every few years in order to validate the continuing practice in some counties of registering instruments prior to the clerk's order of registration.

Chapter 48—Adoption of Minors

G.S. Chapter 48 was extensively revised and amended by Chapter 778 (HB 225) and Chapter 90 (SB 41), which among other things, inserted new G.S. 48-25(c) and deleted the second paragraph of G.S. 48-27. [For a detailed discussion of these changes, see the article entitled "Domestic Relations" elsewhere in this issue.]

Chapter 50—Divorce and Alimony

See the article entitled "Domestic Relations," elsewhere in this issue, for a discussion of the amendment to G.S. 50-12 [Chapter 394 (HB 542)] and the enactment of a new statute [Chapter 983 (SB 320)] providing for the central registration of divorce decrees, requiring clerks of courts authorized to grant divorces to transmit reports of such cases to the Office of Vital Statistics, and prescribing various requirements for such reports.

Chapter 59—Partnership

The maximum commission of 5% out of the share of a deceased partner which a surviving partner may have for his services in settling the partnership estate has been eliminated by Chapter 783 (HB 687), amending G.S. 59-82, with the effect that the surviving partner is now allowed such commissions as prescribed by the court without a specified maximum limit.

Chapter 101—Names of Persons

The much-amended section G.S. 101-2 has been given a new paragraph [Chapter 1442 (HB 1372)], providing that the consent of a parent who has abandoned a child is not necessary in a change of name proceeding, if a copy of the court order adjudicating abandonment is filed with the clerk of superior court. If there has been no such order, the procedure is prescribed whereby the clerk may have the matter determined.

Applications for change of name must now contain, in addition to the applicant's true name and the name he desires to adopt, the "county of

birth, date of birth, and the full names of parents as shewn on applicant's birth certificate," in accordance with Chapter 1233 (HB 789), amending G.S. 101-3, 101-5. The new act also provides that if the clerk decides that the applicant's name may be changed, his order changing the name of the applicant must now contain the true name, county of birth, date of birth, the full names of parents as shewn on birth certificate, and the name sought to be adopted. Finally, the copy of the change of name order need now be forwarded to the State Registrar of Vital Statistics only if the applicant was born in North Carolina.

Chapter 106—Agriculture

Judgments of the Structural Pest Control Commission, created in 1955, which, under G.S. 106-65.32 are required to be sent to the clerk of the superior court, must now be filed by the clerk in the judgment docket of his county [Chapter 1243 (HB 954)].

Chapter 108—Board of Public Welfare

For a discussion of extensive amendments to this chapter, see the article entitled "Public Welfare" elsewhere in this issue, with particular reference to Chapter 1107 (SB 376), amending G.S. 108-30.1 (authorizing the clerk of superior court to accept payment of amount set out in statement received from Superintendent of Public Welfare and to cancel OAA lien), and Chapter 1273 (HB 1225), amending G.S. 108-30.2 (providing that if the personal property of the estate of a deceased OAA recipient does not exceed $100, a personal representative is not a necessary party to an action to enforce the old age assistance lien.)

Chapter 109—Bonds

The registration of certain official bonds may now be effected by the register of deeds without an order of probate entered by the clerk of the superior court, provided that such bonds are executed as surety by an authorized surety company, under seal in the name of the surety, by an agent or attorney in fact by authority of a power of attorney recorded in the register's office [Chapter 1011 (HB 1010), amending G.S. 109-11].

Chapter 110—Child Welfare—Juvenile Courts

[For discussion of new legislation affecting juvenile courts and clerks of superior courts acting as judges of such courts, see the article entitled "Domestic Relations," elsewhere in this issue.]

Chapter 116—Educational Institutions—Escheats

The present sections G.S. 116-21 and 116-22 have been repealed and replaced by new sections (with the same numbers) by Chapter 1105 (SB 354). New section 116-21 provides that whenever the owner of real or personal property dies intestate (or without disposing of all his property by will), without leaving surviving heirs, such property shall escheat to the University of North Carolina. In an action by the University, under this section, a default judgment (final) may be entered by the clerk of superior court when no answer is filed by the administrator, executor, unknown heirs, or claimants, or if an answer is filed, the allegations of the complaint are admitted or are not denied, and no claim is made in the answer to the property left by the deceased. The act provides that it shall also apply to the administrator for the estate of a missing person, appointed under G.S. 28-2.1, when the court finds that such person left no lawful heirs or claimants to the property. The new section G.S. 116-22 provides that all personalty remaining in the hands of administrators, executors, administrators c.t.a., or personal representatives, when the administration of the estate of an intestate (or partial intestate) is ready to be closed, there being no known heirs to inherit the same, shall be paid over to the University of North Carolina as an escheat and shall be included in the disbursements in the final account of the estate. The University again is authorized to sue for and recover such unclaimed monies from any administrator, etc., or from the clerk of the superior court if the unclaimed assets had been paid over to him.

Chapter 122—Hospitals for the Mentally Disordered—Commitments

G.S. Chapter 122 has been extensively revised and amended by Chapter 1232 (HB 756) and Chapter 1257 (HB 1130), including certain provisions sponsored by the Clerks' Association. For a detailed discussion of the new sections see the article entitled "Public Health," elsewhere in this issue, and the discussion of new legislation affecting G.S. Chapter 35, above.

Chapter 152—Coroners

The clerk of superior court becomes the recipient and custodian of two additional reports by Chapter 503 (HB 328), which amends G.S. 152-7(1) and (10) by adding new sentences at the end of each section requiring (1) a written report of the coroner's investigation to be filed by the coroner with the clerk and (2) a copy of all testimony given at the coroner's hearing (in writing) also to be filed with the clerk. The clerk is directed to "preserve the said report" and to "preserve" the copy of testimony, but he is given no instructions or guidance as to the form of preservation required or as to any indexing required. Presumably, such reports and copies of testimony will be added to the growing piles of materials which are deposited with the clerk as a mere custodian and which have no reference value because of the absence of filing and indexing requirements. In view of the increasing seriousness of the space shortage in the clerks' offices around the state, it would seem desirable (and will soon be imperative) that the clerk's office cease to be made a depository for such records, or that some guidance be given these officials as to authorize photocopying and indexing.

Chapter 153—Counties and County Commissioners—Disposition of Records

G.S. 153-15.4 was amended by Chapter 330 (SB 56), deleting the last sentence of the section, which provided that failure (after notice) of the Department of Archives and History to give consent to destruction of original records which have been photographically reproduced shall be deemed consent by the Department for the destruction of such records. The effect of the amendment is that clerks of superior court and other officials who desire to dispose of official records which have been photographically reproduced must now await specific authority from the State Department of Archives and History before disposing of such records.

Registers of Deeds

New Public Health Code

Perhaps the bill holding the greatest interest for the registers of deeds is Chapter 1357 (HB 48), the revised public health code, which contains most of the bills sponsored and approved by the Association of Registers of Deeds.

Originally, the bill provided—so far as the registers of deeds are concerned—authorization for the collection of $1.00 for registering delayed birth certificates, with one copy, plus $1.00 for each additional certified copy, plus $.50 for each notarial act performed in connection with such

registration. The bill also provided that birth and death records should not be open to the general public, but provided what was thought to be an ample list of those entitled to see the records, including a provision for anyone to see them with the permission of the State Board of Health. Prior to passage it was amended as follows, however: the fee for additional certified copies was reduced from $1.00 to $.50; a requirement was inserted that copies of birth and death records be filed in a county of residence when birth or death occurs at a place other than the county of residence; representatives of press, radio, and television were added to the list of those authorized to have access to birth and death record copies.

Compensation

Sixteen registers of deeds received salary increases, or had their salaries fixed by local act, in the 1956-57 legislature. Some of these were given salaries in lieu of fees, some in addition to all fees collected. Of those who act as clerk to the board of county commissioners, some received additional salary for this function, or received a raise in salary in addition to their compensation as clerk to the board, and some others received a salary raise which was to include compensation for acting in this capacity. The new salaries ranged from $4000 to $7500. Sixteen more counties have been added to those in which the county commissioners have the power to raise or to fix the register's salary. (Person County tried to submit the issue of giving such authority to county commissioners to the voters at the next general election, but the measure was killed by an unfavorable committee report.) Five of these sixteen counties merely were brought under the provisions of G.S. Ch. 153, Art. 6A, but eight stated a maximum salary allowable. These maximum limits were as follows: $4800; 10% above present salary; 20% above present salary; and $1350 per year additional. Two registers were given an increased salary range, the specific amount to be fixed by the county commissioners. These ranges were as follows: $2400-4000, and $3800-4500. One bill stated a minimum salary of $3850.

Fees

Nine registers were added to those whose fee bills are fixed and amended by the county commissioners, most of these under the authority of bills bringing their counties within the provisions of G.S. 153-9(12a).

Eleven registers' fee bills were revised by local acts, or were prescribed by local acts for the first time, without giving county commissioners the authority to change such bills.

The following specific fees were set in the counties indicated:

Currituck: $1.00 per page or fraction for all instruments recorded; minimum fee $1.50 plus $1.00 for each additional page.

Pender: $.50 for registering statutory chattel mortgage.

Assistants, Deputies, and Clerical Assistants

In Person County, the permissible pay for clerical assistants was raised from $350 to $500; the Alleghany County register was provided $900 per year for clerical assistance. In Jones County, the register was authorized to appoint a deputy to serve at the will of the register of deeds and to be compensated by the county commissioners. The assistant register of deeds in Dare County was authorized to perform all functions of the register, with respect to discharges of record of mortgages and deeds of trust, and to validate all such acts heretofore done by such assistant, amending G.S. 45-37. (This last new act would probably be unnecessary for most counties in view of G.S. 45-36.2, which provides that "registers of deeds" shall be interpreted to mean assistants and deputies as well.)

Plats and Maps

G.S. 47-30 was amended as to Wilson County to authorize an owner to have a plat of his property recorded upon the oath of a surveyor that it is correct to the best of surveyor's knowledge and belief and that it was prepared from an actual survey made by him. If the surveyor making the plat is dead, however, or if the land was sold according to an unrecorded plat, the amendment provides that it may be recorded upon the oath of a licensed surveyor who has checked the same and found it to be correct. All plats are to be on Irish linen cloth and placed in a secure depository, with a photostatic copy being placed in the plat book. The Wilson register is authorized to receive fifty cents plus the actual cost of the photocopy of such plat.

The requirements for plats in Burke County were prescribed as follows: They must be on 18 x 24 inch linen cloth or matte foil, with a one inch border, in black India ink, with a back reference to the last previous conveyance or an explanation as to how the present owner derived the title. There must also be a surveyor's certificate which states that the plat was made from an actual survey, and the full names of all adjoining landowners must be recorded on the plat.

The requirements for plats in Cleveland County were similarly prescribed, the only difference being that they must be on 19 x 24 rather than on 18 x 24 inch linen cloth.

Surry County's requirements are only slightly different, providing that the county commissioners may require a bound plat book, 18 x 24 inches in size; that photostats may be made of present plats to fit the new books; that the new plats must be in black waterproof ink, 18x24 inches in size, on transparent tracing or linen, containing the oath of the surveyor and the date of his survey; and that there shall be a fee of $1.00 for each map or sheet recorded.

Rowan County added a provision requiring a surveyor's certificate, similar to those described in Surry, Cleveland, and Burke counties.

Durham County also requires a surveyor's certificate, stating that the property described in the plat is within the city limits or one mile thereof.

Registration of Instruments

Under the many provisions of Chapter 783 (HB 687), G.S. 47-42 has been amended to make clear that either the secretary or the cashier of a banking corporation may attest deeds or conveyances of the corporation.

Deeds and other instruments executed prior to March 3, 1949, which were registered without probate and order of registration by the clerk of superior court, have been validated by Chapter 314 (HB 354). The bill amended G.S. 47-50 to provide that when the register of deed's records show that an instrument was executed prior to March 3, 1949, and was authorized or required to be registered, that it was duly *signed and* acknowledged, but that the clerk *or other authorized officer* failed to *pass upon the acknowledgment or* to order registration, *or both,* the registration is valid for all purposes. The amending act inserted the italicized provisions.

G.S. 44-78 was amended by Chapter 564 (HB 661) to provide that assignments by domestic (or domesticated) corporations are to be filed in register's office of county in which assignor has a registered office, or if the assignor has no registered office, then in the county of the principal office of the corporation as shown by its certificate of incorporation or

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Penal - Correctional Administration

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

By
V. L. Bounds
Assistant Director of the Institute of Government

State Prison Department Created

Seven years after its start, the movement to separate the state prison system from the state highway system achieved success. One must be aware of the reasons for the union of the two systems in 1933 and be cognizant of the steps taken since 1950 to secure this separation in order to appreciate the full significance of the effectuating legislation [Chapter 349 (HB 218)].

Background

Briefly stated, the facts influencing the decision of the 1933 General Assembly to consolidate the highway and prison systems were (1) the prison system had an ever-increasing supply of idle prisoners, an acute need for new housing to accommodate the growing prison population, and a mounting financial deficit to be met from an over-burdened General Fund; (2) the highway system could make constructive use of prison labor in road work and pay the cost of prison construction and maintenance from appropriations out of the Highway Fund. It was a merger motivated frankly by financial considerations, which were of compelling importance to a legislature working with shrinking revenues to meet expanding needs for state services in the depths of a great economic depression.

For seventeen years this solution for the problem of prison support seemed to be satisfactory, and no significant attacks were made upon the administrative arrangement that vested control of prison affairs in the State Highway and Public Works Commission. Then in 1950, at the request of the Prison Advisory Council created by the 1949 General Assembly, the State Highway and Public Works Commission engaged Dr. Austin H. MacCormick, a penologist of high repute, to make a survey of the prison system. His chief recommendation, supported in principle by the Prison Advisory Council, was that a separate department be created to receive control of the prison system from the State Highway and Public Works Commission.

MacCormick's critical comments on North Carolina's prison system and his suggested remedies received wide publicity. Articulate advocates rallied to the cause. Support for separation of the prison system from the highway system gathered strength.

A bill for this purpose was introduced in the 1953 General Assembly by John Umstead, Representative from Orange County. The House Judiciary 2 Committee voted for an unfavorable report. But a switch of one vote would have given the bill a favorable report and several members of the Committee were absent when the vote was taken. Although there was talk at the time of an attempt to get the bill to the floor of the House "without prejudice," this was not done and the bill died.

Governor William B. Umstead agreed with his brother, Representative John Umstead, that the prison system should not be controlled by commissioners primarily concerned with road construction and maintenance. But he was also convinced that there were complex problems involved in separating two systems so long consolidated, and that further study was necessary to solve these problems. The Commission on Reorganization of State Government, authorized by the 1953 General Assembly and appointed by Governor Umstead, was asked by him to study the problems and submit recommendations respecting prison administration.

In November, 1954, the Reorganization Commission reported that facts needed to determine the feasibility of separating the prisons from the highway system were unknown or uncertain. The Commission noted, in particular, that no budget had been prepared for an independent prison system and no plans had been made to assure adequate employment for prisoners. They expressed their belief that a gradual readjustment of relations between the prison and highway systems would be wiser than complete separation by one stroke. Accordingly, they recommended measures designed to give greater autonomy within the Highway Department to the Prison Division and to facilitate study and preparation for additional changes in prison organization and administration.

Governor Luther H. Hodges, in his message to the 1955 General Assembly, endorsed the recommendations of the Reorganization Commission respecting prisons. But he also expressed his opinion that the prison system should be separated from the highway system if and when this change was found to be feasible. The General Assembly enacted legislation implementing the recommendation of the Reorganization Commission and, by joint resolution, directed the Chairman of the State Highway and Public Works Commission, the Chairman of the Prison Advisory Council, and the Director of Prisons to take measures to determine the feasibility of the proposed separation and to submit a report thereon to the Governor for transmission to the 1957 General Assembly.

These three officials instituted an extensive program of research to assemble adequate information about the future needs of the prison system. On the basis of information gathered, plans for the long-range development and operation of the prisons were formulated.

These plans provided reasonable assurance of sufficient employment for prisoners, and also made possible proper budgeting for a prison system separated from the highway system. Two budgets were prepared, one for operations under the State Highway and Public Works Commission and the other for an independent prison system. From the measures taken and the facts found, the three officials concluded that separation of prisons from the highway system would be feasible by July 1, 1957.

Enactment

Blessed by the accolade of the administration and almost universal support of the press, the bill to effect final separation of prisons from the highway system did not appear to face formidable difficulties at the time it was introduced in the 1957 General Assembly. The gravest danger of de-

feat seemed to be safely passed when Governor Hodges declared that any prison deficit would be defrayed from the Highway Fund, thereby obviating an oblique attack on the prison bill by proponents of higher pay raises for teachers and other state employees dependent upon General Fund revenues.

But though the prison separation bill easily cleared the House, it hit an unexpected snag in the Senate's State Government Committee. There, like an echo from 1953, a 5 to 3 vote of the committee, cast at a meeting where two members favoring the measure were absent, burdened the bill with an unfavorable report. However, the unqualified and determined support of the Governor made this burden relatively light, and the bill passed the Senate altered only by an amendment barring any use of monies from the General Fund for the support of the prison system. The House concurred in the amendment. A marriage contracted to meet the necessities of the prison system and the convenience of the highway system was dissolved on its 24th anniversary. But it was a divorce with alimony, since the Highway Fund remained the source of monies to meet prison expenditures in excess of earnings.

Organization

All powers and duties respecting the control and management of prisons previously vested in and imposed upon the State Highway and Public Works Commission were transferred on July 1, 1957 to the newly created Prison Department. The Prison Advisory Council was abolished. The governing authorities of the Department include a 7-member part-time policy-making State Prison Commission and a full-time Director of Prisons responsible for administrative management of the prison system.

Commission members are appointed for staggered terms by the Governor, who designates one to serve as chairman. Four members of the first Commission were appointed for four-year terms and three members for two-year terms commencing July 1, 1957. All subsequent appointments to this Commission will be for four-year terms, except those made to fill vacancies occurring before expiration of the regular term. This arrangement is designed to promote continuity in prison policies by providing terms of four Commissioners over lapping the Governor's by six months and terms of the other three overlapping his by thirty months. However, the Governor may remove any member for cause.

Members of the first Prison Commission appointed by Governor Hodges for four-year terms include Linn D. Garibaldi of Matthews, telephone company executive, who was designated to serve as chairman; Mrs. J. Melville Broughton of Raleigh, widow of the former Governor and U. S. Senator; Dr. M. B. Davis of High Point, a physician; and W. W. Shope, businessman and mayor of Weaverville. Members appointed for two-year terms include T. R. Eller of Brevard, a lawyer; Edgar Gurganus of Williamston, also a lawyer; and Dr. William McGehee of Leaksville-Spray, industrial psychologist and Educational Director of Fieldcrest Mills. Dr. McGehee was chairman and Mrs. Broughton and Mr. Garibaldi were members of the Prison Advisory Council.

Relatively few changes were made in the laws pertaining to the office of Director of Prisons. Legislation enacted in 1955 provided for appointment by the Highway Commission (with the Governor's approval) of a Director of Prisons whose term would expire January 1, 1958, with subsequent appointments to be made for four-year terms. Similarly, the present law provides for appointment by the Prison Commission (with the Governor's approval) of a Director whose term will expire July 1, 1962, with subsequent appointments being made for four-year terms. The principle of an overlapping period during which a new Governor and Prison Commission can become acquainted with the work and qualities of a Director before reappointing or replacing him has been retained. As before, the appointing Commission can remove the Director only for cause after notice and hearing and with the consent and approval of the Governor. Administrative powers and duties respecting the prison system transferred from the Highway Commission to Director of Prisons by the 1955 legislation remain vested in the Director, including the responsibility for hiring and firing personnel subordinate to him.

Colonel William F. Bailey, first appointed Director of Prisons in August, 1953, and reappointed under the 1955 legislation, has been appointed as the first Director of the new Prison Department. This assures the continuity in prison administration so long needed in North Carolina. The executive leadership of the prison system had changed hands 12 times in the 20 years preceding the first appointment of Director Bailey. His retention as executive head of the prison system through the many vicissitudes affecting his office stands as its own highly complimentary commentary on the way he has discharged his duties.

Prisoner Employment

Even though the Highway Commission no longer controls the prison system, road work will continue to be the chief employment available for male prisoners, at least during the present biennium. Under the new law, the number to be kept available for this work and the amount to be paid for the labor must be agreed upon by the governing authorities of the highway and prison systems far enough in advance to permit proper provisions to be made in requests for appropriations submitted by each agency. The Governor is to decide disagreements.

Budgets for the present biennium anticipate employment of from 6,200 to 7,000 male prisoners on roads. This range was agreed upon in order to facilitate finding alternative employment for prisoners gradually without creating the inmate idleness problem inevitable if the prisoner road force were to be suddenly reduced to the number actually desired by the highway authorities. The State Highway Engineer has estimated that not more than 5,200 prisoners can be used to advantage in road work on a continuing basis.

An alternative outlet for prison labor holding high promise is work in the development and improvement of state-owned forests. The new law requires agencies controlling these forests to employ as many male prisoners available and fit for forestry work as can be used for this purpose.

The remainder of the able-bodied prisoners are to be employed as far as practicable in prison industries and agriculture, giving preference to the production of food supplies and articles needed by state-supported institutions or activities. However, it is unlikely that sufficient jobs can be created in prison industries and on prison farms to absorb the entire supply of prison labor left after road and forest needs are met.

Contracts can be made with other state agencies and political subdivisions for the hire of prisoners to

(Continued on inside back cover)

Motor Vehicles and Highway Safety

I. Motor Vehicle Laws in General

By DURWARD S. JONES, *Assistant Director of the Institute of Government*

Chapter numbers given refer to the 1957 Session Laws of North Carolina. HB and SB numbers refer to bill numbers of bills introduced in the House and in the Senate.

Although the General Assembly again concerned itself with many proposals for changes in the Motor Vehicle Laws, the final number of such changes was only 32, or some 40% of the introductions in this field, and considerably fewer than the number of changes made by the previous Legislature.

The Department of Motor Vehicles asked that 20 changes be made and eleven of them were enacted, though some were amended extensively in the process. Included in the Department's proposals were four major items: (1) compulsory mechanical inspection; (2) scientific tests for intoxication; (3) unmarked Patrol cars; and (4) a new racing statute. The Highway Patrol was granted limited authority to use unmarked cars and the racing statute was rewritten; but the bills to provide for mechanical inspection and scientific tests for intoxication never reached the floor of the House for debate. Bills similar to these two latter measures also failed in the 1955 General Assembly. Further evidencing the fact that time has not changed the feeling of the Legislature in recent years with regard to mechanical inspection, the 1957 General Assembly defeated a bill which would have authorized a program of voluntary mechanical inspections which would be made by licensed private garages.

General Provisions

Chapter 1087 (SB 428) adds a new paragraph to G.S. 20-38 (1) to broaden the definition of the word "intersection". The new paragraph provides that where one highway includes two roadways 30 feet or more apart, then every crossing of that divided highway by an intersecting highway (or, where the intersecting highway includes two roadways 30 feet or more apart, by each intersecting roadway) is to be regarded as a separate intersection. The addition means that the crossing of two divided

highways meeting the conditions of the amendment will become four intersections; whereas under the old definition that crossing would probably be considered only one intersection.

Chapter 1150 (HB 132) made three alterations in the definitions of certain carriers; the changes become effective and apply to tax years beginning on and after January 1, 1958. G.S. 20-38(q)(2) formerly declared that "for hire passenger vehicles" were any such "motor vehicles engaged in the business of transporting passengers for compensation"—with noted exceptions. Under the amendment "engaged in the business of" has been stricken, and "for hire passenger vehicles" are any such "motor vehicles transporting passengers for compensation"—with the same noted exceptions. G.S. 20-38(r)-(1), which defines "contract carrier vehicles", has been amended to add the requirement that motor vehicles operating as interstate common carriers of property under authority of the ICC and doing contract property-hauling in North Carolina be registered as contract carrier vehicles [this requirement was formerly a part of G.S. 20-38(r)(2)]. And G.S 20-38(r)(2) has been completely rewritten to define "common carrier of property vehicles" as every motor vehicle used for the transportation of property which is certified a common carrier by the Utilities Commission or the ICC.

Chapter 1231 (HB 716) amends G.S. 20-38(bb) to include within the definition of "special mobile equipment" trucks on which special equipment has been mounted and used by Shrine Temples for parade purposes [such vehicles are subject to a $3 annual license tax under G.S. 20-87-(j)].

Registration and Title

Inspection of Foreign Vehicles

Subsection (d) is added to G.S. 20-53 by Chapter 1355 (SB 501) which authorizes the Commissioner of Motor Vehicles to appoint persons (in addition to members of the State Highway Patrol and other designated employees of the Department of Motor Vehicles) to perform the inspections and certifications of foreign motor vehicles required for registration of such vehicles by G.S 20-53(c). Appointed inspectors are permitted to charge an inspection fee of $1 (25¢ of which will be paid to the Dept. of Motor Vehicles to use in supervising and policing the appointees), but are prohibited from inspecting or certifying vehicles owned by themselves. Inspections and certifications made by the State Highway Patrol and designated employees of the Department will continue to be made without charge.

Registration Plate Special Use

A special permit may be granted authorizing the use of a registration plate on a vehicle other than the vehicle for which the plate was issued by virtue of the new section added to Part 3, Article 3, G.S. Chapter 20, by Chapter 402 (SB 182). This section authorizes the Commissioner of Motor Vehicles, if he thinks it equitable, to grant to a licensee a special permit which will enable him to use a registration plate on a vehicle other than the one for which it was issued when the latter vehicle is undergoing repairs in a regular repair shop. The application for this special permit must state, among other things, that an emergency exists, and the permit will be valid only so long as the vehicle for which the plate was issued remains in the repair shop, but in no event will it be valid longer than 20 days from the date of issuance. The person to whom the permit is issued will be liable for any penalties accruing by reason of using the vehicle commercially or overloading as provided in G.S. 20-86 and 20-96 respectively.

Special Plates

An unnumbered section to follow G.S. 20-79 has been added by Chapter 246 (HB 196). This section authorizes the Department of Motor Vehicles to issue a minimum of 25 special temporary registration plates to a duly registered dealer who makes application for them and pays a fee of $1 for each plate. The dealer is required to maintain a record in permanent form of all temporary plates delivered to him and issued by him, which record must be kept for a minimum period of one year from the date of entry, and representatives of the Department and peace officers are given free access to the records during regular business hours. The dealer may issue these temporary plates, together with a temporary registration certificate, only to a bona fide purchaser or owner of a vehicle being sold by him (which vehicle does not have unexpired registration plates), and only upon written application and payment of the prescribed fees for the titling and registration of the purchased vehicle. The application fees, and a copy of the temporary registration issuance are to be forwarded immediately to the Department or (in the case of the application and fees) to a local license agency. The issuing dealer must insert indelibly on the face of the temporary plates the date of issuance and expiration, the make, motor, and serial number of the vehicle, and any other information required by the Department; it is declared unlawful for any person to issue any temporary plate containing any misstatement of fact or knowingly to insert any false information upon its face. Temporary plates are to become void (1) upon receipt of the annual registration plates from the Department, or (2) upon rescission of the contract to purchase the vehicle, or (3) upon the expiration of 20 days from the date of issuance, whichever event occurs first; and the person to whom the plates were issued is required to permanently destroy the plates upon either receiving his permanent plates or upon the expiration of 20 days from the date of issuance. In the event a temporary registration plate or certificate is lost or stolen the owner is directed to destroy the remaining plate or certificate, and the vehicle for which the plate and certificate were issued must not be operated on the highways until the regular license plate is received and attached. G.S. 20-50 is amended by this Chapter to bring the owner of a vehicle bearing temporary registration plates within the exceptions to the requirement that a vehicle owner must apply to the Department of Motor Vehicles for registration plates, etc.

Vehicles of Non-residents

New paragraphs have been added to G.S. 20-83(a) and 20-88(a) by Chapter 681 (SB 363) which will sanction the free interchange of tractors, trailers, and semi-trailers between resident carriers of North Carolina and another state without penalty to the owner of the vehicle licensed in North Carolina. The first addition authorizes the North Carolina carrier to interchange a properly licensed trailer or semi-trailer with a non-resident carrier and to use the trailer licensed in the other state the same as if it were his own during the time the non-resident carrier is using the North Carolina licensed trailer. The second new provision states that when the weight is declared for a tractor which is to be used with a semi-trailer licensed in North Carolina and a semi-trailer licensed in another state only the North Carolina licensed semi-trailer will be considered and when the tractor is used with a semi-trailer licensed in another state it will be deemed to be licensed for the North Carolina maximum permissible weight. The converse is also true. When the weight is declared for a semi-trailer, only the North Carolina combination will be considered and when the semi-trailer is used with a tractor licensed in another state the semi-trailer will be deemed to be licensed for the North Carolina maximum permissible weight.

"Farmer" Plates

Prior to the passage of Chapter 1215 (HB 111), which amends the sixth sentence of G.S. 20-88(c), persons applying for a "farmer" license were required to pay the same rate regardless of what time during the year the plates were bought. With this amendment persons may apply for a "farmer" license on or after January 1, 1958, for less than one year at the reduced fee according to the schedule set out in G.S. 20-95.

Registration Fee

Beginning January 1, 1958, every passenger or property carrying vehicle registered with the Department of Motor Vehicles, for which the annual registration tax fee is $10 or more, shall be subject to an additional annual registration tax of $1. The additional fee is required by Chapter 682 (HB 33) which adds the new section designated G.S. 20-88.1. The revenue derived from the additional tax will be placed in a separate fund to finance a program of driver training and safety education in the public high schools of the state.

Size and Equipment

Chapter 1038 (SB 65) makes three changes sponsored by the Department of Motor Vehicles, in the equipment provisions of the motor vehicle laws.

Head Lamps

G.S. 20-129(b) formerly required every motor vehicle other than a motorcycle, road roller, road machinery, or farm tractor to be equipped with two head lamps, no more and no less. To make this subsection more flexible and to expressly authorize the dual head lamp features of late model automobiles, it has been rewritten to require every self-propelled motor vehicle other than motorcycles, road machinery and farm tractors to be equipped with at least two head lamps, all in good operating condition, with at least one on each side of the front of the motor vehicle. The subsection still specifies that head lamps must comply with the requirements and limitations set forth in G.S. 20-131 or G.S. 20-132.

Safety Belts

The second change resulting from Chapter 1038 adds a new section to G.S. Chapter 20, Article 3, Part 9, regarding safety belts and harnesses. This new section directs the Commissioner of Motor Vehicles to establish specifications or requirements for approved type safety belts and attachments, and forbids any person from selling or offering or keeping for sale any safety belt or harness for use in a vehicle unless it is of a type and brand which has been approved by the Commissioner.

Steering Mechanism

The remaining change effected by Chapter 1038 would likewise add a new section to G.S. Chapter 20, Art. 3, Part 9, directed at the steering mechanism. This section requires the steering mechanism of every self-propelled motor vehicle operated on the highway to be maintained in good working order sufficient to enable the operator to maneuver the vehicle safely and to control its movements. Formerly there were no statutory standards or requirements regarding a vehicle's steering mechanism.

Vehicle Length

G.S. 20-116(e) is amended by Chapter 493 (SB 311) and Chapter 1190

(SB 467) to increase the maximum permissible length for a combination of vehicles and for a house trailer and its towing vehicle respectively. Previously a combination of vehicles was limited to 48 feet *exclusive* of front and rear bumpers; now the maximum total length is stated to be "fifty feet *inclusive* of front and rear bumpers." The maximum length of a house trailer and its towing vehicle is now 55 feet exclusive of bumpers rather than 50 feet exclusive of bumpers.

Width of Farm Equipment

New subsection (j) of G.S. 20-116 [Chapter 1183 (SB 383)] authorizes the operation of self-propelled grain combines or other farm equipment, self-propelled or otherwise, not exceeding 15½ feet in width (1) on any unnumbered highway, and (2) with a special permit, as provided in G.S. 20-119, on numbered federal or state highways; highways that are a part of the National System of Interstate and Defense Highways are specifically excluded from those highways where this equipment may be operated. Combines and equipment which exceed ten feet in width may be operated only on the following conditions: (1) they may be operated only during daylight hours; (2) they may not be operated on Saturdays, Sundays, or holidays; (3) when operated, they must be preceded and followed by a flagman at a distance of 300 feet—either on foot or in a vehicle—who must display a red flag at least three feet by four feet, mounted on a staff at least three feet long; (4) they must display at least one red flag not smaller than three feet by four feet; and (5) they must operate to the right of the center line when possible and practicable.

Signal Devices

Chapter 488 (SB 144) added the same new paragraph to both G.S. 20-125.1(b) and G.S. 20-154. The new paragraph presumes, without evidence to the contrary, that the signal device on a motor vehicle manufactured or assembled after July 1, 1953, has been approved by the Commissioner of Motor Vehicles, and makes a certificate from the Commissioner to the effect that a particular signal device has been approved admissible in evidence.

Rules of the Road

Reckless Driving

The maximum penalty for reckless driving was raised from $100 fine, 60 days imprisonment, or both to $500, six months imprisonment, or both by Chapter 1368 (SB 123). G.S. 20-140 and G.S. 20-140.1, which define the offenses of reckless driving, were amended to incorporate within their provisions this new penalty, and G.S 20-180, the old penalty section for reckless driving, was amended to delete the references to the reckless driving statutes.

Speed

Chapter 214 (HB 71) adds paragraph 5 to G.S. 20-141(b). This new paragraph directs the State Highway Commission, when it finds it reasonable and safe, to set a maximum speed of 60 miles per hour for the vehicles described in paragraphs 3 and 4 of this subsection (generally trucks and passenger vehicles) upon any part of a highway. The maximum speed limit will become effective when signs giving notice of the limit are erected upon the parts of the highways affected.

Chapter 139 (HB 96) amends G.S. 20-218 in Article 7, containing miscellaneous provisions relating to motor vehicles, to declare the maximum speed to be 45 miles per hour for a school activity bus being used for transportation of students or others to or from places for participation in events other than regular classroom work.

Racing

G.S. 20-141.3, enacted in 1955, declared essentially that it was unlawful for any person to race upon the highways unless the race was approved by the Commissioner of Motor Vehicles. Racing was not defined, and the presence of the statute did not in itself prove to be a deterrent. Several bills were introduced at this Session to rewrite this statute and to put more teeth in it by way of definition of the offense and punishment for its violation. Chapter 1358 (HB 619) was the version which finally reached ratification. In it two offenses of racing are set forth. The first makes it unlawful for a person to operate a motor vehicle on a highway wilfully in *prearranged* speed competition with another motor vehicle. Violation is made a misdemeanor punishable by a fine or imprisonment, or both, in the discretion of the court, and no maximums are stated. The second offense makes it a misdemeanor punishable by a minimum fine of $50 or a maximum of two years imprisonment, or both, in the discretion of the court, for a person to operate a motor vehicle on a highway wilfully in speed competition with another motor vehicle. The new statute goes beyond the person driving the vehicle in the race and declares it to be a misdemeanor punishable by a fine or imprisonment, or both, in the discretion of the court, for a person to authorize or knowingly permit a motor vehicle owned by him or under his control to be operated in a prearranged race as defined above, or to place or receive a bet on such a race. This chapter further directs any officer of the law discovering that a person has operated or is operating a motor vehicle in a prearranged race to seize the vehicle and deliver it to the sheriff of the county in which the offense is committed. If the person accused of prearranged racing is acquitted, or if the owner can establish that his vehicle was used in the prearranged race without his knowledge and that he had no reasonable grounds to believe that it would be used for that pupose the vehicle will be restored to him. Otherwise, the court is to order the vehicle sold at public auction.

One-Way Highways

Prior to the 1957 Legislature no statute specifically made it a violation of the law to operate a vehicle in the wrong direction on a one-way highway Chapter 1177 (SB 63) adds a new section to the rules of the road which declares it to be a misdemeanor punishable by a maximum fine of $50 or imprisonment for 30 days for any person to wilfully drive a vehicle on a highway designated by the State Highway Commission for one-way traffic and posted with signs giving notice of that designation, except in the direction indicated by the signs.

Controlled-Access Highways

Chapter 993 (HB 123) authorizes the establishment of controlled-access highways and regulates their maintenance and use. Section 10 of that Chapter sets out four unlawful uses which may be made of these highways and provides the penalty for violations of these "rules of the road". It is declared a misdemeanor punishable by a maximum fine of $100 or imprisonment for 60 days, or both, in the discretion of the court for any person to use a controlled-access facility in any one of the following ways: (1) to drive a vehicle over or upon any central dividing section or line; (2) to make a left turn or U-turn except through an opening provided for that purpose; (3) to drive any vehicle except in the proper

lane provided for that purpose and in the proper direction and to the right of the central dividing line; and (4) to drive any vehicle into these highways from a local service road except through an opening provided for that purpose.

Penalties

Minimum Penalty

For a violation of the various offenses listed in G.S.20-176(b) there was formerly required a minimum fine of $10. Because of the increase in court costs in recent years, Chapter 1255 (HB 1111) has deleted the minimum penalty of $10, and it is now proper for a judge if he chooses, to penalize a violator of any of those named offenses by merely taxing him with the costs of court.

State Highway Patrol

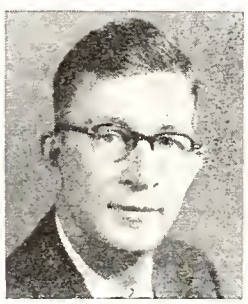
Subsistence

Chapter 1394 (HB 211) adds to G.S. 20-185 new subsection (g) which directs that all members of the uniformed State Highway Patrol shall be paid a monthly subsistence allowance of $40. This allowance is in addition to all other allowances that are otherwise provided.

Unmarked Cars

The second paragraph of G.S. 20-190 which was added by the 1955 General Assembly and required all Patrol cars to be painted a uniform color of silver and black has been rewritten by Chapters 478 and 673 (SB 33 and SB 403). The paragraph now (1) authorizes the State Highway Patrol to operate unmarked vehicles on the highways, so long as the number of unmarked cars does not exceed 21 per cent of the vehicles operated by the Patrol, and so long as the unmarked cars are operated by members of the Patrol of the rank of Sergeant or below; (2) requires all Patrol vehicles to be equipped with a siren, and members of the Patrol operating an unmarked car to sound the siren when attempting to stop another vehicle after dark; and (3) requires the State Highway Commission to erect signs at all points where paved highways enter this state stating that North Carolina's highways are patrolled by unmarked police vehicles.

II. Driver Licensing and Financial Responsibility



By JOSEPH P. HENNESSEE *Assistant Director of the Institute of Government*

The legislative program of the Department of Motor Vehicles contained four recommendations for changes in the Uniform Driver's License Act. These recommendations proposed (1) to give the Department the power to suspend drivers' licenses for the same period as the period of non-operation imposed by a court as a condition for suspending sentence; (2) to increase the fee for new and renewal operators' licenses from $2 to $3; (3) to declare, for purposes of discretionary suspension of drivers' licenses, that "conviction" includes a plea of guilty or nolo contendere; and (4) to amend the Department's discretionary power to suspend a driver's license for repeated speeding and reckless driving convictions so as to permit suspension for two such offenses within 12 months. The Department made no specific recommendations as to changes in the provisions of the Motor Vehicle Safety and Financial Responsibility Act.

A survey of legislation affecting driver licensing shows that the recommendations of the Department were followed as to (1) the proposal to give the Department the authority to suspend a driver's license for the same period as any period of non-operation imposed by a court and (2) the increase in the fee for a driver's license. The other proposals were rejected. Other changes in the driver's license law include a modification of the definition of the word "chauffeur," revisions in the field of license suspension and revocation, and changes in the penalty for driving while a license is under suspension or revocation. An addition to the law provides for the revocation and suspension of licenses for participating in highway racing. A major change in the law, although not directly concerned with driver licensing, provides for a program of driver education in the public high schools. There were no changes in the provisions of the Motor Vehicle Safety and Financial Responsibility Law. A new provision was added, however, that no motor vehicle can be registered in this state unless the owner at the time of registration shows proof of financial responsibility.

Uniform Driver's License Law

G.S. 20-6. Prior to 1957 the definition of the term "chauffeur" included "the driver, other than the owner of a property hauler, of any property hauling vehicle or combination of vehicles licensed for more than 15,000 pounds gross weight." Chapter 997 (HB 433) changes this definition so as to include drivers of vehicles, or combinations of vehicles, licensed for more than 20,000, rather than 15,000 pounds, gross weight.

G.S. 20-7 (i). Fees collected for drivers' licenses are required by law to be placed in a special fund for the administration of the Driver's License Act. In the earlier years of the drivers' licensing program it was possible to build up a small surplus from this source, but this surplus has not been added to since 1947, and it has been exhausted in the construction of the new Motor Vehicles Department Building. Fees collected no longer cover the costs of examination, re-examination, renewal, suspension, revocation, and other services and duties demanded of the Department by law. The work load of the Department has been steadily increasing with the increase in the number of drivers within the state. This takes more examiners—upwards of 200 rather than the present 150—more examining stations, and a larger Raleigh staff. In fiscal 1957 the driver's license division will barely break even. For fiscal 1958 and subsequent years, no alternative was left to the Department but to ask for an increase in the license fees or for an appropriation from the General Fund. The Department elected to ask for an increase from $2 to $3 in the fee for an operator's license, with no increase in the fee for a chauffeur's license. The General Assembly agreed with the Department on general principles as to a raise in such license fees, but limited the increase, provided in Chapter 1225 (HB 416) to 50¢ rather than the $1 asked. Consequently, the fee for a new or a renewal operator's license is now $2.50.

G.S. 20-16 (a) (11). Although the sole power to revoke or suspend a

driver's license is vested in the Department of Motor Vehicles, it is not uncommon for a court to make non-operation of a motor vehicle for a specified period of time a condition to suspending sentence. Under the old law, there was no power given to the Department to back up the court's action by imposing a formal license suspension for the period of time decreed by the court. As a result, the only penalty for the violation of the terms of the suspended sentence by operating a motor vehicle was to invoke the suspended sentence. During the 1955 General Assembly a provision was enacted to authorize the Department of Motor Vehicles to suspend the license of any operator, upon a showing that the operator has been sentenced by a court of record, all or part of the sentence has been suspended, and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a specified period of time. Through inadvertence, this provision did not appear in the enrolled bill, which made a number of changes in the Driver's License Act. This has been corrected by Chapter 499 (HB 142), which rewrites GS 20-16 (a) (11) to delete the provision (also the result of inadvertence in 1955) containing authority to suspend the license of a person convicted of failing to stop at the scene of an accident or collision in which the licensee was involved and which accident or collision resulted in damage to property, and by inserting in its stead the authority to suspend the license of any person who has been convicted (not necessarily a motor vehicle law violation) by a court of record, and has had all or any part of the sentence suspended on condition that he not operate a motor vehicle.

G.S. 20-19 (d) and *G.S. 20-19 (e)*, which set forth the periods of license revocation for a second and a third and subsequent conviction for drunken driving, have been rewritten. Chapter 515 (HB 405) provides a four, rather than a three-year period of revocation for a second conviction, with a new provision permitting the Department of Motor Vehicles to issue a new license after two years, upon such terms and conditions as the Department may see fit to impose for the balance of the revocation period, upon satisfactory proof that the former licensee has been of good behavior for the past two years and that his conduct and attitudes are such as to entitle him to favorable consideration. The provisions as to the reissue of a license are made applicable to revocations for convictions prior to as well as subsequent to the passage of this act.

G.S. 20-19 (e) has been rewritten to permit the Department to issue a new license after three (was five) years following a revocation for a third and subsequent conviction for drunken driving. The revocation period for a third or subsequent conviction for drunken driving continues to be permanent. An attempt to make this period six years was deleted from the act before its final passage.

G.S. 20-19 (g) has been amended by Chapter 499 (HB 142) to provide that whenever a license is suspended under paragraph 11 (was 12) of GS 20-16 (a), the period of suspension shall be for a period of time not in excess of the period of non-operation imposed by the court as a condition of the suspended sentence. In such cases it is not necessary to comply with the provisions of the Motor Vehicle Safety and Financial Responsibility Act in order to have the license returned at the end of the period of suspension.

G.S. 20-28, as amended by the 1955 General Assembly, and as contained in the 1955 Cumulative Supplement to the General Statutes, contained two subsections (a). Resultant confusion as to which subsection applied to a conviction for driving while one's license was suspended or revoked has been resolved by Chapter 1406 (HB 760), which rewrites both subsections to provide for a mandatory additional period of suspension or revocation (as the case may be) of one year for a first offense, two years for a second offense, and permanently for a third or subsequent offense of driving while a license is under suspension or revocation. Persons who have had their licenses suspended or revoked permanently under these provisions are permitted to apply for a new license after three years. Although these additional suspensions and revocations both are mandatory, a new provision has been added that when the trial judge and the trial solicitor both recommend in writing that the Department examine into the facts in hardship cases and exercise discretion in suspending or revoking an operator's license for the additional period of time, the Department is required to hold a hearing, and it may impose a lesser additional period of suspension or revocation or refrain from imposing any additional period. Both sections as rewritten retain the old provisions as to a fine of not less than $200 or imprisonment in the discretion of the court, or both, for driving while a license is suspended or revoked. The provision of the second subparagraph (a) that the restoree of a license who operates a motor vehicle without maintaining financial responsibility is to be punished as for driving without a license, has been included in both sections.

G.S. 20-88.1. Although not specifically within the field of driver's licensing, Chapter 682 (HB 33) is discussed in that context. It adds a new section, numbered 20-88.1 which imposes an additional registration tax of $1 to be used to finance a program of driver training and safety education in the public high schools.

G.S. 20-141.3, as rewritten by Chapter 1358 (HB 619) divides the crime of racing into categories, "wilfully in prearranged speed competition" and "wilfully in competition". In addition to the other penalties provided for racing in either category, the Commissioner of Motor Vehicles is required to revoke for one year, the license of any person convicted of participating in, arranging, permitting, or betting on wilful *prearranged* speed competition, and he is permitted to suspend, for a period of up to one year, the license of any person convicted of a violation of the prohibition against operating a motor vehicle wilfully in speed competition with another vehicle without prearrangement.

Motor Vehicle Safety and Financial Responsibility

Although there were several proposals to amend the provisions of the Motor Vehicle Safety and Financial Responsibility Act, no changes were in fact made. A major change in the area of financial responsibility was made, however. Labelled "compulsory insurance" by its opponents, and entitled "An act to encourage and promote financial responsibility of owners of motor vehicles", Chapter 1393 (HB 33) was passed despite the opposition of major companies in the field of automobile liability insurance and in preference to a proposal to create an unsatisfied judgment fund to protect innocent motorists against motorists who are uninsured or judgment proof. It provides that beginning on January 1, 1958, no self-propelled motor vehicle may be registered in this state unless the owner at the time of registration can show proof of financial responsibility.

Proof of financial responsibility can

be made in either of four ways, as defined in the Motor Vehicle Safety and Financial Responsibility Act: (a) by certificate of insurance; (b) by certificate of a financial security bond; (c) by a financial security deposit, or (d) by qualification as a self insurer. In any event, proof of security in an amount sufficient to pay off a judgment in an amount of $5,000 for injury or death to any one person, $10,000 for injury or death to two or more persons, and $5,000 for injury to property (growing out of any one accident) must be made. As a practical matter this means that unless an owner can present a certificate of insurance in an amount to cover the above items, he cannot register his automobile. In order to guard against unjust insurance rates the Commissioner of Insurance is directed to establish rates which adequately and factually distinguish between classes of drivers having safe driving records and those having a record of accidents, so that those drivers with a record of no accidents shall not be subject to unreasonable, unfair, and discriminatory insurance rates.

The provisions of the Motor Vehicle Safety and Financial Responsibility Act which pertain to the method of giving and maintaining proof of financial responsibility and which govern and define "motor vehicle liability policy" and "assigned risk plan" apply to filing and maintaining proof of financial responsibility required by this act, and the provisions of that act relating to proof of financial responsibility required of each operator and each owner of a motor vehicle involved in an accident and relating to the nonpayment of a judgment continue in full force and effect.

The penalty for operating, or permitting an automobile registered in this state to be operated without having in effect the financial responsibility required is a $10-$50 fine or imprisonment for not to exceed 30 days for each offense. Any person who gives information required in any report required by the act, or otherwise, knowing or having reason to believe it to be false, or who may forge, or without authority sign any evidence of proof of financial responsibility, or who files or offers for filing any evidence of proof knowing or having reason to believe that it is forged or signed without authority, is subject to a maximum fine of $1,000, or a maximum of one year's imprisonment, or both.

In order to enforce the provisions of this act there is appropriated to the Department of Motor Vehicles $100,000 and to the Insurance Department $25,000 for each year of the biennium, no part of which may be used to employ additional patrolmen. Subject to the approval of the Director of the Budget and the Council of State, an additional $100,000 may be added for administrative purposes in carrying out the act.

Unless the provisions of this act are extended by the 1959 or the 1961 General Assembly, its provisions are to become void and of no effect from and after May 15, 1961.

Courts, Judges, etc.

(Continued from page 64)

statement filed with the Secretary of State.

Local bills affected the following counties as indicated: In Burke County the register cannot accept a deed that does not contain the name of the party from whom the grantor acquired title, with a back reference to the book and page where the last previous conveyance is described. If there is no such back reference, an explanation for its absence must be recorded there. However, the act also provides that the clerk of superior court may certify that such back reference cannot be shown, after due diligence, and if the clerk so certifies, then such reference may be omitted. This act also requires the full names of the grantors and the signature of the person who drafted the deed or the name of the attorney who drafted and approved it.

Macon County now prohibits the registration of a deed without presentation of the same to the county tax supervisor and endorsement by him of a statement that taxes between the seller and the buyer have been adjusted.

Randolph, Forsyth, Davidson, and Ashe counties have joined those which now require the name of the draftsman to appear on the cover page of deeds and other instruments before the clerk of superior court may probate them or the register of deeds may register them. The first two counties were brought under the provisions of G.S. 47-17.1, but Davidson and Ashe accomplished the same effect by local acts [Chapter 384 (SB 267) and Chapter 48 (HB 126) respectively] which did not mention this section. Such instruments prepared outside of the county of recordation may be accepted by the register of deeds without such identification.

Marriage and Vital Statistics Laws

Chapter 506 (HB 448), amending G.S. 51-8 and 51-17, was ratified May 1. Registers of deeds are now authorized by these sections to require a certified copy of a birth certificate or a birth registration card, as provided in G.S. 130-102, before issuing a marriage license, in those cases where it appears to the register that either party may be under 18 years of age. If such certificate or registration card is required, this satisfies the requirement of G.S. 51-17 for a reasonable inquiry, thus protecting the register of deeds from the penalty provided by this section.

Under the authority of Chapter 1261 (HB 1150), amending G.S. 51-6, a minister or officer may perform a marriage ceremony if the marriage license was issued out of the county of the ceremony by a register of deeds of the county of either party. Therefore, parties to a marriage may now obtain a license in the county of either of them and then go to a distant county to be married, and a Minister of the Gospel may lawfully marry them. Of course, the minister is still required to return the marriage license to the register of deeds who issued it, in accordance with G.S. 51-7.

The bill (HB 1165), providing that registers of deeds may charge their regular fees for issuing birth certificates for school-age children, was amended early in the legislature to provide that such certificate must be issued free of charge in cases of indigency—that is, when proof satisfactory to the register of deeds is shown to him to the effect that the parents of a school-age child cannot afford the fee for the certificate. The bill was reported unfavorably. The end result is that the original law (G.S. 115-162) remains in force—that is, free certificates for children entering school.

The register of Beaufort County has been given increased discretion with regard to delayed birth registration by Chapter 640 (HB 819). This act provides that in hardship and emergency cases, when applicants for delayed birth registration cannot meet the requirements of the present law (G.S. 130-88), the register of deeds of Beaufort County may file delayed birth registrations of applicants born in Beaufort County who can furnish proof satisfactory to him as to their date of birth. The bill gives to such

delayed certificates the same evidentiary value as other delayed birth records in Beaufort County.

SB 417 would have required the registers of deeds to notify the board of elections of all deaths occurring, for the purpose of permitting the board to remove from the registration books the names of all persons no longer eligible to vote, among other things. This bill was reported unfavorably.

The bill (HB 97) which would have prohibited registration of death certificates unless the names of the next of kin, etc., were recorded on the back, met some rough sledding in the legislature. It was finally amended to apply to Caswell County only, and to require that the register of deeds provide the form for such information and that the register of deeds file and preserve such certificates. As amended, it was ratified (Chapter 110).

Miscellaneous

The Mecklenburg register of deeds is no longer clerk to the board of county commissioners, under Chapter 64 (HB 158).

The Currituck register can now use a facsimile signature device, under Chapter 715 (HB 834), which repeals Chapter 254 of the Session Laws of 1947.

Sheriffs and Constables

No public laws were enacted affecting G.S. Chapter 161, Sheriffs, or G.S. Chapter 151, Constables. For other legislation of interest to these officers, see the articles entitled "Legislation of Interest to County Officials," "Law Enforcement," and "Penal-Correctional Administration," elsewhere in this issue.

Penal-Correctional Administration

(Continued from page 66)

perform appropriate work. The Prison Department may also contract with any person or group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Director of the Department of Conservation and Development as beneficial in the conservation of the natural resources of the state. This does not mean a return to the evils of an earlier era. All contracts for the employment of prisoners must provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Prison Department.

Work Release Law

Legislation permitting the prison authorities to grant work-release privileges to misdemeanants upon the recommendation of the sentencing judge [Chapter 540 (SB 124)] places a tool in the hands of the courts and the prison officials by which they may improve the administration of justice, and at the same time reduce the number of prisoners for whom other employment must be found, while lightening the load of the taxpayers. Since a prisoner with work-release privileges will spend the time when he is not at work (or going to or from work) in prison, this plan will provide that measure of punishment sufficient to satisfy the ends of justice in many cases where probation is inappropriate but conventional imprisonment is too harsh or hurtful to the prisoner and society. A part of the prisoner's earnings will be used to pay the cost of his keep while in prison and another part will be used to support his dependents. Payments for the support of dependents will be made through the appropriate county department of public welfare. Any balance remaining at the time the prisoner is released from prison will be paid to him, thus facilitating a fresh start.

To be eligible to receive a recommendation by the judge for work-release privileges, a misdemeanant must not have previously served more than six months in a jail or other prison. When this condition is met and the judge's recommendation is set forth in the judgment, the prison authorities may grant work-release privileges providing the prisoner requests them and agrees in writing that upon violation of the conditions prescribed by prison rules and regulations the privileges shall be withdrawn and the prisoner transferred to the general prison population to serve the remainder of his sentence.

Prisoners with work-release privileges must be quartered apart from prisoners serving regular sentences. In areas were facilities suitable for this purpose are not available within the prison system when needed, the Prison Department may contract with political subdivisions of the state for quartering prisoners with work-release privileges in local confinement facilities.

Since 1913 Wisconsin has had a law permitting its courts to sentence convicted misdemeanants to jail, to be released for regular employment in the free community. But only in recent years has the law been used to any great extent. Even now less than half of the 71 counties in Wisconsin make much use of the law, and the seven counties with large urban areas make the most extensive use of the plan.

Work release will be tried in North Carolina first in a few carefully selected prison camps with suitable facilities close to the major cities. A period of experimentation will be required before it can be put to its maximum use. Like other innovations, this plan must be developed cautiously to avoid increasing the impact of unanticipated difficulties.

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