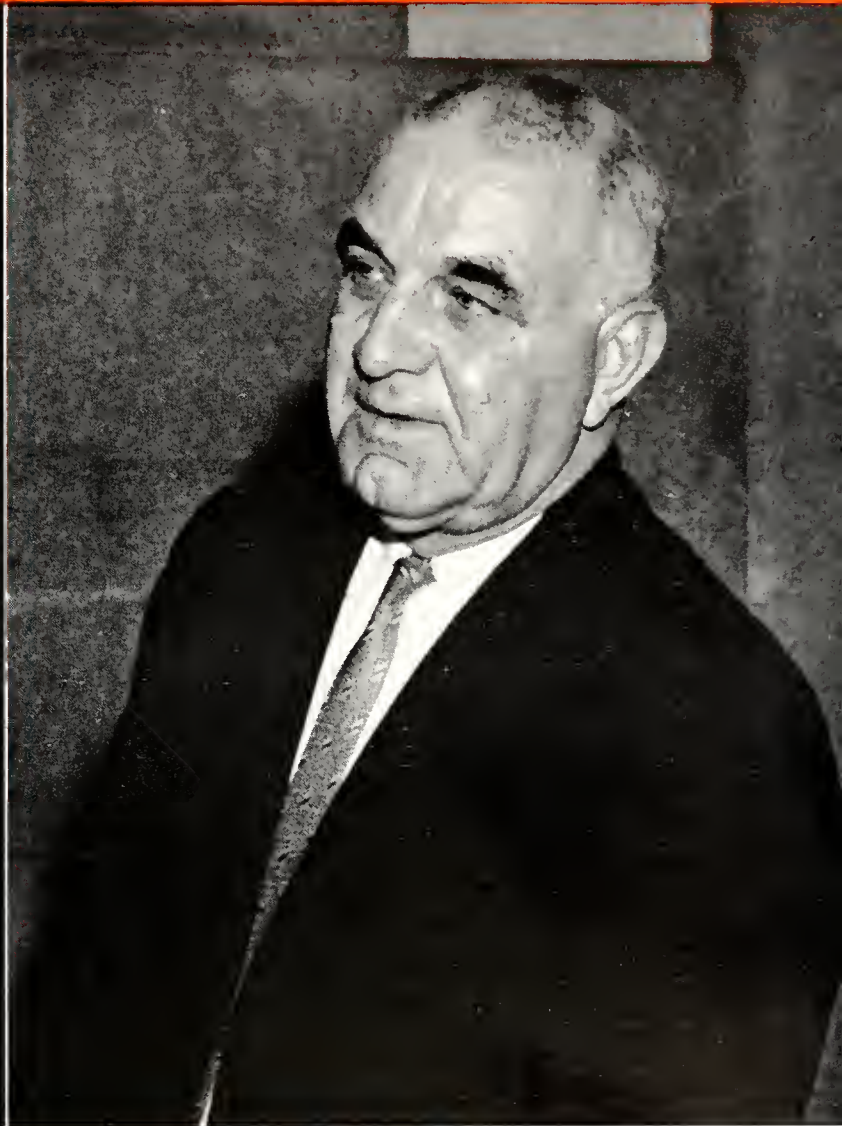


# POPULAR GOVERNMENT

SEPTEMBER 1961  
OCTOBER 1961



*Mrs. Annie E. Cooper and S. Ray Byerly, Principal Clerks to the General Assembly*

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COVER: Our cover picture features the principal clerks of the State Senate and House, S. Ray Byerly and Mrs. Annie Cooper. For details, see KEY LEGISLATIVE LINKS (inside back cover of this issue). Staff photo by Jim O'Neil.

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by Clyde L. Ball  
Assistant Director  
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# THE N. C. GENERAL ASSEMBLY OF 1961

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

The 1961 General Assembly of North Carolina convened at 12:00 noon, February 8, and adjourned *sine die* at 12:22 p.m., June 22. In the 144 days and 22 minutes which elapsed during the session, members introduced 1776 bills and resolutions, of which 1298 were ratified. Of the bills introduced, 895 were public and 881 were local. Three hundred eight-six public bills failed of ratification. Ninety-two local bills failed of ratification — an unusually large percentage; some of these were killed by the sponsors for various reasons; a few were rejected as being contrary to uniform state policy; and a sizable number reflected partisan concern — one Republican legislator saw ten of his local bills fail.

The 170 members who made up the 1961 General Assembly represented 57 different vocations. Twenty-two of the 50 Senators and 45 of the 120 Representatives were lawyers — the lowest representation of lawyers since World War II. Next most common occupation, according to the list compiled by Secretary of State Thad Eure, was that of farmer; eight Senators and 29 Representatives profess to belong in that category, though it is a safe bet that some of these are not actual tillers of the soil.

There were five women in this legislature, all in the House. Two of these were Republican, and one, Mrs. J. M. Phelps, was named to succeed her husband, Dr. Phelps, who died during the session.

The legislature lost a second member by death — veteran Forsyth County Representative F. L. Gobble.

Thirty-eight Senators and 75 Representatives had had some prior service in the General Assembly.

Two Senators and 15 Representatives were Republicans — a sharp increase from the 1959 total of one Senator and four Representatives. As a result of this increase, partisan influences were more prominent in the 1961 session. Republican Representatives introduced a number of public bills; though these bills were routinely short-lived, their ghosts will undoubtedly appear in the 1964 elections.

## Legislative Machinery

### Senate Rules

Several months prior to the session, Lieutenant-Governor-elect Philpott appointed a committee composed of Senators Currie, Crew and Kesler to review the Senate Rules and prepare a recodification to be submitted to the 1961 Senate. This committee, with the technical assistance of the Institute of Government, revised the rules to eliminate obsolete material, reworded ambiguous language, rearranged the whole into a more orderly scheme, and prepared a new index. After

minor changes were made by the Senate Rules Committee, the revised rules were adopted by the Senate.

### Printing of Bills

Under the rules of previous sessions, a joint subcommittee on printing was supposed to designate which bills were to be printed, and these bills were then sent to the public printer to be reproduced in the form prescribed by GS 120-30. In actual practice the principal clerks sent all public bills to be printed, and the form prescribed by the statute was not followed precisely. Under this practice a lapse of several days occurred between the time a bill was introduced and time a copy was available to the members, and bills introduced in the last few days of the session were never printed. If a committee reported a substitute bill, the bill commonly had to be displaced on the calendar to await receipt of the printed version. If amendments were made in the house of origin, engrossed copies were not commonly printed, and the members of the second house had to work from the original version — a practice which led to considerable confusion and waste of time. Furthermore, the occasional typesetting error which was not caught by the proofreader, and the difference in the line and page numbers between the official typewritten copy and the printed texts led to problems.

The 1959-61 Reorganization Commission, composed almost entirely of experienced legislators, recommended a change in printing procedures, and the 1961 General Assembly adopted the suggestion. Under the new procedure bills are reproduced by a photocopy process in the Central Duplicating Service of Prison Enterprises. This process made it possible for exact copies of bills to be on members' desks on the morning following introduction, and bills introduced up to the last day were reproduced for the members. Committee substitutes were available as soon as reported, and engrossed bills were reproduced in quantity without delay for use of the second house. A second innovation recommended by the Reorganization Commission and put into effect by the Assembly was the adoption of the photocopy process for reproducing copies of bills for introduction. This work was done in a special office under the direction of the principal clerks; it made it possible to produce as many copies as might be needed, and for the first time the members of the press did not have to scramble to get copies of bills of great public interest. GS 120-30, already obsolete, was repealed [Ch. 24 (HB 19)].

### Research Services

Another recommendation of the Reorganization Commission dealt with the need of the General Assembly for research assistance during the session. For the first time such assistance was regularly available on a limited basis

from assigned staff members of the Institute of Government. See STATE GOVERNMENT.

#### Pay and Allowances

##### *Legislative Subsistence*

The General Assembly took another step toward alleviating the financial pinch which almost invariably results from service in the General Assembly. Chapter 889 (HB 23) entitles each member to a subsistence allowance of \$12 per day for each day of the period during which the General Assembly remains in session. The allowance is a flat amount, so that members will be entitled to \$12 without having to submit records of amounts spent. Under the law as amended members now receive a salary of \$15 per day for the first 120 days of the session, \$12 per day subsistence without limit as to the number of days, and a travel allowance of 10c per mile for one round trip per week from their homes to Raleigh and return.

##### *Legislative Employes' Pay*

The General Assembly did not forget its employees. Chapter 1177 (HB 926) increased the pay of the principal clerk of each house and the chief enrolling clerk to \$24 per day; the same act increased the pay of the reading clerk and sergeant-at-arms of each house to \$18 per day. An effort to provide subsistence allowances for these chief employees failed. Chapter 1176 (HB 925) increased the pay of other legislative employees, ranging from a 50¢ increase for pages to a \$3 increase per day for disbursing clerks.

#### Reapportionment and Redistricting

The 1961 General Assembly did what its five predecessors had failed to do — it reapportioned House seats according to the latest census figures. The first bill of the session [Ch. 265 (HB 1)] applies the Constitutional formula to the 1961 census figures. The result gives Mecklenburg five seats, Cumberland, three, and Alamance and Onslow two each (an increase of one seat in each instance), and reduces Buncombe to two seats, and Cabarrus, Johnston and Pitt to one each (a decrease of one seat in each instance).

The 1961 General Assembly failed, as had its predecessors, to redistrict the Senate according to the Constitutional mandate. Numerous efforts were made, some approaching the present Constitutional provision, some seeking to modify the existing requirement. All failed, as this highly political is-

sue brought out most clearly the rural-urban differences in the state.

#### State Legislative Building

The Legislative Building Commission, established in 1959 has proceeded with dispatch. The foundations of the building which sits astride Halifax Street one block north of the Capitol have been poured, and work is proceeding rapidly. Present expectations are that the building will be ready for the 1963 session. The building will mark a really significant step toward providing the General Assembly with physical facilities to enable it to function as a policy-making body. Members will have small private offices, the clerical and administrative staffs will have adequate space, and in general it will no longer be necessary for members to work under virtually impossible conditions.

The old chambers in the Capitol will not be neglected. Chapter 724 (SB 336) provides for the maintenance of the present chambers as historic shrines and for initial and final sessions of each General Assembly to be held there.

#### Miscellaneous

##### *Lobbying*

Lobbyists have been required by GS 120-43 to file with the Secretary of State a written authorization of their authority, signed by the person or corporation employing them. Chapter 1151 (SB 457) amended the statute to require the same authorization to be filed with any committee before which the lobbyist seeks to appear.

##### *Agency Reports*

Chapter 243 (SB 80) repealed GS 120-13 which formerly required that specified state agencies and institutions make a full report of their operations and recommendations to the General Assembly. The repeal was one provision in an act designed to empower the Department of Administration to exercise more effective authority over publications of state agencies and institutions. See STATE GOVERNMENT.

##### *Convening Date*

Ever since the Constitution was amended in 1956 to fix the convening date of the General Assembly in February, attempts have been made to change the date back to January (the change can be made by statute). The attempt failed again this year as HB 211, which would have effected the change, never got out of the House Committee on State Government.

## CONSTITUTIONAL AMENDMENTS

The 1961 General Assembly adopted and submitted to the voters of the State for ratification or rejection six constitutional amendments:

1. Revising the structure and functioning of the state court system—Chapter 313, HB 104.
2. Requiring the Speaker of the State House of Representatives to reapportion House seats after each federal census, in accordance with the formula set out in the Constitution—Chapter 459, HB 29.
3. Clarifying succession to the governorship and other elective state executive offices, and providing for the removal of incapacitated officers—Chapter 466, SB 154.
4. Authorizing the General Assembly to reduce the period of residence in North Carolina required as a qualification for voting for President and Vice President—Chapter 591, SB 179.
5. Permitting the General Assembly to increase the pay of elective state executive officers effective during their terms of office—Chapter 840, HB 816.
6. Requiring that the General Assembly's power to clas-

sify and exempt property for taxation be exercised only on a uniform state-wide basis and without delegation except for local license tax purposes—Chapter 1169, HB 711.

In an advisory opinion to the Governor, the Chief Justice and Associate Justices of the Supreme Court of North Carolina recently stated that these six pending amendments should be voted upon at the general election of November 1962.

The State Constitution requires that amendments be submitted to the voters "at the next general election" following the legislative session which proposes the amendments. The recent General Assembly, in addition to proposing six constitutional amendments, scheduled a state-wide election in the fall of 1961 on the issuance of State bonds.

The question then arose, whether "the next general election" will be the 1961 bond election or the 1962 election for members of the General Assembly. In order to obtain an authoritative answer to the question, Governor Terry Sanford asked the advisory ruling by the members of the State Supreme Court.



by John L. Sanders  
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# STATE GOVERNMENT

Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

Organizational changes and functional shifts within the administrative branch of State government, although less dramatic than some of the issues confronting the 1961 General Assembly, constituted a significant part of the session's business.

Ten new State agencies were created; three new boards were established in connection with existing agencies and institutions; three agencies were abolished; and many agencies underwent some statutory change, ranging from the addition or deletion of a board member to complete reorganization. Constitutional provisions governing succession to the constitutional state executive offices were adopted and submitted to the people for approval. Several new or improved state programs of regulation and/or service were undertaken. And five new study commissions were created to study assigned subjects and bring recommendations back to the 1963 legislative session.

This article reviews the numerous actions in these areas which were considered by the 1961 session.

## Reorganization Commission Proposals

The entire legislative program of the fourth Commission on Reorganization of State Government won legislative approval.<sup>1</sup> Included in that program were proposals for new agencies to plan for the orderly meeting of state building needs in Raleigh, to plan and supervise the construction of a State museums-library center in Raleigh, and to operate the North Carolina Museum of Art; strengthened procedures for controlling state printing activities; constitutional amendments clarifying succession to office provisions; and improved legislative staff services.

### Succession to Office

Constitutional amendments proposed by the Reorganization Commission and approved by the legislature as Chapter 466 (SB 154) will make several changes and clarifications with respect to succession to the ten elective state executive offices and the methods of determining when the holder of one of those offices is disabled. These amendments will be voted on as a package by the people of the State at the time of the next general election. If approved by the voters, these amendments will have the following effect:

**Governor:** The General Assembly will be required to establish a longer line of succession to the Governor's office. This will cure a potentially troublesome defect of the present Constitution, which is not sufficiently clear as to the order of succession beyond the Lieutenant-Governor.

1. A full discussion of the recommendations of the fourth Commission on Reorganization of State Government will be found in *Proposals of the Commission on Reorganization of State Government*, POPULAR GOVERNMENT, Feb. 1961, pp. 10-14.

To implement that provision, the General Assembly enacted Chapter 992 (SB 458), to take effect only if the constitutional amendments proposed by Chapter 466 are ratified at the polls. Chapter 992 provides that the line of succession to the governorship shall be: Lieutenant-Governor, President of the Senate (elected by the Senate), Speaker of the House of Representatives, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

Present uncertainty as to the procedure for determining when a Governor is so incapacitated that a successor must take over, either temporarily or for the remainder of the term, will be removed. The General Assembly will be authorized to find, by a two-thirds vote of the membership of both houses, that a Governor is *mentally* incapacitated. It may later find by majority vote that the Governor has regained his mental capacity and may resume his office. The Governor may certify his own *physical* incapacity (thus allowing the Lieutenant-Governor to take over as Acting Governor), and may resume his office upon his declaration of his own recovery.

**Lieutenant-Governor:** The President *Pro Tempore* of the Senate will automatically succeed to the presidency of the Senate in case of a vacancy in that office. The legislature will be required to provide a method of determining when the Lieutenant-Governor is physically or mentally incapacitated.

**Other Officers:** The authority of the Governor to appoint an acting or interim successor to any of the other eight elective executive officers, and the circumstances for the exercise of such power, will be clarified. The legislature will be required to provide a method of determining the incapacity of any of these officers.

An additional amendment, added by the Legislature to the Reorganization Commission's recommendations, will enable the legislature to move the seat of government from Raleigh temporarily.

### Museum of Art

The recommendation of the Reorganization Commission which was most discussed, particularly in the press, was for the establishment of the North Carolina Museum of Art as a full-fledged state agency, under a state-controlled board.

Heretofore the Museum of Art has been under the control of the North Carolina State Art Society, Incorporated, a private corporation. The Board of Directors of the Society consists of four members appointed by the Governor, eight chosen by the Art Society, and three *ex officio* members.

While the Museum of Art began as a project of the Art Society, state assistance to the Museum has grown in the last 18 years to the point where the operating expenses of the Museum are now paid almost entirely from State appropriations. The State has invested in the Museum more

than \$1,000,000 in works of art and more than \$1,000,000 in buildings and facilities. Hence the recommendation that the Museum of Art be recognized as a State agency and governed by a board responsible to the people of the State through normal political channels.

Chapter 731 (HB 408) is the Reorganization Commission's bill with some modifications accepted in return for the endorsement of the bill by the State Art Society. It declared the Museum of Art to be a State agency and transferred to it the museum assets of the State Art Society. A Board of Trustees was established as the policy-making group of the Museum. It consists of the Governor and the Superintendent of Public Instruction (or his designee) as *ex officio* members, eight members appointed by the Governor for six-year overlapping terms, and four members chosen for overlapping six-year terms by the Board of Directors of the State Art Society. The position of Director of the Museum is also provided for in the law.

The State Art Commission, originally established in 1947 to spend a \$1,000,000 state art purchase appropriation, was abolished by Chapter 731.

SB 459 was proposed by leaders of the Art Society in order to retain quasi-official status for the group, and was enacted as Chapter 1152. It declared the Society to be under the patronage and control of the State and reconstituted its Board of Directors along the old lines, with the addition of the State Treasurer as an *ex officio* member (the Attorney General had already been relieved of *ex officio* membership by Chapter 547 [SB 21]). The revised functions of the Society are to promote the cause of art in general and to encourage support for the Museum of Art. It will no longer have any voice in governing the Museum except through its four members on the Board of Trustees of the Museum.

#### *Planning Commission*

The need for intelligent long-range planning to meet the housing needs of growing state governmental agencies in Raleigh resulted in the recommendation by the Reorganization Commission and the creation by Chapter 361 (HB 178) of the State Capital Planning Commission.

Appointed by the Governor, the nine members of this new Commission will (1) examine present state laws and policies with respect to the financing, location, planning, and construction of buildings for state agencies in Raleigh; (2) analyze the building requirements of those agencies over an appropriate period; and (3) formulate and recommend to the Governor and the General Assembly a long-range capital improvement policy and program to aid in meeting those needs, including a plan for the future development of the physical plant of state government in the capital city. The powers of the Commission are purely advisory and its life is limited to four years.

A similar but far more ambitious proposal was embodied in SB 316. That bill would have created a State Planning and Development Commission of nine members, appointed by the Governor, with broad authority to acquire land for, plan, and construct state buildings on a new public square in Raleigh. To finance this venture, the first \$5,000,000 of any surplus in the General Fund at the end of each fiscal year would have been appropriated to a reserve fund under the control of the Commission. Furthermore, all existing appropriations for state governmental buildings in Raleigh would have been put under the Commission's control.

Despite its introduction over the signatures of two-thirds of the members of the Senate, the bill was heavily amended in that chamber to take away the earmarking of surplus funds to the Commission's use, to deny the Commission any control over funds appropriated to any other agency for construction purposes, and to withhold from the Commission the power of eminent domain and the power to enter contracts and spend money. Thus shorn by its friends, the bill limped

over to the House where it was finally dispatched by an unfavorable committee report.

#### *Heritage Square*

Chapter 385 (HB 177) establishes Heritage Square, a center in Raleigh in which eventually will be erected a related group of buildings for the Department of Archives and History, the State Library, the Museum of Art, and the State Museum of Natural History. This action is a recognition that there is a present need for some of those buildings, that there ultimately will be a need for all of them, and that bringing them together in a well-planned grouping will have benefits not attainable if the buildings are located at random.

To acquire a site for, plan, and supervise the development of Heritage Square, Chapter 385 creates The Heritage Square Commission, a nine-member group appointed by the Governor and serving overlapping six-year terms. It is not contemplated that this will be a permanent agency, but that it will last only until its assigned functions are completed.

The issuance of \$2,560,000 in bonds to construct a joint library-archives building, the first unit of the Heritage Square complex, was endorsed by the 1961 session and submitted to the voters for approval this fall.

#### *Ports Authority*

Chapter 242 (SB 79) provides that the nine members of the State Ports Authority board will serve overlapping terms of six years; formerly they served four-year terms, all expiring in the first year of each new Governor's term. The object is to insure greater continuity of experience and policy in the board.

#### *State Printing*

Proposed by the Reorganization Commission in an effort to achieve more effective control over the quantity and cost of state printing, Chapter 243 (SB 80) transfers from the Governor and Attorney General to the Department of Administration the authority to regulate the quantity, method of reproduction, and format of departmental reports and other publications of state agencies.

#### *Legislative Services*

One recommendation of the Commission on Reorganization of State Government called for the substitution of a system of photocopy reproduction for letterpress printing of bills introduced in the General Assembly. This system was adopted and proved highly satisfactory. (For details see N.C. GENERAL ASSEMBLY OF 1961.)

A second recommendation for assisting the legislative process was for the establishment of an experimental legislative research service, staffed by two men from the Institute of Government. This service provided considerable aid to the committees considering congressional redistricting, state legislative representation, and court improvement, and gave some help to other legislative committees. The activities of the service consisted mainly of preparing and publishing statistical tables and other documents for the use of legislators and doing limited research on topics of current legislative interest.

#### **New Agencies**

In addition to the three agencies established and one abolished on recommendation of the Reorganization Commission, the General Assembly added ten new State agencies and boards (some of them as adjuncts to existing departments) and abolished two.

The Commission on Employ the Physically Handicapped was replaced by the Governor's Committee on Employment of the Handicapped, under the terms of Chapter 981 (SB 395). The Committee consists of an indefinite number of representatives of economic, religious, educational, civic, scientific, and other groups. The working element of the Committee will be the Governor's Executive Committee on the Employment of the Handicapped, composed of 15 mem-



bers appointed by the Governor for three-year overlapping terms, plus the Governor, Commissioner of Labor, Commissioner of Insurance, Chairman of the Employment Security Commission, and Director of Vocational Rehabilitation, all serving *ex officio*.

The objectives of the Committee and its Executive Committee are to encourage and assist in the employment of persons with physical, mental, emotional, or other handicaps.

#### *Eastern School for Deaf*

The Eastern North Carolina School for the Deaf was established by Chapter 968 (SB 300). The school will be under the control of the North Carolina Directors of Schools for the Deaf, a newly-created 11-member board to be appointed by the Governor, subject to Senate confirmation, to serve coterminous four-year terms. Control of the existing North Carolina School for the Deaf at Morganton was transferred by Chapter 968 to this new board, and the separate Board of Directors of the Morganton school was abolished.

As introduced, SB 300 would have required the location of the new school at Wilson, where advantage could be taken of surplus land and buildings of the Eastern North Carolina Sanatorium. As enacted, however, the bill specifies no site for the institution, but leaves it to the Directors and the Governor to determine where in the eastern part of the State it will be established. Chapter 1027 (SB 5) authorizes the issuance, subject to the approval of the voters, of \$2,057,000 in state bonds to finance the physical plant of the school.

#### *Battleship Commission*

The battleship U.S.S. North Carolina, through the fortuitous circumstance of having twenty years ago acquired the name of a State now brimming with enthusiasm for the preservation or restoration of things historic, apparently will be saved from the ignominy of the scrap heap.

The task of aiding in the acquisition, maintenance, and exhibition to the public of the World War II battlewagon was entrusted by Chapter 158 (SB 106) to the U.S.S. North Carolina Battleship Commission. The new Commission consists of not more than 15 members appointed by the Governor for two-year terms, including one person from the Board or Department of Conservation and Development.

No appropriation was made to the Commission at the 1961 session, but it was authorized to borrow up to \$15,000 from the Contingency and Emergency Fund and to solicit gifts from private sources.

The Commission will expire in 1963, unless its life is then extended by the legislature.

#### *Health Insurance Advisory Board*

The North Carolina Health Insurance Advisory Board was created by Chapter 1044 (SB 371). It consists of the Commissioner of Insurance, *ex officio*, and nine members appointed by the Governor (five from the public at large; four from the insurance industry on recommendation of the Commissioner of Insurance) to serve two-year terms. The Board is directed to study the health insurance industry and make such recommendations to the industry, the Governor, and the General Assembly as it finds necessary to insure better service to the public. It may examine the operations of any company selling health insurance in this State, and if the Board and the Commissioner find that such company is not operating in the public interest, the company may be reprimanded, be placed on probation, or have its license suspended. (Apparently such disciplinary measures would be joint actions of the Board and the Commissioner.)

#### *Museum Advisory Commission*

Chapter 1180 (HB 1027) established the Advisory Commission for the Museum of Natural History, consisting of seven *ex officio* members and three members appointed by the Governor for two-year terms. The Commission will for-

mulate policy for the Museum, make recommendations to the Governor and legislature regarding the Museum, and assist in promoting its effectiveness.

#### *Hospital Advisory Council*

The Advisory Council to the administration of O'Berry School and Cherry Hospital, established by Chapter 766 (HB 916), comprises seven members appointed by the Governor for terms of two years. The functions of the Council are to review the operation, maintenance, and administration of O'Berry School and Cherry Hospital periodically and to make recommendations to the administration of the School and Hospital.

#### *North Carolina Awards*

Chapter 1143 (SB 148) initiates the "North Carolina Awards for Literature, Science, the Fine Arts and Public Service", to be awarded annually to five citizens and one ex-citizen of the State for the most notable attainments in the fields indicated by the title of the awards. As introduced, SB 148 provided grants of \$1,000 each to the recipients of the awards, but the grants were deleted in the House. The awards program will be administered by the North Carolina Awards Commission, whose five members will be appointed by the Governor. The Commission will appoint a committee for each category of achievement, and these committees will make the actual selections of award recipients.

#### *Doughton Commission*

The Robert Lee Doughton Memorial Commission was established by Chapter 1079 (SB 444). Its 25 members are to be appointed by the Governor. It was appropriated \$25,000 with which to erect a suitable memorial in or near the Town of Laurel Springs.

#### *Edenton Commission*

Created by Chapter 1009 (HB 978), the Edenton Historic Commission is authorized to acquire title to, repair, restore, and improve historic properties in Edenton and Chowan County. Its membership includes at least 15 persons appointed by the Governor and three *ex officio* members.

#### *Licensing Boards*

A licensing board for water well contractors was established by Chapter 997 (HB 461), while licensing boards for psychologists, dental laboratory technicians, and radio and television repairmen were rejected. These measures are discussed below in the section on occupational licensing.

#### *Cultural Miscellany*

The Flat Rock Playhouse was recognized by Resolution 59 (SR 335) as the "State Theater of North Carolina", but the resolution expressly disclaimed any state financial obligation towards its namesake.

An effort (HB 1101) to establish the post of Poet Laureate and to grant its holder an emolument of \$300 a year died in the House. A proposal (SB 428) to put the North Carolina State Ballet Company under the patronage and control of the State, with access to the Contingency and Emergency Fund, was killed by the Senate.

### **Agency Reorganizations**

Several state boards and commissions underwent statutory changes affecting their membership. At the instance of the Governor, bills were enacted ending the terms of persons then serving on the State Highway Commission, the Board of Conservation and Development, the Wildlife Resources Commission, and the State Personnel Council, and reconstituting those boards with larger memberships.

#### *State Highway Commission*

Chapter 232 (HB 397) fulfilled a campaign pledge by the Governor and many legislators to make a change in the organization of the State Highway Commission. That act replaced the former seven-member Commission, which served staggered four-year terms, with a Commission of 18 members plus a Chairman, all appointed by the Governor and

serving four-year terms which begin July 1 following the inauguration of each new Governor.

Under the former arrangement, the Director of Highways was the executive officer of the Commission. The Chairman of the Commission is now the fulltime executive officer of the Commission. He and the Commission are assisted by a Director of Highways (who is the Commission's "administrative" officer), a Director of Secondary Roads (who will prepare annual secondary road construction and maintenance plans for each county, following policies of the Commission), and a Controller. The Chairman is appointed by the Governor: the Director of Highways, Director of Secondary Roads, and Controller are formally chosen by the Commission with the Governor's approval. All serve four-year terms beginning in the year of each Governor's inauguration, except for the Director of Secondary Roads, who serves at the pleasure of the Commission and Governor.

Chapter 232 retains the 1957 language which makes the Commissioners representative of the entire State, while giving to each one special public relations responsibilities in a particular geographic area. The former statutory details governing allocation of secondary road funds were repealed, and the Commission now has general authority to adopt policies in accordance with which the Director of Secondary Roads will, after consultation with county commissioners and interested citizens, prepare annual secondary road construction and maintenance plans.

#### *Board of C & D*

Chapter 197 (HB 207) ended the terms of all incumbent members of the Board of Conservation and Development, enlarged the Board from 15 members serving overlapping six-year terms to 28 members with overlapping four-year terms, and eliminated the provision that three Board members represent specified economic interests. No change in the functions of the Board was involved.

#### *Wildlife Resources Commission*

The tenure of all nine members of the Wildlife Resources Commission ended June 30 by the terms of Chapter 727 (HB 630), which enlarged the Commission to 11 members. Nine members will continue to be appointed by the Governor from nine geographical districts prescribed by law. Two members will be appointed from the State at large and will serve overlapping four-year terms, while their district colleagues will serve overlapping six-year terms. The powers and duties of the Commission were not changed by this act.

#### *State Personnel Council*

The State Personnel Council was enlarged from five to seven members; the terms of members were extended from four to six years, overlapping; and the terms of incumbent members were terminated on July 1 by Chapter 625 (SB 197). One of the additional members must come from the field of personnel administration and one must come from business management. The number of members who may be appointed from the ranks of State employees was raised from one to two. The way was opened for virtual merger of the Personnel Council and the Merit System Council by the appointment of the same persons to both councils, should the Governor deem it advisable.

#### *Other Changes*

An additional member at large was added to the Hospitals Board of Control by Chapter 752 (HB 795). The John H. Kerr Reservoir Development Commission was enlarged from seven to nine members by Chapter 650 (HB 678). The Speaker of the House of Representatives was made an *ex officio* member of the Commission on Interstate Cooperation by Chapter 1108 (HB 1032); as introduced, the bill would also have added the Governor and Lieutenant-Governor to the Commission.

Deeming it inappropriate to serve as an *ex officio* member of boards to which he is also official legal counsel, the

Attorney General requested that he be relieved of membership on the Banking Commission, the State Board of Assessment, and the Board of Directors of the North Carolina State Art Society, Incorporated. This was accomplished by Chapter 547 (SB 21). His place on the Banking Commission will be taken by a four-year appointee of the Governor.

The Western North Carolina Regional Planning Commission was declared by Chapter 743 (HB 681) to be a state planning agency.

HB 847 sought to have a veterinarian appointed to the State Board of Agriculture; it failed in the Senate.

Attempts to lengthen the term of members of the Utilities Commission to eight years (HB 283) and to grant them the same retirement benefits as Superior Court Judges (HB 457) died in committee in the House.

#### **Program Shifts**

The duty of making payments to hospitals for services to medically indigent persons was transferred by Chapter 138 (SB 12) from the Medical Care Commission to the State Board of Public Welfare. This move will make available additional federal funds to match state and local grants for this purpose.

The task of regulating, inspecting, and licensing nursing homes was shifted from the State Board of Public Welfare and the Medical Care Commission to the State Board of Health by Chapter 51 (SB 13).

#### **New Agricultural Programs**

The Commissioner of Agriculture is directed by Chapter 719 (SB 244) to conduct a meat inspection program which is compulsory for inter-county slaughtering operations and may be extended by the Commissioner to any intra-county slaughtering operation. A similar program for the compulsory inspection of all poultry slaughtering and processing establishments operating in inter-county commerce was established by Chapter 875 (SB 422). (For details of these laws, see PUBLIC HEALTH.)

Chapter 961 (SB 241) empowers the Gasoline and Oil Inspection Board to require the name or brand under which gasoline is to be sold to be applied at the time of its first purchase in North Carolina. The owner of such gasoline may thereafter, however, upon notice to the Board, change the name of such gasoline.

A uniform code of safety for the handling of liquified petroleum gasses, to be administered by the Commissioner of Agriculture, was established by Chapter 1072 (SB 340).

A proposal (HB 1259) to appropriate \$2,000,000 for the establishment of a School of Veterinary Medicine at North Carolina State College was reported unfavorably by the House Calendar Committee. A similar move in the form of an amendment to the appropriation bill had earlier been rejected on the House floor.

#### **Highways**

The reorganization of the State Highway Commission — the chief bill on the subject of highways — has been discussed earlier in the section on agency reorganizations.

The highway condemnation procedures (GS 136-103 *et seq.*) were amended by Chapter 1084 (SB 494) to require the Commission to file with the appropriate Register of Deeds, at the time of the filing of the complaint and declaration of taking, a memorandum of action giving a description of the tracts affected, the interest being taken, the names of all persons known to have or claiming an interest in the property, and other information. A similar memorandum of action must be recorded by a person who institutes an action to recover damages for the taking of any interest in land by the State Highway Commission without the filing of a complaint and declaration of taking.

HB 1009, which would have allowed the State Highway Commission to regulate billboards on and near the rights of



way of the National System of Interstate and Defense Highways, was reported unfavorably in the House. An identical Senate bill (SB 408) was not reported by the Senate Committee on Public Roads.

#### Occupational Licensing

The licensing of occupations and commercial activities was the subject of more than the normal share of bills this year. One new licensing board was set up (three proposed boards were rejected), private detectives were subjected to regulation, and several boards obtained changes in their organization and/or powers.

##### Detectives

Chapter 782 (SB 249) requires all persons acting as private detectives to be licensed by the Director of the State Bureau of Investigation. Applicants must meet the standards set out in the act, undergo investigation by the State Bureau of Investigation, take an examination if required by the Director of the S.B.I., and post a \$5,000 surety bond. The Director may revoke or suspend any detective's license for statutory cause. Exempt from the coverage of the licensing act are attorneys at law and their agents, public officers and employees acting in the course of duty, full-time insurance adjusters, and regular employees of a single employer.

##### Water Well Contractors

The water well contractors got a licensing board by Chapter 997 (HB 461), but only after their bill had survived almost every known legislative peril. Tabled in the House, it was later resurrected only to have 41 counties exempted from its coverage by the House and another 35 counties exempted by the Senate.

The act establishes the State Board of Water Well Contractor Examiners, composed of seven members appointed by the Governor for three-year overlapping terms. Four members must be water well contractors, one a public representative, one an employee of the State Department of Water Resources, and one an employee of the State Board of Health. The Board has the power to examine and license applicants wishing to engage in the business of drilling water wells, and to discipline any licensee for statutory cause by the revocation, suspension, or refusal to grant annual renewal of a license. Persons now in the business may qualify without examination. The Board will operate entirely from its own license and permit fee receipts.

While residents of the 24 counties to which the act applies must be licensed by the Board in order to engage in the water well contracting business, residents of the 76 exempt counties may practice without a license in any of the 100 counties of the State.

##### Dentists

Chapter 213 (SB 45) makes the State Board of Dental Examiners unique among North Carolina licensing boards in that its members are now elected by direct ballot of all the licensed members of the profession. Most licensing board members are either appointed by the Governor or chosen by the members of a professional organization. Heretofore the six members of the State Board of Dental Examiners have been elected by the North Carolina Dental Society and commissioned by the Governor.

Annual elections of Board members will now be held by mail ballot, and all licensed dentists in the State will be able to vote each year for two Board members for three-year terms. Candidates will be nominated by petition of ten or more licensed dentists. The conduct of elections will be the responsibility of the Board of Dental Examiners, acting as the Board of Dental Elections, *ex officio*.

Several changes were made in the dental practice act by Chapter 446 (SB 228). The chief change is the requirement that any dentist who employs another to prepare dentures or other dental appliances must do so by a written

work order, comparable to a prescription, copies of which must be kept and open to official inspection for two years. License fees were also increased.

##### Attorneys

The Council of the North Carolina State Bar is authorized by Chapter 1075 (SB 372) to formulate rules for the trial of licensed attorneys at law for breaches of standards of professional conduct. Such rules must provide for service of written charges upon the attorney; written answer; trial upon the charges (1) by a jury in the Superior Court, (2) by a committee of practitioners appointed by the Supreme Court, or (3) by a committee of the Council of the North Carolina State Bar; and trial and appeal procedures.

The membership of the State Bar Council was enlarged by Chapter 641 (HB 536) to include each President of the State Bar retiring hereafter, for a term of three years from his retirement.

The annual fee for membership in the North Carolina State Bar was increased by Chapter 760 (HB 876) from \$10 to \$20.

##### Barbers

Chapter 577 (HB 453) increases the barber school course required of license applicants from six to eight months and increases the course required of barber schools accordingly. The requirements for certification as an instructor are raised, and every barber school is required to have a certified instructor as its manager.

##### Electrical Contractors

The State Board of Examiners of Electrical Contractors is required by Chapter 1165 (SB 511) to license without examination any person who was over 40 years of age on June 22, 1961, and who had continuously done electrical work under the supervision of a parent who is a licensed electrical contractor.

##### Nurses

Chapter 431 (SB 23) increases the examination fee for registered nurses from \$15 to \$20 and that for practical nurses from \$10 to \$15.

##### Veterinarians

The name of the North Carolina Board of Veterinary Medical Examiners was changed to the North Carolina Veterinary Medical Board by Chapter 353 (SB 170), which also made several changes in the veterinarians' practice act, including the specification of grounds and procedures for disciplinary action by the Board.

##### Accountants

The educational requirements for admission to practice as a certified public accountant and the certification fees were increased by Chapter 1010 (HB 980).

##### Private Schools

Chapter 1175 (HB 899) entirely rewrites the law (GS 115, art. 31) governing the licensing of private business, trade, and correspondence schools operating in North Carolina. Resolution 69 (SR 456) requests Congress to enact legislation which would enable the states to regulate business and correspondence school solicitors operating in interstate commerce, in the interest of preventing the commission of fraud and deception.

##### Proposals Defeated

Bills to create occupational licensing boards for psychologists (HB 445), dental laboratory technicians (HB 699), and radio and television technicians (HB 773) were defeated by House committees. Defeat was also the lot of bills to rewrite the podiatry (chiroprody) practice act (HB 950), to reorganize and rename the North Carolina Board of Nurse Registration and Nursing Education (HB 582), to restrict the exemptions from the architects' licensing act (SB 254), to extend the coverage of the refrigeration examiners' act throughout the State (HB 1061), to include decorators and painters within the definition of general

contractors (HB 1047), to license driver training schools (HB 223), and to license motor clubs and associations (SB 392).

### Study Commissions

The interim commission for the intensive study of state problems and the formulation of solutions (chiefly legislative) has proved both popular and effective in recent sessions of the General Assembly. The 1961 session evidenced the legislature's continuing—but not unbounded—confidence in this device by the creation of five study commissions (two of them continuations of existing groups) and the rejection of proposals for another ten study commissions. All five of the commissions are to make their assigned studies and report to the 1963 session of the General Assembly.

#### *Commissions Created*

The Commission on Reorganization of State Government, in operation since 1953, was continued for another biennium. Its nine members will be appointed by the Governor. (Resolution 48 [HR 840]).

The Commission to Study the Cause and Control of Cancer in North Carolina was renewed for a third biennium. The Governor appoints its members, ten from within and ten from without the medical professions. (Resolution 70 [HR 335]).

The Commission to Study the Impact of State Sovereignty upon Financing of Local Governmental Services and Functions will consist of nine members: three citizens appointed by the Governor, three Senators appointed by the President of the Senate, and three Representatives appointed by the Speaker of the House. It will "study the impact of . . . State property in local governmental units upon the services and functions necessitated thereby, and the effect upon local governmental revenues and expenditures", and will make recommendations for the more equitable financing of local governmental services and functions required by such state property. (Resolution 68 [HR 1122]).

The Commission on the Study of the Manner of Selection of Members of the Several Boards of Education of the County and City Administrative School Units of the State will make the study indicated by its title. Three members will be appointed by the Governor; three will be Senators, appointed by the President of the Senate; and three will be Representatives, appointed by the Speaker of the House. (Resolution 21 [HR 50]).

The Commission to Study Public Welfare Programs will consist of three to seven members, all appointed by the Governor. It is to study existing public welfare programs and submit to the 1963 session recommendations designed to insure (among other things) that only needy persons are on the welfare rolls, that welfare grants are spent only for items needed by the persons for whom the grants are made, and that the best formula is used for determining public assistance grants. (Resolution 66 [SR 283]).

#### *Commissions Rejected*

The ten study commissions which were turned down were: a continuation of the North Carolina Grain Commission, established in 1959 (SR 317), The Commission for the Study of the Insurance Laws of the State (SR 298), The North Carolina Small Business Commission (SR 322), The North Carolina Civil Service Study Commission (HR 103), The Commission on the Reorganization of School Administrative Units (HR 350), The North Carolina Study Commission on Fire Insurance Rates (HR 355), the Commission to Study the Necessity and Advisability of the Establishment of a School for the Deaf in Eastern North Carolina (HR 455), the Study Commission to Inquire into the Operation and Administration of the Driver Training Program and the Feasibility of Requiring all Persons Under the Age of Twenty-one, when Applying for Drivers' License, to Have Taken a Driver Training Course (HB 1103), The Commis-

sion to Study Installment Sales (HR 1171), and The 1961 Tax Study Commission (HR 1149).

### Miscellaneous

#### *Executive Pay*

The State Constitution provides that the ten elective state executive officers shall receive salaries fixed by law, which shall neither be increased nor diminished during the time for which they shall have been elected, and said officers shall receive no other emolument or allowance whatever.

Since the legislature now convenes after those officers have been sworn in for their four-year terms, and since it has not been customary for their salaries to be increased two to four years in advance of the time when such increases can take effect, the Attorney General and Council of State members have not shared fully in the general rise in state salaries.

Chapter 840 (HB 816) submits to the voters for their approval at the next general election a constitutional amendment which will alleviate the constitutional aspects of their problem. It eliminates the prohibition against increasing the pay of these officers effective during their terms of office, and it also strikes out the prohibition against allowances.

Attempting a shorter cut to the same end, HB 1235 would have granted the Attorney General and each of the seven members of the Council of State an allowance of \$2,000 a year, payable in 12 equal instalments, "in lieu of any other allowance for any travel expense incurred for intrastate travel. . . ." It was defeated on its third reading in the House.

#### *Public Purchasing*

Two bills were enacted to cope with alleged "price rigging" between bidders on public contracts. Chapter 407 (SB 131) makes it a violation of the statute prohibiting combinations in restraint of trade for sellers to agree among themselves not to sell below a fixed or agreed price, so as to preclude free competition among themselves, unless this is done in compliance with state regulations or pursuant to the Fair Trade Act.

Chapter 963 (SB 245) commands the Director of Administration to require all bidders on state contracts to certify that each bid is submitted competitively and without collusion.

Bids on public contracts exceeding a value set by statute are required by Chapter 1226 (HB 1011) to be sealed, and the premature disclosure of the contents of any bid without the permission of the bidder is made a misdemeanor.

SR 380 would have authorized state purchasing officials to accept a bid other than the low bid, when the low bidder proposes to furnish foreign products and a higher bidder proposes to furnish domestic products. The bill died in a Senate committee.

A bill (SB 470) to make it clear that county and city boards of education must purchase through the Department of Administration all supplies, equipment, materials paid for with tax funds was reported unfavorably in the House. A similar fate has befallen similar bills in past sessions.

#### *Department of Administration*

The Director of Administration is required by Chapter 310 (SB 138) to supervise inventories of all fixed and movable property of the State. Formerly he was required to maintain such inventories.

HB 820 would have given the Department of Administration powers of condemnation equivalent to those of the State Highway Commission; it failed to pass second reading in the House.

Chapter 457 (HB 542) grants the State and its agencies the same authority now held by municipalities to remove

(Cont'd, see "State Government" on p. 69)



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# LEGISLATION OF INTEREST TO COUNTY OFFICIALS

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

## Introduction

No attempt is made in this article to discuss all legislation of interest to county officials. Legislation discussed in it for the most part is legislation directly affecting county commissioners, legislation relating to the financing of county government, and legislation granting new powers and authority to counties. Legislation primarily of concern in the administration of particular county activities is discussed elsewhere. In this connection the reader should check the table of contents for other articles of interest to county officials and, particularly, to those officials responsible for the administration of particular county activities. In cases where legislation discussed in this article is discussed in greater detail in other articles, specific references are given.

## County Commissioners

### *Selection of Vice-Chairman*

Chapter 154 (SE 75) amends GS 153-8 to authorize boards of county commissioners to choose a vice-chairman to act in the event of disability or absence of the chairman. This chapter also authorizes the members present at any meeting to choose a temporary chairman when the chairman and vice-chairman are absent from such meeting. Previously, no express statutory authority existed for selection of a vice-chairman by boards of county commissioners.

### *Changes in Terms of Office, Number of Members, and Method of Selection*

Chapter 30 (HB 76) changes the term of office of McDowell County commissioners from six to four years. Chapter 150 (HB 257) provides for submission of the question of election of county commissioners for four year staggered terms to the voters of Caswell County at the 1962 general election. At the present time Caswell County commissioners are elected for straight two year terms. Chapter 101 (HB 159) increases the number of commissioners in Wilkes County from three to five, and Chapter 188 (HB 306) increases the membership of the Person County board from five to seven.

Chapter 188 also divides Person County into seven districts and provides for the nomination of one candidate for commissioner from each district by the voters of the entire county. Previously, the commissioners were elected at large. Under Chapter 706 (HB 894) district nomination of Currituck County commissioners is continued but nomination is by the voters of the whole county rather than by the voters of the districts only, as in the past. Chapter 764 (HB 901) provides for nomination and election of Bertie County commissioners by districts by all the voters of the county. Form-

erly, nomination was by districts by district voters only while election was by districts by county-wide vote.

### *Fees and Compensation*

Cherokee (Chapter 691, SB 144), Martin (Chapter 777, HB 962), Moore (Chapter 816, HB 955), and Richmond (only in part) (Chapter 948, HB 1197) were added to the list of counties to which GS 153-9(12a) applies. This subsection authorizes boards of county commissioners to fix the fees charged by certain county officials. There were also a number of local acts fixing fees to be charged by various county officials.

Cherokee (Chapter 692, SB 145), Martin (Chapter 713, HB 960), Northampton (Chapter 1135, HB 1219), and Transylvania (Chapter 108, HB 192) were added to the list of counties to which Article 6A of Chapter 153 of the General Statutes applies. This article authorizes boards of county commissioners to fix the number and compensation of county employees. In addition, there were dozens of local acts fixing the compensation and travel allowances of county employees, including county commissioners. Some of these local acts are discussed in the article on PUBLIC PERSONNEL.

### *Changing Site of Courthouse*

Chapter 811 (HB 920) amends GS 153-9(9) to provide that where notice of proposed new site for county courthouse is published in a newspaper printed in the county, posting of notices in townships is no longer required. Formerly, this section required the posting of notices in one or more public places in each township in the county in addition to publication of notice in a newspaper.

## Powers and Functions

### *Garbage Collection and Disposal*

Chapter 514 (HB 417) authorizes boards of county commissioners to regulate the collection and/or disposal of garbage by private persons, firms or corporations in areas of the county outside incorporated cities and towns. County commissioners are authorized to license persons collecting and/or disposing of garbage and to grant to licensed persons the exclusive right to collect and/or dispose of garbage for compensation within a specified area. They may prohibit unlicensed persons from collecting and disposing of garbage and may prohibit unauthorized persons from collecting and/or disposing of garbage in areas where exclusive rights have been granted. The board may regulate fees charged by licensed persons. It is also authorized to adopt appropriate regulations in the exercise of the above powers. Violation of any regulation adopted is made a misdemeanor punishable by fine up to \$50 or imprisonment up to thirty days. Each week that any violation continues to exist is made a separate offense.

This grant of authority to counties to regulate the collection and disposal of garbage is probably broader than

that given a limited number of counties by GS 153-10.1. At any rate the powers of counties in this respect are set out in greater detail in the state-wide act. GS 153-10.1 authorizes commissioners to regulate the removal and disposal of garbage "within the rural areas of the county" and outside incorporated cities and towns. Its provisions relating to criminal liability for violation of regulations adopted are similar to those in the present act. GS 153-10.1 applies only to Cabarrus, Gates, Graham, Guilford, Henderson, Hertford, Hoke, Jackson, Martin, McDowell, Mecklenburg, Northampton, Polk, Scotland, Stokes, Transylvania, Wayne and Wilson counties. Hoke (Chapter 803, HB 878), Stokes (Chapter 711, HB 914), Transylvania (Chapter 806, HB 889), and Wayne (Chapter 40, HB 4) were added at this session of the General Assembly to the list of counties to which the section applies. Chapter 187 (HB 305) and Chapter 304 (HB 428) grant similar authority to Haywood and Burke counties and, in addition, authorize them to enter agreements with municipalities located in the counties in the exercise of the powers granted.

Chapter 514 also authorizes counties to establish and operate garbage collection and/or disposal facilities in areas of the county outside incorporated cities and towns. Counties may contract with cities and towns for them to collect and dispose of garbage in these areas. County commissioners are authorized to use vacant land owned by the county or to acquire suitable sites for the disposal of garbage. Authority is given to counties to make appropriations for these purposes. County commissioners may charge fees for use of county disposal facilities and must charge fees for collection services sufficient to defray the expenses of collection. Apparently, county commissioners will not have any discretion concerning the source of revenue to be utilized in financing garbage collection activities.

The new law is inapplicable to Vance and Johnston counties. Chapter 912 (HB 1037) authorizes the commissioners of Dare County to levy ad valorem taxes to carry out the powers granted by Chapter 514, but provides that taxes shall be levied only in those areas of the county in which the county provides garbage collection services. The validity of such a levy may be questionable under the uniformity provision of the Constitution.

#### *County Utilities*

The 1961 General Assembly enacted legislation which will better equip counties to meet the increasing need for water and sewer services in counties which cities are no longer willing or able to meet. Chapter 1001 (HB 745) authorizes counties "to acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system and any sanitary sewerage system or parts thereof, either within or without the boundaries of the county. . . ." Acquisition of land and rights in land by gift, purchase or eminent domain is authorized. County commissioners are authorized to provide water and sewer services to residents and nonresidents and to fix fees and charges for such services. Charges for services provided inside the county may vary from charges for services provided outside the county, and charges for the same class of services may vary in different areas either inside or outside the county.

Counties are further authorized to acquire, maintain and operate water systems and sanitary sewerage systems jointly with other counties or municipalities, located within or outside such county or counties. Participating political subdivisions are authorized to enter such contracts as are necessary to exercise jointly the powers granted. Also, counties and/or municipalities acting jointly may establish a joint agency to exercise all or part of the powers granted. The duration of the agency, financial contributions for its support by participating subdivisions, and fiscal control procedures

are to be determined by agreement between the participating subdivisions. Participating subdivisions are authorized to make appropriations to carry out the powers granted, and expenditures by counties are declared to be for necessary expenses and special purposes.

Chapter 795 (HB 796) authorizes creation of metropolitan sewerage districts upon petition of two or more political subdivisions or political subdivisions and unincorporated areas within the same county. The board of county commissioners and a representative of the State Stream Sanitation Committee are required to hold a joint hearing, after notice, concerning creation of the district. If, after hearing, they deem it advisable to create the district and determine that the public health and welfare in the area concerned require its creation, the State Stream Sanitation Committee is to adopt a resolution establishing the district. The district governing board is to be appointed by the county commissioners and the governing bodies of participating political subdivisions.

The Chapter prescribes the powers of the district, bond issuance procedures and the procedure for inclusion of additional political subdivisions and unincorporated areas in the district. It authorizes political subdivisions to make advances to the district for its creation and preliminary expenses and, subject to approval of the Local Government Commission, to convey existing sewerage systems to the district. The district, with approval of its voters, is authorized to assume sewer debt of political subdivisions in the district. (For further discussion see article, WATER RESOURCES.)

#### *Parking Regulations.*

Chapter 191 (SB 28) adds subsection (54) to GS 153-9. This subsection gives county commissioners power "to regulate and control by resolution the parking of motor vehicles on county-owned property, and to provide that violation of regulations adopted . . . shall be a misdemeanor punishable by a fine of not more than one dollar. . . ." Resolutions adopting such regulations shall not apply to streets, roads, or highways in the county. This bill does not make violation of regulations adopted a misdemeanor but authorizes county commissioners to provide by resolution that violations shall constitute misdemeanors. There may be some question of the constitutionality of this delegation by the legislature to counties of the power to enact criminal laws. It should be noted that GS 14-4 making a violation of municipal ordinances a misdemeanor applies only to cities and towns.

#### *Planning, Zoning, and Subdivision Regulations*

For a discussion of new legislation in these areas, see the article, *PLANNING*.

#### **Finances**

##### *Special Taxes and Appropriations*

*For Payment of Salaries.* Five more counties—Cleveland (Chapter 631, SB 324), Edgecombe (Chapter 1083, SB 484), Halifax (Chapter 193, SB 102), Robeson (Chapter 1045, SB 425), and Wayne (Chapter 1082, SB 481)—brought themselves under the provisions of GS 153-9(43). This subsection authorizes counties to levy special purpose taxes for the payment of the salaries and office expenses of the county accountant, the farm and home demonstration agents, and the veteran's service officer. When originally enacted in 1953, this subsection applied only to fourteen counties. Eight more counties were added in 1955; five in 1957; and seven in 1959.

*For Water and Soil Conservation.* GS 153-9(35½) was amended by Chapter 656 (HB 768) to authorize counties to cooperate with the national soil conservation service and the state soil and water conservation agencies and districts to promote soil and water conservation work. Previously, this subsection authorized cooperation for promotion of soil conservation only. Counties are authorized to appropriate



nontax funds for these purposes. This section was originally enacted in 1959 and applied to sixty-four counties. Eleven more counties were added by the 1961 General Assembly. These are: Bertie (Chapter 301, HB 397), Currituck (Chapter 1126, HB 1205), Davie (Chapter 582, HB 650), Granville (Chapter 581, HB 626), Guilford (Chapter 250, SB 54), Lincoln (Chapter 584, HB 695), Martin (Chapter 266, HB 221), Montgomery (Chapter 579, HB 571), Rutherford (Chapter 693, SB 350), Stokes (Chapter 809, HB 915), and Wilkes (Chapter 705, HB 884).

*For County Office Buildings.* A number of local acts granted authority to particular counties to levy special purpose taxes for renovation and enlargement of courthouses or for purchase or construction of county office buildings. The counties affected were Ashe (Chapter 1205, HB 1176), Martin (Chapter 1018, HB 1074), Person (Chapter 654, HB 744), Granville (Chapter 496, SB 266), Halifax (Chapter 207, HB 219) and Hyde (Chapter 550, HB 673). Since the County Capital Reserve Act expired, there has existed no general law authority for counties to accumulate funds from current revenues to meet capital improvement requirements. Thus, counties have no authority to levy a tax with the intention of accumulating the proceeds of such levy over a period of years to finance a particular capital improvement. These local acts are significant not only because they authorize the levy of a special purpose tax but also because they authorize the accumulation of the funds derived from such tax over a period of years.

*For Industrial Promotion.* If volume of legislation enacted can be taken as an indicator, all signs are that local governmental units have taken arms alongside the state administration in the "big industry hunt." At least twenty-nine state-wide and local bills relating to local government industrial and economic development activities were enacted by the 1961 General Assembly.

The only state-wide authority for counties to engage in industrial and economic promotion activities is Chapter 158 of the General Statutes. Before the 1961 session of the General Assembly GS 158-1 authorized counties to set apart and appropriate for these purposes funds derived from the general taxes levied by the county in an amount of not less than 1/100 of one per cent nor more than 1/10 of one per cent of assessed valuation for tax purposes. GS 158-2 provided that no county could raise or appropriate money under this chapter until the chapter had been adopted by the voters of the county.

Chapter 294 (SB 88) amends GS 158-1 to provide that taxes levied under the chapter can be levied as special purpose taxes and validates special taxes which have heretofore been levied under the chapter. Under Chapter 722 (SB 309) the existing sections of Chapter 158 are designated Article 1 and the provisions of SB 309 are designated Article 2 of Chapter 158. These provisions authorize counties to create economic development commissions acting individually or to create regional commissions acting jointly with other counties or municipalities. Counties are authorized to make appropriations to such commissions out of surplus funds or funds derived from nontax sources. Counties are also authorized to appropriate tax funds derived from levies made pursuant to Article 1 of Chapter 158 or pursuant to local acts.

Before SB 309 was enacted it seems fairly clear that the provisions of GS 158-2 prohibited any county from appropriating nontax funds as well as from levying taxes under Chapter 158 without a vote of the people. Probably, SB 309 was intended to authorize counties to appropriate nontax funds for industrial and economic promotion without approval of the voters. If this were the intention, a question of interpretation of GS 158-2 arises. GS 158-2 was not amended and, as we have seen, requires approval of the vot-

ers before any appropriation can be made under authority of the chapter, which would now encompass the provisions added by SB 309. It may be that, because of the apparent intention of SB 309 to grant authority to appropriate nontax funds without approval of the voters, the word "chapter" as used in GS 158-2 will be construed to mean "article" so as to restrict its limitation to Article 1. If this construction were adopted, counties would now have authority to appropriate nontax funds under Chapter 158 without a vote of the people; if this interpretation is not adopted, the law in this respect will not be changed.

In all probability more counties proceed under authority of local acts in carrying out industrial development activities than under Chapter 158. Chapter 212, 1959 Session Laws, is the forerunner among local acts and its provisions are typical of most local acts authorizing tax levies for industrial promotion purposes. It authorizes the county commissioners to call an election upon the question of levy of a special purpose tax not to exceed five cents for industrial promotion purposes. If the voters approve the tax levy, an industrial development commission is created and this commission is charged with the responsibility of carrying out the industrial development activities of the county. Chapter 212 initially applied to Edgecombe, Franklin, Polk, Rutherford, and Vance counties. Alexander (Chapter 683, HB 947), Burke (Chapter 1011, HB 991), Caswell (Chapter 208, HB 259), Chowan (Chapter 1058, HB 977), Harnett (Chapter 560, HB 729), Person (Chapter 701, HB 743), and Tyrrell (Chapter 228, HB 332) were added by the 1961 General Assembly. In Harnett and Tyrrell the maximum tax rate which may be levied is ten cents rather than five. In Person the maximum tax rate is three cents. There were a number of other local acts enacted authorizing the levy of taxes and the appropriation of nontax funds for these purposes.

*Miscellaneous.* Chapter 309 (SB 137) authorizes municipalities and other political subdivisions to support or assist in supporting any art gallery, museum or art center owned or operated by a nonprofit corporation, which is located in its territorial area and which is open to the public. Counties and other political subdivisions are authorized to appropriate tax funds, upon approval of the voters, or nontax funds for this purpose.

Chapter 1065 (SB 198) authorizes any county to appropriate funds other than ad valorem tax funds for any celebrations, observances, publications, museum collections, or any other actions or activities that are a part of, or connected with, the tercentenary of the granting of the Carolina Charter.

Chapter 662 (HB 839) authorizes boards of county commissioners to advance funds for the preliminary expenses of drainage districts. Such advances shall be made to a county official designated by the Commissioners, and shall be disbursed upon such terms as the county commissioners may direct. If the district shall be organized, the funds advanced shall be repaid from assessments thereafter levied.

#### *Bonds and Borrowing*

*Destruction of Paid Bonds and Coupons.* Chapter 633 (HB 846) rewrites GS 153-111 to expand the authority of counties for destruction of paid bonds and interest coupons. The new enabling law permits destruction of paid bonds and coupons by counties by either burning or shredding and permits counties to contract with paying agents for destruction of bonds and coupons by such paying agents. The former law permitted destruction only by the counties by burning. Under the former law, the increasing volume of surrendered bonds and coupons was creating a problem for many counties which do not have adequate cremation facilities. Most of these counties have followed the practice of pasting surrendered bonds and coupons in bound volumes and storing these volumes indefinitely. This procedure has not been complete-

ly satisfactory because of additional personnel requirements and lack of storage space. The new destruction legislation should be an aid to these counties.

Where the counties themselves destroy their bonds and coupons, the procedure under the new law is similar to that set out in the former law. Destruction must be in the presence of the chairman of the board of county commissioners, the county accountant, and the clerk of the board of county commissioners (formerly, chairman of the board of county commissioners, the county accountant or treasurer or auditor, the county attorney, the secretary of the board of county commissioners and the county superintendent of public instruction), each of whom must certify that he witnessed the destruction. The county accountant (formerly treasurer) must make a descriptive list of bonds and coupons destroyed in a substantially bound book kept for that purpose. Details which must be included in the identification of destroyed bonds and coupons in the descriptive list are set out in the statute.

Where counties contract with paying agents for destruction of surrendered bonds and coupons, it will no longer be necessary that such bonds and coupons be returned to the county before they are destroyed. Such contracts must require the paying agent to furnish to the county periodically a certificate of destruction identifying the bonds and coupons destroyed by the paying agent. In the paying agent's certificate of destruction bonds must be identified as to (a) designation or purpose of issue, (b) date of issue, (c) bond numbers, (d) denomination, (e) maturity date and (f) total principal amount. Coupons must be identified as to purpose and date of bond issue; maturity date of coupons; and as to coupons maturing on a given date, the denomination, quantity and total amount of coupons maturing. The contract need not require that coupons be identified by serial number, but counties may include this requirement in the contract. The paying agent must certify in the certificate that the bonds and coupons identified therein have been destroyed either by burning or by shredding.

The contract may contain such other provisions as the county and paying agent may agree upon. Examples of matters counties may consider for inclusion in contracts are: (a) a provision giving duly authorized representatives of the county the privilege of examining and auditing paid bonds and coupons before they are destroyed; (b) a provision that a county official be present to witness the destruction of bonds and coupons by the paying agent; (c) the scope of the paying agent's audit of paid bonds and coupons before destruction; (d) a requirement that the paying agent retain all bonds and coupons for a designated period of time after payment before destroying them; (e) provision that the paying agent shall assume full responsibility for payment of bonds and coupons upon deposit with it by the county of adequate funds for such payment and shall be liable for payments made to any person who does not present a valid bond or coupon for payment.

No bonds or coupons can be destroyed within one year from their maturity dates. Thus, counties destroying their own bonds and coupons would have to retain them for one year before destroying them and counties contracting with paying agents for destruction by such paying agents probably would want to include a provision in the contract for retention of paid bonds and coupons by the paying agent for one year.

The provisions of GS 121-5 and GS 132-3, requiring approval of the State Department of Archives and History before destruction of county records, are made inapplicable.

*Purposes for which Bonds may be Issued.* Chapter 293 (SB 76) amends the County Finance Act to authorize counties to issue bonds for remodeling, enlarging and reconstructing county buildings. This Chapter also adds sub-

section (b1) to GS 153-77 authorizing counties to issue bonds for the erection and purchase of county office buildings.

Chapter 1001 (HB 745) rewrites subsections (o) and (p) of GS 153-77 to authorize counties to issue bonds for acquisition, construction, reconstruction, extension and improvement of water and sanitary sewerage systems, either singly or jointly with other counties and municipalities.

Chapter 1042 (SB 363) amends GS 127-113 authorizing the issuance of bonds by counties to aid in the construction of armory facilities to provide that the issuance of such bonds and the levy of taxes for the payment of principal and interest thereon shall be subject to approval by the voters of the county if required by the Constitution or by the County Finance Act.

#### *Investment of County Funds*

Attempts to expand the authority of counties to invest funds in shares of buildings and savings and loan associations failed. One state-wide bill and two local bills introduced for this purpose were not favorably acted upon by the General Assembly. The provisions of all three bills were identical. The state-wide bill, SB 189, is set out below: "The Board of County Commissioners of any county is hereby authorized and empowered to invest the cash balance of any fund or funds, not needed to meet current appropriations of a current fiscal year, in shares of any building or savings and loan association organized under the laws of this State or in shares of any federal savings and loan association organized under the laws of the United States and having its principal office in this State, in an amount not in excess of the amount insured by the federal government or any agency thereof."

#### *Fiscal Control*

*Application of Local Government Act.* Chapter 1106 (HB 992) rewrites GS 159-42 to provide that Article 1 of Chapter 159 of the General Statutes shall apply to every local governmental unit having power to levy ad valorem taxes, regardless of any provision to the contrary in any general, special or local act enacted before the adjournment of the regular session of the 1961 General Assembly.

*Selection of County Depositories.* Chapter 892 (HB 426) and Chapter 891 (HB 320) give the county commissioners of Haywood and Jackson counties authority to select "building or savings and loan companies in this State as an official depository or depositories" of their respective counties. However, no deposit in any one building or savings and loan company may exceed the sum of \$10,000. Any building or savings and loan company selected as a depository must have its accounts insured by the FSLIC to the amount of any deposits made. The above local acts modify GS 159-28, which is part of Article 1 of Chapter 159, by changing the insurance coverage of accounts required from FDIC to FSLIC insurance. *Quaere*, as to what effect HB 992, which was ratified four days after the ratification of the two local acts, has on these local acts.

*Administration of Functions by Commissions.* In a number of general and local acts the General Assembly established commissions which are charged with the responsibility of carrying out particular county functions. In other instances commissions have been created to administer functions which counties and municipalities have been authorized to carry out jointly. Counties are authorized to appropriate funds to these commissions which are to be spent by the commissions in carrying out the functions they administer. The fiscal control procedures provided under which expenditures of these funds are to be made by the commissions are meager. Often no provision or inadequate provision is made for submission of budgets by such commissions, for audit of commission funds, and for safeguarding and deposit of commission funds. Frequently, these matters are left to the

(Cont'd., see "County Officials" on p. 69)



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# THE CITIES AND THE 1961 GENERAL ASSEMBLY

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

Legislation concerning city government tends to run in cycles. If one legislative session produces significant legislation concerning cities, the following session is likely to be one where the cities seek to protect and consolidate their gains. 1959 was one of the years for major advances. The 1961 legislative program of the League of Municipalities was based on the strategy of protecting and consolidating these gains. If any judgment can be passed on the results of a legislative session this soon after the fact, this was a prudent and successful strategy.

This is not to say that the League's legislative program was lean or lacking in substance. It was a good program, designed first to protect existing legislation from weakening amendments and second to modify, strengthen, and clarify existing laws. Both major objectives were substantially met. If every item in the legislative program was not adopted, neither in fairness can it be said that the League expected 100% success.

It is perhaps just as well that cities had no major legislative policy change to carry to the General Assembly, for from the earliest part of the session the cities were engaged not so much in pursuit of their own program as in defense against the proposal that cities, together with other governmental units, become subject to the state sales tax. In proposing elimination of most exemptions to the sales tax as the primary means for financing necessary improvements in the public education program, Governor Sanford's administration suggested that the tax apply to state and local governmental purchases and not only as a means of raising revenue. In particular the administration was concerned that other potential taxpayers, such as contractors for the federal government, would not be able to claim that the tax was discriminatory as it applied to purchases on behalf of the federal government while not applying to similar purchases on behalf of state and local governments.

While the cities recognized the logic of this argument, in return they pointed out (1) that it was unsound policy for one level of government to directly levy a tax on another level of government, and (2) that payment of the sales tax might help meet school needs but that it would also increase municipal expenditures and therefore the municipal property tax. Eventually a compromise was reached whereby the cities and counties were made subject to the tax but were entitled to apply and receive, at the end of each fiscal year, a refund equal to the amount of tax paid during the fiscal year.

One of the more interesting features of the League's 1961 legislative program was a set of resolutions addressed

to the General Assembly and setting forth the League's position with respect to several statewide policies. It was all the more interesting because the North Carolina Association of County Commissioners adopted a similar set of resolutions, and the cities and counties were in clear agreement on most of the subjects covered. Whether or not the resolutions in themselves had any substantial impact on legislators, these resolutions seemed to have two distinct advantages:

1. They committed all cities, and all counties, on particular policies so that the legislative representatives of both associations had clear mandates to rely on when troublesome questions arose in Raleigh.
2. They served as good public relations devices in defining the positive attitudes of local governments on certain important statewide issues, such as court reform.

Perhaps the most important item covered by both sets of resolutions insofar as local government is concerned was property revaluation in response to the recommendation of the State Tax Study Commission that the "property tax should be stable, uniform, broad and inclusive," the 1959 General Assembly enacted a mandatory schedule for periodic revaluation of property in each of the 100 counties, G.S. 105-278. This action had the whole-hearted support of the counties and the cities. As expected, efforts were made in 1961 by a few counties to seek authority to delay revaluation from the dates set forth in the 1959 legislation. With the active support of the County Commissioners Association, backed up by the League, the General Assembly held the line and permitted no delays.

Similarly, both associations adopted resolutions pointing out the effect on local governmental units of the exemption of state-owned property from the property tax, even though essential local government services had to be provided state agencies in those cities and counties where such exempt property is located. The General Assembly responded to this request for a study by establishing a nine-member study commission to look into all aspects of the problem and to report to the 1963 General Assembly. Resolution 63 (HR 1122). The Governor is to appoint three members; the Lieutenant Governor three members; and the Speaker of the House three members.

The cities and the counties agreed on two other resolutions. Both registered support of the constitutional amendments designed to permit reform of the court system, and both argued for the advantages of special legislation. On the latter subject, both associations were in agreement that special legislation permits desirable flexibility in the delegation of legislative powers to cities and counties having different types of problems, and both noted that the volume of

special legislation can be most effectively reduced by enactment of broad and general enabling legislation. Whether more careful study of the need for local legislation took place at the local level, or whether general legislation enacted in recent years cut down on the need, it is a fact that the number of special acts passed in 1961 was a little over 10% less than in 1959.

Perhaps the most significant feature of the general policy positions on which the cities and counties agreed during the 1961 session was the simple fact of city-county agreement and cooperation. To the extent that cities and counties can present a united front on major policy affecting them both, favorable response by the General Assembly is much more likely.

Apart from general problems on which the cities and counties took a similar position, the cities also re-submitted a request for another look at the system of privilege license taxation. Noting that the privilege license tax system was "inherently inequitable," the League urged the General Assembly to devote serious attention to remedies for these inequities. But in a General Assembly faced with so many major and complex problems, there was no incentive to seek a solution to a problem of great complexity but of relatively small significance in terms of dollars.

Turning to the legislative record, the observer is struck, as always in North Carolina, with the amount of legislation which, though not inspired by cities and towns, affects directly or indirectly the affairs of cities and towns, and with the great volume of special legislation affecting cities and towns. Rather than single out those acts which were specifically endorsed by cities in their legislative program, all legislation affecting cities will be briefly reviewed in several major subject matter classifications, with those acts stemming from the municipal legislative program noted as such.

As noted above, special legislation is a prominent feature of North Carolina legislative activity, and cities and towns, as well as counties, rely heavily on the special act to tailor legislative authority to the needs of particular communities. As Table No. 1 makes clear, the emphasis in special legislation is more and more on the structure and organization of the city, and this emphasis should tend to grow stronger. For example, general legislation concerning zoning, subdivision control and annexation has greatly reduced not only the number but also the importance of special legislation on these subjects in a period of just four years. The special laws concerning taxation and revenue have in the past ten years also decreased both in number and importance. The volume of legislation concerning sale of property has fallen off markedly with the enactment of more flexible general laws. While it would be foolish to predict that the volume of special legislation will continue to fall, it may not be foolish to predict that its emphasis will continue to be on those subjects where general legislation is likely to be unsatisfactory—the composition, size and terms of governing boards, provisions concerning municipal elections, and basic charter provisions being examples.

#### Organization and Structure of Municipal Government

It is a matter of history, of course, that the legislative powers of cities were once defined completely in special legislative acts termed "city charters" without any general enabling legislation applying to all cities. In states which prohibit special legislation, either there are no individual city charters or such charters are adopted under constitutional "home rule" procedures. In North Carolina, charters continue to be important in providing for (1) boundaries, (2) the basic form of government, including the powers and composition of the governing board, (3) municipal election procedures, (4) organization for administration, and (5) miscellaneous powers and procedures wherein a given

TABLE NO. 1  
LOCAL LEGISLATION AFFECTING CITIES AND TOWNS

Subject	No. of New Laws			
	1957	1959 Passed	1961	Bills Introduced but not Passed—1961
<i>Structure and Organization</i>				
Incorporation and Organization	11	13	10	2
Forms of City Government				
Providing for city manager	4	6	5	0
Changes in number and term of governing board members	21	22	25	0
Municipal Election Procedures	41	44	34	2
Pay of Governing Board members	29	15	11	1
Appointment and Qualification of Officials	8	6	4	0
Retirement and Civil Service	10	17	11	0
Charter Revisions	16	13	28	1
Sale of Property	40	18	19	1
Sub-Total	190	154	146	7
<i>Municipal Finance and Fiscal Control</i>				
Taxation and Revenue	21	14	14	0
Expenditures	9	6	9	0
Property Tax Collection	10	12	8	0
Special Assessment	15	7	6	0
Sub-Total	55	39	37	0
<i>Planning, Zoning and Extension of Limits</i>				
Planning and Zoning	22	17	21	0
Annexation	28	35	15	1
Sub-Total	50	52	36	1
<i>Miscellaneous</i>				
Streets, Traffic and Parking	4	4	1	1
Regulatory powers, other	20	8	5	0
Police Jurisdiction	15	9	14	2
Local Courts	27	25	12	2
Sale of Wine, Beer and Liquor	7	6	14	0
Other Municipal Functions	17	13	18	3
Miscellaneous	3	2	1	0
Sub-Total	93	67	67	8
Grand Total	388	312	286	16

city may want some modification from general law authority.

Over a period of years amendments to a city's charter will become burdensome to account for, and the basic charter itself may become obsolete. In almost every legislative session one or more cities will secure basic revision of their charters, which will usually consist of updating obsolete provisions, incorporating separate amendments into one document, and introducing new provisions which have been tried and tested in other cities.

Thus the 286 special acts affecting particular cities may all be generally classified as charter amendments, but of this number only 14 provided for thoroughgoing and complete charter revisions. Even this smaller number is significant, however, for in 1959 there were only four such re-



visions, and there are indications that there will be more thoroughgoing revisions in the future, not only to update old and obsolete provisions but to incorporate new ideas. Among the larger cities sponsoring charter revisions this session were Burlington, Hickory, Kinston, Goldsboro, Wilmington, Chapel Hill, and Reidsville. City officials interested in the subject would do well to consult these new charters for new ideas on a number of subjects.

Some indication of the relative importance of special as opposed to general legislation in the area of organization and administration is given by the almost complete absence of general legislation. Chapter 308 (SB 134) may be said to be the only such general law. It adds G.S. 160-2(11) to authorize cities, following an annexation, to assign the annexed land to one or more of the existing wards or precincts in the city.

There were a number of laws concerning annexation and incorporation of new towns in fringe areas but they are discussed *infra* under "Planning, Development and Problems of Growth."

Comments on the special legislation in this general area follow, but it should be noted that these touch on trends rather than making any attempt to be comprehensive.

#### *Incorporation*

The easiest way to incorporate a new town is by means of a special legislative act. The 1961 General Assembly created five new towns—Bunn Level in Harnett County, Red Oak in Nash County, Chadwick Acres in Onslow County, Boiling Spring Lakes in Brunswick County, and Nags Head in Dare County. The incorporation of Havelock was validated; the charter of Wood in Franklin was repealed; and Bolivia (Brunswick County) and Beargrass (Martin County) were reactivated.

Chapter 726 (SB 357) and Chapter 866 (SB 360) are interesting in that they provide for an election by 1965 on the merger of the City of Asheboro and the adjacent North Asheboro-Central Falls Sanitary District. The legislation originated in an effort to avoid having each governmental unit construct its own sewage disposal plant, and pending the merger election Chapter 865 (SB 358) and Chapter 727 (SB 359) authorize the sanitary district to contract with the city for treatment of the district's sewage.

#### *Form of Government*

There are essentially only two forms of city government in North Carolina—the mayor-council form where all legislative and administrative power is vested in the council or board, and the council-manager form where the council is authorized to appoint a city manager as the chief administrative officer.

North Carolina is known as a "manager" state. There are, for example, city managers in 30 of the 35 cities having a population of more than 10,000. Legislation was enacted in 1961 authorizing elections on adoption of the council-manager form of government in three of the five cities in this category not having a manager. Chapter 133 (SB 147) authorized a vote this spring in Roanoke Rapids, and the voters failed to adopt the plan. Chapter 509 (SB 287) provides for a vote in Shelby during the next year, the plan to become effective July 1, 1963, if adopted. And Chapter 872 (SB 415) authorizes an election in Albemarle which the governing board has fixed for October.

One other law called for an election on the council-manager form of government. Chapter 62 (HB 140) provided for an election this past spring in Cary in Wake County. The voters approved the council-manager plan, and in approving also approved an increase in the number of councilmen from three to five, adoption of four-year staggered terms of office for the councilmen, and provisions for election of the mayor by and from the membership of the council for a two-year term.

Whether or not adoption of the council-manager plan should be subject to an election is within the discretion of the General Assembly. For example, other legislation simply authorized the governing boards in Lowell (Gaston County) and Garner (Wake County) to appoint a city manager.

#### *Composition of Governing Boards*

It is difficult and perhaps not profitable within the confines of a general discussion of legislation to break down and analyze all the legislation dealing with the composition of governing boards and governing board members. An accurate analysis must await a more careful examination of existing law in the cities and towns affected by 1961 legislation. When all the charter revisions as well as special acts specifically changing the number of governing board members or their terms of office are included, about forty North Carolina cities and towns (roughly 10% of all cities and towns) made some changes in their governing boards this session. Perhaps the most notable trend is the fact that more than half of this number adopted staggered terms of office for their governing board members. The trend toward staggered terms of office has been gathering momentum for the past decade and shows no signs of tapering off.

#### *Municipal Election Procedures*

While there are general law provisions concerning municipal elections, they apply only to a minority of cities and towns and as they stand do not provide for all steps in the election procedure. As Table No. 1 shows, laws dealing with election procedures alone have for the past three sessions constituted the largest single category of special acts affecting municipalities. But this number is misleading. When all the procedural provisions in the charter revisions, in other laws which have been primarily classified in some other category, and in laws providing for special elections (such as ABC elections) are counted, there are procedural provisions found in about 91, or over 30% of the laws dealing with cities. The content of this legislation varies from simple changes, such as changing the election date or clarifying some single procedural feature, to laws setting forth in detail new election procedures. One of the more interesting changes involves a handful of cities and towns which secured legislation vesting all control of municipal elections in the county board of elections. In smaller counties where the county board is active only during the period of general elections, this is not feasible. In larger counties where the elections board maintains a continuing activity, such action is feasible. For example, Chapter 8 (HB 67) transfers responsibility for the conduct of all elections in Fayetteville to the Cumberland County Board of Elections and provides for sharing the cost of the board's operation between the city and the county.

#### *Pay of Governing Board Members*

Compensation for municipal governing board members is very low under most circumstances, and in many municipalities it is still governed by charter provisions dating back many years. Every session finds a number of acts fixing new per meeting, per month, or per year salary scales for councilmen, aldermen or commissioners. As the table shows, the number dropped off again this year.

#### *Retirement and Civil Service*

Although a majority of the larger North Carolina cities and towns have brought their employees under either the Local Governmental Employees Retirement System or Social Security or both, there are a number which still have no retirement system benefits. Legislation in 1961 authorized Albemarle, Canton, Reidsville, and Waynesville to establish retirement systems. Most other legislation concerning retirement involved minor amendments to supplementary retirement systems in a number of cities, while High Point overhauled its civil service system. For a closer look at legis-

lation affecting municipal personnel administration see the article entitled PUBLIC PERSONNEL.

#### *Sale of Property*

Despite legislation in 1959 which eased the restrictions on the sale of municipal property, there were still a substantial number of special acts specifically authorizing cities and towns to sell or transfer property. Some of the transactions involved seemed to be adequately covered by the existing general laws. Others involved transfers under conditions not specifically provided for in the general law.

#### **Taxation, Revenue, and Financial Administration**

In its 1961 legislative program, the League of Municipalities included a number of revenue proposals. In addition to asking the General Assembly to stand firm on the new property revaluation system, which it did, the League proposed to ask for legislation (1) returning to cities and towns a greater share of the franchise tax levied by the state on public utilities, and (2) providing permissive authority for municipalities of 10,000 population and over to submit to the qualified voters therein the question of the levy of a "municipal individual occupation tax." HB 1161, designed to increase the municipalities' share of the franchise tax from one-eighth to one-fourth of the state's total tax proceeds from within municipalities, was introduced late in the session but died in committee. The other proposal was never submitted.

The defense against the sales tax unquestionably affected strategy in this respect. In addition to the sales tax proposal, there was also a bill (one of the many alternatives offered to the food tax) to make cities which distribute electric power subject to the state franchise tax on public utilities (HB 370); this type of proposal undoubtedly discouraged the cities in their attempt to secure additional revenue.

Two other items in the League's program concerned property tax administration, but neither was ever submitted in the form of a bill. One concerned inclusion of leased wire mileage in the statutory formula for allocation of corporate excess values of public service corporations by the State Board of Assessment. The other would have permitted municipalities located in more than one county to fix the assessment ratio for municipal ad valorem taxation.

There were a number of acts which did affect municipal financial administration. One, proposed by the Municipal Finance Officers Association and endorsed by the League, rewrites G. S. 160-398 to make it easier for cities and towns to destroy paid bonds and interest coupons. Chapter 663 (HB 846) authorizes cities and towns to (1) destroy paid bonds and interest coupons by burning or shredding and specifies appropriate safeguards, (2) contract with paying agents for destruction of such bonds and coupons by such paying agents usually located in New York City) with paying agents required to furnish municipalities with a certificate of destruction identifying the items destroyed. Hereafter municipalities will not have to get the approval of the State Department of Archives and History, now required by G.S. 121-5 and 132-3, before destroying such bonds and coupons.

Municipal power to appropriate money was expanded in three areas. Chapter 309 (SB 137) amends G.S. 160-200(40) to authorize municipalities to support, or appropriate nontax funds to, any art gallery, museum or art center owned or operated by a nonprofit corporation, and also authorizes use of property tax funds upon approval of a tax levy by the voters. Chapter 1065 (SB 198) authorizes municipalities to appropriate nontax funds for the support of the Carolina Charter Tercentenary Commission. And Chapter

294 (SB 88), while adopted primarily to specify that a county local development tax under G.S. 158-1 is for a special purpose under Article V, Sec. 6 of the Constitution, also reaffirms the power of municipalities to levy taxes for local development purposes provided the voters have approved the levy.

Three other new laws relate to municipal finance. Chapter 1042 (SB 363) amends G.S. 127-13 to make the provisions of that section concerning issuance of bonds for armory purposes conform to the Municipal Finance Act with respect to bond elections. Chapter 1074 (SB 370) amends G.S. 160-249 to authorize any municipality owning a sewerage system but not a water system to contract with the owner of the water system serving the municipality to act as the billing or collection agent of the municipality in the levy and collection of sewerage service charges. The problem here is that sewerage service charges today are usually based on a percentage of water consumed, and heretofore municipalities not owning a water system have had no way of imposing a sewerage service charge on the basis of water consumed. Chapter 1106 (HB 992) amends G. S. 159-42 to insure that the Local Government Act applies to all governmental units having power to levy property taxes, regardless of any general or special act to the contrary enacted before 1961 adjournment.

#### *Privilege License Taxation*

There were very few changes made to Schedule B of the Revenue Act insofar as that act affects the power of cities and towns to levy and collect privilege license taxes.

The only substantive change is contained in Chapter 1203 (HB 1166) which amends G.S. 105-85 to limit to \$50 a year the tax which a city or town can levy on laundries or linen rental agencies where the laundry work is performed inside the county wherein the city or town is located. Presently, the section limits to \$12.50 a year the tax which can be levied on a laundry or rental service which solicits in the city or town but performs the laundry work outside the county, and contains no limitations on the amount of tax to be levied on "home" laundries or linen services.

Chapter 965 (SB 272) amends G.S. 105-64 to exempt non-stock, non-profit charitable recreational corporations from paying license taxes on pool tables and bowling alleys if the municipality contributes to the operating expense of such corporation.

A number of cities may be interested in those provisions of some of the charter revisions which provide a more effective system for collection of delinquent privilege license taxes. All these procedures are based on the Greensboro charter revision found in Chapter 1137, 1959 Session Laws.

#### *Special Legislation*

Special legislation concerning the power of municipalities to levy taxes, make expenditures, and manage their fiscal affairs covers a variety of subjects.

The largest group of special acts authorizes municipal expenditures for special purposes not covered in particular by general law. Carolina Beach, Raleigh, Rocky Mount, Salisbury and Spencer received authority to spend nontax funds for advertising their communities; Drexel and Valdese to appropriate funds to a community center; Charlotte to appropriate money to the International Trade Fair to be held there this fall; municipalities in Franklin County to appropriate nontax funds for industrial development or to vote on a 5¢ tax levy for such purpose; Kure Beach to vote on a tax levy for industrial development; and Yadkinville to levy a tax for support of the county library.

Of the remaining legislation, much of which is technical or dealing with details of financial administration and property tax collection, three might be noted. Towns which own no water systems not only have difficulty in levying and collecting sewerage service charges based on a percentage of



the water bill; they have difficulty in collecting unpaid service charges because they do not have the alternative of cutting off water service. Chapter 785 (SB 374) amends G.S. 160-249 as it applies to the towns of Rutherfordton and Spindale to make unpaid sewerage charges a lien on property furnished with sewer services.

For most cities and towns the maximum property tax rate for general purposes is \$1.50 per \$100 property valuation as fixed by G.S. 160-402. Chapter 979 (SB 388) permits Hendersonville to levy a tax rate of as much as \$1.60 for general purposes. And both Hendersonville and Mount Airy were authorized to exceed the statutory limit on indebtedness.

Several cities, in the process of charter revision, made changes in their procedures for special assessments which are discussed in the article entitled WATER RESOURCES in this issue of *Popular Government*.

### Planning Development and Problems of Urban Growth

It is fortunate when state policy corresponds with and re-enforces municipal policy. It is doubly fortunate when the legislative and administrative arms of the State recognize that sound community planning and systematic extension of municipal facilities to newly-developing areas are essential elements in the community's economic development program. And economic progress for the State is, of course, the cumulative result of successful community development programs.

This recognition that the character of the community and the quality of its local government has an important bearing on the community's ability to attract new economic activity has led, in North Carolina, to greater willingness on the part of the General Assembly to give cities and counties the legislative powers necessary to encourage and influence sound community development. North Carolina stands out among all the states to the degree that the State and the local communities have been able to cooperate in combatting the problems of urban growth. And the 1961 General Assembly continued the recent practice of further strengthening the ability of cities and counties to meet urgent problems of growth.

This is not to say that all legislation requested by the cities in the area of planning was adopted. For example, the League's legislative program included bills to (1) eliminate the mandatory "two-corner" zoning provision of G.S. 160-173, (2) authorize municipalities to acquire street rights-of-way "both in and around" their corporate limits in implementation of comprehensive street plans adopted jointly with the State Highway Commission, and (3) enact ordinances protecting rights-of-way of future streets from encroachment. None of this legislation was adopted.

While this section gives a rapid survey of all planning and development legislation, municipal officials interested in more detailed analysis of the legislation outlined herein should consult the article in this issue of *Popular Government* entitled PLANNING.

#### *Planning for Economic Development*

Chapter 722 (SB 309) is a major piece of legislation, designed both to give communities a broad range of powers for organizing local development programs and to qualify cities and counties for federal assistance which may become available under the new federal Area Development Act aimed at helping economically-distressed areas. The act contains detailed provisions for the creation of (1) regional planning commissions which would have general overall planning functions similar to the Western North Carolina Regional Planning Commission which now serves the area around Asheville and to the west; (2) county, municipal or regional economic development commissions which would

have the power to make plans for economic development, formulate projects to carry out plans, and encourage development corporations to perform such functions as purchase of sites and construction of industrial buildings; and (3) commissions having the combined powers of planning and economic development.

In addition to this general law, 17 counties and 8 municipalities gained additional local authority for different aspects of economic development, including, as noted in the last section, the power to levy and spend taxes for certain aspects of development.

#### *Urban Redevelopment*

As more and more North Carolina cities and towns made progress on urban renewal and urban redevelopment programs, and as some projects moved from the planning to the execution stage, it became apparent that some revision of the urban redevelopment law was necessary. Redevelopment officials proposed necessary changes and the League incorporated these recommendations in the municipal legislative program. Chapter 837 (HB 758) is the result. In particular this act (1) authorizes the redevelopment of non-residential areas, (2) authorizes programs of rehabilitation, conservation and reconditioning in areas of a city where full-scale development is not needed, and (3) simplifies and clarifies the procedures in the present act.

One important feature of municipal programs to improve living conditions is the power to fix minimum housing standards in the city. The existing law, Article 15 of G.S. Chapter 160, applied only to cities and towns with a population of 5,000 or more. Chapter 398 (HB 343) removes the population limitation.

Two other new acts bear mention. Chapter 240 (HB 341) amends G.S. 160-236 to authorize establishment of secondary fire limits within municipalities and thus provide a way for alteration or repair of wooden buildings in congested areas. Chapter 200 (SB 141) amends the housing authority law (G.S. Chapter 157) to make it apply to municipalities with a population of 500 or more, instead of 5,000 or more.

#### *Problems of Urban Growth*

After a thorough study of rapidly-growing urban areas in North Carolina, the Municipal Government Study Commission recommended to the 1959 General Assembly a program that emphasized the need for comprehensive planning by both cities and counties and for action by both types of governmental units to carry plans into effect. On the basis of the Commission's action, the 1959 General Assembly enacted legislation which (1) permitted cities to annex without an election land that met legislative standards of development, provided the cities could assure services to the areas to be annexed; (2) permitted cities to exercise extraterritorial zoning powers in an area one mile in all directions from corporate limits; and (3) permitted counties to exercise zoning and subdivision control powers. A number of cities and counties were excluded from this legislation.

#### *Annexation*

The 1959 annexation legislation contained a provision that the 1947 annexation law, authorizing annexation of land by a city subject to approval by residents of the annexed area or the residents of the city or both in an election, would be repealed as of June 30, 1961. A number of cities desired to keep the election provision as an alternate procedure for annexation, and such a proposal was part of the municipal legislative program. Legislation (HB 299) to extend the life of Part 1, Article 36, G.S. Chapter 160, to June 30, 1963, was bottled up in a House Committee, but extension of the law until June 30, 1962 was approved. Chapter 655 (HB 764).

Whether because of the 1959 law, or because the pass-

ing of the census year has temporarily relieved the pressure for annexation, or because cities and towns hesitate to bring major annexation proposals before a General Assembly which has expressed a reluctance to act in specific cases, the volume of special acts annexing land to cities and towns fell off sharply. Three more counties (Edgecombe, Iredell and Nash) were made subject to the 1959 annexation procedure for municipalities having a population of 5,000 or more, and the procedure for towns of less than 5,000 was made applicable to Battleboro in Edgecombe and Nash Counties. Two special acts redefined corporate limits to exclude areas from two towns, and nine acts provided for relatively minor annexations to municipalities.

#### *Incorporation of Suburban Towns*

One of the most vexing problems in many metropolitan areas is the incorporation of small suburban communities, with the result that the efforts of many towns must be coordinated in order to provide for functions affecting entire metropolitan areas. The League's legislative program contained a recommendation that G.S. 160-196 be amended to provide that no area within three miles of an existing incorporated municipality might be incorporated by the Municipal Board of Control under the general law procedure. Chapter 269 (HB 342) enacted this recommendation into law. Although the General Assembly itself, by special act, may continue to incorporate cities and towns in such areas, such incorporation cannot follow without an exercise of legislative discretion by the General Assembly. Such discretion cannot, under the Constitution, be exercised by the Board of Control, at least without further legislative standards to guide it.

#### *Zoning*

At the request of the smaller towns, the League's legislative program contained a proposal that G.S. 160-181.2, which authorized the exercise of extraterritorial zoning power by municipalities of 2,500 population or more only, be amended to vest this power in all municipalities. The General Assembly went halfway. Chapter 548 (HB 509) amends the section to permit a municipality having a population of 1,250 or more to exercise zoning authority for up to one mile from the corporate limits. The act also permits a municipal governing board to appoint the outside-city representative on the planning board if the county commissioners fail to make such appointments within 90 days following a written request. There was also a handful of special acts concerning extraterritorial zoning by specific cities and towns.

#### *Subdivision Control*

The municipal legislative program contained a recommendation that the subdivision law be amended to permit municipalities to require, in the subdivision ordinance, that street improvements and utility main installation be made as a condition of approval of subdivision plats. Chapter 1168 (HB 508), as enacted, authorizes cities to require "construction of community service facilities" in subdivisions developed within the corporate limits alone.

Under the provisions of G.S. 160-227.1, cities in 49 counties have not had the power to enact subdivision ordinances although some of the cities in these counties hold such power by special act. Through special legislation cities in seven counties (Chowan, Halifax, Lenoir, Macon, Martin, New Hanover and Richmond) were given full subdivision control powers, and the towns of Oxford, Raeford and Roxboro were given such powers within their corporate limits.

#### *Extension of Utility Services*

With rapid urbanization outside municipal corporate limits, some of it several miles from municipal corporate limits, more pressure has been brought upon counties to finance water and sewer facilities in unincorporated areas. During the past few years, some legislative authority has been given to counties to support water and sewer services.

When the question of providing sewage disposal facilities and expanding water facilities in the Research Triangle area was being studied, however, public officials found that the counties and cities involved did not have sufficient power to cooperate in the sort of joint financing and management that may be essential in a few years. As a result Chapter 1001 (HB 745) was enacted to permit the financing and management of joint water and sewer facilities by any two or more counties and cities, and to give counties broader powers in the acquisition, construction and operation of water and sewerage systems. For further discussion of this legislation, see the article in this issue of *Popular Government* entitled WATER RESOURCES.

In some urban areas, the city's sewerage system serves more than just the area inside the city, but there is no provision for the city to secure financial assistance from unincorporated areas served except through imposition of sewer service charges. Construction of a sewage disposal system to serve Asheville and a considerable area surrounding the city has become necessary, but in order to raise the necessary money, it was also essential to find some way by which the tax base in the unincorporated area which would be served could be relied upon in the sale of bonds for the plant. Chapter 795 (HB 796) meets this need by authorizing the creation of metropolitan sewerage districts which need not include the entire county. The district governing board would have the power to issue bonds, upon approval of the voters, to construct a sewerage system to serve the entire area within the district.

#### **Miscellaneous Legislation**

In order to tie up the loose ends of 1961 legislation concerning cities and city government, a number of new acts need brief reference.

#### *Criminal Law and Law Enforcement*

For years cities and towns, under appropriate authority, have enacted ordinances regulating business activity on Sunday. In recent years the constitutionality of these ordinances has been challenged, but in both the North Carolina Supreme Court and, more recently, in the U. S. Supreme Court, their constitutionality has been upheld.

Soon after the U. S. Supreme Court decisions this spring, legislation was introduced in the General Assembly forbidding the sale of a long list of specific items on Sunday, anywhere in the state. By the time the bill had worked its way through both houses, not only had the list been modified but also the act had been amended to permit cities and counties to decide whether or not the law would apply within their jurisdictions. And counties were authorized to exclude not only all, but parts of counties from the effect of the law.

Looking at Chapter 1156 (SB 479) only as it applies to cities, municipal governing boards will have to determine on and after the effective date of the legislation (October 1, 1961) whether or not the law is to apply within their corporate limits. If no action is taken, the law will go into effect and will supersede the conflicting provisions of existing ordinances regulating Sunday business. If action is taken to exclude the city from the effect of the law, presumably existing ordinances will continue to apply.

#### *Traffic Regulation*

Chapter 879 (SB 440) authorizes uniformed firemen and volunteer firemen to direct traffic and enforce traffic laws at the scene of a fire. Chapter 191 (SB 28) amends G.S. 153-9 to authorize county boards of commissioners to regulate the parking of motor vehicles on county-owned property (not including streets, roads and highways). Chapter 793 (HB 712) amends G.S. 20-183 to require county and city law enforcement officers stopping vehicles outside

(Cont'd., see 'Cities' on p. 70)



# THE PROPOSED REVISION OF THE COURTS OF NORTH CAROLINA

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*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

## **Legislative History**

House Bill 104, ratified May 2, 1961, is the end product of more than five years of work and study and of two sessions of bitter legislative battling over the form and scope of proposed court revision in North Carolina. The North Carolina Bar Association's Committee on Improving and Expediting the Administration of Justice in North Carolina — the "Bell Committee"—published its Report in December, 1958, and included a draft of a Constitutional amendment which would effectuate the recommendations of the committee. The draft amendments were introduced in the 1959 General Assembly as Senate Bill 94. The Senate Committee on Constitution reported favorably a substitute bill which was amended once on the floor and passed second reading, after which it was postponed indefinitely. The provisions of the amended bill were incorporated in another bill revising the entire Constitution; this bill passed the Senate but, after further amendment of the Judicial Article in the House, was postponed indefinitely in the House.

Following the 1959 session of the General Assembly, the Bell Committee resumed its meetings and began a study of the Senate-passed version of the court bill, with a view to determining what changes, if any, the committee should recommend in this text for introduction in the 1961 General Assembly. After this committee had arrived at a revised text., the draft was then studied by a legislative committee of the Bar Association, and a bill embodying a modification of the Bell Committee's revised text was prepared. This bill was introduced in the General Assembly on February 24, and became HB 104.

HB 104 was rewritten by the House Committee on Courts and Judicial Districts and was reported favorably as to the committee substitute on April 20. From that time forward the progress of the bill was deceptively swift. It passed second reading in the House on April 25 and passed third reading the following day. It was received in the Senate and sent to the Committee on Courts and Judicial Districts on April 27. The bill was reported favorably by that committee on Friday, April 28, and was placed on the calendar for immediate action. A final compromise resulted in two floor amendments and the amended bill then passed both second and third readings. Proponents of the bill mov-

ed it quickly back to the House for concurrence in the amendments, and that action was also taken on the same day—April 28. The formal act of ratification occurred on Tuesday, May 2.

The dispatch with which the bill moved through the General Assembly after it was reported to the House floor meant that most of the serious differences between various factions had been settled in the period between introduction on February 24 and the favorable report on April 20. In this interval several bills affecting the courts had been introduced, including HB 444 (SB 187) and HB 149 (SB 64) to amend the Constitution to establish a uniform system of inferior courts. The committee-approved version of HB 104 embodied provisions from each of these other bills. In general, most of the modifications made in the original 1958 Bar Association draft amendments were in the direction of increasing the authority of the General Assembly over the courts — a reversal of the Bar Committee's conclusions that the best way to achieve better court administration was to give the courts authority over their internal affairs, and make the courts solely responsible for their performance

## **General Structure of The Courts**

The revised Article IV states that, with the exception of powers vested in the Court for the Trial of Impeachments and in administrative agencies, the judicial power of the state is vested in a General Court of Justice, consisting of an appellate division, a Superior Court division, and a District Court division, which together shall constitute a unified judicial system for purposes of jurisdiction, operation and administration. This general language is followed by specific provisions which sharply limit the "unified" concept. In effect, the General Court of Justice consists of three different courts—Supreme Court, Superior Court and District Court—with some centralized administrative responsibility, and clear specifications as to uniformity. If these amendments are approved by the voters, the "crazy-quilt" of local courts and varying jurisdiction of courts will disappear, and a truly uniform system of courts will exist throughout the state.

## **Supreme Court**

The jurisdiction of the Supreme Court will be unchanged. The Justices of the Court will continue to be elected as they now are. The General Assembly is empowered to in-

crease the number of Associate Justices to eight, thus adding two more members to the Court, whenever such action appears to be needed. Sessions of the Court will continue to be held in Raleigh, but language has been added to authorize the General Assembly to provide for sessions elsewhere in the state.

### Superior Court

The Superior Court remains substantially as at present. Superior Court districts will be fixed and changed by the General Assembly, and regular judges will continue to be elected from each district.

The jurisdiction of the Superior Court and of the Clerk of Superior Court will be fixed by the General Assembly and will be uniform throughout the state. Except as otherwise provided by law the Superior Court shall have original general jurisdiction throughout the state—that is, it is in this court that cases not otherwise specifically assigned to other courts will be brought for original hearing. One principle of a truly unified court appears in connection with the jurisdiction provisions of the rewritten Article; the General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases. If the General Assembly does authorize such waiver, it would thereby be recognizing the Superior and District Courts as being two divisions of a single court with basic power to try all civil cases—not two different courts with rigidly fixed subject-matter jurisdiction beyond which the courts could not act, regardless of the wishes or convenience of the litigants and the courts.

Trial sessions of the Superior Court will be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court, subject to the requirement that at least two regular sessions for the trial of jury cases shall be held annually in each county. This represents attainment of one goal of the Bar Association Committee—calendars can be fixed more frequently and in the light of requirements of the state as a whole, rather than once every two years by unilateral action of representatives from individual counties acting with reference solely to local situations.

The Chief Justice of the Supreme Court may, in accordance with rules of the Supreme Court, make assignments of Superior Court Judges.

Superior Court solicitors, in addition to their present duties, will perform such duties related to appeals from their courts as the Attorney General may require. This will assure some continuity of effort on behalf of the State in criminal cases.

### District Court

All courts below the Superior Court will within the next ten years be converted into or replaced by district courts. The jurisdiction of the district courts will be fixed by the General Assembly and will be subject to the waiver provision discussed under the Superior Court, above. The General Assembly will fix district lines and prescribe where the district court shall sit, subject to the requirement that a district court must sit in at least one place in each county. District judges will be elected from the various districts for four-year terms, in a manner prescribed by the General Assembly.

If the General Assembly provides for more than one district judge in a given district—a development which the Bar Association Committee contemplates—the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge, and this judge shall, subject to the general supervision of the Chief Justice, assign district

judges within the district. The Chief Justice may transfer district judges from one district to another for temporary or specialized duty.

In each county the General Assembly shall authorize one or more magistrates who shall be appointed by the senior regular resident Judge of Superior Court, from nominations submitted by the Clerk of Superior Court. These magistrates will not be separate and independent courts, but will be officers of the district court, subject to its administration and supervision. The General Assembly shall determine what matters may be heard by magistrates, subject to a right of appeal with a complete new trial in the appropriate court.

Prosecution of criminal actions in the district court division shall be done in a manner prescribed by the General Assembly.

Efforts to authorize 6-man juries and less than unanimous verdicts in the district courts, and thereby to satisfy the Constitutional requirement as to trial by jury, were defeated.

### Rules of Practice and Procedure

Procedural rule-making by the courts—a major point in the Bar Association's original proposals—is not accomplished in the revised Article IV, but the General Assembly is authorized to delegate this power to the Supreme Court, subject to the continuing power of the General Assembly to alter or repeal Court-made rules. The Supreme Court, as an independent branch of government, retains its exclusive right to make its own rules of practice and procedure, but rules for the Superior and District Courts will be made by the General Assembly unless it delegates the power to the Supreme Court. The new authority to delegate makes possible, without further Constitutional change, the evolution of a practice whereby the Supreme Court makes rules for all courts and is held responsible for the proper functioning of these courts under the rules—a practice similar to that which has developed in the federal courts. The Bar Association Committee in its original report pointed out historical differences in the state and federal legislative attitudes toward court rules, and expressed doubt that permissive authority for the General Assembly to establish a practice of Court-made rules would be enough to ensure the desired development of the practice.

### Administration

“The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.” This language from the new Article IV makes court administration the province of an office established by the General Assembly. The original Bell Committee proposals would have placed administrative authority in the Supreme Court, and would have made the administrative office an arm of the Court in discharging its duties.

The operating expenses of the judicial department, other than compensation paid to process servers and other locally paid non-judicial officers, will be paid from State funds. The General Assembly will prescribe the salaries of all officers provided for in the new Article, and will provide for the establishment of a schedule of court fees and costs which will be uniform throughout the state within each division of the court. Thus, for example, the costs assessed for the same court service or action will be the same in the district court in Mecklenburg County as it is in the district court in Macon County. The compensation of no judicial officer will depend upon his decision in a case, or upon the collection of costs. The establishment of local courts primarily as a revenue-producing device will be eliminated.





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# WATER RESOURCES

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

This was a year of consolidation for water resources legislation. It saw: . . . *in the field of regulatory laws*, the repeal of an administratively troublesome irrigation permit law, a legislative refusal to relax existing pollution control deadlines, and adoption of a much-amended law regulating well drilling contractors applicable in a minority of the 100 counties of North Carolina; . . . *in the field of small watershed programs*, a substantial new appropriation for planning activities and adoption of a few clarifying changes in the watershed improvement district law; . . . *in the field of drainage legislation*, some significant improvements in procedures for enlarging and renovating existing districts which, together with other changes, will make the drainage districts more adaptable to small watershed work; . . . *in the field of State water resources administration*, substantial appropriations hikes for ground water studies and for Morehead City harbor work; . . . and *in the field of public water and sewer services*, adoption of new enabling laws providing greater flexibility to cities and counties in supplying these services jointly or through public district arrangements.

## Regulatory Laws

### *Irrigation Permit Repealer*

Chapter 315 (HB 295) repealed the irrigation permit law, administered since 1959 by the Department of Water Resources and previously by the Department of Conservation and Development. The repealed law, GS 143-355(e), required any person using water for irrigation purposes from a stream or lake in such amounts as to substantially reduce its flow to apply for an irrigation permit and file with the application a proposed irrigation plan and survey. The law had been a perennial source of administrative difficulty. The Department of Water Resources found that on some streams permits had been issued covering withdrawals of water that might approach or exceed low water flows. Furthermore, there was confusion concerning the meaning of the law and the status of permits issued under it. Some irrigators felt that a permit conferred legal rights to the use of a given quantity of water; in other quarters there were doubts that this interpretation could be squared with the prevailing riparian water rights doctrine. The text of the law itself was far from clear and furnished no ready answer.

Confronted by these conditions, the Department of Water Resources decided to suspend issuance of further permits. As a stopgap measure the Department then instituted the

practice of issuing letters to applicants indicating the Department's views concerning the applications—a practice designed primarily to satisfy Farmers Home Administration regulations concerning irrigation facility loans. With the advent of the 1961 General Assembly, consideration was given to several possible legislative recommendations. The Department concluded that repeal of the law would furnish the best means of clearing the air and laying the foundation for an ultimate solution to the problems raised, and so recommended.

This repealer brings to a close a limited excursion into regulation of water use by the State of North Carolina. During its brief life span, the irrigation permit law was never tested in the courts. Its demise leaves unanswered questions, among other things, concerning the validity in this State of legislation allocating or regulating the use of water, and concerning the standing and effect of outstanding permits that were issued under this law.

### *Well Drilling*

A well-watered-down bill to establish an occupational licensing system for water well contractors was enacted as Chapter 997 (HB 461), after a tortuous legislative course. Before passage it was amended to limit its scope to operators of power driven equipment, to eliminate experience requirements from the bill, and to exempt 76 counties from its application. In light of these expurgations, the act's workability and perhaps its validity, remain to be proven. (For further discussion of its details, see STATE GOVERNMENT.)

### *Stream Pollution Control*

Two efforts to temporarily relieve communities in the Neuse River Basin from pollution control requirements both failed of passage. The proposals were embodied in bills amending a special act that prohibits discharge of untreated sewage or industrial waste into the Neuse River after January 1, 1962. HB 123 would have delayed application of this act to the City of Kinston until January 1, 1964. A broader bill, HB 365, would have made the remedial provisions of the act inapplicable to cities, industries and others who initiated construction of approved treatment facilities not later than July 1, 1962 and placed the facilities in operation not later than January 1, 1964.

### **Small Watersheds**

The most notable legislative action affecting small watershed programs was a large increase in planning appropriations. For the biennium a total of \$176,903 was added to the appropriations of the State Soil Conservation Committee to pay the expenses of an additional planning party for preliminary investigation of small watershed applications. Until now only Federal planning funds have been available,

supporting one planning party. (On the average one planning party can be expected to process 1 to 4 applications per year.) With these additional State funds, it should be possible to make considerable headway in reducing a backlog of some 16 applications now awaiting planning studies.

Reflecting the expansion of the soil conservation movement into water conservation programs, Chapter 746 (HB 696) changed the names of soil conservation districts and of the State Soil Conservation Committee to, respectively, "soil and water conservation districts" and the "State Soil and Water Conservation Committee." In a similar vein GS 153-9(35- $\frac{1}{2}$ ) was amended to authorize boards of county commissioners in counties covered by this section to appropriate non-tax revenues for water conservation as well as soil conservation work (Chapter 656—HB 768).

Minor ambiguities in the 1959 small watershed enabling law were clarified by Chapter 32 (SB 14) and Chapter 746 (HB 696).

Chapter 32 specifies that under GS 139-40 a board of county commissioners may present for approval by the voters of the county a proposed special county watershed tax in a maximum amount of less than 25¢ per \$100. Prior to this bill's adoption, it was not clear that the law would allow a vote upon a tax of less than 25¢, even though a lesser amount would suffice for known program needs. At least two counties, Transylvania and Henderson, have held elections on taxes lower than 25¢ since the passage of Chapter 32; the former election carried, the latter failed.

Chapter 746\* deals with two technical problems that have arisen under the watershed improvement district law. *First*, it provides that boundary descriptions required under the law will be sufficient if they convey an intelligent understanding of the location of the land described, and may take the form of a metes and bounds, a reference to a map, a general description referring to natural or political or tract boundaries, or any combination of these. (The original law did not clearly specify how the boundaries of a district could be described in a petition to create a district or in a final order creating a district.) Chapter 746 also permits the final order to simply refer to the petition if no change is made in the boundaries originally sought. *Second*, the 1959 law did not authorize the supervisors of a multi-county soil conservation district to delegate to a county soil conservation committee any of their functions respecting watershed improvement districts.\*\* This failing was remedied by a provision of Chapter 746 empowering multi-county supervisors to delegate to a county committee any of their functions respecting an existing or proposed watershed improvement district lying wholly within the boundaries of the county represented by the affected committee.

The 1961 session brought the first local modifications of the small watershed laws, in the form of three local acts affecting a total of seven counties.

Chapters 433 and 1047 (HB 403 and SB 441) empower Yadkin and Clay Counties to levy county-wide ad valorem taxes for the purpose of financing county watershed programs, at a rate no higher than 2¢ per \$100 valuation. (Under the general law a maximum tax rate of 25¢ per \$100 is permitted.) The tax could be levied under these local acts without holding the election prescribed by general law, GS 139-39.

Chapter 724 (HB 726) confers a limited power of eminent domain on watershed improvement districts in

Davie, Iredell, Polk, Rowan, Wake and Yadkin Counties. The authority is granted to the county commissioners in these counties if they are authorized to levy a county watershed tax. Among the limitations upon the exercise of eminent domain under this act is a provision that the power may be used only after a finding by the State Soil and Water Conservation Committee that the district or county, without going to condemnation, has acquired from the owners of at least 75% of the tracts involved the lands and rights-of-way needed for any particular construction unit. The apparent purpose of this limitation is to restrict the use of condemnation in small watersheds to genuine hold-out cases. Its workability—especially in instances where condemnation might be required for technical reasons alone—will remain to be seen.

One observation is pertinent to all of these local acts: in breaking the "no local legislation" line, they have opened an area of possible constitutional objections to small watershed programs in the affected counties. Without attempting to assay the merits of the issues, it would come as no surprise if the validity of any of these acts were challenged by litigants under the prohibition against certain classes of local legislation contained in Article II, Section 29 of the State Constitution, and if the validity of the special tax measures were similarly challenged as having authorized taxation for non-necessary expenses without a vote of the people, contrary to the requirement of Article VII, Section 7 (assuming that this provision is applicable).

#### *Dike Districts*

Chapter 233 (SB 107) is a local act that would permit establishment within Bladen County of a special district for drainage and flood control purposes, to be known as "Kelly Dike District." This act is worthy of note because of its financing provisions. They contemplate that district expenses would be defrayed by an ad valorem tax of not more than 10¢ per \$100 valuation, to be levied by the board of county commissioners solely within the area of the dike district. This is an unusual and perhaps unique method of local financing for projects of this sort. In the past, local funds have been raised principally either by benefit assessment (as in the case of drainage districts or watershed improvement districts), or by county-wide property taxes (as in the case of county watershed improvement programs operated under Article 3 of GS Chapter 139). If this novel financing arrangement proves workable, it might be useful in a variety of broader applications.

#### **Drainage Districts**

Chapter 614 (HB 812) made a number of important amendments to the drainage districts law. The principal changes were these: (1) Detailed procedures, heretofore lacking, were established for annexation of territory to existing districts and for renovation and extension of existing districts. The latter should prove especially useful in reviving old districts as agencies to carry on new drainage or small watershed projects. (2) The limitation of \$1 per acre for annual maintenance assessments was repealed. (3) Provisions were adopted, modelled upon corresponding parts of the watershed improvement district law, empowering municipalities to participate in drainage district works and to contribute funds toward construction and operation of works that furnish water supply or sewage disposal benefits to the municipality or drainage or flood pro-

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In addition to the changes described in this paragraph, Chapter 746 also substitutes as a member of the State Soil and Water Conservation Committee a person designated by the Committee, in place of a nominee of the U. S. Secretary of Agriculture (who in years past has always been the State Conservationist).

\*\*Some of the questions raised by the lack of any clear provision on this subject in the 1959 law are reviewed in Small Watershed Guide No. 2, Addendum (a joint publication of the Institute of Government, the State Soil Conservation Committee, and the State Conservationist).



tection benefits for property of the municipality or its inhabitants. The new law provides that municipalities may enter continuing contracts to be performed entirely or partly in ensuing fiscal years, agreeing to make periodic payments to drainage districts in consideration of such benefits. (4) GS 156-69 was amended to empower a board of drainage viewers to consider the feasibility of water retardant structures controlling the flow of water *in a proposed district*. Under the existing statute only structures controlling the flow of water *in proposed canals* could be considered by the viewers. As noted in an earlier discussion of this statute, this restriction had limited the usefulness of the drainage district as a vehicle for small watershed projects (*Popular Government*, Nov. 1959, p. 7). Removal of the restriction, in conjunction with the other changes made by Chapter 614, should go far toward making the drainage districts law more adaptable for small watershed work.

Other amendments to the drainage laws included Chapter 1198 (HB 1128), substituting reference to the "Department of Water Resources" for the "Department of Conservation and Development" throughout GS Chapter 156; and Chapter 601 (HB 233), reducing the minimum annual principal installment payments required on drainage district notes from 10% to 2% of total authorized and issued notes. Chapter 662 (HB 839) authorizes counties to advance funds for preliminary expenses of drainage districts, repayable after organization of a district.

#### State Water Resources Administration

Substantial new appropriations were made to the State Department of Water Resources in two areas.

Included in the general appropriations act (Chapter 833—HB 10) was an increase of \$176,000 for the biennium in the cooperative ground water fund. This will go toward three purposes: completing reconnaissance investigations underway in forty counties, initiating an experimental cooperative county-state-federal program of detailed ground water investigations, and expansion of investigations of ground water levels by means of observation wells.

The capital improvement voted bonds act (Chapter 1037—HB 13), if approved by the voters, will provide \$60,000 to the Department to acquire spoil disposal areas for maintenance of the Morehead City harbor, newly improved to a depth of 35 feet by the Army Corps of Engineers.

#### Public Water And Sewer Service

North Carolina's increasing industrialization and growing urban population are bringing ever larger demands for public water and sewerage services. More and more these demands cover areas greater than is found within the jurisdiction of a single local governmental unit. The 1961 General Assembly moved on a number of fronts to enlarge the authority of cities, counties, and sanitary districts to provide water and sewerage services and to clarify or make express previously granted authority to meet these needs.

Most of the legislation was initiated because of the immediate and pressing needs of particular localities, but because of the question of possible constitutional prohibition of local legislation in this area (Art. II, Sec. 29) legislation of a general nature was secured.

#### County Authority—Joint Operations

Perhaps the most significant of the acts adopted by the 1961 General Assembly was Chapter 1001 (HB 745) which grants increased authority to counties to provide water and sewerage services, authorizes cities and counties to jointly provide such services, and permits cities and counties (in any combination) to establish, by mutual agreement, joint agencies to provide water and sewerage services.

This legislation was developed by the Research Triangle Planning Commission because of the immediate needs for

water and sewerage services in the Research Triangle area of Durham and Wake Counties.

Provision of adequate water and sewerage services to the Research Triangle area of these counties, essential to the hoped-for development of the area, would require relative large expenditures of money. At present, the area needing these services is largely undeveloped and the organization of a sanitary district or other means of locally financing the needed facilities would not appear to be feasible. If the facilities needed to encourage and promote growth and to serve the growth already present are to be provided, it appears that financial participation by one or more of the existing governmental units [Durham and Wake Counties or the cities of Durham, Raleigh, Cary, and Morrisville] will be necessary. While counties and cities both already had authority to provide such services for their own inhabitants, neither had express authority to join with the other to provide services. Nor was there previously express authority for cities and counties to establish joint agencies for the administration of services jointly provided.

Conversations with officials from other parts of the State and with officers of the State agencies concerned with water resources clearly indicated that while the situation in the Research Triangle was perhaps more pressing than that found in other areas of the State, it was certainly not unique and similar conditions were likely to develop in a number of other areas of the State. Thus the Research Triangle Planning Commission deliberately attempted to draft the legislation in a fashion that would provide sufficient flexibility for its use throughout the State wherever cities and counties need to cooperate in extending or in providing new water and sewerage services.

Chapter 1001 authorizes counties to acquire and operate water and sewer systems, using the power of eminent domain where necessary, and to serve customers both within and without the county, with varying rates if desired. It also authorizes counties and cities, in combination, to jointly operate water and sewer systems under mutually agreeable terms and to establish for these purposes joint operating departments. Insofar as counties are concerned, the act declares water and sewerage expenditures to be a special purpose and necessary expense and counties are authorized and given approval to levy special taxes and to appropriate money for water and sewerage services.

The Act also amends the County Finance Act [GS 155-77(o), (p)] to provide that counties may issue bonds for acquisition, construction, reconstruction, extension and improvement of water and sewerage systems, either singly or jointly with other counties or municipalities. Prior to this amendment the authority of counties to issue bonds for joint operations was not clear.

Chapter 1001 merits further comment because of certain provisions added by amendment to the bill in the course of its passage. The first of these amendments requires that counties or municipalities proceeding jointly under the act obtain approval of the State Board of Water Resources (acting under standards imposed by GS Chapter 162A, the Water Authorities Law) before diverting water from one stream to another or condemning water rights. Another amendment provides that the act should not be construed to change existing water rights law. It also prohibits the diversion of water from any major river basin, except where now permitted by law and except as to rivers whose main stem below the point of diversion is located entirely within North Carolina (for example, the Neuse and Cape Fear Rivers for their entire length, and the Roanoke River for a part of its length). A third amendment gives to a riparian owner alleging injury from action taken pursuant to this act the privilege of bringing suit either in the county where his land lies or in any county taking such action or in which

a defendant municipality or joint agency is located or operates.

This incursion into the law of water rights seems to follow a pattern set in 1959 when similar legislative riders were attached to major water resources legislation. Downstream riparian interests have obviously become quite alert to legislative developments potentially affecting their water requirements.

The amendments to Chapter 1001 appeared initially in the form of a committee substitute that was adopted in the House on May 31. Final Senate passage of the House committee substitute occurred on June 16. Thus, during the busiest two weeks of the legislative session the General Assembly was called upon without prior warning to consider, in the form of a legislative rider, a complex set of water law proposals of potential interest to many areas of the state. It should not be too much to hope that when the Assembly comes again to pass upon these water policy issues it will do so in calmer and more leisurely times, and with conscious attention to the overall considerations involved.

#### *Metropolitan Sewerage Districts*

Chapter 795 (HB 796) establishes a general law procedure for the creation of metropolitan sewerage districts. While enacted as a general law, this measure also had its origin in the needs of a particular community—in this case Asheville and the independent water districts of Buncombe County. Currently, neither the City of Asheville nor any of the independent water districts surrounding Asheville provides treatment of sewage being collected. The need to provide such treatment facilities and additional major collection facilities at a time when both the City of Asheville and Buncombe County have relatively large outstanding indebtedness made it desirable to look for alternative methods of financing the needed facilities. The solution arrived at—a metropolitan sewerage district similar to those found in other states—is a new arrangement for North Carolina. Asheville and the local units are already moving under the authority of the Act and by early Fall the State's first metropolitan sewerage district may be a reality.

The act provides in detail for initiation of action to create a district by the affected areas, creation of a district after public hearing, appointment of the district governing board, the basic powers to acquire and operate sewerage systems, and financing provisions (through fees and charges, district taxes, and district bonds).

The district board determines the tax rate necessary to meet its obligations and certifies the rate to the county board of commissioners. It is the duty of the county board of commissioners to levy the tax and to collect the tax and turn it over to the district board. The levy made by the county for the district may include also a sum necessary to reimburse the county for its expense in making the levy and collecting the tax.

The authority with respect to the fixing of rates and fees and their collection is broad and flexible, as are the provisions with respect to relations between the political subdivisions and the district. The actual operations of the district might vary from operating sewage treatment plants only to the complete responsibility for operation, maintenance and construction of all sewage collection systems as well as disposal facilities.

Coordination between the activities of a district and the political subdivisions is achieved, first, through the power of the subdivisions to appoint members to the district board, and secondly, by the requirement that all plans for the location and construction of any sewerage system or parts thereof by the district shall be presented in a preliminary form to the planning agencies of the county, municipality or region in which they would be located.

The key points of contrast in these two acts are: (1)

the Metropolitan Sewerage District Act provides for the creation of a new political subdivision with independent taxing power, whereas the Joint Facilities Act provides only for the creation of a joint administrative arm for the participating governments, with no independent taxing power; (2) the Joint Facilities Act permits cooperation between any number of cities and counties, whereas the Metropolitan Sewerage District Act is confined in its application to a single county and the political subdivisions therein; and (3) the Joint Facilities Act permits cooperation and joint action with respect to both water and sewerage services in contrast with the Metropolitan Sewerage District Act which is limited to sewerage services alone.

Both acts will undoubtedly find additional use as North Carolina continues to grow and as services are more extensively provided.

#### *Sanitary District Legislation*

Although given additional powers, sanitary districts have generally been organized in North Carolina to provide water and sewerage services. Four acts of the 1961 General Assembly bear upon provision of these services by sanitary districts.

The first act, Chapter 866 (SB 360), establishes the procedure whereby a sanitary district may be merged with a contiguous city or town on the favorable vote of the qualified voters of both the district and the town. The object here is to permit the consolidation of both units when the town has grown up to, or around, a district and the provision of services by a single agency is to the advantage of the total community.

Where merger is not the answer, Chapter 865 (SB 358) authorizes sanitary districts to contract with any city, town, village or political subdivision of the State for the treatment of the district's sewage upon such terms as may be agreed upon by the governing boards of the district and the city, town or village concerned.

The extension of sanitary district boundaries was made easier by the enactment of Chapter 732 (HB 427) which eliminates the necessity for an election on the extension of sanitary district boundaries if such an extension is made after the receipt of a petition from not less than 51% of the freeholders of a territory, or receipt of a petition signed by all the owners of real property in the area to be annexed. Previously, GS 130-148 required an election on all extensions, regardless of the degree of unanimity expressed in a petition.

Ch. 1155 (SB 472) gives added financing flexibility to sanitary districts by permitting permanent withdrawals from reserve funds to meet necessary expenditures on improvements of properties when bonds have been authorized or issued to meet such expenditures and it is found that the actual cost exceeds the funds available from the bonds. A withdrawal for this purpose may be made even though the amount remaining in the reserve fund does not equal the debt service requirements for the year of withdrawal and the ensuing year as had previously been the case.

#### *Miscellaneous Provisions*

County and city boards of education are authorized by Chapter 395 (SB 185) to grant utility easements to any public utility, municipality or quasi-municipality, with or without compensation other than the benefits accruing because of the location of the utilities.

Chapter 1074 (SB 370) is directed at the small number of cities and towns in North Carolina which operate sewerage systems but do not provide water services. It authorizes such cities to contract with the owner or operator of the water distribution system to serve as the billing and collecting agent of the municipality for any charges, rates or penalties imposed by the municipality for sewerage serv-

(Cont'd., see "Water Resources" on p. 70)



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# PLANNING

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*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

The words "development" and "redevelopment" were key ones in a bountiful crop of new planning legislation harvested during the 1961 General Assembly. Governor Sanford's announced emphasis on economic development of the state spurred legislators to adopt two major bills and a multitude of minor ones, which may turn the programs of many local planning agencies into new channels during the coming months.

## **Economic Development**

Chapter 722 (SB 309) gives local governmental units a broad range of powers for organizing a local development program. In addition to fitting into the framework of the Governor's general plans for the state, it is designed to qualify North Carolina's cities and counties for whatever assistance becomes available under the new federal Area Redevelopment Act. It operates at several levels.

First, it authorizes the creation by any group of two or more counties and/or municipalities of a regional planning commission. Although this type of action is also possible under G.S. 160-22 and 153-9(40), through creation of a "joint" planning board by agreement, the new act spells out powers and duties of a regional planning commission in detail. Such a commission would have powers virtually the same as the existing Western North Carolina Regional Planning Commission; i.e., to make studies of the region, to prepare a regional development plan, to provide assistance to local planning agencies, and in general to encourage planning throughout the area. In particular, it could prepare economic development programs and encourage the formation of economic development commissions and of private business development corporations to carry them out.

Second, the act authorizes any municipality or county to create an economic development commission, and any group of two or more counties and/or municipalities to create a regional economic development commission. This commission would have authority (1) to receive from any planning board having jurisdiction within its area an economic development program for part or all of the area, (2) to formulate projects for carrying out such economic development

programs, (3) to conduct industrial surveys, advertise, and furnish advice and assistance to existing or prospective businesses and industries in the area, and (4) to encourage the formation of private business development corporations or associations which could carry out such projects as securing and preparing industrial sites, constructing industrial buildings, or rendering financial or managerial assistance to businesses and industries.

Third, any group of two or more counties and/or municipalities may, at their option, create a combined regional planning and economic development commission to perform all the functions of the two agencies outlined above.

Finally, municipalities and counties are authorized to appropriate funds to support such agencies.

In short, the act contemplates the establishment of regional planning commissions to prepare broad general plans and economic development programs. These plans would be made specific in the form of economic development "projects" (such as the attraction of particular industries) by the economic development commissions, which could generally engage in advertising and promotional activities as well. Where it was necessary to acquire an industrial site, construct an industrial building, or take other action which a governmental unit could not do under the terms of our Constitution, these agencies would then encourage private corporations or associations of local citizens to take up the load.

This act was supplemented by a spate of special acts granting particular counties or municipalities authority to create economic development commissions, engage in development programs, levy taxes for economic development, etc. Among these were acts for Alexander, Brunswick, Burke, Caswell, Chowan, Franklin, Harnett, Lenoir, Madison, Martin, Nash, New Hanover, Northampton, Person, Rowan, Stanley, and Tyrrell Counties, and for Carolina Beach, Kinston, Kure Beach, Raleigh, Rocky Mount, Salisbury, Spencer, and municipalities in Franklin County.

Minor changes were made in the legislation establishing the state's two existing regional planning commissions. Chapter 270 (HB 345) added Avery, Mitchell, and Yancey to the list of counties eligible to join the Western North Carolina Regional Planning Commission, and Chapter 743 (HB 681) made it a "state agency" for the purpose of administering federal "701" planning assistance funds. Chapter 264

(SB 186) modified the Research Triangle Regional Planning Commission's provisions relating to financial reporting and audits.

A minor modification in existing development legislation was made by Chapter 294 (SB 88), which makes definite the fact that taxes levied under Chapter 158 of the General Statutes are for a "special purpose."

#### Urban Redevelopment

Chapter 837 (HB 738) makes extensive changes in the state's urban redevelopment law, broadening it in many ways to bring it into phase with the more up-to-date concepts of "urban renewal." This act too keys in, to some extent, with the federal Area Redevelopment Act. The amendments it contains are aimed at three major objectives: (1) authorizing redevelopment of non-residential areas, (2) authorizing programs of rehabilitation, conservation, and reconditioning in areas where full-scale redevelopment is not yet needed, and (3) clarifying and simplifying the procedural requirements in the law.

The key provision in permitting redevelopment of non-residential (i.e., business or industrial) areas is a new definition of a "non-residential redevelopment area." This provides that such an area is one in which "there is a predominance of buildings or improvements, whose use is predominantly non-residential, and which, by reason of (a) dilapidation, deterioration, age or obsolescence of buildings and other structures, (b) inadequate provision for ventilation, light, air, sanitation or open spaces, (c) defective or inadequate street layout, (d) faulty lot layout in relation to size, adequacy, accessibility or usefulness, (e) tax or special assessment delinquency exceeding the fair value of the property, (f) unsanitary or unsafe conditions, (g) the existence of conditions which endanger life or property by fire and other causes, or (h) any combination of such factors, (1) substantially impairs the sound growth of the community, (2) has seriously adverse effects on surrounding development, and (3) is detrimental to the public health, safety, morals, or welfare." The boundaries of each such area are to be determined on findings by the local planning board that at least one-half of its buildings substantially contribute to such conditions.

In the 1954 Federal Housing Act it was recognized that redevelopment (in which a slum area is acquired by a public agency, cleared, and then sold for new development) is a slow and expensive process, and that slums were being created faster than they were being eliminated. Provision was made, therefore, for the broader concept of "urban renewal", under which some areas would continue to be redeveloped but other areas would be treated with less stringent measures such as rehabilitation of existing structures, improvement of public facilities, improvement of services such as trash and garbage collection, etc., as a means of preventing worse conditions later.

Until this year North Carolina cities have been able to participate only partially in this broader program. Although they were empowered to undertake rehabilitation measures using a minimum housing standard ordinance (under Article 15 of G.S. Chapter 160), no federal assistance was available for such measures. The new amendments embodied in Chapter 837 fill this deficiency. Now "rehabilitation, conservation, and reconditioning areas" may be designated and programs developed for correcting incipient slum conditions in those areas, with full federal support. This support consists primarily of low-interest loans for the purpose of making home improvements or for constructing homes to house persons displaced from such an area.

In addition to providing these new substantive powers

for local redevelopment commissions, the act clarifies and simplifies many erstwhile confusing provisions relating to the procedures which they are required to follow. The necessity for these amendments was highlighted by the experience of the North Carolina cities which have embarked upon such programs since 1957. The major changes eliminate the confusion between "redevelopment plans" and "redevelopment proposals" which existed under the earlier law, standardize the notice and hearing requirements for various actions, and simplify the procedures for marketing the commission's bonds.

#### Housing

Local urban renewal programs will also be affected by changes made in the laws relating to minimum housing standards ordinances and public housing authorities. Chapter 398 (HB 343) makes Article 15 of Chapter 160 of the General Statutes (authorizing municipalities to adopt and enforce ordinances setting minimum housing standards within the community) apply to all cities and towns in the state, rather than only those with populations over 5,000. A special act extended Chapel Hill's powers under this law to the surrounding area over which it exercises planning and zoning jurisdiction.

Coverage of the housing authorities law was expanded also, under Chapter 200 (SB 141), so as to apply to all cities over 500 (instead of 5,000) population. Chapter 987 (SB 417) adds to the law procedures for repealing the charter of an existing housing authority, where the city council and the housing authority submit appropriate petitions to the Secretary of State and he makes findings that the authority has incurred no indebtedness and acquired no property.

#### City Powers

City planning received a good bit of attention in the 15-odd bills revising municipal charters, with many cities receiving powers not available on a statewide basis. But this did not prevent enactment of a number of general laws relating to subdivision regulations, zoning, etc.

#### Subdivision Regulations

One major change was made in the state's laws under which municipalities may adopt subdivision regulations (G.S. 160-226 to 160-227.1). Chapter 1168 (HB 508) authorizes cities to require "construction of community service facilities in accordance with municipal policies and standards" in subdivisions within their corporate limits, and to require the posting of bond or other guarantee of compliance with such requirements. Although the term "community service facilities" will have to be defined eventually by the courts, presumably it includes water and sewerage systems, drainage systems, street pavement, curbs and gutters, sidewalks, and possibly other improvements. The bill survived an exceedingly perilous trip through legislative waters, including at one time an unfavorable Senate committee report.

Special acts gave Fayetteville subdivision-regulation powers; extended Laurinburg's jurisdiction; granted such power to Raeford, Oxford, and Roxboro (but only within its corporate limits); and brought municipalities in Chowan, Halifax, Lenoir, Macon, Martin, New Hanover, and Richmond Counties within the coverage of the state enabling act.

#### Zoning

Two general laws were proposed relating to municipal zoning but only one passed, Chapter 548 (HB 509) extends the coverage of G. S. 160-181.2 (granting cities power to zone for one mile beyond their limits) to all cities over 1,250 population instead of those over 2,500. It also removes a potential impasse (except in Vance County) by provid-



ing that where a board of county commissioners fails for 90 days to make appointments of outside members to the city planning board and board of adjustment after written request by the city council, the council may proceed to make such appointments itself. The act also added Watauga County to the list of counties subject to the provisions of G.S. 160-181.2, and a special act added Vance County as well. The town of Zebulon received special authority to zone for one mile beyond its limits

The other major proposal (HB 510) would have removed the controversial "four-corner" proviso from G.S. 160-173. Many of the state's larger cities are already exempt from this proviso, but the bill received an unfavorable Senate committee report. Union County municipalities were added to the list of exemptions from the proviso by a special act, however.

#### *Other*

Planners as well as other city officials are interested in the possibility of annexation of developing areas. Two significant laws relating to annexation were enacted. Chapter 269 (HB 342) lessened the possibility of "paper incorporation" of towns for the purpose of blocking an annexation, by preventing the Municipal Board of Control from incorporating a town within three miles of the limits of another municipality. It will still be possible to incorporate such a town through action of the General Assembly, of course. Chapter 655 (HB 764) extended the life of the statute (Part 1 of Article 36 of G.S. Chapter 160) providing for annexation-by-election until July 1, 1962. After that date, cities subject to the 1959 annexation-by-ordinance provisions will no longer have the option of proceeding under this old law. Special acts brought cities in Edgecombe, Iredell, and Nash Counties under the coverage of the 1959 law relating to towns over 5,000.

Chapter 240 (HB 341) authorizes municipalities which have established primary fire limits including the principal business districts to establish "secondary fire limits" in which alterations, repairs, and additions to wooden buildings are permitted under rules and regulations adopted by the town.

An interesting special act [Chapter 230 (HB 347)] authorizes Charlotte to establish set-back lines of varying sizes on streets within its limits and the surrounding area within its zoning jurisdiction.

#### **County Powers**

Counties continued to receive authority to deal with urban-type problems within their limits. Two major acts provided optional arrangements for furnishing water and sewerage service. Chapter 1001 (HB 745) authorizes counties to furnish such services both within and outside their limits and also provides for the creation of joint agencies by counties and/or municipalities to furnish them. Chapter 795 (HB 796) authorizes the creation of metropolitan sewerage districts. Both these bills are treated at greater length elsewhere in this issue. In addition, a number of new laws granted or modified regulatory powers of the counties.

#### *Subdivision Regulations*

There were no substantive amendments to the county subdivision regulation enabling act (Article 20A of G.S. Chapter 153), but 12 previously exempt counties (Alleghany, Ashe, Bladen, Currituck, Duplin, Iredell, Martin, Person, Surry, Tyrrell, Warren, and Wayne) were brought beneath its coverage. In addition, Mecklenburg County was granted similar powers through a special act.

#### *Zoning*

Enforcement of county zoning ordinances was made easier by the enactment of Chapter 414 (HB 557), which

provides that violation of such ordinance constitutes a misdemeanor punishable by a fine up to \$50 or imprisonment up to 30 days. In addition, Alleghany, Ashe, Bladen, Currituck, Duplin, Halifax, Iredell, Martin, Onslow, Person, Surry, Tyrrell, Warren, Watauga, and Wayne Counties came under the general enabling act (Article 20B of G.S. Chapter 153). Vance County was exempted, however.

*Other*  
Special acts granted Haywood, Rockingham, and Transylvania Counties authority to appoint plumbing inspectors under G.S. 153-9(47). Beaufort and Haywood County received power to require building permits, and Dare County's existing power was modified slightly.

#### **Sanitary District Zoning**

The sanitary district zoning enabling act (subsection 18 of G.S. 130-128) which formerly applied only to sanitary districts which adjoin and are contiguous to cities having a population of 50,000 or more, now applies [by virtue of Chapter 669 (HB 618)] only to sanitary districts "which adjoin and are contiguous to any incorporated town and are located within three miles or less of the boundaries of two other cities or towns."

#### **State Planning Agencies**

Chapter 361 (HB 178) created a new State Capital Planning Commission, with authority to prepare a long-range capital improvements program for the state government in Raleigh. The Commission will expire upon completion of its duties or in any event no later than July 1, 1965.

Chapter 1214 (HB 1231) broadens the powers of the Division of Community Planning of the Department of Conservation and Development to make clear that it can furnish planning assistance to county and regional planning boards as well as municipal planning boards; to give it explicit authority to make economic studies; and to authorize the making of regional and statewide studies which may be necessary as a basis for local or regional studies and plans.

#### **Miscellaneous**

Thirteen additional counties (Anson, Brunswick, Camden, Granville, Hertford, Lincoln, Perquimans, Richmond, Sampson, Union, Vance, Warren, and Yadkin) were exempted from the provisions of the 1959 Uniform Map Law relating to the requirements (from an engineering and surveying standpoint) for subdivision plats to be recorded. Chapter 534 (SB 216) and 535 (SB 217) make clear the requirements for platting in counties not subject to the Uniform Map Law. Chapter 660 (HB 826) and Chapter 985 (SB 413) authorize surveys for such plats to be made "under the supervision of" a licensed surveyor, as well as by him.

Watauga County, Boone, and Blowing Rock; Brunswick County, Southport, Boiling Springs Lake, and Long Beach; and Northampton, Hertford, and Bertie Counties were authorized to form joint airport commissions.

Among the major bills which were killed were HB 1009 (identical with SB 408), which would have authorized regulation of billboards along the state's segments of the Interstate Highway System, and SB 316 which would have created a State Planning and Development Commission. A number of bills sponsored by the North Carolina Planning Association were never introduced, including bills permitting (a) municipalities to require recreation areas in new subdivisions; (b) municipalities and counties to acquire easements for the preservation of open spaces; (c) municipalities and the State Highway Commission to protect the beds of future streets; and (d) municipalities to acquire street rights-of-way outside their limits.

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# LOCAL PROPERTY TAXATION

Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

## Classification and Exemption

### Constitutional Proposals

In its nature, constitutional change is a deliberate process. For proponents it often seems interminable. Some of the unaccustomed limelight in which the Property Tax found itself in 1959 clung to it in 1961; especially was this true with respect to constitutional treatment of the tax.

One of the "Policy Objectives" recommended to the General Assembly and to local tax authorities by the Tax Study Commission in its report issued in October 1958 read as follows (p. 18):

"The property tax base should be uniform throughout the State. In other words, regardless of the taxing unit in which an item of property happens to be situated, its taxable status should be the same; it should be taxable in all units or exempt in all units. Thus,

"A. All classifications of property should apply throughout the State . . .

"B. All exclusions from the tax base should apply throughout the State

"C. All exemptions should apply throughout the State.

"D. The General Assembly should not delegate to local units power to exempt, classify, or exclude from the tax base; such decisions should be made by the General Assembly for the State as a whole. The General Assembly should prohibit local use of exemption and classification powers."

Having made these recommendations, the Tax Study Commission prepared working drafts of amendments to Article V of the North Carolina Constitution which would put them into effect. The 1959 legislative history of these proposals can be found in an article entitled "Local Property Taxes" in POPULAR GOVERNMENT for June, 1959 (p. 32 and following). The fact is that the 1959 General Assembly never took decisive action on the proposals. Doubtless this was a motivating factor for their reintroduction in 1961.

Chapter 1169 (HB 711) submits the two constitutional amendments for approval of the voters at the next general election. They are designed to make precise what many believe is already intended, but what is not entirely plain in the existing language of the Constitution. That intention has already been explained in the quotation from the Commission's Report; technically, the amendments can be explained as follows:

One would expand the sentence in Article V, Section 3, concerning property taxes to specify that only the General Assembly has power to classify property for taxation, to

require that the power be exercised on a statewide basis with each classification being uniformly applicable in every local taxing unit, and to prohibit legislative delegation of the classification power.

The other amendment would add to Article V, Section 5, which deals with exemptions, a requirement that every exemption must be granted on a statewide basis and must be uniformly applicable in every local taxing unit; it would also make it plain that only the General Assembly has power to grant exemptions and would prohibit legislative delegation of the power.

Independent of the exemption and classification amendments proposed in Chapter 1169 (HB 711), another bill (SB 126) was introduced which proposed a change in the constitutional provisions dealing with property tax administration. It was designed to submit to the electorate an amendment allowing a tax exemption up to \$5,000 of the assessed value of the home and homestead for owners who had reached the age of 65 or over. But this bill failed to obtain legislative approval and, consequently, will not be voted on by the people.

### Statutory Changes

*Real Property of Churches Occupied by Others:* GS 105-296 sets out the conditions on which real property is to be granted exemption from taxation. Subsection (3) of this section has for many years provided exemption for, "Buildings, with the land upon which they are situated, lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship . . . together with the additional adjacent land reasonably necessary for the convenient use of any such building." It also grants exemption to buildings owned and used by churches "for the residence of the minister." Other subsections of GS 105-296 provide comparable exemptions for the real property of educational institutions, benevolent and patriotic organizations, non-profit hospitals, etc. In each situation, however, the exemption is conditioned upon two basic qualifications: (1) ownership by an "exempt" owner and (2) use for an "exempt" purpose by the owner. Thus, a building owned by a church but used for educational purposes by a school did not fall within the exemption despite the fact that had the building been owned by the using school for the same purpose it would be entitled to exemption.

Chapter 953 (SB 146) is designed to meet this situation in a limited way. It amends subsection (3) of GS 105-296 to grant exemption to real property owned by a church, but not being used by the church itself, if it is occupied "gratuitously" by an organization or agency which, if it were the owner, "would qualify for the exemption" under



some other portion of GS 105-296. Thus, a church-owned building used without charge by a school for school purposes would be exempt, but a school building used by a church for religious purposes would not be exempt.

#### *Contingent Statutory Changes*

*Wheat in Unmanufactured State:* In 1957 the General Assembly passed a special act (Chapter 1187, Session Laws of 1957) granting tax exemption to grain grown in North Carolina and stored in Iredell County in an unmanufactured state for the year following the year in which grown if (1) money was borrowed on the grain and the loan secured by a mortgage on the grain and (2) if the grain is owned or held by one other than a grain processor.

When Chapter 1169 (HB 711) was being considered by the two houses an amendment was adopted which seems to have been calculated to insure survival for the exemption provided by the Iredell Act, even if the constitutional changes proposed by Chapter 1169 should win popular approval. The statutory amendment does not become effective unless the people approve the proposed amendment to the classification provisions of the Constitution. Should they do so, however, a statute of state-wide application would grant exemption for the year following the year in which grown to "wheat grown in North Carolina and stored in an unmanufactured state, owned or held by one other than a processor of wheat, upon which there is money borrowed and said money borrowed being secured by a mortgage on said wheat."

*Tobacco in Storage:* Since 1947 GS 105-294.1 has permitted individual boards of county commissioners, upon making certain factual determinations, to make an annual classification of stored tobacco (technically, any "agricultural product . . . of such a nature as customarily to require storage and processing for periods of more than one year in order to age or condition such product for manufacture") and tax it at 60% of the rate applied to property in general. In recognition of what adoption of the classification amendment proposed by Chapter 1169 (HB 711) was likely to do to this statute, a provision was added to Chapter 1169 to the effect that should the classification amendment be approved in the next general election, GS 105-294.1 would be rewritten to delete the requirement for action by the board of county commissioners, to classify the described agricultural products on a state-wide basis, and to require that they be taxed uniformly as a class at 60% of the rate levied for all purposes upon real and personal property in whatever taxing unit they may be listed for taxation.

*Peanuts in Storage:* Since 1955, GS 105-294.2 has purported to classify peanuts in the year following the year in which grown for taxation at not less than 20% nor more than 60% of the rate levied on property in general, leaving individual boards of county commissioners free to make an annual decision as to the precise percentage to be applied. Presumably on the assumption that this statute might come into question should the classification amendment proposed by Chapter 1169 (HB 711) win the voters' approval, a provision was added to that act to take effect in that event. It would rewrite GS 105-294.2 to delete the requirement for action by boards of county commissioners, to classify peanuts in the year following the year in which grown on a state-wide basis, and to require that they be taxed uniformly as a class at 20% of the rate levied for all purposes on real and personal property in whatever taxing unit the peanuts may be listed for taxation.

*Cotton in Bales:* Under the provisions of Chapter 291, Public-Local Laws of 1939 (as amended by Chapter 552, Session Laws of 1947), "cotton in bales" in Gaston County is classified for tax purposes, and the commissioners of that county are empowered to tax it in their discretion at a

rate "lower than the ad valorem rate fixed each year on real estate and other personal property." (Municipalities in the county are prohibited from imposing a tax on classified cotton "in excess of the rate fixed by the board of county commissioners for the county.") In addition, this special legislation defines as "cotton in transit" all cotton "stored in bonded warehouses in Gaston County, and held for resale, at any time within three (3) months before the annual listing date," and grants to the Gaston County commissioners authority in their discretion "to declare said cotton to be exempt from ad valorem taxation."

Aware of the probable impact of the amendments proposed by Chapter 1169 (HB 711) on this special legislation, the General Assembly added a provision to that act to take effect in the event the electorate approved the classification amendment. Under its terms a new section, GS 105-294.2, is to be added to the Machinery Act to classify on a state-wide basis baled cotton held for manufacture or processing and to require that it be taxed uniformly as a class at 50% of the rate levied for all purposes upon real and personal property in whatever taxing unit the cotton may be listed for taxation. It should also be noted that Chapter 1169 specifically provides that it is not to be considered as repealing any act of state-wide application classifying or exempting cotton from taxation, but it does not mention special and local legislation dealing with the product.

*Property Stored at North Carolina Seaports:* In its zeal to lend assistance to the development of this state's seaports the General Assembly, through the years and from time to time, has enacted a series of curiously overlapping exemption statutes. They are codified as subsections (10), (14) and (17) of GS 105-297. The first exempts any "tangible personal property held at any seaport destined for and awaiting foreign shipment." The second exempts farm products "held or stored for shipment to any foreign country in any seaport terminals in North Carolina or in any city or town in North Carolina in which is located any seaport or within ten miles of the corporate limits of such city or town." And finally, the third grants exemption to farm products "and all goods, wares and merchandise, held for shipment to any foreign country, or held or stored after being imported from a foreign country awaiting further shipment, in the seaport terminals at Morehead City or Wilmington, or within ten (10) miles of such ports or terminals . . . Provided that the provisions of this subsection shall not apply to any products, goods, or merchandise which are stored for more than twelve months."

Should uniform and state-wide classification and exemption provisions be spelled out in the Constitution as called for by Chapter 1169 (HB 711) it was apparent that some of these exemptions might come under severe scrutiny. Thus, provisions were added to Chapter 1169 (HB 711) which will become effective should the electorate approve the classification amendment and which will specifically repeal all three of the quoted exemptions. In their place GS 105-281 would be amended to provide that the following described property is to constitute a special class of state-wide application to be excluded from the tax base, that is, from the definition of the word "property" for purposes of ad valorem taxation: "Cotton, tobacco, other farm products, goods, wares, and merchandise which are held or stored for shipment to any foreign country or held or stored at a seaport terminal awaiting further shipment after being imported from a foreign country through any seaport terminal in North Carolina, except any such products, goods, wares, and merchandise which have been so stored for more than twelve

months on the date as of which property is assessed for taxation."

#### *Unsuccessful Attempts at Statutory Change*

In 1959 the General Assembly modified the statute granting exemption to real property of educational institutions [GS 105-296(4)] so that it would not apply to "any institution organized or operated for profit, or if any officer, shareholder, member, or employee thereof or other individual shall be entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services." At the time it was noted that the General Assembly made no change in the section of the Machinery Act [GS 105-297(3)] granting exemption to "the furniture, furnishings, books, and instruments contained in buildings wholly devoted to educational purposes, belonging to and exclusively used by churches, public libraries, colleges, academies, industrial schools, seminaries or other institutions." The failure to amend this section dealing with personal property exemption brought out divergent opinions concerning the legislature's intention and the proper interpretation of the personal property exemption statute.

The Attorney General took the view (when asked about the tax status of the personal property of a business school being operated for profit) that if the personal property concerned were "furniture, furnishings, books, and instruments," if they were "contained in buildings wholly devoted to educational purposes," and if they belonged to and were exclusively used by "such a school, then the personal property would be exempt. In other words, the fact that the school might be privately owned and might produce a profit for the owner would not affect the tax exempt status of the personal property. (Letter of the Attorney General to John Sharpe Hartsell, February 22, 1961).

On the other hand, in discussing the 1959 change in the real property exemption for educational institutions, the *North Carolina Law Review* suggested that the personal property exemption was not amended, "in all probability on the ground that exemption of the personal property of such institutions is governed by whether it is located in exempted buildings. The building issue having been settled, no issue is raised as to the personalty, and thus the exclusion of real property belonging to 'schools operated for profit' from the exemption would work an automatic exclusion of the personal property in such buildings from any exemption contained in GS § 105-297." [38 N.C. L. Rev. 226, 228 (1960)]

As expected, this uncertainty produced activity in the 1961 General Assembly. HB 404 was an attempt to settle the issue by adding to the personal property exemption a proviso identical in terms with that added to the real property exemption in 1959. Although this bill passed the House it failed to gain approval of the committee to which it was assigned in the Senate. Subsequently, in an attempt to settle the issue in a different way, SB 398 was introduced to remove the modifying language added to the real property exemption in 1959 and SB 399 was introduced to remove from the personalty exemption the requirement that the property must be "contained in buildings." These bills met the same fate as HB 404; the Senate Committee to which they were referred failed to give them a favorable report. Thus, the 1961 General Assembly refused to undo what had been done in 1959, and it also refused to do more. This makes it interesting to speculate on whether its rejection of these three bills might be treated as an expression of legislative opinion on the proper interpretation of the existing law.

SB 302 which would have granted exemption to the real property of the North Carolina Federation of Women's Clubs and their local affiliates was rejected.

#### *Significant Local Legislation*

As already suggested, the 1961 General Assembly's attitude toward tax exemption demonstrated much greater concern for putting an end to erosion of the property tax base than some of its predecessors. Nevertheless, two local bills expanding exemptions managed to obtain passage.

Chapter 1008 (HB 975) opens with recitals describing the Gastonia Little Theatre as a "non-profit" organization, "dedicated to promoting the welfare of the citizens of Gastonia and Gaston County," which "provides entertainment for the citizens," and then proceeds to exempt the theatre from all property taxes. (It is interesting to note that the recitals do not characterize the theatre as "educational" or "literary," qualities that justify exemption under Article V, § 5, of the State Constitution.)

Earlier in this discussion it was pointed out that boards of county commissioners, following certain procedural routes, are entitled to tax stored tobacco at 60% of the rate at which other property is taxed (GS 105-294.1). The 1961 General Assembly allowed Lenior County's commissioners to tax stored tobacco at 40% of the general rate [Chapter 1090 (HB 125)].

#### **Revaluation Schedule**

There are situations in which what a legislature does not do is just as significant as what it does. In 1959 the General Assembly adopted a comprehensive real property revaluation law which set out in specific terms the dates at which each county in the state should conduct a revaluation by actual appraisal, thereafter each county to conduct such programs on an octennial basis. (See GS 105-278.)

In 1961 three bills were introduced which would have had the effect of amending the 1959 schedule in the case of three counties. One of these bills was designed to empower the commissioners of a county scheduled for 1963 to postpone revaluation through 1965; the commissioners of another county scheduled for 1963 were directed to postpone revaluation until 1965; and a third county, scheduled for 1964, was allowed to postpone revaluation until 1969. (SB 262, SB 339, and HB 981). None of these bills was passed. Thus, for the first time since 1939 no county has been granted legislative authority to deviate from the legally-established schedule for real property revaluations.

#### **Assessments and Appraisal Standards**

GS 105-294, as amended in 1959, requires that all property be appraised at its "true value in money" for tax purposes, then permits boards of county commissioners to select some percentage of that appraised value as the basis on which property is to be taxed; this is usually known as the assessment ratio. The appraisal standard of "true value in money" is defined in terms commonly found in property tax statutes throughout this country: "the amount of cash or receivables the property . . . can be transmuted into when sold in such manner as such property . . . [is] usually sold." HB 77 was an interesting attempt to modify the appraisal standard for McDowell County. It would have given an owner of real property the right, on appealing his valuation to the board of equalization and review, to present evidence of "the appraised loan value of the real property as certified by one or more licensed banks or building and loan associations within the county." If the lending institution appraisal had been made within the preceding four years by a bank or building and loan association in which the landowner was not a director, the board of equalization would have been required to consider this evidence and take whatever action was necessary to insure "that the appraised value of any particular piece of real property . . . will not exceed the

(Cont'd., see "Local Property Tax" on p. 72)



# STATE TAXES

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

For state revenue purposes North Carolina imposes fourteen taxes of general application. The 1961 General Assembly received proposals for amending ten of them; in addition, it received proposals which would have added at least three new taxes to the list. The exact number of separate tax proposals introduced was sixty-two; of this total, seventeen became law. Statistics of this kind tell nothing of the significance of individual proposals, but for those who have observed tax legislation in this state over a period of years these numbers demonstrate an activity in the revenue field unequalled since World War II.

It is not difficult to trace the mainspring of this activity: It lay in Governor Sanford's program and found concrete expression in his Special Revenue Message to the General Assembly on March 6 in which he proposed increasing the tax on hard liquor and removing most major exemptions from the 3% Retail Sales Tax in order to raise the \$83 million he estimated would be needed for the public education program he advocated. Bills to effect the Governor's recommendations were introduced on March 9; this was the signal for legislators with contrary and alternative propositions to bring them forward.

In addition to what can be called the administration's bill, fifteen separate proposals for amending the Sales Tax were introduced. There were three proposals for liquor tax changes in addition to that proposed by the Governor. Seeking new tax sources, five bills sought to impose taxes on tobacco; four were aimed at soft drinks; and one proposed a tax on real property transfers. In the end it was the Governor's original proposals—with modifications in application rather than in theory—that were enacted into law.

#### **Sales and Use Tax Amendments**

One 1961 change caused more comment than any other; and it is expected to yield far more revenue than any other. It was the provision of Chapter 826 (SB 78) which removes the exemption heretofore accorded non-restaurant sales of food and food products for human consumption.

The same act limits the exemption for medicines to those sold on prescription. At the same time, the broad exemption heretofore granted sales of printed materials has been limited to Bibles and school books sold at prices fixed by state contract. Nevertheless, news vendors who sell not more than 1,000 papers per week are excused from the tax, and so are their customers by Chapter 1163 (SB 506). The outright exemption for sales to local governments and to religious, charitable, and educational institutions has been removed by Chapter 826, but these units and agencies have been given the right to obtain refunds of taxes paid.

Chapter 1103 (HB 828), not part of the administration's program, moves in a different direction and broadens an existing exemption. As expanded, the statute exempts (in addition to fuel) sales of any items of tangible personal property for use by or on ocean-going vessels in interstate and foreign commerce when delivered to the vessels. This relaxation of what seems to have been a general determination to tighten the tax structure is probably a reflection of another legislative objective — the desire to do what is reasonable to build a climate favorable to development of the state's ports.

Laundries, cleaning and pressing establishments, and allied business have been brought under the 3% rate with respect to their gross receipts by Chapter 826 (SB 78). Under the same act, the maximum tax collectible on any one car or plane has been raised from \$80 to \$120, and beginning July 1, 1962, the rate of tax on these items is raised from 1% to 1½%.

Following executive recommendations, the legislature provided in Chapter 826 (SB 78) that sales of certain items which had been taxed at ½ of 1% shall hereafter be taxed at 1%: fuels to farmers, manufacturers, laundries, and cleaning establishments for use in their businesses; supplies to freezer locker plants for direct use in plant operation; horses and mules; and semen for artificial insemination of animals. A similar change has been effected with respect to sales of the following items, but with a maximum tax limit of \$80 per item: machinery to farmers, dairies, poultrymen, laundries and cleaning establishments, freezer locker plants, and factories for use in business; central office and switchboard equipment for regulated telephone and telegraph companies; and broadcasting equipment and towers for radio and television companies.

Late in the session, and not as a part of the Governor's original tax proposals, the General Assembly enacted Chapter 1213 (HB 1226) which repealed the tax of ½ of 1% on gross wholesale sales.

#### **Tax on Liquor Sales**

As already pointed out, one of Governor Sanford's original revenue-raising proposals was to increase the tax on retail liquor sales from 10% to 12%. This was effected by Chapter 826 (SB 78).

#### **Income Tax Amendments**

Most of the 1961 changes in the Income Tax Schedule fall into the category of clarifications. Chapter 201 (HB 277) adds gifts to Alcoholics Anonymous to the list of contributions allowed as deductions in computing net income. The extent to which nonresident individuals and business firms may claim deductions for charitable and governmental donations has been spelled out in Chapter 1148 (SB 336); generally, it is made plain that the donee must have an of

*(Cont'd., see "State Taxes" on p. 70)*

# ELECTION LAWS

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

The 1961 General Assembly received eleven bills dealing with the conduct and regulation of general elections and primaries. Only five of them received legislative approval, and one of that five must await approval from the people of the state because it proposes a constitutional amendment.

## Registration of Voters

### *Residence Qualifications*

Article VI, §2, of the North Carolina Constitution prescribes that one seeking to register and vote in this state "shall have resided in the State of North Carolina for one year, and in the precinct, ward or other election district in which such person offers to vote for thirty days next preceding an election . . ." In increasing numbers North Carolina has been acquiring new citizens from other states, and before each presidential election those new citizens who find they cannot meet the year's residence requirement in time to register and vote in the presidential race have protested their disfranchisement. The 1960 General Election again brought this issue to the attention of the state, and, not surprisingly, legislation was introduced in 1961 looking to a solution.

Chapter 591 (SB 179) submits to the voters at the next general election the question of whether the Constitution shall be amended to allow the General Assembly to reduce the residence requirement quoted above for the limited purpose of permitting persons otherwise qualified to vote for presidential electors. It makes clear, however, that persons made eligible to vote for this limited purpose would not thereby become eligible to hold office in this state.

### *Registration Period*

Regardless of whether a county is holding a new registration or merely providing for the registration of additional voters, GS 163-31 has heretofore provided that the books should be opened on the fourth Saturday before the election or primary concerned. Chapter 382 (SB 193) provides that when a new registration has been ordered the registration books must be opened on the fifth rather than the fourth Saturday before the election.

### *Loose-Leaf Registration Systems*

When the state-wide new registration law was passed in 1949, provision was made for seeing that each precinct in the state should have new and adequate books in which to record registrations. At the same time, however, the State Board of Elections, at the request of any individual county board of elections, was empowered to authorize that county, at its own expense, to "use a modern loose-leaf registration book system in the larger precincts instead of the new registration book to be furnished by the state" under the new registration law. See GS 163-43.

In the ensuing years the number of counties seeking to use loose-leaf registration systems has shown constant increase. Chapter 381 (SB 190) recognizes this trend by

removing the necessity for State Board of Elections' approval for each county desiring to adopt such a system. Instead, it provides that any county board of elections can adopt a loose-leaf system for any or all precincts if it can obtain "the approval of a majority of the board of county commissioners" of the county concerned.

## Counting and Recording Votes

When voting terminates and the polls are closed, the election laws require precinct officials to proceed at once with the task of counting the ballots. When they have completed the count they are required to mail a copy of the official returns to the county board of elections and, on the day of the county canvass, send in a duplicate copy by a precinct official. This system, while adequate for official purposes, has done little to satisfy the insatiable appetite newsmen have for early returns, no matter how unofficial. Chapter 487 (HB 565) demonstrates a legislative willingness to recognize this hunger. On the night of the election, as soon as the precinct count has been completed and the returns certified, the new law states that one of the precinct officials "shall report the total precinct vote for each candidate or proposition by telephone or otherwise to the office of the county board of elections, which report shall be unofficial and shall have no binding effect upon the official county canvass to follow thereafter. The chairman or secretary or clerk to the county board of elections shall, as soon as such reports are received . . . publish such reports to the press and to the radio and television." Whatever costs are incurred are to be borne by the county's budget for operations of the county board of elections.

## Second Primary

Heretofore the statutes have required an aspirant receiving the second highest number of votes in a primary to file written notice of his demand for a second primary with the appropriate board of elections "within five days after the result of such primary election shall have been officially declared and such aspirant has been notified by the appropriate board of elections." It will be noted that the five-day period and the written demand requirement applied regardless of the board with which the demand has to be filed. See GS 163-140.

Chapter 383 (SB 195) makes the provisions of this statute more detailed. First, it draws a distinction between aspirants for legislative, county, or township offices who file with county elections boards and aspirants for district or state offices who file with the State Board of Elections. The first group must hereafter file their written second primary requests by noon on the fifth day after the result of the first primary is officially declared and "such aspirant has been notified by the chairman or secretary of the appropriate county board of elections." The second group must hereafter file their second primary requests with the State Board by noon on the third day after the first primary results are officially declared and the aspirant has been notified by the chairman or secretary of the State Board. Requests filed with the State Board may be made in writing or by telegram.



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# EDUCATION

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

## "Quality Education"

The "quality education" program formulated by the United Forces for Education and adopted by Governor Sanford as his primary legislative program was adopted practically unchanged as the General Assembly approved a State Board of Education budget of \$459,917,867 for the 1961-63 biennium. This compares with a budget of \$347,596,053 for the 1959-61 biennium. The increased appropriation will allow salary increases ranging from about \$650 per year for a beginning teacher with a "A" certificate (from the present \$2,946.30 to about \$3,660) to about \$900 per year for the teacher with 13 years experience and a graduate certificate (from the present \$4,556.70 to about \$5,600). It will also allow a similar salary increase for principals, supervisors and superintendents. Also the additional funds will provide the following: (1) one additional teacher for each 20 now assigned to each administrative unit; (2) five per cent more janitors; (3) funds for clerical assistants in each school; (4) increases in State funds for instructional supplies and school libraries; (5) expansion of services offered by the State Board of Education, including the continuation on a permanent basis of the Curriculum Study Commission now headed by Dr. I. E. Ready.

In addition to flooding the State's school system with new financial resources, the General Assembly enacted other bills which would assist in developing "quality education" through special techniques for dealing with children who deviate from the normal.

Chapter 1077 (SB 383) establishes a state-wide program for education of exceptionally talented children which is to be administered by the State Department of Public Instruction through a newly created Division for the Education of Exceptionally Talented Children. A program is to be established in each of the State's eight educational districts under a district supervisor of education for exceptionally talented children. The superintendent of any local school unit may submit to the director a proposal, including programs already in operation, for a local exceptionally talented children program. If, under rules prescribed by the State Board of Education, the program proposal is approved, the State Board is to allocate from the State nine months school fund sufficient funds to carry out the program, but the total amount allocated to any unit shall not exceed a maximum amount per child fixed by the State Board. The present pilot center program will continue for the 1961-62 school year; thereafter, continuation of the pilot program is in the discretion of the Director, with approval of the State Board. The act appropriates \$300,000 for the 1961-63 biennium for operation of the program.

Chapter 1146 (SB 226) provides for establishment of

a continuing program for training educable mentally handicapped children beginning with the 1961-62 school year. The State Superintendent of Public Instruction, subject to approval of the State Board of Education, is to formulate reasonable rules prescribing the program and its operation. Local school boards may establish an educable children training program and, by written agreement, may operate the program jointly with other units. To finance the program, local units may use State allotted funds and may include amounts for the program in their capital outlay and current expense budgets. If a local unit establishes the program, it may request State allotment of teachers and other allotments applicable to the program, and if the program meets State requirements, the State Board of Education may provide teachers and other allotments from the State nine months' school fund. The State Board of Education may fix allotments for the program which exceed those for the normal school program and may provide a separate salary schedule for teachers in the program.

The General Assembly also adopted several other bills which are intended to provide new ways of developing the educational program of the State.

Chapter 1043 (SB 368) directs the State Board of Education to establish an experimental program for the purpose of developing and administering a teachers' merit pay plan. The program is to be administered by the State Superintendent of Public Instruction who is to prepare necessary rules and regulations subject to approval of the State Board. The program will continue for the 1961-62 and 1962-63 school years; the first year to be devoted to formulation of plans, criteria, and administrative machinery for plan, and the second year to be devoted to application of the plan by making merit payments to teachers in two or more participating local administrative school units. A report on the program is to be made to the 1963 General Assembly and a final report and recommendations are to be made to the 1965 General Assembly. The bill appropriates \$40,000 for each year of the 1961-63 biennium for administration of the program and \$120,000 for the 1962-63 fiscal year to be used to pay teachers merit supplements.

Chapter 970 (SB 315) authorizes local school boards to establish a permanent endowment fund to be used for the schools of the unit and to be financed by voluntary contributions. The fund is to be administered by the board of education as ex officio Board of Trustees with the usual corporate powers and the power to determine the purposes for which the fund will be spent.

## School Machinery Changes

In addition to the above bills, which seem to directly implement the Governor's "quality education" program, numerous other changes were made in the legal provisions under which the public school system operates. These are summarized briefly in the following paragraphs.

### *State Board of Education*

The prospect of increased federal aid to education caused the adoption of Chapter 969 (SB 312) which gives the State Board of Education specific authority to: (1) apportion and equalize over the State federal funds granted to the State for assistance to local units; (2) receive, use or re-allocate to local school units federal funds granted to the State and accepted by the State Board of Education.

### *Revenue for the Public Schools*

Chapter 894 (HB 441) authorizes expenditure of local funds for summer schools operated by the local unit in accordance with standards developed by the State Superintendent of Public Instruction and approved by the State Board of Education. The standards adopted are to specify requirements for approved curriculum, personnel qualification, length of session, and conditions under which course credit may be granted.

Chapter 1199 (HB 1131) provides that county-wide capital outlay funds for industrial education centers shall be allocated by the county commissioners to the administrative unit operating the center on the basis of the budget approved by the county commissioners for the center.

### *Special Local Tax Elections for School Purposes*

Chapter 894 (HB 441) provides that where a supplemental school tax has been approved by the voters, supplemental tax funds may be expended to operate summer schools approved by the State Superintendent of Public Instruction.

Chapter 1019 (HB 1084) provides that a district school committee, or a majority of the committees in a number of districts, or a majority of the qualified voters in an area less than a district, with the approval of the County Board of Education of a contiguous county, may petition the County Board of Education of the county in which located for an election on the question of annexation to a contiguous district or district in the adjoining county. If the annexing unit levies a supplemental tax, the question of levy of the tax is also included in the election. If the annexation and levy of supplemental tax is approved, the county in which the annexed territory lies is to collect the supplemental tax and pay it over to the proper school fund in the contiguous unit.

### *School Property*

Chapter 395 (SB 185) authorizes local boards of education, in their discretion, with or without compensation other than the benefit received by virtue of the location, to grant easements to any public utility, municipal corporation, or quasi-municipal corporation to furnish utility services to school property.

### *Employees*

Chapter 1085 (SB 495) authorizes the State Board of Education to adopt rules under which salaries of classified principals and supervisors may be paid in 12 equal monthly installments in local school units which so request. The same authority as to teachers' salaries has existed for some time.

### *School Transportation*

Chapter 1102 (HB 785), parts of which are codified in GS Chapter 143, extends the application of the State Tort Claims Act to claims arising from the negligence of the operator of a school transportation service vehicle when the salary of the operator is paid from State funds. The Tort Claims Act already applies to claims arising from the negligence of school bus drivers if they are paid from State funds. Chapter 1102 further provides that the State Board of Education shall not pay claims for more than \$1,000 awarded under the Tort Claims Act unless the local school board involved has defended against the claim in good faith. If the local board does not defend in good faith, it must pay the claim. The act also provides that GS 115-53, allowing local boards of education to waive their governmental im-

munity for the torts of their employees by securing liability insurance, does not apply to operators of transportation service vehicles if their salaries are paid from State funds. School bus drivers paid from State funds already are exempted from the provisions of GS 115-53.

Chapter 474 (HB 573) requires that activity buses be inspected for mechanical or other defects which affect their safe operation at the same time and in the same manner as the regular transportation buses are inspected. If an activity bus is found to be defective, it is the duty of the principal involved to see that it is not operated until the defect is repaired.

### **Business, Trade and Correspondence Schools**

Chapter 1175 (HB 899) rewrites Article 31 of GS Chapter 115 which last year was declared by the North Carolina Supreme Court to be unconstitutional at least in so far as it applied to solicitors for out of State schools. The new bill does not apply to solicitors for out of State schools. The act provides that the State Board of Education, acting through the State Superintendent of Public Instruction, is to establish criteria and standards for licensing of these schools, keep a list of licensed schools, and provide for periodic inspection of the schools. No business, trade or correspondence school (as defined in the act) may operate in the State without a license from the State Superintendent of Public Instruction. The reasons for which a license may be denied, form of license applications, amount of license fees, and provisions for posting of bond by the school, are set out in the act. The State Superintendent of Public Instruction is to appoint a five-member advisory committee from the types of schools regulated by the act to assist him in determining the standards and criteria to be used in administration of the act.

### **Local Legislation of Interest**

The General Assembly received its usual glut of local legislation concerning schools, the bills ranging from those which authorize local units to give antiquated buildings to community clubs to those which authorize special procedures for the issuance of school bonds. This discussion will not attempt to discuss all bills, but will confine itself to several trends which appear to be of major importance.

Four bills were adopted which set up the procedure for an election on the question of consolidation of city and county administrative school units in a particular county. The four were: Chapter 112 (SB 100), Forsyth County and Winston-Salem; Chapter 775 (HB 949), Granville County and Oxford; Chapter 784 (SB 352), Lee County and Sanford; and Chapter 788 (SB 436), Rockingham County and Madison-Mayodan, Leaksville and Reidsville. All the bills except the one for Forsyth/Winston-Salem provide for an elected board of education. Under the Forsyth/Winston-Salem bill, the petition calling for the election would specify whether the board of education would be elected by the voters or appointed by the county commissioners. All four bills provide that appointment of district committees would be discretionary with the board of education in the consolidated systems.

HB 637, which would have compelled consolidation of the Haywood County and Canton schools, was defeated when the representative from Haywood refused to move that the House concur in a Senate amendment which would have made consolidation dependent upon approval by the voters of the county.

There is a perennial discontent, especially in the Republican counties, with the method under which county boards of education are appointed by the General Assembly. And, as usual, the General Assembly received a number of bills which would allow the local election of county boards  
(Cont'd., see "Education" on inside back cover)



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# PUBLIC HEALTH

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of the bills introduced in the House and in the Senate.*

[Readers interested in this section should also check the articles on LEGISLATION OF INTEREST TO COUNTY OFFICIALS and PUBLIC PERSONNEL.]

## Licensing of Nursing Homes

Chapter 51 (SB 13) provides for the licensing of nursing homes by the State Board of Health rather than by the Medical Care Commission and the State Board of Public Welfare. It authorizes the State Board of Health to establish standards, provide rules and regulations for the operation of, and inspect and license nursing homes as defined in the act. A nursing home is defined as an institution maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. It is also defined as a home for chronic or convalescent patients who, on admission, are not as a rule, acutely ill and who do not usually require special facilities (such as operating room, laboratory facilities, etc.). The definition also states that a nursing home provides care for persons who have remedial ailments or other ailments for which medical and nursing care is indicated but who are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

The act makes it a misdemeanor punishable by a fine not to exceed \$50 for the first offense and not more than \$500 for each subsequent offense, with each day constituting a separate offense, to establish, conduct, manage, or operate a nursing home without a license.

The act then distinguishes between homes for the aged and infirm (or boarding homes) and nursing homes, pointing out that a boarding home is a place for the care of aged and infirm persons whose principal need is a home with such shelter and custodial care as their age and infirmities require.

Specifically exempted from this act are those facilities operated by or under the auspices of, or in conjunction with, any hospital required to be licensed by the North Carolina Medical Care Commission.

## Vital Statistics

Chapter 862 (SB 177) provides for the central registration of marriages in North Carolina. (For discussion see REGISTERS OF DEEDS).

## Venereal Disease

The present law, G. S. 130-95, requires physicians and other persons responsible for diagnosis or treatment of a patient with venereal disease, or managers of hospitals and charitable institutions in which there is a patient or inmate with a venereal disease, to report the same to the local health director. Chapter 753 (HB 798) adds to that section a requirement that laboratories performing a positive laboratory

test for venereal disease also report such positive laboratory test for venereal disease to the local health director.

## Meat Inspection

Chapter 719 (SB 244) establishes a compulsory inspection of meat, meat products and meat by-products program in North Carolina. This program is to be administered by the Commissioner of Agriculture, and the State Board of Agriculture is authorized to adopt rules and regulations for the carrying out of the program.

Exempted from this law are slaughtering establishments whose commercial operations do not extend beyond the county boundary lines. However, in those cases where it appears to the Commissioner of Agriculture that any intra-county slaughtering operation is detrimental to the public health such operation does become subject to this act. Also exempted are producers or individuals slaughtering animals principally for their own domestic use or that of their immediate family. The act further exempts the sale of country or country-styled cured hams, shoulders and bacons except that the storing, handling and curing of such meat must comply with rules and regulations adopted by the Board of Agriculture. Finally, any firm operated and licensed under the inspection program of the U. S. Department of Agriculture is exempt from the provisions of this act.

Effective July 1, 1962, before a person may engage in slaughtering meat food animals or manufacturing or processing meat food products, or by-products, on an inter-county basis, he must apply to the Commissioner of Agriculture for the inauguration of inspection service. Upon approval of the application, the establishment is then given an official number and inspection service is inaugurated in such plant. Provision is made for suspension or revocation of such inspection service if any condition exists in the establishment which affects adversely the wholesomeness of the meat products prepared or processed therein. The bill provides for ante mortem and post mortem inspection. The program is to be financed by state appropriation rather than by the charging of fees from the establishment except where inspectors are required to work outside regular working hours.

One section in the bill provides that it is not to restrict the authority of the State Board of Health or any other agency under the statutes of North Carolina.

This bill becomes effective November 1, 1961.

## Poultry Inspection and Disposal

Chapter 875 (SB 422) is virtually identical to the compulsory meat inspection programs except that this bill relates to poultry and poultry products, thereby providing a compulsory poultry inspection law for inter-county operations in North Carolina. This bill also provides, as did the meat inspection bill, that it shall not affect the authority of the State Board of Health or any other agency under the laws of North Carolina. One difference between the two is that the poultry inspection bill became effective upon ratifica-

tion (June 16, 1961) and the meat bill becomes effective on November 1, 1961.

Chapter 1197 (HB 1125) makes it unlawful for any person, firm or corporation engaged in growing poultry, turkeys or other domestic fowl, or products thereof, for commercial purposes, to fail to maintain a disposal pit or incinerator of a size and design approved by the Department of Agriculture wherein all dead diseased poultry carcasses shall be disposed of in a manner to prevent the spread of disease. This act does not apply to growers of poultry, turkeys or other domestic fowl with flocks of 200 or less. This act becomes effective January 1, 1962.

#### **Garbage Collection**

Chapter 514 (HB 417) authorizes boards of county commissioners to regulate the collection and disposal of garbage outside of municipalities. It authorizes them to grant franchises to individual collectors in specified areas, and to regulate the fees charged by such collectors. It also authorizes the commissioners to provide directly for garbage collection and disposal services. (A discussion of local acts relating to garbage collection and disposal appears below.)

One section of the bill provides that: "Nothing in this article shall affect the powers of local boards of health to control the keeping, removal, collection, and disposal of garbage, insofar as the exercise of any such power is necessary to protect and advance the public health." Vance and Johnston Counties are exempted from this bill.

The Institute of Government is making a study of garbage collection and disposal law and practices, and will distribute this to all health directors and other interested persons as soon as it is completed.

#### **Salt Marsh Mosquito Control**

Chapter 1190 (HB 1086) appropriates to the State Board of Health, in addition to all other appropriations made in the General Appropriations Act for this purpose, \$60,000 for each year of the biennium to be expended for improvements in drainage, filling and diking in order that the salt marsh mosquito control program may be expanded to include salt marsh drainage. The distribution of these funds is to be in accordance with the provisions of G. S. 130-209.

#### **Mental Health**

Chapter 512 (HB 254) provides for the commitment of mentally disordered persons or inebriates to a state hospital for observation upon the certificate of two licensed physicians. It therefore provides for commitment without a hearing, but authorizes a hearing upon objection by the person being committed or by a member of his family within specified time periods. In case of inebriates, arrangements must be made with the superintendent for the cost of care and treatment before commitment can be had.

Chapter 511 (HB 253) makes several amendments to the laws relating to hospitalization of mentally disordered persons. Among other minor changes, it provides: that the physician making the examination at the request of the clerk of superior court must not be related by blood or marriage to the alleged mentally disordered persons; that a person committed for a 60 days' observation period may receive treatment during such period; that no state hospital director or superintendent or staff member under their supervision is to be personally liable for any act done pursuant to the provisions of Chapter 122 of the General Statutes (entitled Hospitals for Mentally Disordered); and, that fees paid physicians for making an examination of an alleged mentally disordered person at the request of the clerk of the superior court shall be determined in accordance with a schedule of fees adopted by the Hospitals Board of Control (law had stated flat \$15), plus 7¢ per mile. This bill also rewrites G.S. 122-57 to spell out the procedure more fully for temporary detention (was commitment) of

persons who become suddenly and violently homicidal or suicidal (was suddenly or violently mentally disordered).

Chapter 981 (SB 395) rewrites Article 29A of Chapter 143 of the General Statutes relating to the Governor's Committee on Employment of the Handicapped. This article had previously dealt only with the promotion of the employment of the physically handicapped, but is changed by this bill to deal with the promotion of the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of the state.

Chapter 1186 (HB 1057) amends G. S. 122-50 to provide that when a mentally disordered person who is a resident of this state is committed in some county other than his county of residence, the clerk of superior court of the county of such person's residence shall maintain the records required by this section upon receipt of a certified copy of such records from the clerk of superior court of the county of commitment.

Chapter 751 (HB 795) increases the number of members at large on the Hospitals Board of Control from three to four so as to provide that the Board of Directors of the Hospitals Board of Control is to consist of one member from each congressional district and four members at large, instead of three members at large as was previously provided.

#### **Water and Sewer**

Chapter 997 (HB 461), applying to only 24 counties, creates a Board of Water Well Contractors to administer an occupational licensing law for well contractors. The details of this act are discussed in the article on STATE GOVERNMENT.

Chapter 1001 (HB 745) authorizes counties (singly or jointly with municipalities or other counties) and municipalities (jointly with counties or other municipalities) to acquire, lease, construct, reconstruct, extend, improve, maintain and operate any water system or sanitary sewerage system within or without the boundaries of any such counties or municipalities, and to establish by mutual agreement joint agencies to exercise the powers conferred by such article, and amends the County Finance Act to authorize the issuance of bonds by counties for the acquisition, construction, reconstruction, extension and improvement of water systems and sanitary sewage systems either singly or jointly with other counties and municipalities.

Chapter 656 (HB 768) authorizes the boards of county commissioners to co-operate with the National Soil Conservation Service and the state soil and water conservation agencies and districts to promote soil and water conservation work, and to appropriate from non-tax revenues such sums as they deem advisable for this purpose.

Chapter 247 (HB 267) adds to the list of bodies entitled to exercise the right of eminent domain public sewage systems which have been granted a certificate of public convenience and necessity by the North Carolina Utilities Commission.

Chapter 795 (HB 796) provides for the creation of a metropolitan sewerage district within a county. For a discussion of this chapter, see article in this issue of *Popular Government* entitled WALTER RESOURCES.

Chapter 865 (SB 358) authorizes sanitary district boards to contract with any city, town, village or political subdivision of the state for the treatment of the district's sewage in a sewage disposal or treatment plant owned by such city, town, village or political subdivision.

Chapter 866 (SB 360) authorizes a sanitary district to merge with a city or town which is contiguous thereto by a majority vote of the qualified voters of both the sanitary district and the city or town. If the sanitary district board and the governing board of the contiguous city both feel that it is advisable to call an election for the purpose of determin-



ing if here will be a merger, an election is to be called by such bodies. The bill makes provisions for ballots, new registrations, and the election to be conducted by the board of county commissioners. Should the majority of the registered voters who vote at said election approve the merger, the city or town then assumes all of the obligations of the sanitary district and obtains all of the property of the sanitary district and the sanitary district ceases to exist.

Chapter 732 (HB 427) deals with the extension of sanitary districts and provides, basically, that if a petition for extension is signed by 51% or more of the freeholders resident within the area proposed to be annexed, it is not necessary to hold an election on the question of extension of the district, and that if the petition is signed by the owners of all the real property within the area to be annexed, neither election or hearings on annexation are to be necessary.

Chapter 667 (HB 529) validates actions taken in relation to sanitary districts, including the creation thereof and the appointment or election of members of the governing board thereof. It specifically provides, however, that it shall not be construed to create, revise, or renew proceedings to create a sanitary district when a court of competent jurisdiction has ruled that such district was not legally or properly created. This bill, as originally introduced, would also have validated all bonds issued by any sanitary district but this section of the bill was deleted by amendment. Also, this bill specified that it does not apply to pending litigation.

Present G. S. 130-128(16) (c) provides that no permanent withdrawals may be made from a capital reserve fund established thereunder unless, after such withdrawal, there shall remain in the capital reserve fund an amount equal to the sum of the principal and interest of bonds of the district maturing either in the fiscal year in which the withdrawal is made or in the ensuing fiscal year, whichever is greater. Chapter 1155 (SB 472) adds at the end thereof the following: "except that, when the amount of authorized and unissued bonds of the district is determined by the sanitary district board to be insufficient for financing the cost of the improvements or properties for which such bonds were issued, all or any part of such remaining amount may be withdrawn for the purpose of meeting such insufficiency."

The present sanitary district law authorizes sanitary district boards to exercise zoning powers under certain conditions, and this authority only applies to sanitary districts which adjoin and are contiguous to cities having a population of 50,000 or more. This was changed by Chapter 669 (HB 618) so as to make the zoning authority apply only to sanitary districts which adjoin and are contiguous to any incorporated town, and are located within three miles or less of the boundaries of two other cities or towns.

#### Miscellaneous

Chapter 1173 (HB 848), designed to promote the development of community alcoholism programs, recites that the illness of alcoholism is considered by eminent medical authorities to be one of the most prevalent public health problems, and designates the State Alcoholic Rehabilitation Program (an agency of the State Hospitals Board of Control) as the state agency authorized to establish and administer minimum standards for local community alcoholism programs as a condition for the receipt of state grants-in-aid. The State Alcoholic Rehabilitation Program is authorized to promote local alcoholism programs in accordance with the following state policy: (1) state aid is to be given only to communities which have indicated a readiness to contribute to the financial support of alcoholism programs; and, (2) state grants-in-aid are to be limited to two-year periods. The bill appropriates \$45,000 to be designated as the Community Services Fund to be used to carry out the purposes of the act. The bill specifically provides that it is not to

encroach upon the operation of existing community alcoholism programs.

Chapter 1072 (SB 340) establishes a uniform code of safety for the handling of liquified petroleum gases under rules and regulations promulgated by the State Board of Agriculture.

Chapter 398 (HB 343) amends G. S. 160-183(a) so as to make the authority granted by Article 15, Chapter 160 of the General Statutes of North Carolina, entitled "Repair, Closing and Demolition of Unfit Dwellings", applicable to all incorporated cities and towns in North Carolina (previously this article only applied to municipalities having a population of 5,000 or more according to the last federal census). An amendment to this bill makes the old definition of municipality (5,000 or more) still applicable in Gaston County.

Chapter 557 (HB 453) rewrites various provisions of Chapter 86 of the General Statutes of North Carolina entitled "Barbers". It includes a provision which expressly empowers the Board of Barber Examiners to adopt rules and regulations governing barbers and barbershops.

#### Bills of Interest to Public Health Officials Which Failed to Pass

There were several bills introduced in the 1961 General Assembly of interest to public officials which failed to pass. These include:

SB 127 which would have provided for the regulation of the sanitation of agricultural labor camps under rules and regulations adopted by the State Board of Health.

SB 387 which would have prohibited local boards of health from charging for sanitary inspections or supervision of any dairy or milk production facility located outside the territorial jurisdiction and political boundary of said board and inside the territorial jurisdiction and political boundary of another board or department under the supervision and control of the State Board of Health and State Health Director.

HB 776 which would have rewritten G. S. 14-287 (which makes it unlawful to leave unused wells open and exposed) to require that any person, after discontinuing the use of any well, to immediately report such fact to the "County Sanitary Officer" of the county in which the well is situated, and authorize the county sanitary officer to prescribe the method of filling said well so that underground water supplies would not be contaminated from improper filling.

HB 511 which would have made deductible for income tax purposes (up to a maximum of \$2,000) the cost of constructing a family fallout shelter built according to plans and specifications of the Office of Civil and Defense Mobilization.

HB 384 which would have provided for the establishment of a medical assistance program for the aged in North Carolina. (See PUBLIC WELFARE AND DOMESTIC RELATIONS.)

SB 112 which would have made it unlawful for any person, firm or corporation to dispense, sell, give away, or distribute gasoline or other explosive volatile liquids in a glass container.

SB 258 which would have amended G. S. 67-27 to provide that cattle-killing, hog-killing, goat-killing or poultry-killing dogs (in addition to the present coverage of mad, sheep-killing or egg-sucking dogs) may be killed on sight without liability to owner.

HB 365 which would have amended the stream sanitation law relating to the discharge of sewerage and waste into the waters of the Neuse River by allowing an additional two years for implementation thereof. Also, HB 123 which would have allowed the City of Kinston two additional years

(Cont'd., see "Public Health" on p. 71)

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# PUBLIC WELFARE AND DOMESTIC RELATIONS

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*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

[Readers interested in this section should also check the articles on PUBLIC HEALTH, LEGISLATION OF INTEREST TO COUNTY OFFICIALS, and PUBLIC PERSONNEL.]

## **Public Welfare Administration**

Three bills falling generally under the heading of public welfare administration passed, and one failed to pass. Chapter 186 (HB 303) changes the title of the executive head of the county departments of public welfare from "Superintendent of Public Welfare" to "Director of Public Welfare". (In 1957, the General Assembly changed the title of the executive head of the county health department from "County Health Officer" to "County Health Director"—thus, there is now consistency in the title of these two county officials). Chapter 51 (SB 13) transfers the licensing of nursing homes, heretofore performed by the Medical Care Commission and the State Board of Public Welfare, to the State Board of Health. Resolution 66 (SB 283) provides for the appointment by the Governor of a three to seven member Commission to Study Public Welfare Programs in North Carolina, and to submit a report to the Governor and the 1963 General Assembly containing its findings and recommendations. The Commission is to make an exhaustive study of existing welfare programs and other matters deemed appropriate, and the bill appropriates \$10,000 for the biennium for the payment of the expenses of the Commission upon approval by the Governor. SB 68, which failed to pass, would have amended G. S. 110-49 so as to specifically include day care facilities for children within those institutions to be licensed by the State Board of Public Welfare.

## **Public Assistance**

Chapter 133 (SB 12) transfers the administration of the appropriation for the hospitalization of medically indigent patients from the Medical Care Commission to the State Board of Public Welfare. This bill authorizes the State Board of Public Welfare, in accordance with rules and regulations promulgated by the Board, to make hospitalization payments for eligible medically indigent persons hospitalized in any hospital licensed by the Medical Care Commission (or licensed or approved according to the laws of another state) who do not qualify for money payments under the old age assistance, aid to dependent children or aid to the permanently and totally disabled programs. The payments under this program are to be established on the basis of money available for this purpose, taking into account the availability of federal matching funds and state funds appropriated for the program, with the non-federal share to be

borne equally by the state and the several counties. The bill further provides that all outstanding obligations existing under the rules and regulations of the Medical Care Commission at \$1.50 per day for medically indigent patients are to be transferred from the Medical Care Commission to the State Board of Public Welfare for payment. This act became effective May 1, 1961, and the regulations of the State Board of Public Welfare provide that all requests for payment of the \$1.50 per day under the Medical Care Commission regulations must be made within six months of that date.

Under the law in existence prior to May 1, 1961, the Medical Care Commission would pay \$1.50 per patient day for all patients certified as being medically indigent by a county department of public welfare. In addition, the State Board of Public Welfare administered a "pooled fund" from which payments were made for the hospitalization of persons receiving old age assistance, aid to the permanently and totally disabled, or aid to dependent children.

With the passage of this bill, the State Board of Public Welfare will continue to administer the "pooled fund" for the payment of hospitalization costs of public assistance recipients eligible for money payments, and will, in addition, be administering a program for the payment of hospitalization costs for persons who do not qualify for public assistance money payments, but who do meet all the other eligibility requirements for old age assistance, aid to dependent children, or aid to the permanently and totally disabled. The appropriation made by the General Assembly to the State Board of Public Welfare for the purpose of carrying out these hospitalization programs will allow the State Board of Public Welfare to pay the actual cost per day up to \$16 for such hospitalization (the per diem rate from the "pooled fund" had varied from time to time but had been \$10 since July 1, 1959). The appropriation to the State Board of Public Welfare for the hospitalization program created by this bill amounted to \$681,500 for the biennium, and these funds are to be matched with federal and county funds on the basis of the following formula: for old age assistance—federal 80%, state 10%, and county 10%; for aid to dependent children and aid to the permanently and totally disabled—federal 65%, state 17.5%, and county 17.5%.

In so far as the counties are concerned, the upshot of this legislation would appear to be that the counties which have been appropriating substantial sums for hospitalization will save money as the hospital will be getting up to \$16 per day (only a small percentage of which will be county money) for most of the medically indigent patients which these counties were financing previously (over and above the \$1.50



per day from the Medical Care Commission). On the other hand, those counties which have not been appropriating substantial sums for hospitalization (and not thereby paying the difference between the \$1.50 per patient day and the actual cost of the hospitalization) may be required to appropriate more funds for hospitalization than previously. At any rate, more federal and state money will be expended for the hospitalization of medically indigent persons in North Carolina.

Two bills were passed which broaden the scope of the aid to dependent children program. The enactment of these followed passage by the United States Congress of an amendment to the Social Security Act making federal funds available for these extensions in the aid to dependent children program. The first of these, Chapter 533 (SB 206), makes children living in foster homes licensed by the State Board of Public Welfare eligible for aid to dependent children grants provided they meet the other eligibility requirements. Under the old law, a child was not eligible for an aid to dependent children payment unless he was residing with his parents or some other relative.

The other bill extending the aid to dependent children program is Chapter 998 (HB 567). This chapter makes eligible for an aid to dependent children grant a child who has been deprived of parental support by reason of the unemployment of a parent, and who is otherwise eligible. Under the old law, the child was eligible only if he had been deprived of parental support or care by reason of the death, physical or mental incapacity, or continued absence from the home of the parent. The bill defines an unemployed parent as an employable person who is residing in North Carolina; who is registered with the Employment Security Commission for work; who has no employment; who has no social security benefits; and who has received unemployment compensation benefits but has exhausted the full benefits to which he was entitled. The bill further provides that the State Board of Public Welfare shall by rule and regulation provide for the entering into of co-operative agreements with the various public employment offices in the state, including appropriate provisions for registration and periodic re-registration of the unemployed parents of any such child, and for maximum utilization of the job placement services and other services and facilities of such employment offices.

Under the amendments to the Social Security Act, federal funds for aid to dependent children in the case of unemployed fathers are to expire on June 30, 1962. Chapter 998 thus provides that if at that period, or at any future date, there is a termination of federal aid for the purposes set forth in this bill, then this bill is ipso facto repealed and declared null and void.

This bill appropriates \$50,000 for each year of the biennium for the purpose of providing grants under the provisions of this act, and specifies that state expenditures for this purpose shall not exceed this amount and that no additional funds shall be transferred or allocated for the purpose of this act.

Chapter 666 (HB 525) makes various amendments to the program of aid to the blind, one of the four public assistance programs financed by federal, state, and county funds. The first of these amendments deletes from the statute the requirement that in determining eligibility of an aid to the blind applicant, the first \$50 per month of earned income is to be excluded, and substitutes the exclusion of "such income as will enable said agency (State Commission for the the Blind) to receive the maximum grants from the federal government for such purposes". Under the social security amendments of 1960, the federal act was amended to provide that, until July 1, 1962, states have the option of either disregarding the first \$50 per month of earned income

or disregarding the first \$85 per month of the individual's earned income plus one-half of earned income in excess of that figure. On and after July 1, 1962, the law makes the latter provision mandatory. Thus, the bill amends the North Carolina law so as to allow the Commission for the Blind to exclude, in accordance with the federal law, (and requires it to exclude beginning July 1, 1962) the first \$85 per month of the applicant's earned income plus one-half of earned income in excess of that figure, when determining eligibility for an aid to the blind grant.

The second amendment deletes specific limitations in G. S. 111-17 on the amount of aid to the blind payments and the amount of the county's share thereof, and substitutes the following: "within the limitations of state appropriations, the maximum payment for aid to the blind is to be such as will make possible maximum matching by the federal government."

The third amendment to the aid to the blind law sets out a procedure for the appointment of a personal representative for aid to the blind recipients for the limited purpose of receiving and managing public assistance payments for such recipients. The procedure is to be as follows: a petition is filed by an interested person (or the director of public welfare) in court (domestic relations court or clerk of superior court) alleging that the applicant for or recipient of aid to the blind is unable or fails to manage the payments to the extent that deprivation or hazard to himself or others results; the court gives five days' notice of a hearing; and, if the court (sitting without a jury) finds the allegations to be true, a personal representative for the aid-to-blind applicant or recipient may be appointed to serve without bond (except that the clerk of superior court may require a bond) and without compensation. The representative is to receive the monthly assistance check and to use the proceeds for the benefit of the aid to the blind recipient. The representative is responsible to the court and may be removed by it, and provision is made for an appeal de novo before the judge of the superior court. The court may direct the director of public welfare to maintain records of the proceedings in lieu of separate records by the court. No findings of fact under the act are to be competent evidence in any proceedings other than the proceedings under this act.

The last of the bills affecting public assistance which passed was Chapter 967 (SB 280) affecting the old age assistance lien law. G. S. 108-30.1 has provided that no action to enforce the old age assistance lien may be brought more than ten years from the last day for which assistance is paid nor more than three years after the death of any recipient. In the case of *Lenoir County v. Outlaw*, 241 N. C. 97, the court made the statement: "If it be conceded that no action to enforce such lien may be maintained after the expiration of one year [now three years] from the death of the recipient of old age assistance, we do not concede that the petitioner herein is barred from having its claim satisfied to the extent that funds may be available out of the surplus realized from the sale of the recipient's real estate". This holding by the court apparently caused some difficulty in clearing the title to property when the statutory limitations on bringing an action to enforce the lien had passed. Chapter 967 removes this doubt by amending the statute to provide that a failure to bring action within the time period specified shall constitute a complete bar against any recovery and shall extinguish the lien. Thus this chapter is designed to make it clear that if the action is not brought within the time limits specified there may not thereafter be any recovery against the property for the old age assistance lien.

Bills falling generally into this area which failed to pass include HB 362 which would have repealed the old age

assistance lien law; HB 590 which would have appropriated sufficient funds to the State Board of Public Welfare to provide \$20 per day from the "pooled fund" for hospitalization and \$20 per day for the hospitalization of medically indigent persons; HB 1132 which would have authorized the State Board of Public Welfare to accept federal funds to provide medical services (other than the hospitalization payments authorized elsewhere in the statutes) to public assistance recipients and the medically indigent; and, HB 384 which would have provided for the establishment of a medical assistance program for the aged in North Carolina. This latter bill, as originally introduced, defined medical assistance to mean essential medical and ancillary care and services for persons 65 years of age and over who are not recipients of old age assistance and who are otherwise eligible in accordance with federal law. The program was to be administered by the local departments of public welfare under the supervision of the State Board of Public Welfare, but the bill also created a "Council for Medical Assistance for the Aged" which would have had the responsibility of recommending regulations, policies, etc. to the State Board of Public Welfare.

#### Adoption

G. S. 48-21 provides that the interlocutory decree of adoption may be waived by the adoptions court and the final order of adoption entered without a probationary period when the child is by blood a grandchild, great-grandchild, nephew or niece of one of the petitioners or is the stepchild of the petitioner. Chapter 384 (SB 231) amends this to also authorize the waiver of the interlocutory decree in those instances in which the child is by blood a grandnephew or grandniece of the petitioners.

A second bill relating to adoptions which passed is Chapter 241 (SB 72). The adoptions law makes the consent of a parent or parents who have abandoned the child unnecessary for adoption purposes. The definition of an abandoned child has been any child under the age of 18 years who has been willfully abandoned at least six consecutive months immediately preceding the institution of an action or proceeding to declare the child to be an abandoned child. This chapter adds a second definition of abandonment for adoption purposes. It declares that in addition to the definition of abandonment already in the law, an abandoned child for adoption purposes "shall be a child under 18 years of age who has been placed in the care of a child caring institution or foster home, and whose parent, parents, or guardian of the person, has failed substantially and continuously for a period of more than one year to maintain contact with such child, and has willfully failed for such period to contribute adequate support to such child, although physically and financially able to do so. In order to find an abandonment under this subsection, the court must find the foregoing and the court must also find that diligent but unsuccessful efforts have been made on the part of the institution, or child placing agency to encourage this parent, parents, or guardian of the person of the child to strengthen the parental or custodial relationship of the child".

#### Alimony and Divorce

The batting average of bills relating to alimony and divorce was not very good as one passed and four failed to pass. The bill that passed is Chapter 80 (SB 31), which relates to motions for alimony pendente lite. G. S. 50-15 has provided that in actions for divorce if the wife sets forth in her complaint facts which upon her application for alimony shall be found by the judge to be true and entitle her to the relief demanded in the complaint, and if the judge finds that she has not sufficient means whereon to subsist

during the prosecution of the suit and to defray the expenses thereof, the court may award her alimony pendente lite. This chapter eliminates the necessity that the judge find the allegations to be true and to entitle the wife to the relief demanded, and substitutes a requirement that the judge find that the wife's complaint "probably" entitles her to alimony pendente lite.

The bills in the alimony and divorce area which failed to pass included HB 1003 which would have specified that the following proof would have been sufficient to constitute compliance with the residence requirements for divorce purposes: (1) plaintiff or defendant was a citizen of North Carolina and resided in North Carolina for at least six months preceding his entry into United States Armed Forces; (2) that he remains at the time of the institution of the action for divorce a member of the Armed Forces; and, (3) that he has not relinquished his citizenship or established legal residence outside North Carolina. Although this bill failed to pass, its provisions appear to the writer to be consistent with the present North Carolina law concerning residence for divorce purposes.

HB 70, which failed to pass, would have amended G. S. 50-10 to provide that in divorce actions in the superior court, if the pleadings did not contain a denial of the allegations of the complaint or present an affirmative defense, cross-action or counterclaim, the judge could make findings of fact without a jury unless one of the parties requested a jury trial.

Also failing to pass was HB 51 which would have provided that the allegations of the grounds for divorce from bed and board, alimony without divorce and alimony pendente lite would be sufficient if alleged in the language of the statute, and that it would not be necessary to allege particular acts in detail, but that a verified bill of particulars detailing acts constituting the grounds would, on motion before the judge or clerk, be served on the party requesting it.

Finally, SB 253 would have added G. S. 50-16.1 to provide that in suits for alimony without divorce if it is made to appear that the husband and wife own property by the entirety and the husband is properly before the court, the judge of superior court may make such orders with respect to the property held by the entirety as he deems proper.

#### Marriage

Two bills relating to marriages passed and two failed to pass. Chapter 862 (SB 177) provides for the central registration of marriages in North Carolina, with the forms for a marriage license issued by the register of deeds containing a portion to be sent to the State Office of Vital Statistics, thereby providing a record in the State Office of Vital Statistics of all marriages which take place in North Carolina from and after January 1, 1962.

Chapter 367 (HB 494) deletes from G. S. 51-3 the prohibition against marriages between a white person and an Indian or between a white person and a person of Indian descent to the third generation, thereby making marriages between white persons and Indians lawful.

The two bills in the marriage area which failed to pass were SB 122 designed to prevent hasty marriages in North Carolina by requiring a twelve-hour waiting period between the application and issuance of the license for non-residents (amended before defeat to limit its application to minors who did not have parental consent); and, SB 463 which would have amended G. S. 51-15 (which presently provides that if any person shall obtain a marriage license for the marriage of persons under the age of 18 years by misrepresentations or false pretenses, he is guilty of a misdemeanor) to have also made it a misdemeanor to obtain a marriage



license by means of misrepresentations or false pretenses as to sex, place of residence or mental capacity of the applicants.

#### Husband and Wife

Bills falling within this general area which passed include Chapter 184 (HB 242). G. S. 39-13.2, enacted in 1951 and rewritten in 1955, authorized married women under 21 years of age to execute contracts, conveyances, etc. with respect to estates by the entirety. This section is rewritten by this chapter to provide that any married person (male or female) under 21 years of age is authorized to: (1) waive, release or renounce by deed or other written instrument any right or interests which he or she may have in the property of the other; (2) give written assent to conveyances of real property of the wife; or, (3) jointly execute with his or her spouse, if such spouse is 21 years of age or older, any note, contract of insurance, deed, deed of trust, mortgage, lien of whatever nature or other instrument with respect to real or personal property held with such other spouse either as tenants by the entirety, joint tenants, tenants in common, or in any other manner. This chapter specifies that transactions between husband and wife pursuant to this section must comply with the provisions of G. S. 52-12 (which requires a private examination of the wife). This chapter also validates any renunciation of dower or curtesy by a married person between the dates of June 30, 1960 and the effective date of the act (April 7, 1961) where such person was under age, and also validates conveyances of real property between such dates where the written assent of the husband was given by a husband under 21 years of age.

Chapter 958 (SB 236) relating to various amendments to the Intestate Succession Law, Chapter 959 (SB 237) relating to dissent amendments, Chapter 960 (SB 238) relating to a renunciation record to be kept by the clerk of superior court, and Chapter 210 (SB 38) adding a new Chapter 31A entitled "Acts Barring Property Rights" are discussed elsewhere in this issue of *Popular Government* under the heading of COURTS, CLERKS, AND RELATED MATTERS.

Bills falling within the husband and wife area which failed to pass include HB 1227 which would have validated contracts between husband and wife coming within the provisions of G. S. 52-12 executed between June 10, 1953 and June 20, 1959, which did not comply with the requirements of private examination of wife but which were otherwise regular (the present law validates such contracts executed between June 10, 1957 and June 20, 1959); and, HB 854 which would have amended G. S. 41-10 to authorize actions to be brought to quiet title to realty by any person against his or her spouse or alleged spouse where the parties have not lived together as man and wife within the six months (present law is two years) preceding.

#### Guardian and Ward

All seven bills introduced relating to guardianship

matters passed. They included Chapter 292 (HB 302) which amends G. S. 33-42.1 (which requires the clerk to require the guardian to exhibit to the court all investments and bank statements showing cash balance, and the clerk of superior court is to certify on the original account that an examination was made of all investments and the cash balance, and that the same are correctly stated in the account) to provide that examinations required may be made by the clerk of the superior court of the county in which the guardian resides or in which the securities are located, or (when the guardian is a bank or trust company) in the county where the bank or trust company has its principal office or where the securities are located, and that a certificate of the clerk of superior court of such county is to be accepted by the clerk of superior court of any county in which the guardian is required to file accounts.

Chapter 396 (SB 203) amends three sections of Chapter 34 entitled Veterans' Guardianship Act. G. S. 34-2 is amended so as to redefine "income" as the money received from the Veterans' Administration and revenue from property wholly or partially acquired with defined income, and "estate" is defined as income on hand and assets acquired partially or wholly with income. G. S. 34-10 is amended to exempt banks organized under the laws of North Carolina or the United States from the requirement of exhibiting investments and bank statements required, when the bank is acting in a fiduciary capacity and there is added a certificate of other bank officers certifying that all assets referred to in an account are held by the guardian. Lastly, G. S. 34-14 is amended to authorize the guardian to apply income received from the Veterans' Administration for the benefit of the ward in the same manner and to the same extent as other income of the estate without the necessity of securing a court order.

Chapter 1066 (SB 204) amends G. S. 33-42.1 to exempt the banks and trust companies organized under the laws of North Carolina or the United States from the requirements of the act when acting in a fiduciary capacity if a certificate executed by a trust examiner employed by a governmental unit is exhibited to the clerk of superior court and shows that the securities have been examined within one year.

Chapter 973 (SB 341) allows the removal of guardianship or trusteeship of cestui que trust (as well as of ward, mentally defective or mentally disordered persons) to county of residence of cestui que trust.

Chapter 477 (HB 609) amends G. S. 33-71 (e) to allow the custodian to use funds in his custody to purchase insurance on the life of the minor and to designate the minor's estate or dependent as beneficiary.

Chapter 418 (HB 316) relating to removal of fiduciaries and Chapter 362 (HB 317) relating to personal representative commissions are discussed elsewhere in this issue of *Popular Government* under the heading of COURTS, CLERKS AND RELATED MATTERS.

# PUBLIC PURCHASING

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*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

The 1961 General Assembly met at a time when collusive bidding on public contracts was front-page news. The federal government had just brought to conclusion action, under federal anti-trust laws, against a number of electrical manufacturers who were found guilty of collusive bidding on federal contracts. And here in the State reports of identical bidding were frequent—both on State bid openings and on those for a number of different items being purchased by cities and counties. Of the four public bills enacted by the 1961 General Assembly which concern State and local purchasing, two were aimed at discouraging collusive bidding and a third amended the State's anti-trust statutes. The fourth simply made explicit what has been the general interpretation of the competitive bidding statute for some years.

## **Acts to Discourage Collusive Bidding**

North Carolina, like most other states, has had general anti-trust legislation since the early part of this century. (Ch. 75, General Statutes of North Carolina) This legislation, patterned after the federal anti-trust legislation, appears to be designed to protect business enterprises from one another rather than to protect consumers from collusive bidding by sellers. The general prohibition found in GS 75-1, that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal," could be interpreted as being sufficiently broad to cover collusive bidding. However, the listing of particular acts which are prohibited (found in GS 75-5) would not clearly cover collusive bidding.

Chapter 407 (SB 131) amends GS 75-5 by adding a new subsection which makes it unlawful for any person, directly or indirectly, ". . . while engaged in buying or selling goods in this State to make, enter into, execute or carry out any contract, obligation or agreement of any kind by which the parties thereto or any two or more of them bind themselves not to sell or dispose of any goods or any article of trade, use or consumption below a common standard figure, or fixed value, or establish or settle the price of such goods between them, or between themselves and others, at a fixed or graduated figure, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale of such goods." The same act exempts from this prohibition agreements made under North Carolina's Fair Trade Act (Art. X of Ch. 66, General Statutes of North Carolina) and ". . . any act which is done in compliance with the rules and regulations of any state regulatory agency." Responsibility for enforcement of these provisions, as well as other provisions of the anti-trust

chapter, and for bringing prosecutions under it rests with the Attorney General.

Another approach to meeting the problem of collusive bidding was taken with the enactment of Chapter 963 (SE 245). This act amends the State purchasing statute (Article III, Ch. 143) by requiring the Director of Administration, in whose department is located the Division of Purchase and Contract, to require bidders on State contracts ". . . to certify that each bid is submitted competitively and without collusion. False certification shall be punishable as in cases of perjury." The use of no-collusion affidavits by state and local governments in other parts of the country has been found for some time. While the act does not require local governments in North Carolina to take no-collusion affidavits, it seems clear that such affidavits could be demanded of bidders at the discretion of local units.

North Carolina's anti-trust laws were also amended by Chapter 1153 (SB 464) which repeals GS 75-3. GS 75-3 had declared all contracts, combinations in the form of trust, and conspiracies in restraint of trade prohibited by GS 75-1 and GS 75-2 to be unreasonable and illegal unless the persons entering into such contracts or combinations could show affirmatively that such contracts, combinations or conspiracies did not injure the business of any competitor, or prevent anyone from becoming a competitor by unfairly injuring him. While repeal of this section weakens the general anti-trust legislation, it probably will have little effect insofar as collusive bidding is concerned.

## **Requirement for Sealed Bids**

The fourth general act, Chapter 1226 (HB 1011), amends GS 143-129 to require that all bids submitted under the provisions of that section be sealed, and provides further that the "disclosure or exhibition of the contents of any bid" by anyone without the permission of the bidder and prior to the time set for the opening of the bids is a general misdemeanor. As noted before, this amendment would seem to do no more than to make an express statutory requirement of what has been the general practice and interpretation of the meaning of GS 143-129 by public purchasing officials heretofore.

## **Bills Killed**

Among the bills not enacted by the 1961 General Assembly were two of special importance in the field of purchasing. The first, SR 380, would have authorized the Director of Administration and the Board of Awards to reject the low bid on state contracts if the low bidder proposed to furnish foreign-made goods and accept other than the lowest bid from a bidder who proposed to furnish domestic-made goods, when such action appeared to be in the best interest of the State. At the present time, of course, the statutes regulating both State and local purchasing do not



authorize awarding officials to consider whether goods offered are foreign-made or not in making an award. This bill was never reported from the Senate committee to which it was referred.

The second bill, SB 470, would have amended GS 115-52 to require local boards of education to make purchases of supplies, equipment and materials through the Department of Administration. This is in contrast with the present provision which requires that contracts for such goods be either made by or approved by the State Division of Purchase and Contract. This bill was reported unfavorably in the House.

### Local Legislation

#### *Sale of Real Property*

As in past sessions of the General Assembly, most of the local acts dealing with the acquisition or disposal of property by cities and counties were concerned with the transfer of real property. A total of 23 such acts were adopted by the 1961 General Assembly. In some cases the price of the property was set, in some authority to sell at auction was given, but most simply authorized disposal at private sale of certain specified properties.

#### *Local Purchasing Procedures*

Changes in the purchasing procedures of eight cities and one county were made as a result of local acts. The Reidsville Charter was revised by Chapter 831 (SB 437) and, in general, requires that purchasing by the City of Reidsville follow the provisions of the general law on local purchasing. In addition, the Charter provides that no contract shall be binding unless it is approved by the council or "authorized by ordinance or resolution specifically referring to a particular contract or generally referring to a class of contracts which may be executed by a designated official or officials on behalf of the City." The revised charter of the Town of Chapel Hill, Chapter 87 (HB 86), contains provisions identical with those of Reidsville's.

Chapter 324 (HB 486) revises the Eion College Charter and provides that rules and regulations governing purchases shall be prescribed by the Board of Aldermen and that an opportunity for competition shall be given before making any purchase on behalf of the town. The act incorporating Chadwick Acres, and the revisions of the charters of Garner and Dallas contain essentially the same provisions. And minor changes in local purchasing procedures were made for Hickory and Wallace.

Person County, through the provisions of Chapter 841 (HB 867), is required to provide for a county purchasing agent and to appoint a county administrative officer. The purchasing agent may be the same person appointed as county administrative officer or he may be some other person selected by the board of commissioners. It is further stipulated that "the purchasing agent of Person County shall be responsible for purchasing all materials and supplies for Person County, except where purchases are made on state contract." [Under the provisions of GS 153-27 all boards of county commissioners are authorized to appoint purchasing agents but are not required to do so.]

#### *Conflict of Interest*

Five of the charters revised or adopted by the 1961 General Assembly contain "conflict of interest" provisions.

In general these provisions are more inclusive than GS 14-234 which prohibits a director of public trust from having a private interest in any contract which he executes in his official capacity.

The Mt. Holly Charter [Chapter 86 (HB 85)] provides that "neither the mayor nor any member of the city council nor any officer or employee of the city shall have a financial interest in any contract with the city concerning any land, materials, supplies, or services, except on behalf of the city as an officer or employee."

The revised Elon College Charter [Section 32, Chapter 324 (HB 486)] contains similar language but goes on to require dismissal of any employee who has such an interest. The Elon College Charter provides that "neither the mayor nor any member of the Board of Aldermen or any officer or employee of the town shall have a financial interest, direct or indirect, in any contract with the town, or be financially interested, directly or indirectly, in the sale to the town of any land, materials, supplies, or services except on behalf of the town as an officer or employee. Any willful violation of this section shall constitute malfeasance in office and any officer or employee of the town found guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge express or implied of the person or corporation contracting with the town shall render the contract voidable by the Board of Aldermen."

The new and revised charters of Chadwick Acres, Garner and Graham contain similar provisions with respect to conflict of interest on the part of municipal officers and employees.

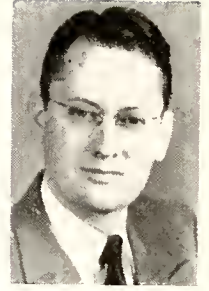
#### *Disposal of Surplus Property*

Three of the charters revised in the 1961 General Assembly contain special provisions with respect to the sale and disposition of property. The Goldsboro Charter [Chapter 447 (HB 423)] contains special provisions on the sale and disposition of property similar to that found in the general law (GS 160-59) except that authority to dispose of property whose value does not exceed \$1,000 at private sale is authorized.

The revised Hickory Charter [Chapter 323 (HB 476)] modifies the general law procedure for the sale of personal property found in GS 160-59 by authorizing the manager to sell personal property with a value of less than \$500 in accordance with provisions essentially the same as those found in GS 160-59, which provides for the sale of such property by the governing board.

Sec. 4.161 of the revised Reidsville Charter [Chapter 831 (SB 437)] gives Reidsville broader powers in the sale of property to other governmental units than is found in GS 160-59, which provides only for the sale of *personal* property to other governmental units at private sale. The Reidsville Charter provides that "the city council shall have the power to sell at private sale to the Reidsville Graded School Board, the County of Rockingham, or any agency of the State of North Carolina or the government of the United States located within the territorial limits of Rockingham County any real or personal property belonging to the city for such consideration and upon such terms as, in the judgment of the city council, shall be in the best interest of the citizens of the City of Reidsville."

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# PUBLIC PERSONNEL

*Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.*

The trend toward increasing local control over salaries and personnel matters was continued and accelerated by the acts adopted by the 1961 General Assembly. Previous progress in this area may partially have been responsible for the five per cent reduction in personnel bills adopted by the 1961 General Assembly. Personnel bills accounted for 18 per cent of all ratified bills in 1959 and only 13 per cent in 1961.

Of the 1,298 bills enacted, 175 affected some aspect of state, county and/or local personnel administration. An analysis of the new personnel acts reveals that 16 were state-wide acts, 132 were county acts, and 27 pertained to cities and towns or their employees.

A classification of the new personnel acts as to subject matter revealed that 87 acts changed the salary or compensation of one or more public officials or employees, 43 revised the fees collected by local officials, and 51 pertained to pension plans and retirement systems. Other acts amended statutes pertaining to civil service, credit unions, group insurance, jurors' pay, mileage allowances, and workmen's compensation.

## Compensation

### State Officials Compensation

Chapter 840 (HB 816) is a proposed constitutional amendment authorizing the General Assembly to fix the compensation of the Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. The proposed amendment to be voted on at the next general election deleted a provision in the present Constitution prohibiting the above officials from receiving other allowances or emoluments. The objective of the proposed amendment is to permit the General Assembly to increase the compensation of the above officials during the term of office for which they have been elected.

Chapter 984 (SB 409) increased the salaries of the solicitors of the state from \$7,936 to \$9,000 a year.

### State Employees Compensation

Chapter 833 (HB 10) the general appropriations act provided funds for granting a one-step (five per cent) increment to each permanent, full-time employee subject to the State Personnel Act. The effect of this legislation was to increase by five per cent the minimum and maximum rates to pay for each class of positions. The General Assembly authorized a similar increase for most other full-time state employees. The appropriations act also provided funds (1) to continue the salary adjustments made in adopting the new salary schedule July 1, 1960, (2) to provide automatic and merit salary increases in accordance with the provisions of

the State Personnel Act, and (3) to adjust salaries (\$200,000 for each year of the biennium) of employees covered by the State Personnel Act. The act also prohibited State institutions of higher education from paying student help less than seventy-five cents an hour.

Chapter 1087 (SB 501) appropriated funds to increase the salaries of Supreme Court employees by the same percentage granted to employees subject to the Personnel Act.

Chapter 536 (SB 224) empowered the State Personnel Director with the approval of the Council and the Governor, to provide for a system of longevity, merit salary increases over and above any maximums established by the standard salary scales. No additional funds were appropriated specifically for paying increases given in accordance with the provisions of this latter act.

### State Employee Subsistence

The general appropriations act increased the amount of actual meal and housing expenses traveling officials and employees may be reimbursed. The subsistence allowance for members of state boards was increased from \$9.60 to \$12.00 a day when traveling in-state and from \$9.00 to \$14.00 when traveling out of state. A new provision was added to permit board members attending meetings in their home communities to be reimbursed for meals on the days they attend such meetings.

The general appropriations act also increased the subsistence allowance allowed other state officers and employees from \$9.00 to \$10.00 when traveling in state and from \$12.00 to \$14.00 when traveling out of state.

While increasing the subsistence allowances of traveling state employees, the General Assembly repudiated the idea that state employees should be paid a subsistence allowance in addition to being reimbursed for actual travel expenses allowed all state employees.

Seven different bills were introduced proposing to authorize or increase subsistence allowance for some groups of full-time state employees. Two groups of employees, patrolmen and license examiners, enjoyed statutory allowances under previous legislation. Not satisfied with present allowances, HB 34 was introduced to increase a patrolman's allowance from \$40.00 to \$75.00 a month, and HB 170 was introduced to increase a license examiner's allowance from \$25.00 to \$50.00 a month.

Five other groups sought similar benefits. SB 202 would have allowed officers and agents of the State Bureau of Investigation a \$75.00 a month subsistence allowance. HB 271, HB 308, and HB 652 would have authorized \$40.00 a month subsistence allowances for driver license examiner hearing officers, motor vehicle weight station operators, and driver education employees. HB 870 would have removed statutory limits on subsistence allowances for industry development seekers.

The General Assembly closed the door on special sub-



sistence allowances for groups of employees by killing all bills increasing and extending subsistence allowances and repealed the \$40.00 and \$25.00 a month allowances to highway patrolmen and driver license examiners. Although these officers were deprived of their subsistence allowances, the general appropriation act included funds for an extra ten percent increase in the salaries of all patrol and examiner personnel to replace the lost subsistence and the additional taxes which must be paid on the salary increase.

While disapproving special group consideration, the General Assembly authorized the recognition of special cases. The general appropriations act added a new section, G.S. 138-7. This section provides that the Director of the Budget, with the approval of the Advisory Budget Commission, shall establish and publish uniform standards and criteria for reimbursement of extraordinary changes for hotels, meals and convention registration. If prior approval is secured, expenditures above the \$10.00 in state, \$14.00 out of state, and \$10.00 convention registration may be reimbursed.

#### *County Employee Compensation*

The 1961 General Assembly passed 73 county salary acts. Only once in the last 20 years has a General Assembly passed fewer county salary acts.

The 1961 General Assembly authorized or directed salary changes/increases for the chairman and/or members of the board of commissioners in the following 21 counties: Anson, Bertie, Brunswick, Davie, Gates, Graham, Guilford, Hertford, Johnston, Lenoir, Martin, Mecklenburg, Mitchell, Northampton, Onslow, Pitt, Rutherford, Sampson, Stokes, Wayne and Wilson.

Acts were also adopted increasing the compensation of members of the county boards of education in Bertie, Gates, Graham, Martin and Stokes counties. Acts increased the compensation of the board of health in Martin County and the travel allowance of the board of health in Bertie County.

Salary increases for 34 county constitutional officials were authorized or required by local acts affecting 16 counties. The average increase required by statute was \$660 a year for each official. All three county constitutional department heads (clerk of court, register of deeds and sheriff) may or will receive increases in Alamance, Brunswick, Franklin, Gates, Greene, Halifax and Person counties. Increases were also authorized for the following constitutional officials: clerk of court in Cherokee, Graham, Guilford, Mecklenburg and Tyrrell counties; register of deeds in Cherokee, Forsyth, Tyrrell and Wilkes counties; and sheriff in Edgecombe, Harnett and Mecklenburg counties.

Other county officials who may receive salary increases as the result of 1961 legislation include the county accountant of Mitchell, the county attorney of Graham, Henderson and Hertford counties, the judge and/or solicitor of recorder's court in Brunswick, Columbus, Franklin, Greene, Pasquotank, Richmond and Rowan counties, and a number of clerks and deputy sheriffs.

#### *County Salary Home Rule Increased*

Evidence of the continuing and accelerating trend in North Carolina toward county salary home rule can be seen in the legislative history of this legislation. In 1950, county commissioners in only seven counties were authorized to determine the salaries of all elective and appointive officials and employees. Only one other board could set the salaries of all appointive officials and employees. Following the Institute's first study of county salary home rule in 1952, the number of boards of commissioners with authority to set the salaries of elective and appointive officials and employees was increased to 26 and the number of boards with authority to set salaries of appointive officials and employees was increased to 12.

After the 1959 General Assembly, 37 boards of com-

missioners had authority to set the salaries of both elective and appointive officials and employees; and the boards of commissioners in 16 other counties had the authority to set the salaries of all appointive officials and employees.

The 1961 General Assembly adopted legislation providing that commissioners of eleven additional counties may henceforth set the salaries of both elective and appointive officials. These counties include Bladen, Cherokee, Davie, Franklin, Martin, Northampton, Pitt, Perquimans, Randolph, Stokes and Transylvania.

The commissioners in 48 counties now have the authority to set the salaries of elected officials and the commissioners in 63 counties now have authority to set the salaries of appointive officials and employees.

The only exception to the trend toward county salary home rule was Chapter 946 (HB 1187). This act, applicable only to Graham County, requires the board of commissioners of Graham County to appropriate funds for granting salary increases to the employees of the Graham County Welfare Department. The commissioners of Graham County are directed to appropriate such surplus debt service funds, not exceeding \$800 per year, as the Graham County Board of Public Welfare may determine to be wise.

#### *County Fees Home Rule*

Most county officials in North Carolina are today paid a salary. Only a few officials are still exclusively dependent upon the fees they collect for their entire compensation. In spite of this shift from fees to salaries, fees for special services rendered continue to be an important source of county revenue. As the costs of providing these services increase, county commissioners have asked that the fees be increased by the General Assembly or have requested authority to increase the fees charged.

The first state-wide act authorizing county commissioners to set fees and commissions was enacted in 1953. This first act was applicable to only 13 counties. After the 1955 General Assembly 30 counties could set the fees and commissions charged by county officials. Twenty-one of these counties were subject to the state-wide act. The other nine counties had secured similar if not identical local legislation.

The 1961 General Assembly granted fee setting authority to the following six additional counties: Cherokee, Martin, Moore, Pender, Perquimans and Pitt. With the addition of these counties, county fee home rule is a recognizable trend of county government in North Carolina today.

#### *County Travel Allowance*

G. S. 147-8 provides that state and local employees who are authorized by statute to charge mileage for the use of a motor vehicle in the performance of their duties shall not charge in excess of seven cents per mile. Chapter 905 (HB 1017 which is applicable only to Guilford County repeals the seven cents per mile limitation and provides that the board of commissioners of Guilford County shall determine the proper mileage to be allowed county employees. This local act also amends G. S. 147-9 by repealing the criminal liability provisions as to Guilford County officials who pay mileage in excess of seven cents a mile.

#### *Compensation of Jurors*

One small but neglected area needing legislative study is the matter of fees allowed citizens for jury service. The 1961 General Assembly did not act to correct the problem; instead the General Assembly continued and extended the confusion.

Article II, Section 29 of the North Carolina Constitution prohibits the General Assembly from passing any local, private or special acts relating to a number of matters including the pay of jurors. This provision of the Constitution is either overlooked or disregarded by many county officials and legislators. In fact, it is noted more for its breach than its observance.

State-wide legislation in accordance with the Constitution permits the board of commissioners of the respective counties to fix the compensation of jurors at not less than \$3.00 a day and not more than \$8.00 a day. The state-wide legislation sets the travel allowance of jurors at five cents a mile for one round trip a week or term.

As a result of the action of the 1961 General Assembly and previous assemblies, the state-wide act described above now applies to a minority of the counties of the state.

Prior to the 1961 General Assembly, 42 counties were known to have local acts setting the pay of jurors. The 1961 acts set the compensation of jurors in the following nine counties: Alleghany, Bladen, Cherokee, Halifax, Johnston, Martin, Onslow, Union and Washington counties. Now, 51 counties, more than half of the counties of the state, are paying jurors in accordance with unconstitutional local acts. The number would be larger, but the Columbus, Granville and Yancey county acts have been repealed.

Fourteen of the acts do not increase the freedom of the counties to compensate jurors. In fact, the local acts in these counties only restrict the authority of the board of commissioners. In each county the compensation provided by the local act sets the compensation within the limits of the state-wide act.

The other local acts vary from the state-wide act in one or two of five respects. First, 27 counties pay each juror mileage for each trip required between his home and the county seat while he is serving on the jury. Second, Duplin County allows jurors only four cents a mile travel allowance. Third, Caswell allows jurors ten cents a mile for travel. Fourth, five counties, Craven, Duplin, Scotland, Union and Wayne, have acts authorizing the county commissioners to set the fees of jurors at \$2.00 a day instead of the state-wide minimum of \$3.00. Fifth, Onslow county pays jurors \$10 a day which is above the \$8.00 state-wide maximum.

In considering legislative reform of the judiciary, future general assemblies may note the disregard of the Constitution by 51 counties as indicating a need for revision of the state-wide act governing the fees and travel of jurors.

#### *Compensation of Municipal Officials*

Fourteen local acts and charter revisions set the salary of the mayor, and/or aldermen in the following cities and towns: Carthage, Charlotte, Durham, Edenton, Ellerbe, Hickory, Kinston, Kure Beach, Longview, New Bern, Scotland Neck, Selma and Wilson.

Most of the acts authorized small salary or per diem increases. Nine of the acts authorized a small salary increase for the mayor and aldermen instead of a per diem allowance. The largest increases were given to the mayor of Kinston who was increased from \$2,000 to \$3,600 and the mayor of Charlotte who was raised from \$3,600 to \$5,000 a year.

#### **State Personnel Department**

Two items in the legislative program of the state employees' associations pertained to the State Personnel Act, and both were enacted.

Chapter 625 (SB 197) increased the membership of the State Personnel Council from five to seven members and increased the number of state employees who might serve on the council at any time from one to two. The terms of office of the present members were terminated, and eventually all council members will serve six-year overlapping terms.

Chapter 536 (SB 224) which permits the longevity salary payments previously described was also supported actively by the employee associations. This act empowered the State Personnel Department to establish a system of longevity, merit salary increases over and above the maximums established by the state salary schedule.

The newly acquired State Farmers Market was excluded

from the jurisdiction of the State Personnel Department by Chapter 833 (HB 10).

#### **Civil Service**

Four acts amended or rewrote local civil service charter provisions. Two acts pertained to the High Point Civil Service Commission. Chapter 929 (HB 1100) provided for (1) a four instead of a six-year term of office for commission members, (2) five eligibles to be certified for each vacancy instead of three, (3) the commission's rule making authority and supervision to be restricted to personnel matters rather than the general promoting of efficiency, (4) the salary of the secretary of the commission to be set by the council, and (5) the city manager to appoint a personnel director who would not be subject to the civil service commission.

Other acts rewrote the Mecklenburg County Rural Police Civil Service Act to delete a provision restricting applicants to white persons and added a minor amendment to the New Bern Civil Service Act.

A civil service study commission was proposed and considered by a committee of the 1961 General Assembly. HB 103 would have created a North Carolina Civil Service Study Commission of nine members to be appointed by the Governor. The resolution directed the proposed commission to make a thorough study of the desirability and feasibility of establishing a civil service system to be applicable to state employees. The resolution received an unfavorable report from a House committee.

#### **Workmen's Compensation**

Three acts affect workmen's compensation as far as public employees are concerned. Chapter 235 (HB 167) declares a county agricultural extension service employee holding an appointment as a member of the staff of the U. S. Department of Agriculture not to be an employee of the county for purposes of the Workmen's Compensation Act. Agricultural agents are covered under the Federal Employees Compensation Act which provides similar benefits, and so they do not need workmen's compensation coverage.

Chapter 231 (HB 357) extends workmen's coverage to Caswell County deputy sheriffs. The deputy sheriffs in the following 13 counties still do not have workmen's compensation coverage: Alleghany, Avery, Bladen, Carteret, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga and Wilkes counties.

Chapter 1200 (HB 1146) amended the Workmen's Compensation Act to exempt governmental units acting as self-insurers from paying the workmen's compensation self-insurers maintenance payroll tax required by G.S. 97-100 (j).

#### **Credit Unions and Insurance**

##### *Credit Unions*

Public employees belonging to credit unions as well as other credit union members may be affected by Chapter 1187 (HB 1062) which authorizes a credit union to make unsecured individual loans of up to \$750.

##### *Insurance*

Since 1923, municipalities have been authorized to pay the entire cost of up to \$2,000 of group life insurance for each employee. Greensboro pioneered in 1955 by securing legislation authorizing the purchase of up to \$10,000 of group life insurance on an employee. The 1955 Greensboro act required the employee to pay one-half of the cost of all group life insurance over \$2,000 and the cost of group insurance on dependents and insurance payable after retirement.

Greensboro's leadership led to a revision in the state-wide act in 1959 to permit a municipality to insure the lives of city employees under group insurance plans up to \$5,000 per person. All of the cost of such insurance to be paid by the municipality.



Chapter 686 (HB 819) put Greensboro out in front again in providing group insurance for its employees. In rewriting the city charter the 1955 act is included in the city charter and amended to permit Greensboro to pay the entire cost of up to \$25,000 of group life insurance per employee.

#### Retirement

Thirty retirement or pension acts were enacted by the 1961 legislature. Four pertained to the state-wide retirement funds; one amended the state-wide Firemen's Pension Fund; 11 authorized or amended local retirement funds; and 14 established or amended local law enforcement officers' relief funds. The most important retirement act passed by the 1961 General Assembly was Chapter 626 (SB 284) which for the first time authorized the investment of North Carolina public employees' retirement funds in certain common and preferred stocks.

#### State Retirement Funds

For at least ten years some retirement administrators have been stating that the world has been remarkably blind to a primary cause of insecurity in old age—inflation. During the 19th century, the rise in prices averaged about one-half of one per cent per year. During the first sixty years of the 20th century, the average has been about 2½ per cent per year. Because of this steady inflation, many pension planners stress that the investment of pension funds must protect the purchasing power of the dollar as well as safeguard the dollars themselves.

Chapter 626 (SB 284) authorizes the State Treasurer to appoint a five-member investment committee to advise on the investment of up to ten per cent of all invested funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System in common and preferred stocks.

The new act establishes certain limitations upon the stock investments. Not more than 1½ per cent of invested funds may be invested in stock in any one year. The total number of shares in a single corporation held by either fund may not exceed eight per cent of the corporation's outstanding stock. Not more than 1½ per cent of the total value of either fund shall be invested in the stock of a single corporation.

Retirement funds may be invested only in stocks listed on a national security exchange as provided in the Federal Securities Exchange Act and stocks of (1) banks which are members of FDIC and have capital, surplus, etc., of at least \$20,000,000 and (2) life or fire or casualty insurance companies with capital, surplus, etc., of at least \$50,000,000. Only stocks which meet detailed previous earning requirements set out in the statute may qualify for purchase by the retirement funds.

A second less revolutionary act also liberalizes the investment policies of the three state retirement systems, the two listed above and the Law Enforcement Officers' Benefit and Retirement Fund. Chapter 397 (HB 186) permits the funds of the three retirement systems to be invested in obligations of any corporation in the United States which bears any of the three highest ratings of at least two nationally recognized rating services. Previously, retirement funds had been restricted to obligations bearing the two highest ratings.

Chapter 397 further liberalizes the retirement funds investment policy by authorizing investment in notes secured by mortgages on North Carolina real estate and insured by federal housing commissioner, or in debentures issued by the commissioner and guaranteed as to principal and interest by the U. S., FHA, or other U. S. Government agency.

#### Teachers' and State Employees' Retirement System

Chapter 516 (HB 482) and Chapter 779 (HB 974) amend the Teachers' and State Employees' Retirement

System to give full credit for prior service and military service to veterans who entered the armed services after September 16, 1940 and who returned to state employment prior to October 1, 1952 (now, July 1, 1950).

Chapter 516 (HB 482) adds a number of technical amendments to the Teachers' and State Employees Retirement System. It permits a person who joins the Law Enforcement Officers' Benefit and Retirement Fund and later transfers to another non-law enforcement state position to transfer his contributions and credits and the state's contribution to the teachers' retirement system.

Agricultural extension service employees, in the discretion of the local board of commissioners, may become members of the teachers' retirement system to the extent that their compensation is derived from the county.

Members of the teachers' retirement system who leave state service prior to attaining age 60 no longer have to file an application to retire before they are 61 or lose the state's matching contribution.

The act authorizes a state agency to have deducted from an employee's accumulated contribution to the retirement system an amount equal to any fees embezzled by a former employee. It places a three-year statute of limitations on the collection of deficiency in payments and on actions by the state or the retirement system to collect overpayments.

Chapter 516 also permits state employees leaving state employment to request that their accumulated contributions be retained in the state teachers' fund (vested) if they are employed by a governmental unit participating or which begins to participate in the N. C. Local Governmental Employees' Retirement System within five years.

#### Local Governmental Employees, Retirement System

Chapter 515 (HB 481) adds a number of minor technical amendments to the Local Governmental Employees' Retirement Act as well as several amendments of general interest. Employing governmental units eligible to cover their employees were redefined to include any separate, local governmental entity. Henceforth, employees who retire with 20 or more years of service before reaching 60 years of age for general employees and 55 for policemen and firemen may apply for retirement at any time after reaching the minimum retirement age. Previously, such members were required to file their applications within 12 months of reaching the minimum retirement age.

The local governmental retirement act now permits local officials to serve on the board of trustees without vacating their local office or violating the double office holding provisions of the Constitution. The new amendment exempts city and county officials serving on the board from taking a second oath and provides that they shall serve in addition to their local governmental duties.

Chapter 515 adds the embezzlement deduction and three-year statute of limitations described above to the Local Governmental Employees' Retirement Act.

#### Firemen's Pension Fund

Only one act amended the Firemen's Pension Fund. Chapter 980 (SB 394) inserts as a purpose of the 1959 Firemen's Pension Fund the recognition of the public service rendered by the eligible firemen. G.S. 118-25 was amended to permit eligible firemen to accept pensions from this fund while also accepting pensions from other retirement funds in spite of statutes prohibiting members from receiving pensions from more than one fund financed by public funds. The amendment also deleted Section 2 of the 1959 enabling act. This section stated that the state's contribution to the pension fund would be derived solely from the pro-

(Cont'd., see "Public Personnel" on p. 68)

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# CRIMINAL LAW AND PROCEDURE

Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

The 1961 General Assembly continued in its tradition—on the whole, healthy—of looking warily upon bills designed to create new crimes or expand the powers of the police or the state in the area of criminal law and procedure.

Notable exceptions were the passage of several acts dealing with various types of fraudulent behavior and the legislative overruling of the judicial rule that solicitors could not argue to the jury for imposition of the death penalty. This last mentioned act was one of the recommendations of the Judicial Council. The council's program for this session fared better than expected by some in that four out of its eight proposals affecting criminal law and procedure were adopted. The proposals that were adopted are treated under appropriate topics below. The proposals that failed were in every instance reported unfavorably in the House. They were SB 30 (making larceny by trick a felony whatever the amount taken), HB 60 (making possession of stolen goods some evidence that the possessor knowingly received them), HB 62 (deleting reference to inferior courts in the suspended sentence appeals statute), and HE 63 (giving the state the same number of peremptory challenges as the defendant).

Another feature of this Assembly was a number of bills relating to gambling and sporting events. Proposals to prohibit the possession, distribution or transmission, including transmission over wire services and other communications media, of betting odds or point handicaps were killed (SB 467 and 468 and identical HB 1153 and 1154), but the existing laws on athletic bribery were strengthened. In addition, Chapter 1158 (SB 487) authorized allotment to the Department of Justice from the Contingency and Emergency Fund up to \$50,000 for employment of special personnel to investigate and prosecute violations of our laws relating to athletic contests.

As usual, a number of bills were introduced to modify and strengthen existing statutes. Those that passed included the subjects of drugs and weapons to inmates of certain institutions, poison liquor, false fire alarms, tightening up search warrant procedure, including stimulant drugs among the items for which search warrants may issue, marking of state-owned cars, and increasing the punishment for safe cracking. Bills that failed that were in this group included SB 364 (Peeping Toms), HB 1133 (bad check law), HB 654 (probation procedural changes plus authorization for week-end jailing as a condition of probation), HB 480 (loitering and disorderly conduct law), HB 246 (cruelty to animals), and HB 617 (liquor law minimum punishment).

Acts that break more or less new ground count as among their number the following: ban on Sunday sales of certain goods, firefighter law enforcement authorization, establish-

ment of statewide ABC peace officers, licensing of private detectives, penalty for transmission of obscenity from out of state, regulation of ad solicitation for law enforcement publications, and a prohibition against use of documents resembling a summons or other official process to intimidate or coerce in connection with any claim or demand. Bills that failed in the attempt to break new ground were HB 900 (criminal trespass and riot law apparently aimed at sit-ins), HB 225 and 583 (expanding the power of arrest without warrant), HB 290 (hot pursuit arrest), and HB 113 (virtual abolition of capital punishment).

For reference to other criminal law bills that both passed and failed, see the articles entitled MOTOR VEHICLES AND HIGHWAY SAFETY and GAME, FISH, AND BOAT LAW ENFORCEMENT.

## \$200 Larceny and Receiving

Chapter 39 (SB 29), which was one of the bills proposed by the Judicial Council, may affect more people than any other piece of criminal legislation passed in 1961. The act amends GS 14-72 to raise the dividing line between the misdemeanor and felony categories of the crimes of larceny and receiving stolen goods from \$100 to \$200. This will result in large numbers of cases of what is essentially petty thievery being handled in inferior courts rather than in the crowded superior courts. The act does not apply to crimes committed prior to July 1, 1961, or to causes pending at that time.

## Selling Goods on Sunday

Chapter 1156 (SB 479) takes the form of a blue law but is intended more for the purpose of regulating business competition than to keep the Sabbath holy. The act was vigorously supported by merchants all over the state, and it is frankly designed to take the profit out of full-scale Sunday operation on the part of discount houses and self-service drug stores. The merchants supporting the legislation stated that they feared being forced by the necessity of competition to open on Sunday in the absence of a law such as this.

The Supreme Court of the United States in a battery of opinions handed down May 29, 1961, affirmed the constitutionality of various laws against Sunday sales in Maryland, Massachusetts, and Pennsylvania. HB 1044 was introduced on the following June 5 and was almost identical in text with one of the Pennsylvania statutes upheld by the Court. See 18 Purdon's Pa. Stat. Ann. § 4699.10, as quoted in *Two Guys from Harrison-Allentown, Inc. v. McGinley*, 366 U.S. 582, 583, n. 1 (1961); see also *Braunfeld v. Brown*, 366 U.S. 599, 600, n. 1 (1961). On June 12, a bill identical with HB 1044 was introduced in the Senate; it was this Senate bill—as amended—which eventually was ratified as Chapter 1156 (SB 479).

Chapter 1156 adds GS 14-346.2 making it a misdemeanor punishable in the discretion of the court to engage on Sunday in the business of selling or to sell or offer to sell on



that day, at retail, particular items of merchandise listed in the act. The act is effective October 1, 1961. There is no provision closing any stores on Sunday; it is simply against the law to sell any of the following: clothing and wearing apparel, clothing accessories, furniture, housewares, home, business, or office furnishings, household, business, or office appliances, hardware, tools, paints, building and lumber supply materials, jewelry, silverware, watches, clocks, luggage, musical instruments and recordings, excluding novelties, toys, souvenirs, and articles necessary for making repairs and performing services. (The emphasized phrase was added by amendment and is not in the Pennsylvania statute.) The Senate committee reporting the bill had suggested an amendment making the act inapplicable to resort areas. This amendment was rejected, on the grounds that it might prejudice the constitutionality of the legislation. In its place was substituted a provision allowing county commissioners to exempt by resolution their county from the operation of the act. This portion of the bill was further amended in the House to result in the scheme finally ratified: the governing board of any incorporated city or town may by resolution exempt the municipality from the operation of the act; county commissioners in any unincorporated area of their county may by resolution exempt all or any portions of the county from the operation of the act.

The act unquestionably raises a number of legal problems. One of the first is the interpretation of the phrase exempting from the ban "articles necessary for making repairs and performing services. . . ." The reasoning advanced in support of adding this phrase was to allow emergency sales of prohibited articles when necessary for the completion of the permitted acts of repairing or servicing. For example, a service station or garage might need a special tool on Sunday to complete the repair of an automobile. Suppose, however, the garage owner bought the tool on Sunday in order to avoid losing any time on Monday or Tuesday when he contemplated using it? The act does not clearly specify that the repairs or services must be special ones to be performed on Sunday in order to qualify under the exemption, though there is always the possibility the court might so construe the statute. Another question of interpretation might be how broadly to interpret the phrase "performing services." Could an interior decorator sell furniture on Sunday if the sale was an incident of the performance of the decorating service? Could a tailor sell clothing accessories in the process of fitting a suit? In each case there is a grave danger the sale might be the major component of the transaction and the performance of the service minor and incidental. Apparently the courts will have to determine on a case by case basis whether the "sale" or the "service" aspect is paramount in any particular instance.

Although there is little doubt but that the act is basically constitutional in the light of the recent decisions of the Supreme Court of the United States a strong attack—probably on the basis of provisions in the North Carolina Constitution—will certainly be made against the part of the bill allowing county commissioners to exempt by resolution all or portions of a county lying outside incorporated areas.

#### Death Penalty Argument

Chapter 890 (HB 72) represents a legislative overruling of *State v. Manning*, 251 N.C. 1, 110 S.E.2d 474 (1959), and adds GS 15-176.1 expressly permitting the solicitor or other counsel appearing for the state to argue that the jury should not recommend mercy in a capital case.

In 1949 all capital offenses but one (GS 14-278, malicious train sabotage causing death) were amended to provide that the jury may recommend life imprisonment instead of death. A series of cases has underscored the unfettered discretion of the jury in its recommendation; the *Manning*

case took the position that argument of the solicitor against the exercise of the discretion represented a restriction on the discretion. The Judicial Council had endorsed the bill on the ground that the defense attorney could argue in favor of the lesser life imprisonment punishment and that it was unfair to prevent the solicitor from replying to this argument. See Note, 38 N.C. L.Rev. 281 (1960) for a discussion of the *Manning* decision.

#### Laws Governing Fraudulent Conduct

##### *Credit Card False Pretenses*

The felony of obtaining property by means of false pretenses defined in GS 14-100 is highly technical. If either service or credit is obtained instead of "property" there is apparently no crime under the section. Other technical elements of the crime to be satisfied are the false representation of a subsisting fact calculated to deceive and which does deceive. As a result of the restricted application of the felony, a number of supplementary felonies and misdemeanors involving various fraudulent practices are grouped in GS 14-101 through -113. Chapter 223 (HB 255) enacts a new statutory article setting out further supplementary crimes at the misdemeanor level consisting of GS 14-113.1 through -113.6 The new article specifically covers fraudulent use of credit devices of all sorts, including use of telephone or credit numbers as well as credit cards. Two basic types of fraud are made misdemeanors punishable by fine or imprisonment or both in the discretion of the court; attempts to commit the prohibited acts are additionally included under this punishment.

The first type of offense is knowingly obtaining credit or purchasing either property or services (1) by the use of a false, fictitious, or counterfeit credit device; (2) by the use of a credit device of another without authority; or (3) by the use of a credit device that has been revoked when proper notice of revocation has been given. The article defines notice of revocation of a credit device and sets out prima facie provisions relating to receipt of notice and of the guilty knowledge required in the use of a credit device.

The other type of offense is the fraudulent obtaining of free telephone or telegraph service or the free transmission of a message or signal by a telephone or telegraph company.

It is obvious that some kinds of credit card fraud fall squarely within the classical pattern of the felony of false pretenses. As the act specifically states it should not be construed to repeal GS 14-100, this type of conduct may still be indictable as a felony instead of being placed mandatorily within the new misdemeanor classification. This will raise the question whether there would be an option to prosecute a particular offense as a misdemeanor instead of as a felony, and whether prosecution for the misdemeanor would constitute former jeopardy in a subsequent felony trial.

##### *Forged Endorsements*

Although GS 14-120 has long made it a felony to utter or knowingly pass forged commercial paper, it did not prohibit the forging of an endorsement or the knowing passage of paper with a forged endorsement. In recommending the bill which was ratified as Chapter 94 (SB 32), the Judicial Council indicated that the forged endorsement offenses might be covered by the common law but that it would be a helpful clarification to have them set out in the statute. Chapter 94 amends GS 14-120 to add as felonies under that section the following three transactions: (1) the false making, forging, or counterfeiting of any endorsement of any instrument described in GS 14-119, whether it be genuine or false and whether done for the sake of gain or with intent to defraud or injure any other person; (2) the knowing utterance or publication of any instrument described in GS 14-119 containing a false, forged, or counterfeited endorsement; and (3) the passing or delivery of or the attempt to

pass or deliver any instrument described in GS 14-119 to another person, with knowledge that it contains a forged endorsement.

#### *Simulated Court or Official Process*

Bill collectors who use official-looking documents to frighten people into paying their debts will now have to find other methods of persuasion. Chapter 1188 (HB 1082) has added new GS 14-118.1 making it a misdemeanor punishable by a fine up to \$200 or imprisonment up to six months or both to intimidate or coerce or attempt to intimidate or coerce by the use of fake court or official process. The exact words of the new statute make it unlawful "to in any manner coerce, intimidate or attempt to coerce or intimidate any person by the issuance, utterance or delivery of any matter, printed, typed or written, which simulates or is intended to simulate a summons, warrant, writ or other court process in connection with any claim, demand or account or any forms of demand or notice or other document drawn to resemble court process, writs, summonses, warrants or pleadings or any simulation of seals or words using the name of the State or county or any likeness thereof, or the words 'State of North Carolina' or any of the several counties of the State as a part of such simulation."

#### *Price-Fixing Prohibition*

Chapter 407 (SB 131) resulted from several instances of identical low bids having been received from firms seeking state contracts. In its final form the act adds GS 75-5 (b) (7) to make it unlawful for one buying or selling goods or services in North Carolina to agree or to carry out an agreement not to sell goods below a common standard figure or fixed value, or at any settled price or fixed or graduated figure, to preclude free competition among agreeing sellers or buyers or any purchasers or consumers. The new legislation is made subject to the Fair Trade Act, GS 66-50 through -57, and does not apply to acts done in compliance with the regulations of any state regulatory agency.

For a fuller discussion of Chapter 407 and also of Chapter 1153 (SB 464), which repealed GS 75-3 relating to the burden of proof in anti-trust and restraint of trade cases, see the article entitled PUBLIC PURCHASING.

#### **Search Warrants**

##### *Notation of Hour of Issuance and Names of Witnesses*

Chapter 1069 (SB 269) amended GS 15-26 to require that the person issuing a search warrant note on the face of it over his signature the date and hour of the day or night when it was issued and the name or names of the witnesses examined. This is an important step in criminal procedure likely to bring the North Carolina law more closely akin to the federal law, which has different search warrants for day and for night. Search warrants have always been short lived; the courts generally hold the warrant loses its validity when enough time has passed that the probable cause upon which it was issued may have been erased. This length is usually about one day. The statutory requirement of noting the hour of issuance may well instigate case refinements in this area. If a search warrant is issued in the morning, the North Carolina court might follow the federal lead and hold that an unexplained delay till after nightfall in making the search would void the warrant. See *Jones v. United States*, 357 U.S. 493 (1958).

The requirement of listing the names of the complaining witnesses on whose examination the warrant is issued does not change matters greatly. GS 15-27 already requires the complainant or other person to sign the affidavit under oath. Though *State v. Cradle*, 213 N.C. 217, 195 S.E. 392 (1938), holds the complainant need not be the one who signs, this in fact is usually the case.

One point of interest arising from this new legislation will be whether the court interprets the date, hour, and wit-

ness provisions as directory or mandatory. Under GS 15-27, evidence secured by the use of an "illegal" search warrant is made inadmissible. Although *Mapp v. Ohio*, 367 U.S. 643 (1961) has extended to all states the federal rule excluding evidence obtained by means of an unconstitutional search, North Carolina should still have the final say whether omission of certain details of form not required as a minimum of due process would render a warrant illegal.

#### *Stimulant Drug Search Warrants*

In 1959, GS 90-113.1 through -113.7 was amended to add stimulant drugs under the controls set out for prescription, delivery, and possession of barbiturate drugs. No corresponding legislation was introduced, however, to add stimulant drugs beside barbiturate drugs in the list of items for which search warrants may issue. Chapter 453 (HB 208) now remedies this oversight and amends GS 15-25.1 in several regards. The basic change is to include stimulant drugs as items for which search warrants may issue, and a definition of such drugs is set out that is identical with the one in GS 90-113.1(2). In addition, the definition of "barbiturate drug" is changed to conform to a change in the definition in GS 90-113.1(1) effected in 1959.

The truly noteworthy thing about Chapter 453, however, is a series of changes in search warrant issuance procedure inserted in the text of GS 15-25.1 as rewritten. As of now, these changes in procedure affect only search warrants for barbiturate or stimulant drugs; the main search warrant statute, GS 15-25, was left unchanged. Since GS 15-25 and GS 15-25.1 were previously identical in form and since there is no logical reason why they should differ, the 1961 changes may well be a prototype for future amendment of GS 15-25. The procedural changes written into GS 15-25.1 are as follows:

(1) Search warrants for barbiturate or stimulant drugs may be issued by any judge of any court of record, any clerk or assistant clerk of any court of record, or any justice of the peace (formerly, by any justice of the peace, mayor of any city or chief magistrate of any incorporated town, or the clerk of any court inferior to the superior court). (2) The act specifies that any warrant issued by a justice of the peace or by a superior court judge, clerk, or assistant clerk may be executed anywhere in the county in which executed; any warrant issued by an inferior court judge, clerk, or assistant clerk may be executed only within the territorial jurisdiction of the court (formerly, JP's and mayor's warrants were county-wide while clerk's warrants were restricted to the jurisdiction of the particular court).

(3) The warrant must be directed to any proper peace officer (formerly, any proper officer) and must authorize him to search for the drugs, seize them, and make return thereof to any court of competent jurisdiction to be dealt with according to law (formerly, the warrant authorized the officer to search for and seize the drugs, arrest the person having them in his possession or on whose premises they were found, and bring them before any magistrate of competent jurisdiction to be dealt with according to law). (4) The warrant must issue only on an affidavit sworn to before a proper issuing officer and which establishes grounds for issuance; if the issuing officer is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the drugs and naming or describing the person or place to be searched (formerly, if any credible witness shall prove upon oath before an issuing officer that there is reasonable cause to suspect. . . . it shall be lawful for the issuing officer to grant the warrant). (5) The warrant must state the grounds or probable cause for



its issuance and the names of the persons whose affidavits have been taken in support thereof; the warrant must command the executing officer to search forthwith (nothing of this kind has before been spelled out in the statute). (6) No warrant may be issued in any case upon an affidavit stating nothing more than "information and belief."

Examination of several of the changes will reveal that requirements already in the case law or other statutes have simply been included in detail. The ban against "information and belief" affidavits is new. Although the courts require the complainant to *tell* the underlying facts to the issuing officer, they have not required the facts to be set out in the affidavit. So far as search warrants for barbiturate and stimulant drugs are concerned, *State v. Elder*, 217 N.C. 111, 6 S.E.2d 840 (1940), which upheld an affidavit containing the word "information," has been legislatively overruled. The new act apparently is not intended to make any change in the standard practice that warrants may be issued on hearsay information if it is deemed reliable enough to furnish probable cause. See *State v. Banks*, 250 N.C. 728, 110 S.E. 2d 322 (1959).

Another new feature of the act is the authorization of clerks of superior court and their assistant clerks to issue search warrants. Many superior court clerks are also ex-officio clerks of recorders' courts, and in that capacity they and their assistants have often issued warrants, but this marks the first time a superior court clerk or assistant as such has been granted any power to issue any criminal warrant. Judges of superior and inferior courts were not previously included in any list of officials who could issue search warrants. There is some opinion that judges by virtue of their inherent judicial power plus the general language of GS 15-18 can issue search warrants—and inferior court judges at least have been issuing such warrants without challenge. This question has been settled as to search warrants for barbiturate and stimulant drugs, but is still a live issue for all other search warrants. One point that indicates the strict attitude taken to search warrants is the rigid territorial limitation written into the new act. Arrest warrants of recorder's court judges (if under seal) and of superior court judges may be executed anywhere in the state; this contrasts greatly with the new provisions. There is, of course, less need for an ambulatory search warrant, for most things to be searched for are in a fixed location; there may, however, be cases where drugs are being moved across the state in vehicles so that the territorial restriction will cause enforcement problems.

A remaining question concerns whether mayors may still issue search warrants for barbiturate and stimulant drugs. Mayors are granted the criminal jurisdiction of justices of the peace, and it is possible the General Assembly in eliminating the extra wording covering mayors and chief magistrates of incorporated towns believed they would still be covered by the term justices of the peace. Whether this is true is a matter for the courts.

#### Poison Liquor

Chapter 897 (HB 905) rewrites GS 14-329 to graduate the punishment for various acts of trafficking in poison liquor. The statute formerly punished manufacturing, selling, or dealing out poison liquor with a minimum of five years of imprisonment plus a discretionary fine. This punishment is retained only for the offense of manufacturing spirituous liquor for use as a beverage which is found to contain any foreign properties or ingredients poisonous to the human system. Sale of liquor found to be poisonous is broken down into two different categories depending on whether there is knowledge or reasonable grounds to know of the liquor's poisonous qualities. Along with sale are added the offenses

of transportation for other than personal use and possession for the purpose of sale. Where the sale, nonpersonal transportation, or possession for the purpose of sale is with knowledge or its equivalent, the offense is a felony punishable by imprisonment in the state's prison for not less than twelve months plus a discretionary fine. Where there is no knowledge or reason to know, the offense is a misdemeanor punishable by imprisonment for not less than six months plus a discretionary fine. In its old form, GS 14-329 was silent as to whether knowledge was a requirement; there was some feeling, however, that the severity of the minimum five-year punishment would cause the court to construe knowledge as a necessary part of the crime. Now it is clear that makers of poison liquor are strictly liable at the felony level whether they have any guilty knowledge or not; those otherwise dealing in poison liquor commercially are punished at the felony level only if they do have the guilty knowledge.

The statute as rewritten eliminates the meaningless *prima facie* provision formerly in GS 14-329 and substitutes the familiar one-gallon rule: possession or transportation of over one gallon of spirituous liquor is *prima facie* evidence that it is possessed for purpose of sale or transported for other than personal use. There is no *prima facie* provision however, to help the state in proof of the rather difficult element of knowledge or grounds for knowledge of the poisonous qualities of the liquor in the felony transportation and possession offense.

One new offense was added to GS 14-329. Transportation or possession of liquor found to be poisonous was made a misdemeanor punishable by a fine of not less than \$200 plus discretionary imprisonment. It is a complete defense however, for the defendant to show that the liquor was legally acquired and there was no knowledge of the poisonous nature of the beverage. Lack of knowledge alone, though, is not a defense. As a practical matter, no liquor bought through legal channels has been found to be poisonous in recent times, and the statute in effect places on those who have illicit liquor the risk of additional punishment if it turns out to be poisonous—without the necessity of proving the intent of the person to sell it or deal it out in any way. There is sufficient danger from illicit poison liquor to make it reasonable to place this extra burden on those who violate the law in buying illicit liquor.

#### Transmitting Obscenity

Chapter 1193 (HB 1102) adds to the law governing obscenity a special penalty provision to be enforced against nonresidents. The act, which is fairly complicated, provides for a penalty of not less than \$500 for each shipment of obscene materials if the following three requirements are satisfied: (1) the person, firm, or corporation in question is absent from the state and has not qualified to do business within the state, or is not otherwise amenable to the state's legal processes; (2) the person, firm, or corporation originated, published, or otherwise created some obscenity as defined in GS 14-189.1 knowing or having reasonable grounds to believe that it would be transmitted into this state; and (3) the obscenity was ultimately so transmitted.

The procedure for exacting the penalty is a suit brought by the solicitor in the name of the state in the superior court of any county; service of process to commence the action is to be by complaint and affidavit under the provisions of GS 1-98.1 *et seq.* (service of process by publication or outside the state). Any properties of a violator, including any chose in action, located in this state are subject to execution in satisfaction of the penalty; the penalty will be payable to the school fund of the county in which the suit is brought. A further provision states that anyone against whom seizure, attachment, or levy is brought for the satisfaction of the penalty may plead such in bar of any action for the en-

forcement of any obligation due the nonresident violator, and recovery by the nonresident is barred to the extent of any payment made under seizure, levy, or attachment.

Upon analysis of the nature of this new penalty, a number of legal issues need to be taken into account before there can be any final weighing of the effect of the legislation. A preliminary question is whether the suit should be considered exclusively an action in rem against any property of a defendant that happens to be in North Carolina. The answer to this is probably negative; the act subjects the defendant's property to payment of the penalty but the property has no necessary connection with the case, and there is no specific provision in the act for ancillary attachment of property upon commencement of the action. Assuming, then, that the existence of property of a defendant here is not a prerequisite of commencing an action, the question next arises whether a North Carolina judgment for the penalty would be given full faith and credit if an action were brought by North Carolina on the judgment in some state where the defendant did have property. See *Putnam v. Triangle Publications, Inc.*, 245 N.C. 432, 96 S.E.2d 445 (1957), holding unconstitutional an antecedent of GS 55-145(a)(3) in a factual setting analogous to that which would arise under this act. *But cf. Shepard v. Rheim Manufacturing Co.*, 249 N.C. 454, 106 S.E.2d 704 (1959). (It is assumed North Carolina could not bring the suit in some other state, where personal service could be had, because of the conflict of laws rule that penalty provisions will not be given extraterritorial effect.)

The above questions would be undermined, however, by an adverse answer to these next questions. Is this suit by the state for the penalty a *criminal action* so as to grant the defendant all of the constitutional rights of a criminal defendant? And, if so, may the state—regardless of how much property the defendant may have here—find the defendant guilty in absentia? Considerations of space prevent any examination of the issues set out, but it is obvious that careful account must be taken of them in any suit under the new act.

#### Athletic Contest Bribery

Chapter 1054 (HB 685) amends in some fashion six out of the seven sections in the criminal article dealing with protection of athletic contests (GS 14-373 through -379). Most of the changes were a technical strengthening of the language of the statutes, but one addition of substance is the amendment of GS 14-373, -374, and -377 to define the purpose of prohibited bribes as causing the loss of or a limitation of the margin of victory or defeat in an athletic contest. Also, the maximum punishment possible under each of the three sections cited was raised from five years to ten years of imprisonment.

#### Law Enforcement Controls

##### State ABC Officers

Chapter 645 (HB 603) adds GS 18-39.1 through -39.4 authorizing the commissioning of a new variety of state law enforcement officer. As is the case with all other state law enforcement officers, these will have limited subject matter jurisdiction. The ABC officers that most of us are familiar with are employees of county ABC boards; the new act creates in addition state ABC officers. The State Board of Alcoholic Control is given the authority to commission regular employees of the board as special peace officers; these employees will receive no additional compensation for performing duties as peace officers. They are given the right to arrest with warrant for violations of Chapter 18 of the General Statutes (Regulation of Intoxicating Liquors) and to pursue and arrest without warrant any person violating in their presence any of the provisions of GS Chapter 18 and any connected or associated breach of the peace, including

public drunkenness (*sic*). The officers shall have jurisdiction in any county or municipality that has adopted any segment of the Alcoholic Beverage Control Laws, and are authorized to go into any other county and assist in enforcing the provisions of GS Chapter 18 upon the request of the sheriff or other lawful officer in the county.

Each special peace officer must give a bond payable to the State of North Carolina for not less than \$1,000, conditioned upon the faithful discharge of his duty. The bond shall be duly approved by and filed in the office of the Insurance Commissioner, and shall be received in evidence in all actions and proceedings in this state. Prior to exercising any power of arrest, each officer commissioned must take the oath required of public officers before an officer authorized to administer oaths.

##### Licensing of Private Detectives

In the past the only statewide licensing of private detectives has been the requirement that they pay a license tax under GS 105-42. On June 14, 1961, however, it became unlawful to engage in the "detective business" without an additional license from the Director of the State Bureau of Investigation. Chapter 782 (SB 249) adds new GS 66-49.1 through -49.8 imposing some rather strict conditions on the licensing of detectives. There have been no standards previously, and literally a Nick Carter badge was enough. To get a license, a person now must have had at least two years investigative or law enforcement experience. At first it looked as if employees of a licensed agency would be exempt from licensing requirements so that the investigative experience could be gotten by one as an employee before striking out on his own, but a House amendment to the bill struck this provision out. Although the matter is not completely free from doubt, it appears from GS 66-49.6 (a) (7) and 49.3 (e) (6) plus GS 66-49.3a that every investigator as well as every agency must be licensed. Secretarial or clerical employees of a detective agency not doing investigative work would probably not fall under the licensing requirements. In addition to the requirement of either two years' investigative experience (including insurance adjusting) or law enforcement experience, applicants must be at least 21 years old, citizens of the United States, of good moral character, and able to furnish the names of three references—one of whom must be a judge, solicitor, police chief, or sheriff.

Licenses will be renewable with the Director of the SBI annually on June 30 upon proof of payment of the license tax under GS 105-42. The license must be posted in a conspicuous place in the principal place of business of the licensee. Other regulations of the detective business preclude: (1) divulging information to others than the client or employer for whom it was gotten, except as required by law or except to any law enforcement officer or solicitor or his representative; (2) knowingly making a false report to a client or employer; (3) conducting a detective business under a fictitious name (unless the license is under that name); (4) soliciting or advertising for business without stating the licensee's name and address as kept on file with the SBI; and (5) opening, closing, or changing the location of a branch office without notifying the SBI within ten days. In addition, a number of criminal offenses are specifically set out as grounds for revocation of the license, and one act of breach of contract will result in revocation: when there is wilful failure or refusal to render a service or a report to a client for which compensation has already been paid or tendered in accordance with the agreement between the parties.

Because of the strict standards set up for engaging in the "detective business," it is important to know exactly how this term is defined in the act. The basic definition is in terms of furnishing private patrol or guard service or ob-



taining or furnishing information with reference to a long list of subjects normally considered within the field of private investigations. The best way to tell who must be licensed is to subtract those who need *not* be licensed. These include: private patrolmen or guards who are employees and not on a contractual basis; insurance adjusters (so long as they merely investigate their insurance claims); persons employed exclusively and regularly by only one employer in connection with the affairs of that employer only where the basis is employer-employee and not contractual; officers or employees of the United States or this state or of any political subdivision thereof, while engaged in the performance of official duties; persons engaged in the business of obtaining and furnishing financial rating information; and attorneys at law licensed to practice in North Carolina, or their agents.

Although the licensing and regularizing of the detective business may lay the groundwork for future changes, the licensing act does not affect the present law that completely prohibits private detectives from carrying concealed weapons in this state.

#### *Removal from Office*

GS 128-16 lists six specific grounds upon which superior court judges may remove from office local officials connected with the administration of justice. Chapter 991 (SB 430) amends the statute to clarify that the proper judge to hold the removal hearing is the superior court judge resident in or holding the courts of the district where the official in question resides. In addition, the list of officials covered is expanded so that it now includes judges and prosecuting attorneys of any court inferior to the superior court (formerly, only city prosecuting attorneys were listed), justices of the peace, sheriffs, police officers, and constables.

#### *Firefighter Traffic Law Enforcement*

Chapter 879 (SB 440) as introduced would have given uniformed regular and volunteer firemen the power of arrest without warrant while directing traffic at the scene of fires in connection with their duties as firemen. The arrest provision, however, was struck out and the bill as passed gives firemen the right to "direct traffic and enforce traffic laws and ordinances. . . ."

#### *Soliciting Advertisements for Law Enforcement Publications*

Chapter 518 (HB 530) adds GS 14-401.10 to the General Statutes to prevent some supposed abuses in law enforcement advertising. It is far from certain, however, that the act does what it was intended to do. The only comprehensive directory of law enforcement officials recognized statewide that is *sponsored* by a law enforcement group is the *Official Directory* of the North Carolina Sheriffs' Association. Officers soliciting for advertising in this official publication reportedly discovered that in some areas merchants had already taken advertising in another law enforcement publication—privately sponsored—and were reluctant to advertise again. Some, indeed, had failed to distinguish one publication from the other and complained about being solicited from twice.

Chapter 518 grew out of this situation and attempts to cure it by requiring every person, firm, or corporation soliciting any advertisement to be published in any law enforcement officers' association's official magazine, yearbook, or other official publication to disclose to the person so solicited, whether requested to or not, the name of the law enforcement association for which the advertisement is solicited together with written authority from the president or secretary of the association to solicit. A careful reading of the act shows that it applies to persons soliciting on behalf of *official* publications of law enforcement associations, but it places no restrictions whatever on anyone soliciting on behalf of an unofficial law enforcement publication.

### **Other Statewide Criminal Law Changes**

#### *Furnishing Inmates with Prohibited Items*

GS 14-390 has long made it a misdemeanor punishable by fine or imprisonment in the discretion of the court to give or sell any narcotic or poison (except upon prescription), intoxicant, deadly weapon, or ammunition to an inmate of a charitable or penal institution; if the offender is an officer or employee of a state institution, he must be dismissed from office. Chapter 394 (SB 132) changes this law in several respects. The furnishing of poisons, narcotics, deadly weapons, or ammunition is made a felony punishable by fine or imprisonment up to ten years in the state's prison in newly-added GS 14-390.1; accessories, conspirators, and solicitors are punished equally with the principal under the terms of the act. The misdemeanor punishment under GS 14-390 is continued as to the furnishing of intoxicants and barbiturate or stimulant drugs are added, except when given on prescription. The act incorporates by reference the definitions of barbiturate and stimulant drugs in GS 90-113.1. The way the section is now written intoxicants may be given on prescription, whereas the previous wording of the section left this point somewhat in doubt.

#### *Safe-Cracking Punishment*

Chapter 653 (HB 724) has added since June 6, 1961, a new weapon in the law enforcement arsenal to be used against safe robbers. Previous laws covered breaking or entering with intent to commit a felony (GS 14-54—up to ten years), larceny (GS 14-70—up to ten years), armed robbery (done in the presence of a person) (GS 14-87—up to 30 years), and burglary with explosives (GS 14-57—life imprisonment or a term of years in the discretion of the court). (Before the crime of burglary with explosives is complete there must be both a breaking and an entering plus opening or attempting to open a vault or safe with explosives.) The new act imposes a sentence in the discretion of the court from ten years to life imprisonment for using explosives, drills, or other tools unlawfully to force open or attempt to force open or "Pick" the combination of a safe or vault used for storing money or other valuables.

#### *False Fire Alarm Law Amendment*

GS 14-286 was passed in 1921 making it a misdemeanor wilfully and wantonly to give a false fire alarm over any municipal fire alarm system or wilfully to molest, damage, or interfere with any such system. Chapter 594 (SB 291) amends the wording of the section to make it apply not merely to municipal systems but to all fire alarm systems.

#### *Malicious Mischief Civil Damages*

Chapter 1101 (HB 746) adds GS 1-538.1 making a change in the civil law that will often involve the testimony of law enforcement officers. Effective June 21, 1961, the parents of any minor child under 18 living with his parents will be liable for damages not to exceed \$500 payable to the owners of real or personal property maliciously or wilfully destroyed by the minor. The act indicates that the damages are to be collected "in an action in a court of competent jurisdiction," which apparently would require a separate civil suit. The judge in a criminal court, however, might as a short cut make payment of damages by the parents a condition upon which sentence will be suspended; in this event the judge would not be bound by the \$500 limitation.

### **Other Statewide Criminal Procedure Changes**

#### *Felony Trial Court Term Extension*

Chapter 181 (HB 73) was passed without amendment in the form recommended by the Judicial Council. It rewrites GS 15-167 to clarify when a judge should and what procedure he should follow to extend a term of court to allow completion of the trial of an important case that is in progress. The section formerly made the extension mandatory in felony cases and discretionary in all other causes except civil actions begun after Thursday of the last week. The re-

written section makes the extension discretionary in felony cases by substituting "may" for "shall"; the original form is kept, however, with felony cases being the instance in which extension is specifically authorized followed by additional language giving the same discretionary power in all other but after-Thursday civil cases. This undoubtedly means that a judge would feel freer to exercise his discretion to extend a term in felony cases than he would in other situations.

The act allows extension of the term if it appears the trial will go beyond five p.m. on the last Friday, but the judge may order a recess on Friday or Saturday till the succeeding Sunday or Monday if he wishes. The extension may be as long as necessary for the purposes of the case.

#### *Probation Revocation in Another County*

Chapter 1185 (HB 1056) adds a proviso to GS 15-200 relating to probationers in the superior court. If a probationer resides in or violates the terms of his probation in some county other than that in which he was placed on probation, superior court judges in any other county involved are given concurrent jurisdiction over the probation. Chapter 1185 clarifies the procedure to be followed if the probationer is not returned to the county in which he was placed on probation for hearing and disposition, and probation is revoked in the other county. The clerk in the revoking county may record the Order of Revocation in the Judge's Minute Docket to constitute the permanent record of the proceedings and send one copy of the revocation order to the Prison Department to serve as a temporary commitment. The original revocation order and all other papers pertaining to it are to be sent to the county of original conviction to be filed with the original records. The clerk in the county of original conviction will then issue a formal commitment to the Prison Department.

#### *Bill of Particulars on Activating Suspended Sentence*

Chapter 1000 (HB 689) adds GS 15-200.2 requiring superior court solicitors to have the defendant served with a bill of particulars by the day prior to the time he intends to pray judgment placing a suspended sentence into effect. The bill of particulars should set forth the time, the place, and the manner in which the terms and conditions of the suspended sentence are supposed to have been violated, but no special form of bill must be followed and any informality or defectiveness of the bill is not a ground for appeal.

#### *Evidence from Department of Archives and History*

Chapters 739 and 740 (HB 655 and 656) change certain sections of the evidence statutes to recognize the Department of Archives and History as a custodian and certifier of certain documents and records. GS 8-6 and -7, relating to plats, certificates of survey, abstracts of grants, and grants from the state, are amended by Chapter 739; this act will not likely have any great effect on criminal procedure. Chapter 740, however, will come into play in criminal cases. It amends GS 8-34 to insert the Department of Archives and History among the list of offices which may certify copies of official bonds, writings, papers, or documents recorded or filed in their offices. Such certified copies shall be as competent evidence as the originals unless the court shall order the production of the originals.

#### **ABC Law Changes**

The major change in the area of liquor law enforcement was the authorization of state ABC officers discussed above in the section on Law Enforcement Controls. Two other acts amending parts of Chapter 18 of the General Statutes need to be mentioned, however, as well as an uncodified appropriations act. Chapter 826 (SB 78) which places the sales tax on food also raises the tax on alcoholic beverages in GS 18-85. Chapter 956 (SB 230) amends GS-18-39(j) relative to the opening of ABC stores in counties that vote wet. Stores

should not be located in any community or town that voted dry, but the State Board of Alcoholic Control may alter this if it investigates and discovers a change of heart among the residents. The state board is to investigate upon a petition of 15% of the voters of the affected area submitted more than 18 months after the last election on the question.

Chapter 1173 (HB 848) authorizes state appropriations to assist local community alcoholism programs. The State Alcoholic Rehabilitation Program, an agency of the State Hospitals Board of Control, is authorized to establish and administer minimum standards for the local programs as a condition for participation in state grants-in-aid. The aid is to go only to communities that are ready to contribute to the support of the alcoholism programs locally, and no single community will receive the aid for longer than two years. The act appropriates \$45,000 from the General Fund to a Community Services Fund to be used for necessary state administrative personnel and for the local grants-in-aid.

#### **Local Criminal Law Changes**

##### *County Garbage Laws and Ordinances*

Four counties — **Wayne, Hoke, Stokes and Transylvania** — were added to the list of counties subject to the provisions of GS 153-10.1, granting county commissioners the power to pass ordinances governing the removal, method, or manner of disposal, depositing or dumping of garbage or waste matter in rural areas outside corporate limits. Similar local acts were also adopted affecting **Haywood** and **Burke**, and a 1951 special act relating to collection and disposal of garbage in **Guilford** was repealed.

##### *Other County Ordinance Provisions*

**Wilson** County set the pattern for a statewide law with Chapter 12 (SB 11) which authorized the county commissioners to regulate parking on county-owned land near the courthouse. Violation of the regulations was made a misdemeanor punishable by a fine not to exceed \$10. Chapter 191 (SB 28) followed shortly authorizing county commissioners all over the state to regulate parking on any county-owned property other than streets or highways, and the commissioners were authorized to declare violation of parking regulations a misdemeanor punishable by a fine of not more than \$1.

A number of other local acts concerning diverse areas of specialized regulation granted county commissioners or other local board members ordinance-making powers. Among those noted were acts punishing violations of regulations of **Watauga** Airport Commission, punishing violations of parking regulations of Rural Hall Sanitary District commissioners in **Forsyth** County, and amending a previous act granting ordinance-making power to **Forsyth** county commissioners as to kinds of ordinances permissible in the regulation of firearms and pool-rooms and dance halls in nonmunicipal areas. An alternative civil penalty was provided to the criminal penalties previously set out for violation of parking regulations at the Greensboro-High Point Airport in **Guilford** County.

##### *Interdicting Shows*

Another type of local enforcement activity, but which does not involve the making of ordinances, is authorized under GS 153-10. With the addition of the counties of **Martin** and **Wayne** the section applies to a total of 32 counties. The statute authorizes county commissioners to direct the sheriff or tax collector to refuse to issue licenses to touring carnivals, moving pictures, vaudeville shows, and menageries, etc., when licensing would endanger the public welfare.

##### *Miscellaneous Criminal Provisions*

As usual, there were a number of amendments to GS 141-335 fixing the various local punishments for public drunkenness. Among the counties either adding punishments under the section or modifying punishments set out were **Orange, Wilkes, Cumberland, Buncombe, Davidson, and Anson**.



With certain exceptions the night operation of loudspeakers or public address systems in the Community of Ether in **Montgomery** County was prohibited, and a 1949 act to the same effect applicable to **Caswell** County was amended to exempt loudspeakers at ball games participated in by organized ball clubs.

In 1955 GS 14-414 was amended to permit the sale, use, and possession of explosive caps designed to be fired in toy cap pistols provided the caps did not exceed a certain size. Twenty-three counties, however, were exempted. In 1959 this number was reduced to 21, and in this session the number shrank to 18 with the exemption of **Alamance**, **New Hanover**, and **Union** Counties.

GS 14-401.5, prohibiting the practice of phrenology, palmistry, clairvoyance, fortune telling, etc., was amended to apply to four more counties, **Iredell**, **Rutherford**, **Chatham** and **Orange**. As to **Orange** and **Chatham**, the prohibited practices were made unlawful regardless of whether or not they are carried on or engaged in under the guise of faith healing.

Other criminal acts included laws bringing **Avery** County under the provisions of GS 14-129 relating to the taking of certain wild plants from the lands of another; prohibiting the operation of pool halls in **Columbus** County on Sunday; modifying the procedure under GS 14-269 (b) for **Halifax** County so far as the sale of confiscated shotguns is concerned; adding **Pender** County to the list of those under GS 14-107 punishing the worthless check offense at the JP level when the amount due is not over \$50; and adding **Randolph** County under a 1959 special act prohibiting the use of indecent or profane language in a public place.

#### Local Criminal Procedure Changes

##### *Acts Relating to Local or Special Peace Officers*

Chapter 214 (HB 251) adds a new paragraph to GS 143-286 (concerning the powers of the John H. Kerr Reservoir Development Commission) to authorize the Governor to commission as special peace officers such employees of the Development Commission as the Commission may designate. Although this is in form a statewide act, its operative effect so far as law enforcement is concerned will be restricted to **Granville**, **Vance**, and **Warren** Counties,

Chapter 128, Public-Local Laws of 1941, which denied the sheriff of **Alamance** County the right to name his chief deputy sheriff, was repealed as were a large number of special acts dealing with constables of Asheville Township in **Buncombe** County. The organization, recruiting, training, equipping, and appointing of auxiliary policemen and firemen by the City of Durham in **Durham** County was authorized. Residence within the corporate limits of the Town of Speed in **Edgecombe** County was declared not a necessary qualification for the office of town constable in Speed. The sheriff of **Henderson** County was authorized to appoint an additional deputy sheriff to be known as the "Juvenile Deputy", and the sheriff of **Person** County, to deputize citizens as special police officers to serve as private watchmen. Provision was made for the appointment and reappointment every two years, beginning June 15, 1961, of the Bureau of Identification for **Wake** County—to be under the supervision of the district solicitor of the superior court. Wake County and the City of Raleigh are to make proportional payments of the Bureau's salaries.

##### *Extra-Territorial Police Jurisdiction*

As usual, a number of bills were introduced to grant particular municipal police departments the power to enforce the law in the county area a certain distance outside their respective corporate limits. The ones that passed included acts granting jurisdiction one mile outside Clarkton in **Bladen** County, two miles outside Black Mountain in **Buncombe**, one mile outside Rose Hill in **Duplin**, one mile outside Beulaville in **Duplin**,

one mile outside Coats in **Harnett**, two miles outside Murfreesboro in **Hertford**, one mile outside Aberdeen in **Moore**, one mile outside Columbia in **Tyrrell**, and one mile outside Garner in **Wake** County, but not within the limits of any other municipality.

##### *Pre-Numbered Warrants and Receipts for JP's*

There was a net gain of two counties coming under the statutory provisions requiring the clerk of superior court to furnish justices of the peace with pre-numbered warrants (in duplicate), warrants-issued register pages, and receipt books. This brings the number of counties under GS 7-134.6 to a total of 28. **Avery**, **Macon**, and **Wilkes** Counties were added and **Polk** subtracted.

##### *Inferior Court Jurisdiction and Procedure*

A six-man jury was provided for the **Bladen** County Recorder's Court. The jurisdiction of the Fair Bluff Municipal Recorder's Court in **Columbus** County was confined to Fair Bluff Township effective July 1, 1961. Provision was made for transfer of a case from the County Criminal Court of **Davie** County to the superior court upon a request for a jury trial, and for the appointment of a vice-recorder of the **Franklin** County Recorder's Court. Chapter 350, 1943 Session Laws, (which gives the **Franklin** County Recorder's Court concurrent jurisdiction with justices of the peace only after six months have passed) was amended to provide that justices of the peace shall not have original jurisdiction when charges for two or more motor vehicle law offenses are brought arising from a single occurrence. **Harnett** county commissioners were authorized to call an election on the question of establishing a county recorder's court, and the special laws relating to the Charlotte Recorder's Court in **Mecklenburg** County were rewritten. Provision was made for transfer of a case from the Jacksonville Municipal Recorder's Court in **Onslow** to the superior court upon request for a jury trial, and for warrants issued by the Jacksonville desk officer or desk sergeant to be returnable also before the municipal recorder's court judge. The issuance of summonses, warrants, and other similar process, by deputy clerks of the **Randolph** County Recorder's Court was authorized, returnable before any magistrate or justice of the peace. A substitute judge and an assistant prosecuting attorney were authorized in the City Court of Raleigh in **Wake** County. Transfer of a case from the Mount Olive Recorder's Court (**Wayne**) to the superior court was provided for upon a request for a jury trial.

##### *Regulation of Professional Bondsmen*

Three acts passed which amend in various particulars existing special acts regulating and taxing professional bondsmen in **Cumberland**, **New Hanover** and **Robeson** Counties.

##### *Other Criminal Procedure Changes*

The sheriff of **Alleghany** County was empowered to fix amount of bail and to take and accept bail for persons arrested either by the sheriff himself or by any of his deputies. Chapter 1034, 1959 Session Laws, which exempted **Buncombe** County from the provisions of GS 15-21 requiring the officer to whom a warrant is addressed to note on it the day of its delivery to him and to deliver a copy of the warrant to each of the defendants, was repealed, as was Chapter 310, Public-Local Laws of 1937, which had made the county commissioners responsible for jail maintenance, in order to place custody of the county jail in the custody of the sheriff of **Surry** County under the provisions of GS 162-22. The chief of police in Fuquay Springs was authorized to take affidavits in connection with criminal warrants sworn out in the Recorder's Court for Middle Creek, Holly Springs, Swift Creek, and Panther Branch Township at Fuquay Springs, and to take and accept appearance and recognizance bonds for the appearance of persons in any court in **Wake** County.

# GAME, FISH, AND BOAT LAW ENFORCEMENT

Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

Proposals sponsored by the Wildlife Resources Commission in three major areas received mixed receptions from the 1961 legislators. The Commission had by no means so banner a year as in 1959. The proposal relating to control of hunting and fishing license agents passed without a single change. This could hardly be said of one of the other acts of importance. The bill raising hunting and fishing license charges was killed in the House, but was later resurrected and passed—in an entirely different form from that which it had originally taken. Of two Commission-endorsed boat law bills, one passed; the other was first gutted, and then mercifully killed. All other statewide legislation relating to hunting, fishing in inland waters, and boating created exemptions and exceptions within the framework of existing law and did not enact any new crimes or provide any new enforcement tools.

One omnibus bill contained a series of amendments to the commercial fisheries law; it will, for reasons of space, be discussed under this topic rather than in a separate article. For a discussion of Chapter 737 (HB 630) effecting a reappointment of the Wildlife Resources Commission, see STATE GOVERNMENT.

## License and Fee Increases

In its original form, Chapter 834 (HB 519) concentrated on raising in-state licenses. After rescue from the grave, the bill was overhauled to make the nonresident licenses shoulder most of the job of bringing in increased revenues. The following tables show the new license and fee charges with the former amounts in parenthesis for comparison:

### Hunting Licenses (Effective August 1, 1961)

	Total	License Charge	Agent's Fee
Nonresident hunting license	\$20.00 (15.75)	\$19.50 (15.50)	\$.50 (.25)
Nonresident six-day hunting permit [new]	15.75	15.50	.25
State resident hunting license	4.25 (4.10)	4.00 (4.00)	.25 (.10)
Combination hunting and fishing license	6.25 (5.25)	6.00 (5.00)	.25 (.25)
County hunting license	1.65 (1.10)	1.50 (1.00)	.15 (.10)

The act provides that the new nonresident six-day permit will be good for six consecutive days. There is no mention in the act whether Sundays are exempted in computing the six days, but the Commission is interpreting the act to mean six consecutive hunting days. The act, in the portion

amending the hunting license provisions of GS 113-95, specifies that when employees of the Wildlife Resources Commission sell the license only the net amount of the license should be charged the sportsman.

### Fishing License (Effective January 1, 1962)

	Total	License Charge	Agent's Fee
Resident special mountain trout fishing license	\$1.25 (1.10)	(1.00) \$1.00	(.10) \$.25
Nonresident special mountain trout fishing license	3.25 (2.10)	3.00 (2.00)	.25 (.10)
Resident state fishing license	4.25 (4.10)	4.00 (4.00)	.25 (.10)
Nonresident state fishing license	8.25 (6.10)	8.00 (6.00)	.25 (.10)
Nonresident daily fishing license	1.65 (1.10)	1.50 (1.00)	.15 (.10)
Nonresident five-day fishing license	3.65 (2.60)	3.50 (2.50)	.15 (.10)
County daily fishing permit	.85 (.60)	.75 (.50)	.10 (.10)
Resident county fishing license	1.65 (1.10)	1.50 (1.00)	.15 (.10)

## Boat Law Changes

### Motorboat Loan Repayment

The motorboat numbering act passed by the General Assembly in 1959 authorized in GS 75A-3(c) a \$100,000 appropriation from the Contingency and Emergency Fund to the Wildlife Resources Commission as an advance sum for use in administering the new boating act. The appropriation called for repayment of the \$100,000 within two years from the proceeds of motorboat numbers sold. In the first year of boat numbering, 1960, fewer than 37,000 certificates of number were sold—which was far below advance estimates. In addition, the boating act contained the stipulation that enforcement of the boating laws be on a self-sustaining basis and forbade use of hunting and fishing license proceeds. Thus, in the spring of 1961, the Wildlife Commission had to choose between the alternatives of minimal enforcement of the boating law or of defaulting in repayment of the \$100,000 advance.

Initial hints that repayment of the advance be waived entirely met a cold reception, and Chapter 644 (HB 581) adopted a scheme of deferred payment. It provides for repayment in four annual installments of \$25,000 each payable the first of September each year beginning with 1961.

### Horsepower Level of Numbered Motorboats

The Commission-endorsed motorboat proposal which



failed would have dropped the horsepower floor requirements from the motorboat numbering act. The federal minimum requirement is that all undocumented vessels propelled by machinery of more than ten horsepower must be numbered and North Carolina has adopted this rule. The Council of State Governments in its model legislation, however, recommends that states go beyond this minimum level and number all undocumented motorboats. The neighboring states of South Carolina and Virginia, it should be noted, go partly in this direction and begin their numbering with vessels of *ten or more* horsepower.

HB 715 was introduced as the result of a compromise. It provides for numbering of all undocumented motorboats, but also made several minor changes in lighting, equipment, and classification of motorboats. The net effect was a departure from the nationwide Coast Guard standards as to motorboats on the navigable waters of the United States. The variations that were proposed to be introduced were not important in themselves, but they would have put in very serious doubt the efficacy of the provision in GS 75A-6(k) authorizing the Wildlife Commission by regulation to modify the statutory equipment requirements to conform to federal navigation laws.

HB 715 left the House in a very maimed shape. The provision lowering the horsepower floor for boat numbering had been deleted. Only the equipment modifications remained. Fortunately, from the standpoint of those who believe the Wildlife Commission should enforce laws uniform with those of the Coast Guard, the Senate killed the bill.

#### *Commercial Fishing Boat Number Renewals*

Ever since the beginning of motorboat licensing by the Wildlife Commission, numbers of commercial fishermen have complained of the requirement that they must pay for the boat number in addition to paying for their commercial fishing license under the Commercial Fisheries Division of the Department of Conservation and Development. Their complaints resulted in adoption of two statutes by the 1961 Assembly. The first, Chapter 469 (SB 252), established a procedure whereby commercial fishing boats could have their certificates of number renewed without charge upon presentation of proof that the commercial fishing boat license tax had been paid for the period for which renewal of the number is sought. The second, Chapter 1004 (HB 869), adjusted the amount of license tax payable on commercial fishing boats of eighteen feet or less to charge a greater amount for all motor-driven vessels. This act is discussed below under the heading of Commercial Fisheries.

Chapter 469 inserts GS 75A-5.1 containing the new procedure, and makes a conforming change in GS 75A-5. "Commercial fishing boats" are defined as "motorboats" (undocumented vessels of more than ten horsepower) primarily used for commercial fishing operations and yielding the owners or operators more than one-half their gross incomes during the preceding calendar year. The owner of a boat who signs a statement that the vessel comes within this definition will be entitled to renewal of his certificate of number free upon sending the Wildlife Resources Commission a receipt showing payment of the license tax to the Department of Conservation and Development for that boat for the proper period. The act punishes false statements or falsification of the tax receipt as a misdemeanor. Only renewals of number are free; the initial issuing of a number by the Wildlife Commission will cost \$3. The act further specifies that the regular charge be made for renumbering any boat with a number that has lapsed because of nonrenewal.

#### *Pender County Boating Law Repealer*

Chapter 59 (HB 119) repealed SL 1957, Chapter 590, as amended by SL 1959, Chapter 771. These acts had imposed a five m.p.h. speed limit plus lighting requirements and a reckless driving provision for vessels on the portions

of the Northeast Cape Fear and the Black Rivers flowing through Pender County. One of the bills of the session, HB 24, was introduced to accomplish this result; it was reported unfavorably because of committee dissatisfaction with the title of the bill.

#### **Centralized Control of License Agents**

Chapter 352 (SB 153) gives the Wildlife Commission a year to set up an administrative system for centralized handling of the accounts of hunting and fishing license agents. At present, wildlife protectors find one of the most troublesome aspects of their jobs is the keeping of accounts and records connected with the distribution of licenses to the agents and the collection and transmission of the proceeds. After July 1, 1962, the Commission will deal with all agents directly from Raleigh so far as accounting for and distribution of licenses is concerned. Wildlife protectors are relieved of responsibility and accountability after the 1962 date, though they will still be called on to investigate and inspect license agents and applicants and to deliver licenses to agents in cases of emergency.

The new act, which has been codified as GS 113-81.4 to -81.13, sets out in detail procedures governing selection and control of license agents. Discussion of these provisions here is unnecessary as the 1961 Cumulative Supplement to the General Statutes will have been widely distributed long before the effective date of the act.

#### **Game Law Changes**

##### *Male and Doe Deer Concurrent Season Authority*

Chapter 311 (SB 142) deletes the word "not" from GS 113-84(2) which had formerly said the Commission shall *not* have the authority to fix an open season on doe deer on any day or at any time concurrent with the open season on male deer in localities where the use of rifles is permitted for the taking of deer. The apparent intent of the act is to make it possible to fix concurrent seasons on deer in and west of the counties of Burke, Caldwell, Rutherford, Surry, and Wilkes—which were listed in a proviso as the only counties to which the season-fixing prohibition would apply.

##### *Use of Blunt Type Arrowheads in Taking Game*

GS 113-104 lists only four permissible methods for taking game birds and game animals: shot gun not larger than ten gauge, rifle, bow and arrow meeting certain restrictions, and with the use of dogs. The restrictions governing the use of the bow and arrow require the bow to have a minimum pull of forty-five pounds and the arrow used to be nonbarbed, nonpoisonous, and nonexplosive with a minimum broadhead width of seven-eighths of an inch. By implication, then, only broadhead tipped arrows may be used in taking game animals and birds.

Chapter 1182 (HB 1040) adds a proviso to GS 113-104 that blunt type arrowheads may be used in taking certain game. Blunt type arrowheads are usually just a little bit wider than the shaft of the arrow and have a squared off or ball tip. The object of these arrowheads is to shock the animal rather than to penetrate. Homemade blunt type arrowheads may sometimes consist of the butt end of a cartridge casing of appropriate diameter fitted tightly over the tip end of the shaft. As the minimum measurement of seven-eighths of an inch by its terms applies only to broadhead tips this limitation is not applicable to the blunt type arrowhead. Target and field arrowheads, though, would still be improper when used in taking game animals and birds. (A target arrowhead smoothly tapers down from the exact diameter of the shaft to a point; it is designed to penetrate the straw stuffing of a target while doing the least damage to it. A field arrowhead usually has a blunt-tipped end plus a knife-edge blade or point projecting forward a half inch or so; it is designed to stick up in the ground or in a tree but be stopped by the blunt end from penetrating too deeply for easy removal.)

Blunt type arrowheads are made permissible in taking: "game birds and small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys, and pheasants." The four birds listed comprise the entire category of "upland game birds" set out in GS 113-83; rabbits and squirrels are the only two in the group of game animals carried in that definition section that are generally considered small game. Therefore, the only kind of game covered but not included in the list would be the migratory game birds—which are subject to federal regulation under the Migratory Bird Treaty Act. As the applicable federal regulations only list "bow and arrow" as a permissible method of taking migratory game birds, there is no conflict between this new permissive act and the federal provisions.

#### *Seasons and Bag Limits on Bullfrogs in Twelve Counties*

Chapter 1056 (HB 182) created its share of laughter as well as controversy in its passage through the General Assembly. As introduced, the bill would have required hunting licenses of anyone hunting "amphibians" as well as authorizing the Wildlife Resources Commission to fix seasons and bag limits for them. Even after a committee amendment striking out the license requirements and merely authorizing the Commission to fix seasons and bag limits for "bullfrogs," the bill was ill-received. Whatever the merits of the legislation, a parade of legislators, first in the House and then in the Senate, began taking their counties out. Several counties were even exempted twice. By final tabulation, eighty-nine counties were exempted, but in the closing days of the session Chapter 1224 (HB 1260) was rushed through placing Martin County back under the bullfrog bill. The twelve counties for which the Commission may fix seasons and bag limits for bullfrogs are: Bertie, Brunswick, Carteret, Chatham, Duplin, Franklin, Harnett, Haywood, Martin, Polk, Richmond, and Transylvania.

#### *Local Game Legislation*

Chapter 863 (SB 318) (Edgecombe) makes it unlawful to hunt, take, or kill or to attempt to hunt, take, or kill any species of game by the use of firearms from the right-of-way of any public highway, roadway, or other publicly-maintained thoroughfare. As this county law does not purport to modify the Game Law of 1935, the use of the word "game" probably means any wild animals or birds normally hunted rather than the technical classification of game animals and birds as defined in GS 113-83. The act fails to grant specific enforcement powers to wildlife protectors. As protectors have only limited enforcement jurisdiction, they apparently would be unable to enforce the provisions concerning this offense. See GS 113-91(2) and -91(4). The logical officers to enforce the legislation, then, would be highway patrolmen (who may arrest for any offense committed on the highway) and peace officers of general jurisdiction in Edgecombe County. As the act does not specify any punishment, this offense would be a general misdemeanor (above the jurisdiction of a justice of the peace) punishable under GS 14-3.

Chapter 196 (HB 98) repeals SL 1955, Chapter 1054, which fixed a special 4:00 p.m. quitting time on the shooting of migratory waterfowl in Hyde County except for Ocracoke Island and within ten miles of it. With the repeal of this more restrictive state regulation, the regular shooting hours fixed in the federal migratory bird hunting regulations will apply throughout Hyde County for the taking of migratory waterfowl.

Chapter 333 (HB 412) makes it a misdemeanor punishable by a fine from \$50 to \$100 or by imprisonment from thirty to sixty days to take or kill any deer in or within 100 yards of Turkey Creek, Morgan Creek, or Long Creek, which lie between NC Highway 210 and the Northeast Cape Fear River in Pender County with the aid of any boat or

floating device. The act does not prohibit the transportation of hunters or their legally taken game up or down any of the three creeks, and wildlife protectors are specifically granted enforcement jurisdiction.

A similar bill was passed later in the session for Bladen County. Chapter 1023 (HB 1136) imposes even heavier misdemeanor penalties on one who would take, kill, or attempt to take or kill any deer on the Cape Fear River or any of its tributaries in Bladen County with the aid of any boat or floating device. The punishments under this act are either a fine from \$100 to \$500 or imprisonment from thirty days to six months. The act also stipulates that hunters and their legally taken game may be transported in boats, and it provides for enforcement by wildlife protectors.

Chapter 1003 (HB 789) affects two different counties. It amends SL 1959, Chapter 1145, which made it unlawful to hunt deer in Scotland County with a rifle of a larger bore than .22 caliber, to include Richmond County. The punishment under the 1959 act is a fine up to \$50 or imprisonment up to thirty days or both—which is above the jurisdiction of a justice of the peace. As the 1959 act was silent as to enforcement jurisdiction, the new act corrects this situation as to both counties and specifically grants wildlife protectors the power to arrest for violations of the 1959 act as amended.

Local modifications of the fox hunting laws were a rarity in the 1961 session; only two acts were ratified on this subject. Chapter 297 (HB 372) (McDowell) authorizes the hunting of foxes with dogs only at any time and the hunting of foxes with gun at any time on land in McDowell County in the possession of the hunter or his immediate family. Foxes were previously completely protected during closed season, and could be hunted only with dogs even during the open season (September 1 to March 15). Pub.-Loc. L. 1923, Chapter 280.

Chapter 697 (HB 215) (Graham) authorizes the taking of foxes and wildcats at any time by any means but by the use of poison. This apparently would authorize the use of explosives, which is the one other method which is normally prohibited even for the taking of unprotected birds and animals. GS 113-102 (c). The act additionally sets up the following bounty provisions payable from the county general fund: \$1.50 per fox scalp and \$3 per wildcat scalp when presented with an affidavit made by the person claiming the bounty. Making a false affidavit in the presentation of a claim is a misdemeanor punishable by a fine of up to \$100 or by imprisonment up to six months.

#### **Fish Law Changes**

##### *Invited Guest Fishing License Exemption*

Chapter 312 (SB 149) amends GS 113-143 to provide that fishing licenses shall not be required of persons who are the invited guests of the owners of private ponds, and who are fishing at the specific invitation of the owner. The act sets out a definition of private ponds identical to that in GS 113-257: bodies of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time.

Chapter 312 supersedes the provision in the fishing regulations exempting owners of private ponds and their "house guests" from fishing license requirements. It marks a return—by statute—to the text that was formerly contained in the regulations.

##### *Sale of Game Fish from Private Ponds*

Chapter 357 (SB 150) amends GS 113-257 to authorize the Wildlife Commission to issue permits to owners of private ponds to sell game fish from their ponds under such regulations as the Commission may deem appropriate and consistent with sound conservation policies, and to legalize



the sale of game fish under such regulations. In the past, the only permissible sale of game fish from private ponds was for propagation purposes only.

#### *Use of Licensed Bow Nets by Others with Permission*

Chapter 329 (HB 336) resembles the act creating the invited guest fishing license exemption: it was designed not to change any statutory law but to alter provisions embodied in the Fishing Rules of the Wildlife Resources Commission. It amends GS 113-152 to provide that bow nets which have been properly licensed by the Commission may be used in waters designated for and used by persons other than the licensee with the licensee's permission.

The fishing regulations provide that a special device license "shall be effective only when the special device is used by the licensee under the supervision of the county wildlife protector or some person designated by him." (Emphasis added.) It is common practice for a group of people to accompany the owner of a bow net to fish. The owner and a helper will fish for a while, and then others will take their turns working the net. Later the group members will usually divide up the fish caught and each may take some home—if all the fish were not cooked and eaten on the spot. The enforcement policy of many protectors under the regulations has been to require each member of such a group to have a special device license before he would be permitted to work the net. The act clearly changes the old practice to let unlicensed persons operate bow nets with the permission of the licensed operator.

#### *Local Fishing Legislation*

In the 1961 session, six more counties plus portions of streams adjoining those counties were exempted from the prohibition of GS 113-247 against fishing with nets on Sunday. Chapter 330 (HB 363) exempted Martin County; Chapter 745 (HB 692) exempted Bertie, Beaufort, Chowan, Gates, and Hertford Counties.

Chapter 408 (SB 218) modifies GS 113-146 to provide that the section shall not apply to bona fide residents of Nash and Edgecombe Counties residing within the city limits of Rocky Mount while fishing in the City Lake. The act is subject to unfortunate ambiguity as the section amended does two things: (1) it authorizes the issuance of resident county fishing licenses and (2) provides that such licenses are required only of those using lures or baits of an artificial type. This has been construed to exempt county residents fishing in their own county with natural bait from buying any type of license—county, statewide or whatever. The apparent intent of the new act was to let Nash and Edgecombe residents of Rocky Mount fish interchangeably in the City Lake without a license when using natural bait. Abrogation of the entire section, however, makes it impossible to reach such a result. The only two logical interpretations are that Rocky Mount residents fishing in the City Lake (1) must purchase statewide licenses or daily permits in order to fish (without regard to type of bait used) or (2) may fish without any license at all and without regard to type of bait used. As the latter alternative is clearly the more sensible, it will likely be the one enforced. Rocky Mount residents should take note, however, that a provision in the fishing regulations requires fishermen to carry a means of identification on their persons.

Chapter 1159 (SB 491) declares Bellamy's Lake in Brinkeyville Township, Halifax County, a private lake for purposes of enforcement of laws regarding trespass.

Chapter 348 (HB 435) concerns another two-county fishing situation affecting Bladen and Robeson Counties. The act provides that residents of Bladen are permitted to fish within the boundaries of that portion of Robeson situated easterly of the main run of the Big Swamp without being required to purchase a statewide fishing license. A proviso adds that the Bladen residents must now procure

a Bladen County fishing license, "when required by law." This obviously refers to the necessity for purchasing a county license when fishing with lures or baits of an artificial type.

#### **Commercial Fisheries Changes**

##### *Commercial Fishing License Tax Adjustment*

Chapter 1004 (HB 869) was introduced to complement the act discussed above which provided for free renewals of the required motorboat certificate of number for commercial fishing boats upon presentation of evidence that the commercial fishing license tax has been paid. The act rewrites GS 113-174.7 to insert a definition of "commercial fishing boat" identical to that set out in new GS 75A-5.1 by Chapter 469 (SB 252): a motorboat used primarily for commercial fishing operations from which operations the owners or operators derived more than one-half of their gross incomes during the preceding calendar year. The act then imposes the commercial fishing license tax not only on the "commercial fishing boats" as defined but also on the entire list of vessels previously included in GS 113-174.7: trawl boats, dredge boats, motorboats, and haul boats using commercial fishing equipment. (This makes it clear the tax is payable by all motor-driven vessels and not by just the "motorboats" above ten horsepower which must be numbered. The definition of "commercial fishing boat," however, with its cross-references to Chapter 75A of the General Statutes, would probably be restricted to the above-ten-horsepower boats.) A new clause restricts application of the tax to the situations where the equipment is used in commercial fishing waters.

The tax schedule for all vessels over eighteen feet long remains unaffected. The former tax of \$2.50 on all vessels eighteen feet or under is replaced by two categories of taxes on boats of this length. Boats and skiffs without motors of any type are subject to a tax of \$1. Boats with motors are subject to a tax of \$3. (It should be noted the cost of renewing an annual certificate of number with the Wildlife Resources Commission is \$3.) The new rates go into effect January 1, 1962.

##### *Omnibus Commercial Fisheries Changes*

Chapter 1189 (HB 1085) made a number of major and minor changes in the laws governing commercial fishing, as follows:

*GS 113-136.1.* This newly-added section authorizes the Department of Conservation and Development to close oyster bottoms, breeding areas for shrimp, and polluted areas. It sets limits on the quantity of oysters that may be taken and on the times and manner of taking them for personal use for home consumption, and makes sale of oysters and shrimp taken for personal use for home consumption illegal.

*GS 113-140.1.* This newly-added section prohibits the wilful and knowing sale, transportation, or possession of seafood taken unlawfully or upon which the license tax has not been paid. The section provides, in addition to making violation a misdemeanor punishable in the discretion of the court, that if a violator is a dealer or buy-boat owner or operator he shall be subject to having his license revoked under GS 113-352.

*GS 113-174.10.* The act adds hard and soft crabs to the list of fish and seafood for which dealers are required to keep permanent records as to the quantity of each product purchased, packed, canned, or shipped.

*GS 113-174.15.* The procedure to be used in seizure of boats or appliances used in violation of the fish laws under this section is clarified; the act specifies that seizure is for use in evidence in the trial. Seized boats or appliances are to be returned to the owner at the conclusion of the trial, and pending trial the owner may retain possession by posting bond. The section formerly authorized the Commis-

(Cont'd., see "Game, Fish, etc." on p. 72)

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# COURTS, CLERKS AND RELATED MATTERS

Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

## Civil Procedure

**Limitations:** Chapter 115 (HB 57) raises the statute of limitations on judgments rendered on and after 1 October 61 by justices of the peace from 7 to 10 years (from date of judgment). G.S. 1-47.1.1.

**Venue:** Chapter 110 (SB 33) amends G. S. 1-86 to provide that the presiding judge may order a special venire from another county whether or not he will preside at the term for which the jurors are summoned.

**Nonresident Service of Process:** Chapter 1191 (HB 1091) amends G.S. 1-105 concerning service of process upon non-resident motorists by adding that if the registered letter to defendant is not deliverable, service nevertheless is complete on the date that the letter is returned to the plaintiff or Commissioner.

**Prosecution Bonds:** G.S. 1-109 is amended by Chapter 989 (SB 427) to permit the judge, as well as the clerk, after issuance of summons, (formerly before issuance only) on motion of defendant, to require plaintiff to give undertaking, deposit cash bond, or file authority to sue *in forma pauperis*. Failure to comply in 30 days is grounds for dismissal of action.

**Motions to Strike:** Chapter 455 (HB 458) amends G. S. 1-153 to provide that motions to strike may be heard out of term in any county of the district by the resident judge or by any judge regularly assigned to hold the courts of the district.

**Judgments:** Chapter 295 (SB 188) adds subsection (6) to G.S. 1-211, actions to remove cloud from title to real estate, to scope of section allowing judgments by default final. A new section, G.S. 1-217.2 (added by Chapter 628 (SB 293), validates all judgments by default rendered by the Clerk of Superior Court prior to 1 April 1956, in actions to remove cloud from title.

**Execution Sales:** G.S. 1-315 is rewritten by Chapter 31 (SB 35) to enlarge the kinds of property liable to sale under execution. Added are choses in action represented by indispensable instruments, including those secured by a property interest, together with the security interest, and interests as vendee under conditional sales contracts of personal property. The officer holding the sale shall execute a bill of sale when no other provision is made herein for a deed or instrument of title.

**Special Proceedings:** Chapter 363 (HB 319) deletes the first proviso of G.S. 1-394, resulting in plaintiff in a contested special proceeding being to serve a copy of the complaint on each defendant, in lieu of filing 3 copies with the clerk.

Proceedings initiated prior to ratification (5 May 1961) are unaffected. Effective 1 January 62.

**Arrest:** G.S. 1-410 (5), prohibiting arrest of women and arrests on Sunday, is repealed by Chapter 82 (SB 39), effective 1 October 1961.

**Claim and Delivery:** Chapter 462 (HE 579) rewrites first sentence of G.S. 1-478 to provide that defendant's undertaking for replevy under claim and delivery binds defendant to pay damages, if delivery can be had, of not less than the difference in value of the property at the time of the execution of the undertaking and the value of the property at the time of its delivery to plaintiff, together with damages for detention, and the costs. If delivery cannot be had, for payment of such sum as may be recovered against the defendant for the value of the property at the time of the wrongful taking or detention, with interest, plus costs.

**Nuisances:** Chapter 1101 (HB 746) adds a new section, G.S. 1-538.1, at the beginning of Article 43, to provide for recovery of damages, not to exceed \$500, from the parents of a minor under 18, living with his parents, who maliciously or wilfully destroys property of plaintiff.

**Small Claims:** Chapter 1184 (HB 1054) adds a clause to G.S. 1-539.7, including civil appeals from justice of the peace courts on the small claims docket of appeals to the superior court.

**Compromise:** Chapter 212 (SB 42) adds a new section, G.S. 1-540.1, effective 1 October 1961, which provides that release of a cause of action for personal injury, unless the release expressly provides otherwise, shall not bar a negligence suit against the doctor, surgeon or other professional practitioner who treated the injury.

**Motions:** Chapter 456 (IIB 439) amends G.S. 1-578 to provide that motions may be heard in any county of a district by the resident judge or any judge holding court in the district. No motion may be heard or orders made outside the county where the action is pending unless notice is served on the opposing party pursuant to G.S. 1-581.

**Service of Process on Non-Resident Operators of Watercraft:** Chapter 661 (HB 827)—amended after ratification by HB 1165, (Chapter 1202)—declares that operation of watercraft in North Carolina by a non-resident constitutes appointment of the Secretary of State as attorney for service of process for said non-resident (or his executor or administrator) for any action arising from a watercraft accident. Procedural details for perfecting such service are set out in the act, which is also made applicable to North Carolina residents who move outside the State and remain for 60 days or more. Watercraft having valid marine documents issued by the United States or a foreign government are excepted.



### Clerks of Superior Court

(See also subsequent subheads under this title: Administration, Intestate Succession, Surviving Spouses, and under the title PUBLIC WELFARE AND DOMESTIC RELATIONS the subheads Guardian and Ward and Adoptions).

**Powers:** Chapter 341 (SB 34) amends subsection (17) of G.S. 2-16, specifically authorizing clerks to audit accounts of attorneys in fact when required under G.S. 47-115.1. The latter is a new law permitting competent persons 21 or older to execute a power of attorney which will continue in effect notwithstanding subsequent incapacity of principal. The clerk's powers in this regard are the same as those in respect to the accounts of administrators, but the fees shall be computed only on property of the principal shown in inventories of attorney in fact. The power of attorney shall be registered in the office of register of deeds in the county designated in the power, or in the office of the register of deeds of the county in which the principal has his residence. The clerk of the county of registry performs the account.

**Records:** Chapter 960 (SB 238) adds subsection (33) to G.S. 2-43 to provide that clerks shall keep a record of renunciations of intestate property (G.S. 29-10 (f)), including (1) name of renouncer or name of person waiving his rights to renounce; (2) name of estate affected; and (3) dates of death of intestate and of the renunciation. G. S. 2-42 is also amended by SB 34 (above) to add to record-keeping requirements of subsection (12) appointments and revocations of attorneys in fact (appointed under new G.S. 47-115.1). Finally, Chapter 341 (SB 34) rewrites subsection (14) of G.S. 2-42 to add accounts of attorneys in fact appointed under the new G.S. 47-115.1 to the accounts required to be kept (see *Powers*, above).

**Payments for Incompetents:** Chapter 377 (SB 164) amends G.S. 2-52 to raise from \$500 to \$1000 the amount of insurance proceeds payable to the clerk's office for an incompetent beneficiary.

**Records of Commitment:** Chapter 1186 (HB 1957) amends G.S. 122-50 to provide that when a mentally disordered resident of North Carolina is committed in some county other than that of his residence, the clerk in the county of residence shall keep the required records upon receipt of a certified copy of such records from the clerk of superior court of the county of commitment.

### Courts

**Supreme Court:** Chapter 957 (SB 233) raises the salary of the Chief Justice to \$20,000 (from \$16,500) and of the associate justices to \$19,000 (from \$16,000).

**Solicitorial Districts:** Chapter 730 (HB 375), amending G.S. 7-68, creates a new solicitorial district (10A) composed of Alamance, Chatham, Orange and Person counties. The tenth district is reduced to one county—Durham; Granville county is placed in the 3d district; and Chatham is removed from the fourth district. The governor is authorized to appoint a solicitor for the new district to serve until the 1962 general election. G.S. 7-40 is rewritten to specify that there shall be 30 judicial districts and 24 solicitorial districts.

**Superior Courts:** Salaries of superior court judges are raised from \$12,000 to \$14,500 by Chapter 957 (SB 233), and salaries of solicitors are raised to \$9,000 from \$7,936 by Chapter 984 (SB 409). Chapter 168 (HB 183) adds to the current "justice or Attorney General or judge" in G.S. 7-51, persons who have served "as judge and as district solicitor of the superior court combined" for 24 years, for the purpose of entitlement to certain retirement benefits. At least 8 years of the qualifying service must be as a supreme court justice, attorney general or superior court judge. Four additional special judges, to be appointed as needed by the gov-

ernor for the period ending 30 June 1963, are authorized by Chapter 34 (SB 18). Finally, G.S. 7-62 is amended by Chapter 50, (HB 59) to provide that motions made before a disqualified judge may also be referred to the resident judge or any judge regularly holding court in the same or any adjoining district.

**Court Terms:** Various bills amend G.S. 7-70 to change terms of court in the following counties:

Alamance	Ch. 849	HB 1038
Bertie	280	" 396
Bladen	355	" 463
Brunswick	355	" 463
Caldwell	134	" 75
Carteret	593	SB 264
Cumberland	828	" 384
Currituck	144	HB 117
Edgecombe	934	" 1110
Forsyth	698	" 595
Gaston	770	" 942
Granville	1052	SB 477
Guilford	873	" 418
Lee	830	" 435
Mecklenburg	145	HB 199
Onslow	933	" 1109
Person	490	" 624
Polk	702	" 793
Randolph	853	" 1075
Rowan	217 and 592	SB 63 and 256
Vance	709	HB 907
Wake	627	SB 285

**Assignment of Judges:** Chapter 1207 (HB 1181) amends G.S. 7-70 to add 3 additional Mondays that the judge holding courts of the 1st district is subject to assignment; adds one additional Monday that the judge holding 7th district courts shall be subject to assignment in any county in the State; adds one additional Monday that the judge holding 19th district courts shall be subject to assignment in any county in the state; adds one additional Monday that the judge holding the 29th district courts shall be subject to assignment.

### Evidence

**Grants, Deeds and Wills:** Chapter 740 (HB 656) expands G.S. 8-6 to include the Department of Archives and History with the office of the Secretary of State, as a department whose certification as a true copy makes admissible in evidence certain copies of survey and real estate documents. The same act amends G.S. 8-7 in similar fashion with respect to certain grants of land from the State. Pending legislation is excepted in each case.

**Public Records:** Chapter 739 (HB 655) adds the Department of Archives and History to the list of offices in G.S. 8-34 whose certification renders a copy of an official record competent evidence.

### Administration

**Right to Administer.** G.S. 28-10, 28-11 and 28-12, concerning forfeiture by a misbehaving spouse of the right to administer and share in the estate of the decedent spouse, are expressly repealed, effective 1 October 1961. See the new Chapter 31A, Acts Barring Property Rights, below.

**Notice to Creditors:** Chapter 26 (HB 61) amends G.S. 28-47 and 28-48 to decrease the time for publication of executors', administrators', and collectors' notices to creditors to four weeks (from 6). G.S. 28-47 is also amended by Chapter 741 (HB 670) to provide that notice be given to "firms and corporations" as well as persons, to exhibit claims to executors, administrators and collectors, and the time for exhibiting claims is reduced to six months (from 12) from the date of first publication. G.S. 28-49 is also amended by HB 670 to specify that a creditor shall be barred from suing on a claim not exhibited to the executor, administrator or collec-

tor within 3 (was 6) months from service of personal notice on the creditor. Effective 1 October 61.

*Inventory:* Testamentary trustees must now qualify under the laws applicable to executors, pursuant to an addition to G.S. 28-53, which is effective as to all wills probated on or after 1 July 1961. Chapter 519 (HB 556).

*Assets:* A new section, G.S. 28-56.2, provides that federal income tax refunds, not in excess of \$250, due a married taxpayer who filed a separate return, shall be the sole and separate property of, and may be paid directly to, the surviving spouse. Chapter 643 (HB 555). A similar new section (G.S. 28-56.3) provides that North Carolina income tax refunds not in excess of \$200 due to a married taxpayer shall be the sole and separate property of, and may be paid directly to, the surviving spouse. Chapter 735 (HB 554).

*Proof and Payments of Decedent's Debts:* The period of time in which an action to enforce a rejected claim may be instituted is reduced from 6 to 3 months, by an amendment to G.S. 28-112, effective 1 October 61. Chapter 742 (HB 671). And an amendment to G.S. 28-113 reduces from 12 to 6 months the period in which a claim must be presented, otherwise the executor, administrator or collector is discharged as to assets paid. Effective 1 October 61. Chapter 741 (HB 670).

*Accounts:* Chapter 418 (HB 316) adds a new section, G.S. 28-118.1, authorizing the clerk of superior court to remove personal representatives whenever any accounting, inventory or report required by law is overdue, and a citation or notice to the fiduciary in the county of his last known address is returned unserved because he cannot be found. Removal may be made 10 days after the citation is returned. A copy of the citation shall be served on the fiduciary's surety if he can be found in the county of his last known address.

*Commissions:* Chapter 362 (HB 317) adds to G.S. 28-170 a new sentence to the effect that no personal representative or fiduciary who is guilty of default or misconduct sufficient to justify revocation by the clerk (under G. S. 28-32), of his appointment, shall be entitled to any commission otherwise provided in this section. G.S. 28-170 is also amended (Chapter 575, SB 207) to authorize commissions on amounts withheld at the source for income tax purposes.

#### Intestate Succession

The Intestate Succession Act which became effective 1 July 1960, was amended in a number of respects by Chapter 958 (SB 236).

*Advancement:* The definition of advancement in G. S. 29-2 (1) is amended to spell out, in the exception, that "no gift to a spouse shall be considered an advancement unless so designated by the intestate donor in writing signed by the donor at the time of the gift," thus eliminating a difficult problem of proof.

*Renunciation:* G.S. 29-10 is rewritten, making the following changes: a renunciation may be executed by an heir or his attorney, guardian or next friend when approved by the clerk and the resident judge; renunciation must be filed within four months of death if letters are not issued; if letters are issued within four months of death, within two months after date of issuance; if litigation affecting heir's share is pending at end of period, clerk by written order may allow reasonable time for filing. If there is a renunciation, property shall descend as if the renunciator had died before the intestate, but those representing him may not receive a greater share than he would have received. If there is no renunciation as provided for by this section, it is conclusively presumed that the heir has waived the right to renounce. Any encumbrance, conveyance or contract to convey any interest in the estate or relating to the expectancy, made by an heir within the period allowed for

renunciation, shall constitute a waiver, but be effective against the personal representative only from the time final notice thereof is delivered to the clerk of Superior Court. Renunciations and waivers are to be recorded and cross-indexed by the clerk (See G.S. 2-42, above). This section applies to any portion of an estate to which decedent is intestate.

*Death of Advancee:* G.S. 29-27 is rewritten, deleting the last sentence, and providing that the value of an advancee shall be determined as of the time the original advancee came into possession or enjoyment or when a lineal heir or heirs of advancee came into enjoyment, or at the time of donor's death, whichever occurs first. Advancee's heirs must be lineal.

*Election to Take Life Interest:* G.S. 29-30 (b) is amended to allow election by the surviving spouse as to whether or not the life estate shall include a life estate in the dwelling.

The first half of G.S. 29-30(c), through sub-subsection 4, is rewritten, providing that the election is to be made by filing notice with clerk of the county of administration, or if no administration, with clerk of any county proper for administration. The election must be made within one month after the time for dissent expires, or in case of intestacy, within 12 months after the death of the spouse if no letters are issued within that period, or if letters are issued within that time, then within one month after time for filing claims has expired, or if litigation is pending affecting the share of the surviving spouse, then within a reasonable time as allowed by order of the clerk. The contents of the election notice, directed to the clerk, is unchanged.

In G.S. 29-30(d), a clause describing the intestate share by reference to "subsection (a)" is replaced with "either G.S. 29-14, 29-21 or 30-3(a)".

G.S. 29-30 (g) is rewritten to provide that neither dwelling-house furnishings nor elected life estates are subject to payment of debts due from the estate, except those debts secured by: (1) a mortgage in which the surviving spouse has joined, or (2) purchase money chattel security contracts made before or during marriage, or (3) a mortgage made prior to marriage, or (4) a mortgage which constituted a lien on property when acquired.

G.S. 29-30(h) is rewritten, requiring the election to be made as set out in subsection (c) (above), other language unchanged.

All the foregoing amendments to the Intestate Succession Act are effective 1 July 1961 as to estates of persons dying on or after that date.

G.S. 29-12 of the above Act, concerning escheats, is corrected by inserting "G.S. 29-21 or G.S. 29-22" in place of "G.S. 29-20 or G.S. 29-21". Ch. 83 (SB 40).

#### Surviving Spouses

*Dissent from Will:* Article 1 (G.S. 30-1 through 30-3) is substantially rewritten by Chapter 959 (SB 237).

G.S. 30-1 as rewritten provides that the surviving spouse may dissent from decedent's will when the value of the estate received by her through the will and outside the will is (1) less than her intestate share, or (2) less than one-half of the decedent's net estate where there are no lineal descendants or parents. To illustrate, property passing to spouse includes a life estate, an annuity for life, proceeds of insurance on decedent's life, property passing by survivorship, and principal of trust when the spouse holds a general power. Not included is any property to the extent that the surviving spouse contributed to the purchase price, or donated same. Value for dissent purposes is fixed as of date of death, and executor and spouse may agree thereto, subject to approval of clerk of court. This determination may also



be made by a disinterested person appointed by the clerk under certain specified conditions.

Provisions for time and manner of dissent, set out in G.S. 30-2, are rewritten in substance as follows: Dissent must be made within 6 months of issuance of letters testamentary, or if litigation affecting spouse's share is pending, within a reasonable time as allowed by the clerk. The dissent must be written, signed, acknowledged, and recorded. If no dissent is filed as herein specified, the surviving spouse is deemed to have waived the right to dissent.

G.S. 30-3 is amended to provide that if decedent is not survived by lineal descendants or parent, the surviving spouse shall receive only one-half the net estate—as defined in G.S. 29-2(3)—which portion shall be determined before the federal estate tax is deducted.

*Year's Allowance:* The allowance for children under 18 (formerly 15) was raised from \$250 to \$300, by Chapter 316 (HB 318), amending G.S. 30-17, effective 1 October 61 as to estates of persons dying on or after that date.

A number of changes in the law relating to allowances is made by Chapter 749 (HB 741). G.S. 30-15 is rewritten to allow the *surviving spouse* (formerly widow) an allowance of \$1000 (formerly \$750), lien free, dissent or not, from the decedent's personal property, for the year's support. Rewritten also is G.S. 30-16 to conform to the above and to clarify the duties of the personal representative. G.S. 30-17 (as earlier amended by Chapter 316, HB 318, above) is further amended to state that the child's allowance is in addition to the child's share of the parent's estate. G.S. 30-18 is rewritten to specify that the allowance is to be made from money or other personal property of decedent. The value of personal property assigned as the allowance is to be determined by a justice of the peace and two persons qualified as jurors in the county of administration, G.S. 30-19. The procedure for assignment of the allowance is set out in G.S. 30-20, conformable to above, and if there is a deficiency in the personal estate, the clerk of superior court may enter a judgment against the personal representative, to be paid out of after-acquired assets. By G.S. 30-21 the commissioners making the allowance(s) are required to file one list of the property so assigned with the superior court of the county of administration, for recordation along with any deficiency judgment entered under G.S. 30-20, above.

G. S. 30-29 is amended to delete the requirement that the surviving spouse's complaint for allowance show amount and value of articles consumed by plaintiff since death of decedent. Other sections of Article 4 are amended in minor detail to conform to foregoing.

#### **Acts Barring Property Rights (New GS ch. 31A)**

Chapter. 210 (SB 38) repeals GS 28-10, 28-11, 28-12, 52-19, 52-20 and 52-21 and adds an entirely new chapter to the General Statutes, effective October 1, 1961, as follows.

*Acts Barring Rights of Spouse:* A spouse shall lose all rights (1) of intestate succession in the other spouse's estate, (2) to homestead in the other spouse's real estate, (3) to dissent from the other spouse's will, 4) to a year's allowance in the other spouse's personal property, 5) to administer the other spouse's estate, and (6) in the property of the other spouse settled upon the offending spouse solely in consideration of the marriage by settlement before or after marriage, by the following: (1) absolute divorce or annulment, or divorce from bed and board obtained from the claimant spouse; (2) voluntary separation and living in adultery uncondoned; (3) wilful and unjustified abandonment and refusal to live with and not living with the other at the time of the other's death; (4) obtaining a divorce not recognized as valid under North Carolina law; or (5) knowingly contracting a bigamous marriage. These acts may be pleaded in bar of any action for recovery of rights and interests enumerated. The spouse not at fault may sell or con-

vey all his or her property as if unmarried, barring the other spouse of all right, title and interest therein during the separation arising from the (1) *a mensa* divorce, (2) adultery, (3) abandonment, (4) invalid divorce, or (5) bigamous marriage. G.S. 31A-1.

*Parents:* A parent abandoning the care of his child loses the right of intestate succession in, or to administer, the child's estate except (1) where the parent resumes care of the child at least one year prior to its death and continues its care until its death, or (2) where the parent loses custody of the child under court order and has thereafter substantially complied with the court's orders requiring its support. G.S. 31A-2.

*Wilful and Unlawful Killing of Decedent:* A "slayer" is defined as a person convicted of, or who has pleaded guilty or nolo contendere to, the wilful and unlawful killing of decedent, or who has been found responsible for such killing in a civil action brought within a year from the death and who died or committed suicide before being tried and before the decedent's estate was settled. G.S. 31A-3.

A slayer is deemed to have died prior to decedent and shall not receive any of decedent's property. Property which would have passed to the slayer by intestate succession shall pass to others next in succession, and that which would have passed to slayer by will shall pass as if decedent died intestate thereto, unless otherwise disposed of by will. G.S. 31A-4.

Property held by slayer and decedent as tenants by the entirety shall, (1) if the wife is the slayer, pass one-half to the husband's estate and one-half to the wife for life, then to the husband's estate. If the husband is the slayer, all shall pass to the husband for life, then to the wife's estate. G.S. 31A-5.

In case of survivorship property, the decedent's share shall immediately pass to his estate and the slayer's share to the slayer for life, then to the decedent's estate. In case of survivorship property owned by the slayer, the decedent and one or more other persons, the portion which would have passed to the slayer shall pass to the decedent's estate; if the slayer is the final survivor, one-half the property then held by the slayer shall pass to the decedent's estate and upon his death, the remaining interest of the slayer shall pass to decedent's estate. The slayer is entitled to income from his share, subject to his creditor's rights. G.S. 31A-6.

Reversions and vested remainders in the slayer, subject to a life estate in decedent, shall pass to the decedent's estate during the period of decedent's life expectancy, and where the life estate is in another but measured by decedent's life, the life estate will terminate at the end of the period of decedent's life expectancy. G.S. 31A-7.

As to contingent remainders or executory or other future interests held by slayer, subject to vesting in him or increasing upon decedent's death, (1) if they would not have vested or increased had slayer predeceased decedent, he shall be deemed to have predeceased decedent, and (2) in any case, they shall not vest or increase during the period of decedent's life expectancy. G.S. 31A-8.

Interests held by slayer which would divest or diminish or be extinguished if decedent lives to a certain age, are to be held by slayer during his lifetime or until decedent would have reached such age, but shall then pass as if the decedent had died immediately after the death of the slayer, or the reaching of such age. G.S. 31A-9.

In case the decedent's will gives the slayer a power of appointment, the slayer is deemed to have predeceased decedent and shall derive nothing from the appointment, the appointed property to pass in accordance with any applicable lapse statute. Property held by the slayer subject to dece-

(Cont'd., see "Courts, etc." on p. 71)

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# REGISTERS OF DEEDS

Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

Legislation affecting the office of the Register of Deeds is to be found in several chapters throughout the General Statutes, though there were no changes or additions made to Chapter 161, entitled "Registers of Deeds." While the number of bills passed which directly affect that office were not perhaps as numerous as in past years, nevertheless there were several laws enacted which are of vital interest to all registers of deeds.

## Marriage Licenses

### Central Registration Act

Perhaps the most important bill passed during the last session, from the standpoint of registers of deeds, is Chapter 862 (SB 177), adding GS 130-52.2. This section provides for the central filing of marriage certificates in the Office of Vital Statistics of the State Board of Health. In effect it requires that, on the 15th of each month, all registers of deeds send to the Office of Vital Statistics a copy of the certificate of marriage for each marriage performed in their respective counties during the preceding calendar month. The Office of Vital Statistics is authorized to prescribe the form to be used and, upon request, to provide copies of the filed certificates, which copies shall have the same force and effect as the original. The law requires that the form include such information as may be required to meet the minimum requirements of the national vital statistic surveys. There is also an appropriation to the State Board of Health of \$15,000 for the biennium to finance this program, thereby eliminating the charging of fees for this purpose.

### Miscegenation Laws Amendment

Chapter 367 (HB 494) amends GS 51-3 by deleting therein all references to Indians, thus repealing the prohibition on intermarriages between members of the white and Indian races.

### Marriage Bills Failing to Pass

There were two bills introduced which would have amended sections of Chapter 51 of the General Statutes regarding applications for marriage licenses, but both received unfavorable reports out of committee. The so-called "hasty marriage" law, SB 122, as it was originally introduced, would have amended GS 51-8.1 to require a twelve-hour waiting period between application for and issuance of marriage licenses to non-resident (both) applicants. A committee substitute was then proposed which would have required a twenty-four hour waiting period for all applicants. This was further amended to provide that the waiting period should apply only to minor applicants who did not have the written consent of their parents. All versions of the bill were intended to have state-wide effect. The present sec-

tion, requiring a forty-eight hour waiting period for non-residents, applies only to Pamlico County.

Also unfavorably reported was SB 463 which would have amended GS 51-15 by adding to that section a provision making it a misdemeanor to furnish false information relating to the sex, place of residence or mental capacity of an applicant. This section currently makes it a misdemeanor to misrepresent the age of an applicant.

## Plats, Subdivisions, and Land Surveys

### Plat Registration Laws

During the 1959 Session of the Legislature there was enacted a Uniform Map Law which rewrote, among other sections GS 47-30 to its present form. Insofar as its applicability within the State is concerned, the short title is a misnomer; some twenty-eight counties were exempted from the provisions of the act at the time it was ratified, and during the recent Session several more gained exemption through local bills. The result was that there were no uniform provisions regulating the recording of plats and subdivisions in these exempted counties. Chapter 534 (SB 216) has been enacted to fill this legislative gap. In effect, it re-enacts the plat registration law (old GS 47-30) as it prevailed prior to the 1959 amendment, except that the statute, codified as GS 47-30.1, applies only to those counties exempted from the provisions of the Uniform Map Law. It provides that any person, firm, or corporation owning land in an exempted county may have a plat thereof recorded with the register of deeds in the county in which the land is located, upon submission of proof as to the accuracy thereof by oath of the surveyor making the plat or under whose supervision it was made. (This last clause was added by Chapter 660, HB 826.) The Act further provides that any plat recorded in accordance with these provisions is an exempted county between December 31, 1960 (effective date of the Uniform Map Law) and the effective date of this Act are expressly validated.

### Plat Copies Law

GS 47-32, relating to the filing of plat copies, was also amended in 1959 by the Uniform Map Law, and the same counties were exempted from its provisions as were exempted from GS 47-30, as amended. Thus another gap in the uniformity of the filing laws within the state was created. Chapter 535 (SB 217) is the companion law to Chapter 534 in this area. It creates a new GS 47-32.1 (the existing section of that number being renumbered to 47-32.2), which is identical to the provisions of GS 47-32 before the 1959 amendment, except that it now applies only to the exempted counties and expressly validates any plat filed in accordance with its provisions in these counties between December 31, 1960 and the effective date of this Act.

## Leases and Options

Chapter 1174 (HB 849) creates a new Article 8 of



Chapter 47 of the General Statutes, consisting of four sections, GS 47-117 through 120. This Article provides the form and procedure for filing memoranda of leases and options to purchase real estate with the register of deeds. It further declares that such memoranda, properly executed and registered, shall be adequate for purposes of notices as though the original instrument had been filed in its entirety. The Article prescribes the content of the memoranda, requiring: (1) the names of the parties to the lease or option; (2) a description of the property subject to the lease or option; (3) the term of the lease (including extensions, renewals, and options to purchase) or the expiration date of the option; and (4) sufficient reference to identify the entire agreement between the parties. This Act becomes effective October 1, 1961. An earlier bill, HB 360, which died in committee, was similar to this but provided additionally for the filing of memoranda of contracts to purchase real estate.

#### **Powers of Attorney**

Chapter 341 (SB 34) adds a new section, GS 47-115.1, providing that any mentally competent person twenty-one years old or older may appoint a power of attorney in fact which power will not terminate upon the subsequent mental incompetence or incapacity of the principal as a matter of law. In order to be valid, the power must: (1) be in writing, signed under seal, acknowledged, and delivered to the attorney in fact; (2) contain a statement that the power is executed under this section or in other language show that the power is to continue after the incapacity of the principal; and (3) be registered in the office of the register of deeds in some North Carolina county. The proper county for such registration is (1) that county specified in the instrument itself; or (2) if there is no county specified, then in the county where the principal has his legal residence; or (3) if the principal has no legal residence in this State (or if this fact is uncertain) in some county in the state in which the principal owns property or in the county in which one or more of the attorneys in fact reside. The attorney in fact should also file a copy of the instrument with the clerk of the superior court in the same county of registration within thirty days, but failure to do so will not affect the validity of the instrument or power. Revocation of the power may be accomplished in the following ways: (1) by the death of the principal; (2) by the appointment of a guardian or trustee of the principal's property within this State (providing a copy of such appointment is filed with the register of deeds in the same county wherein the original instrument was filed); or (3) by the filing of a written order of revocation with the register of deeds of the same county wherein the original instrument was filed (provided proof is supplied to the register of deeds that notice of revocation has been served on the attorney in fact in the manner prescribed for the service of civil process). The Act also sets out certain duties and procedures required of the attorney in fact in his capacity as such.

#### **Uniform Trust Receipts Act**

Chapter 574 (SB 114) adds a new Article 6 to Chapter 45 of the General Statutes. This Article consists of twenty-one new sections, GS 45-46 through 66. Of particular interest to registers of deeds in GS 45-58, relating to the filing of a "Statement of Trust Receipt Financing" in the office of the register of deeds. Any entruster (who is the creditor in this type of transaction) who undertakes a trust receipt transaction is entitled to file with the appropriate register of deeds a statement, signed by the entruster and trustee (debtor), acknowledged by the latter and probated in the manner in which other instruments are now acknowledged and probated, and containing the following: (1) names and mailing addresses of entruster and trustee, whether in-

state or out; (2) a statement that the entruster is engaged (or expects to engage) in financing the acquisition of goods by the trustee through a trust receipt transaction; and (3) a description of the kind of goods to be covered by such financing. The Act also suggests a form for the filed statement. The proper county for filing is determined by reference to (1) the county wherein the trustee, if an individual, resides; or (2) if a domestic or domesticated corporation, with a registered office in this State, the county wherein such office is located; or (3) if the corporation has no registered office in this State but does have a principal office (as shown by its certificate of incorporation or legislative charter or, in the case of a domesticated corporation, by its statement filed with the Secretary of State), the county wherein such principal office is located; or (4) if the trustee is a resident or non-resident firm, partnership, or association, or a non-resident individual or a foreign undomesticated corporation, any county wherein the trustee has a place of business.

This section provides that upon the filing of the statement and payment of the filing fee such statement shall cover any goods answering the description contained therein which, within thirty days prior to or one year after the date of filing, are the subject matter of a trust receipt transaction between the entruster and the trustee. At any time before the expiration of this period, in lieu of repeating the entire filing procedure outlined above, the entruster alone may file a new extension statement, acknowledged and probated, and containing the information required in the original statement and the book and page where the original is recorded. This subsequent filing is valid for a like period of time and operates to preserve the existing priority of the entruster's security interest in the subject goods.

The register of deeds is directed to index and record each statement of trust receipt financing or extension statement in the same manner as provided for chattel mortgages, and the fee charged is to be the same as provided by law for the recording and indexing of short-form chattel mortgages.

Cancellation of the security interest created by filing may be effected at any time by the entruster or his attorney in fact, or upon presentation by the trustee or entruster of the original statement marked satisfied in full by the entruster. While such cancellation of the original statement operates to cancel all extensions of the statement it does not affect the protection afforded by other filed statements or by other provisions of the Uniform Trust Receipts Act.

GS 45-61 provides that if any transaction falls within this and any other law requiring or permitting filing or recording, the entruster does not have to comply with all or both laws but can claim the protection afforded by the law with which he complies.

#### **Condemnation by the State Highway Commission**

Article 9 of Chapter 136 of the General Statutes relates to condemnation proceedings instituted by the State Highway Commission. Chapter 1084 of the Session Laws of 1961 (SB 494) makes several changes to this Article. Of primary interest to registers of deeds are the changes in GS 136-104 and 136-111. The former is amended by the addition of a paragraph providing that on and after July 1, 1961, at the time of the filing of the complaint and declaration of taking (as provided in this section), the State Highway Commission shall file a memorandum of action with the registers of deeds of all counties in which the condemned land is located, to be recorded among the land records of the counties. The memorandum shall contain: (1) the names of persons whom the Highway Commission believes to have an interest in the affected land and who are parties to the

*(Cont'd., see "Registers of Deeds" on p. 71)*

# MOTOR VEHICLES AND HIGHWAY SAFETY

Chapter numbers given refer to the 1961 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

Two major pieces of much sought-after highway safety legislation—scientific tests for intoxication and mechanical inspection of automobiles—failed of passage this session, as they did in the 1959 and earlier Assemblies. Another major measure, involving the extension of drunk driving cases to include those persons under the influence of certain types of non-narcotic drugs, also failed of passage. The safety picture, however, was not without its bright spots. The point system, for example, was strengthened in two important respects, and a minimum speed limit was established for major highways. Other important new measures include a new system of registration of vehicles designed to buttress the Financial Responsibility Act of 1957 (compulsory insurance law), and the indefinite extension of the latter law.

## Reciprocity Agreements

Chapter 642 (HB 545) adds an entirely new Article (1A) to Chapter 20 authorizing the Commissioner of Motor Vehicles, on behalf of the state, to enter into reciprocity agreements with other states and foreign countries in regard to registration and licensing of motor vehicles. The declared purpose of the Act is, by means of reciprocity agreements, to promote and encourage the use of the highway system and thus contribute to the economic and social development and growth of North Carolina. Agreements contemplated hereunder include those which provide that vehicles properly licensed in this state, when operated in another jurisdiction, shall receive exemptions, benefits and privileges similar to those extended to vehicles licensed in such other jurisdiction when operated in this state. To this end the Commissioner is given detailed powers. Agreements arrived at hereunder shall be in writing and filed in the Commissioner's office. Current reciprocity agreements are continued in effect.

## Driver Licensing Law

### The Point System

Two years experience and the benefit of further research were thought to call for certain changes in the point system, (G.S. 20-16(c)). By Chapter 460 (HB 224) the penalties for two common accident-causing offenses were increased in severity, and two new moving violations were specified. They are:

Illegal Passing	4 pts. (formerly 3)
Driving on wrong side of road	4 pts. (formerly 3)
Following too close	4 pts. (new)
Running stop sign	3 pts. (new)

The second change (G. S. 20-16(a) 5) involves extending the period for point accumulation (whether 12 or 8 points) from 2 years (in each case) to 3 years, effective 1 July 1961. Convictions and points accumulated prior to 1

July 1961 remain unaffected by the change, but may be added to points accumulated after 1 July 61 for suspension purposes, under G.S. 20-16(a) 5, as it formerly read or currently provides. A provision for inclusion of out-of-state convictions in the point system was defeated.

### Driver License Records

Chapter 307 (SB 95) amends G.S. 20-26 concerning the furnishing of, and fees for, copies of driver license records used for non-official purposes. The current fee—a maximum of \$1—is replaced by a schedule, viz.: 50 cents for a limited extract (up to 3 years) of a license record, \$1 for a complete extract, and \$3 for a certified copy of a complete license record. Fees received hereunder go into the "Operator's and Chauffeur's License Fund". Official copies of license records continue to be furnished without charge.

### Motor Vehicle Act of 1937

### Feed Mixers

Chapter 1172 (HB 843) amends G.S. 20-38 (bb) to include within the definition of Special Mobile Equipment "vehicles on which are permanently mounted feed mixers, grinders and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed mixing, grinding or milling process." A special tax of \$25 is placed on such vehicles (in addition to the standard \$3 for special mobile equipment) by an amendment to G.S. 20-87(j). Effective 1 January 62.

### Notarial Fees

Chapter 861 (SB 89) amends G.S. 20-42(a) by providing a fee system (one signature, 50 cents; two signatures, 75 cents; three or more signatures, \$1) for use by employees of the Department of Motor Vehicles in administering oaths and acknowledging signatures. Receipts hereunder must be used to pay part of costs of distribution of plates and certificates.

### Farm Vehicles Exempt From Registration

Chapter 817 (HB 957) exempts from registration, under G.S. 20-51, certain farm trailers or semi-trailers used by farmers in transporting silage (formerly cotton only) when not operated for hire. And Chapter 334 (HB 443), amending G.S. 20-51(g), provides that "those small farm trailers known generally as tobacco handling trailers, tobacco trucks or tobacco trailers where used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof" shall be exempt.

### Distribution of License Plates

Chapter 861 (SB 89) amends G.S. 20-63 by adding a new subsection (h) which provides a new system for distribution of license plates and registration and title certificates, except those issued by the Raleigh office or mailed. This section provides that the Department, insofar as practicable, shall issue plates and certificates through local commission contracts with persons, firms or state agencies which are



not engaged in commercial competition with other persons or firms in each locality. The Department is required to make an effort to execute such a contract in each locality, and to keep a record of its efforts to do so. When commission contracts cannot be entered into, plates and certificates will be issued by regular employees of the Department. The commission contract system shall be supervised by the Department, which is empowered to prorate payments, at a rate of not more than 17 cents per plate, to facilitate continuous service to the public. At least as many local outlets must be operated in each county as under the present monopolistic practice. Distribution of plates under the new system begins 1 July 1963, but the Commissioner of Motor Vehicles is authorized to initiate the necessary arrangements immediately.

#### *Title Recordation of Liens*

Chapter 835 (HB 564) is designed to strengthen motor vehicle certificate of title laws by providing for a manufacturer's certificate of transfer for new motor vehicles and for the recordation and perfection of security interests in vehicles. The present certificate of title is conclusive only as to liens in existence at the time of application for title, and hence does not meet the requisites of the Uniform Title Code. Under the new law liens in existence at the time of application for title must be listed thereon in the order of priority, and subsequent security interests must be reported to the Department of Motor Vehicles and noted on the certificate. Notation of liens on the title certificate eliminates the need for other recordation of liens. Detailed provisions are made for assignments by lien holders, and for releases of security interests. Certain liens created by operation of law are exempted from these recordation provisions. Portions of the new law (G.S. 20-58 to 20-58.9) concerning security interests are effective 1 January 1962; others are effective 1 July 1961.

An amendment to G.S. 20-85 provides that applications for certain certificates of title are raised from 50 cents to \$1, and two new fees of \$1 each, for recording supplementary liens and removing liens from a certificate of title, are specified, the proceeds of which go into a special "Lien Recording Fund".

#### *Registration and Transfer of Title*

Chapter 360 (HB 107) amends various sections of Art. 3, Parts 3-4 of Chapter 20 concerning registration of vehicles to harmonize with and support the provisions of the Vehicle Financial Responsibility Act of 1957.

Under current law, in general, license plates "follow the car" on sale, and the transferee can operate the car immediately. He may or may not notify the Department of Motor Vehicles, as required, and obtain a formal assignment of title. Since 1958, when the Financial Responsibility Act made proof of financial responsibility (usually a liability insurance policy) prerequisite to registration, the practice of allowing the plates to follow the car has permitted large numbers of vehicles to operate on the highways either legally (for 20 days) or illegally, until the end of the registration year, without necessarily having proper registration or insurance coverage. This made it difficult for the Department to identify car owners for anti-theft purposes or to enforce the financial responsibility law. This situation is aggravated by the dealers' privilege of reassignment without giving notice of transfer to the Department.

Effective 1 January 1962 license plates will no longer follow the car on sale, but may be retained by the seller and placed on another vehicle acquired by him, or turned into the Department. The transferee must procure new plates prior to operation of the vehicle, thus facilitating identification of the owner, control of the plates, and enforcement of the financial responsibility law. In addition, the new law abolishes the dealer-plate loophole by abolishing dealer plates, in connection with the sale of cars, thus requiring resort to the

temporary marker system, previously authorized, and for use of which financial responsibility is a prerequisite.

A new section, G.S. 20-79.2 authorizes "transporter" plates for use by businesses in which foreclosure or repossession of vehicles is necessary.

To accomplish the foregoing G.S. 20-64, 20-72 (a), 20-73, and 20-78 (a) are rewritten, and various related statutes in Art. 3, Chapter 20 are amended in detail to conform.

#### *Evidence—Proof of Ownership*

G.S. 20-71.1 provides that, in motor vehicle accident damage suits, proof of ownership or registration of the vehicle is prima facie evidence that at the time of the accident the owner was legally responsible as a principal or employer for the vehicle's operation. Formerly, it was specified that this rule could be availed of only if suit was instituted within one year of the accident. Chapter 975 (SB 373) removes this one-year limitation.

#### *Fees For Property Hauling Vehicles*

Chapter 685 (HB 544) rewrites G.S. 20-88 (a)-(c) concerning property hauling vehicles, effecting a variety of changes. The new G.S. 20-88(a) provides that, for licensing purposes, the weight of self-propelled property carrying vehicles shall be the declared empty weight and the heaviest load to be carried. The declared gross weight of self-propelled property carrying vehicles operated with trailers or semi-trailers shall include the empty weight of the vehicles to be operated in combination and the heaviest weight to be carried by the combination during the registration period.

G.S. 20-88(b) as rewritten in general adds a "Farmer" column to the present Schedule of Weights and Rates, and inserts figures ranging from 15 cents (not over 4,500 pounds) to 40 cents (over 16,500 pounds) thereon. The minimum fee for a vehicle licensed at the farmer rate shall be \$10; others, \$12. The definitions of "farmer" and "farm products" are substantially unchanged.

G.S. 20-88(c) as rewritten provides that annually on 1 January a registration and licensing fee of \$3 for trailers and semi-trailers shall be paid. Effective 1 January 62.

#### *Fraudulent Rental a Felony*

Chapter 1067 (SB 248) creates a new felony involving fraudulent rental of motor vehicles. The new section, G.S. 20-106.1, condemns obtaining possession of a motor vehicle from the owner (or possessor) thereof by agreeing in writing to pay a rental therefor and to return the vehicle to a certain place or at a certain time, and then wilfully failing to do so, or secreting, converting, selling or attempting to sell the vehicle.

#### *Safety Belt Anchorages*

Chapter 1076 (SB 375) adds a new section G.S. 20-135.2 concerning safety belt anchorages for passenger vehicles. Every such vehicle of 9 passenger capacity or less, except motorcycles, registered in North Carolina and made or sold after 1 July 1962, must be equipped with anchorage units for attachment of two front seat safety belts. Such units must support a loop load of 5000 pounds per belt. After 1 July 1962 no seat safety belt may be sold for motor vehicle use unless it meets the foregoing strength requirement. The buckle, under 5000 pound load, must be releasable with a one hand pull of less than 45 pounds.

#### *Speed Limits*

Chapter 1147 (SB 362) adds a new subsection (b1) to G.S. 20-141 to provide minimum speed limits on certain highways. On the interstate and primary highway system this speed for passenger vehicles (including 3/4 ton pickup trucks) is set at 40 mph in a 55 mph zone and 45 mph in a 60 mph zone. Appropriate signs must be posted. Exceptions include towing vehicles, and places where advisory safe speed signs indicate a slower speed. It is further provided that violations of the act will not constitute negligence *per se* in a civil action.

Chapter 99 (HB 101) rewrites G.S. 20-141 (b) (3) b to exempt from the 45 mph speed limit applicable to all vehicles with trailers, any vehicle towing or pushing a trailer licensed for not more than 2500 pounds gross weight.

#### *Prearranged Racing*

Chapter 354 (HB 366) stiffens the penalties set forth in G.S. 20-141.3 for prearranged (not merely wilful) racing on streets and highways of North Carolina. The criminal penalty is fixed at not less than \$500 or imprisonment for not less than 60 days, or both. In addition, the period for mandatory revocation of license for such an offense, including permitting and betting on prearranged racing, is raised from one to three years.

#### *Local Law Enforcement*

Chapter 793 (HB 712) adds a new proviso to G.S. 20-183 by specifying that when city and county law enforcement officers overtake another vehicles outside the city limits for any violation of the motor vehicle laws, they must, prior to stopping said vehicle, sound a siren or turn on a light, bell, horn or exhaust whistle approved for such use.

### **State Highway Patrol**

#### *Vehicles*

Chapter 342 (SB 135) amends G.S. 20-190 to delete the provision that State Highway Patrol vehicles operated by sergeants and above shall be painted black and silver. Retained is the requirement that not less than 79% of the patrol vehicles shall be so painted.

### **Safety and Financial Responsibility Act of 1953**

#### *Insurance*

Chapter 640 (HB 279) amends the definition, for financial responsibility purposes, of a motor vehicle liability insurance policy, as contained in G.S. 20-279.21, by adding a provision requiring such a policy to contain a clause reimbursing the insured in amounts currently provided by law for death or injuries inflicted by *uninsured motorists* and by *hit-and-run* motor vehicles. Such policies shall also contain provision for reimbursing the insured for property damages (with a \$5000 limit for all insureds in any one accident) inflicted by uninsured motor vehicles, subject to a \$100 deduction for each insured. Coverages under these new provisions may be rejected by the insured.

### **Vehicle Financial Responsibility Act of 1957**

Chapter 276 (HB 204) extended indefinitely as permanent legislation the Vehicle Financial Responsibility Act of 1957 (G.S. 20-309 to 20-319) by removing therefrom the 15 May 1961 termination clause.

### **Transportation of Migratory Farm Labor (New)**

Transportation of migratory farm labor is now regulated under a new Act ratified on 26 May 1961. The new law covers any person being transported by motor to or from employment in agriculture, and a motor carrier of such workers is defined as any person or corporation that carries for hire at any one time in North Carolina 5 or more migrant farm workers, to or from farm work, by any vehicle other than a passenger car or station wagon. Common carriers and a migrant worker carrying himself and family are excepted. A final exception relates to transportation of such labor by a farmer in his own vehicle when such labor is employed or is to be employed by him on his own farm.

The new law empowers the Department of Motor Vehicles, after a public hearing, to make and enforce reasonable rules in implementation of the act. These rules shall establish minimum standards for construction, equipment and operation of vehicles transporting migrant labor, and for the safety and comfort of passengers therein. Adoption of Interstate Commerce Commission regulations, when appropriate, is authorized.

Violation of the new regulations is made a misdemeanor (\$50 or 30 days, or both), and state, county, city and town

law enforcement officials are authorized to stop any motor vehicle on the highways to enforce compliance with the regulations.

## **Public Personnel**

*(Cont'd from p. 47)*

ceeds of a one per cent tax imposed by the 1959 General Assembly upon fire and lightning insurance contracts.

#### *Local Retirement Systems*

Four of the local retirement acts authorized the city councils of Albemarle, Canton, Reidsville and Waynesville to establish a retirement fund by ordinance on an actuarial reserve basis. All acts are similar to the Morganton retirement fund enabling act passed by the 1959 General Assembly. The Albemarle and Waynesville acts differ from other acts in requiring the prior service liability to be funded in 25 rather than 40 years. Each act authorizes the council to provide payments in case of death, disability and retirement because of age by contracting with other governmental units or with an insurance company or other persons or corporations.

Chapter 427 (HB 600) established the Concord Fireman's Supplementary Pension Fund. Financed by surplus funds in excess of \$500 in the local firemen's relief fund, the supplementary pension funds authorized to pay disability and retirement pensions of two per cent of salary at time of retirement for each five years of service. In no case shall the pension exceed 14 per cent of the fireman's compensation at time of retirement.

Chapter 524 (HB 667) and Chapter 607 (HB 770) authorize the transfer of surplus funds in the High Point and Winston-Salem firemen's relief funds to the local firemen's pension funds.

Other notable local retirement acts authorized the increase of pension payments to existing pensioners of the High Point Firemen's Pension and Disability Fund and the investment of funds of the Forsyth County Retirement Fund in securities authorized by statute for the investment of the assets of domestic life insurance companies.

#### *Local Peace Officers' Relief Associations*

Seven new local peace officers' associations were established by the General Assembly increasing the total number of local peace officer funds to 38. New associations were established for the following eight counties: Bladen, Burke and Caldwell, Gates, Harnett, Lenoir, Moore and Rockingham. New acts differed in the annual contribution required of members, the amount of court costs, and the salary paid the secretary. Annual contributions required of members vary from \$12 a year in Bladen, Harnett, Lenoir, Moore and Rockingham to \$36 a year in Burke-Caldwell and Gates funds. The Burke and Caldwell relief fund is financed by a \$.50 court cost and the Gates fund by a \$1.50 court cost. Other new funds require a \$1 court cost. Four of the funds require the secretary to serve without compensation. The Burke-Caldwell and Gates funds allow the secretary \$5 a month and the Rockingham County fund allows the secretary-treasurer \$50 a month.

Seven other acts amended the 31 relief funds previously authorized. The Edgecombe-Nash court cost was increased to \$1.25 and extended to cases involving city ordinances. The court cost of the Chowan fund was increased to \$2.00 and of the Martin-Tyrrell-Washington fund to \$1.50. The Johnston County fund was amended to permit the fund to purchase up to \$5,000 of group life insurance for each member in addition to paying the cost of group life disability and hospitalization insurance. The Chowan fund was further amended to allow the secretary to be paid a salary of \$20 a month.



# State Government

(Cont'd from p. 8)

graves when necessary to the performance of governmental functions.

## State Library

The State Library is authorized by Chapter 1161 (SB 499) to enter into contracts with library agencies of other states to provide, for compensation, library services to the blind here and in other states.

## Archives

The State Department of Archives and History is required by Chapter 1041 (SB 210) to conduct a records management program for the State and its political subdivisions, embracing both (1) the supplies, equipment, and methods used in the creation of public records, and (2) the selective preservation of records of more than temporary value.

## Tort Claim Defense

The Governor is authorized by Chapter 1007 (HB 934), on recommendation of the Attorney General, to authorize the employment at state expense of counsel to defend state employees who are sued for injuries resulting from negligent acts done in the course and scope of their employment.

Chapter 1102 (HB 785) extends the coverage of the state Tort Claims Act to claims arising from the negligent operation of school transportation service vehicles, when the salary of the negligent driver is paid from the Nine Months School Fund. The act also excludes state liability for tort claims in excess of \$1,000 arising from the operation of school vehicles, unless the claim is defended in good faith by the local board of education or settlement is approved by the local board of education and the Industrial Commission.

## National Guard

Chapter 192 (SB 71) leaves the statutory age limits on members and officers of the National Guard and the establishment of rank among Guard officers of the same grade to be fixed by regulations of the appropriate military service, rather than by statute.

## Proposals Defeated

The biennial proposal (HB 528) to institute daylight saving time in North Carolina met its usual defeat. An attempt (HB 739) to require that the designation of depositories for state funds, now made by the state Treasurer alone, be made by him with the approval of the Governor and Council of State, died in a House committee.

HB 1028 would have authorized the State Board of Health to establish a program for the licensing of all who handle radiation machines and radioactive materials, and would have authorized the Governor to enter into agreements with the federal government for the assumption by the State of certain of the federal government's responsibilities in this area. The bill was defeated on second reading in the Senate.

HB 1031, authorizing the Governor to execute on behalf of North Carolina the Southern Interstate Nuclear Compact, was reported favorably by the House Committee on State Government, then re-referred in the face of threatened opposition, and never emerged from committee.

# County Officials

(Cont'd from p. 12)

determination of the county commissioners either by agreement, in case of joint commissions, or by resolution. As substantial sums of money may be involved, the commissioners should insure that these matters are adequately provided for. Commissioners may want to seek help in working out fiscal control procedures which will be adequate.

## Other Finance Legislation

**Sales Tax Refunds.** Chapter 826 (SB 78) deletes subsection (30) from GS 105-114.13 and thereby removes the exemption of local governmental units from payment of sales and use taxes. This bill also amends GS 105-114.14 by adding

subsection (3). This subsection requires the Commissioner of Revenue to make refunds annually to all counties of sales and use taxes paid by such counties. Counties may obtain refunds of taxes paid on direct purchases of tangible personal property and of taxes indirectly incurred on building materials, supplies, fixtures and equipment which become a part of or annexed to buildings and structures being erected, altered or repaired for such counties. However, the exemption from use and sales taxes on purchases of building materials is continued for purchases made for the purpose of fulfilling any lump sum or unit price contract entered into or awarded before July 1, 1961. Exemption is also continued where such a contract is entered into or awarded pursuant to a bid made before July 1, 1961. Of course, since no tax liability is incurred under these contracts, no refund claim would arise under them.

To obtain a refund of taxes paid, a county must file a written request for a refund with the Commissioner of Revenue within six months of the close of its fiscal year. The request must be substantiated by such records, receipts and information as the Commissioner may require. No refund shall be made unless application for it is filed in the manner and time prescribed. "The refund provisions contained in this subsection shall not apply to any bodies, agencies or political subdivisions of the State not specifically named herein." Counties and incorporated cities and towns are specifically named.

**Commission to Study Impact of State Sovereignty upon Financing of Local Government.** Res. 68 (HR 1122) creates the "Commission to Study the Impact of State Sovereignty Upon Financing of Local Governmental Services and Functions." The function of the commission is "to study the impact of the location and concentration of State property in local governmental units upon the services and functions necessitated thereby, and the effect upon local governmental revenues and expenditures. The Commission shall make findings and recommendations concerning methods of equitably financing local governmental services and functions made necessary by the existence of substantial amounts of State property. The Commission shall consider State payments in lieu of taxes; State consent to assessment of property benefited by local improvements; development of more responsive sources of local governmental revenue; and any other equitable solutions deemed feasible."

**Community Alcoholism Programs.** Chapter 1173 (HB 848) is designed to promote community alcoholism programs by authorizing state aid to communities which have indicated a readiness to contribute to the financial support of alcoholism programs. Such aid is limited to a two year period.

## Miscellaneous

Chapter 1156 (SB 479) makes unlawful the retail sale of a designated list of items on Sunday. The county commissioners of any county may by resolution exempt unincorporated areas of the county from the application of this law. (See article on CRIMINAL LAW AND PROCEDURE for a detailed discussion of this bill.)

Res. 66 (SR 283) creates a commission to study existing public welfare programs. (See article on PUBLIC WELFARE AND DOMESTIC RELATIONS for a detailed discussion of this resolution.)

Chapter 1041 (SB 210) authorizes the State Department of Archives and History to conduct a records management and preservation program. The bill provides that "it shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the State Department of Archives and History in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government."

# Cities

(Cont'd. from p. 18)

of town for a violation of the Motor Vehicle Act to sound a siren or activate some other type of noise device as provided in G.S. 20-125 (b).

Special acts giving town policemen jurisdiction for a stated distance beyond corporate limits have been common in past sessions of the General Assembly. Twelve cities and towns were given outside jurisdiction from one to two miles from the corporate limits by the 1961 General Assembly, and bills giving jurisdiction to three more municipalities were introduced but not passed.

## ABC Systems

The general law authorizing establishment of alcoholic beverage control stores provides for county-wide elections. During the past decade a number of cities in counties where ABC elections have failed have secured special legislation permitting city elections and, on approval of the voters, establishment of city ABC systems. 1961 was a banner year for municipal special legislation in this category. Eight cities and towns were given the power to conduct municipal elections on the question of whether ABC stores should be established.

## Property Acquisition and Control

Three new acts concern the power of cities to acquire and control property. Chapter 982 (SB 406) amends G.S. 160-204 to give municipalities specific authority to acquire property for fire protection facilities. Chapter 457 (HB 542) amends GS 65-13 to permit political subdivisions, including cities, to remove graves on state or privately-owned property under specified conditions. Chapter 395 (SB 185) amends G.S. 115-126 to authorize boards of education to grant public utility easements to municipalities furnishing public utilities to schools, with or without compensation except benefits accruing by virtue of the location of the public utility.

## Miscellaneous Functions

A further examination of the many special acts not otherwise mentioned, as well as the new provisions contained in the charter revisions, would turn up many items of interest to particular city officials. Space and time preclude a more detailed analysis. Simply as examples one might note the following.

- . . . Charlotte received authority to license ambulance drivers and to regulate and franchise ambulance services.
- . . . Wake County and Randolph County secured legislation aimed at long range policies for public library service. Though the two plans differ, each provides for new library buildings to be built and maintained at municipal expense, while all library operating costs would be met by the county for county-wide library service. Both bills call for county-wide votes for special library tax levies.
- . . . Three resort areas were authorized to establish airport commissions and construct airports, with governmental units participating. The participating governmental units include: (1) Blowing Rock, Boone and Watauga County; (2) Southport, Boiling Spring Lakes, Long Beach and Brunswick County; (3) Shallotte and Ocean Isle.
- . . . The Asheville wrestling and boxing commission was given jurisdiction over boxing and wrestling in all parts of Buncombe County.
- . . . Morehead City was authorized to discontinue operation of its municipal hospital.
- . . . Voters in the Glen Alpine school district were authorized to vote on the levy of a recreation tax,

which, if authorized, would be administered by a five-member district recreation commission under supervision of the county commissioners.

The very variety of the subjects of special legislation suggest how difficult it would be to enact general legislation meeting the special needs of every incorporated municipality.

## CONCLUSION

The laws governing municipalities are definitely stronger as the result of the 1961 General Assembly. While some municipal officials will regret that some proposed legislation was not passed, North Carolina cities and towns can face the decade of the sixties with the legislative power to handle most of the presently critical problems of urban growth. New developments will unquestionably disclose the need for new legislation, and new crises may arise. With the continued trend toward urbanization, sympathetic consideration of municipal legislative needs by the General Assembly will continue to be of the highest importance.

# State Taxes

(Cont'd. from p. 31)

lice in this state and must be actively engaged in carrying on here the purposes for which organized. Corporations which are allowed to allocate their taxable income between North Carolina and other states are limited in their right to deduct such contributions to 5% of their net North Carolina income. Bringing North Carolina law into harmony with the Federal Income Tax, Chapter 1903 (HB 289) inserts amendments to make provisions for the extent to which gain for shareholders is to be recognized when there is a liquidation of a corporation which effects complete cancellation or redemption of all its stock and when the transfer of all property under the liquidation occurs within a single calendar month.

## Taxes on Insurance Companies

In 1959 the General Assembly added a provision to the gross premiums tax statute applying a 1% supplemental tax on premiums collected on fire and lightning policies (other than marine and automobile) but exempted from its application contracts of insurance written on property in "unprotected areas." Chapter 783 (SB 297) removes this exemption.

# Water Resources

(Cont'd from page 24)

ices. Or, if the municipality prefers, it may require the owner of the water system to supply, at reasonable cost, a record of the water consumption for users of the city sewerage system in order that the city may do its own billing.

Expenditures of capital reserve funds by counties for the acquisition, construction, extension and operation of water and sewerage systems from capital reserve funds is authorized by Chapter 430 (HB 619), except for the limitation that capital reserve funds representing ad valorem tax levies of the county cannot be so expended.

## Local Acts

There were a number of local acts dealing with the provision of water and sewerage services. Of these, three deserve special mention because they represent relatively new approaches to common problems.

A significant departure from the general provisions with respect to assessments for water and sewer extensions



is found in Chapter 895 (HB 873) which grants to the City of Raleigh two additional and alternative methods for making such assessments. The general law (GS 160-241) provides that assessments shall be "upon the lots and parcels of land abutting directly on the lateral mains of such sewerage or water works system, or extension thereof, according to the extent of the respective frontage thereon, by an equal rate per foot of such frontage." Chapter 895 amends this section insofar as Raleigh is concerned to provide that assessments for water and sewer extensions in areas subdivided into lots may be made by dividing the total cost equally among all the lots capable of being served, or at an equal rate per foot of frontage of such lots upon a public street. Thus the Raleigh City Council has available three bases for apportioning assessments for water and sewer extensions: (1) according to the frontage *on the water and sewer lines* as provided in the general law, GS 160-241, (2) according to the *street* frontage of the lots being served by the extensions, and (3) on the basis of an equal division of the cost among all the lots being served. Where lots are irregularly shaped or where lots are being served from lines which do not cross the full frontage of such lots, the two new additional methods of making assessments will undoubtedly permit a more equitable distribution of the cost of extensions.

Chapter 686 (HB 819) contains a number of amendments to the Greensboro City Charter. Among these is an amendment to Greensboro's assessment procedure for water and sewer extensions which permits the city to assess (as a part of the extensions of water and sewer mains) for pumping stations, discharge lines and outfalls. The amendment provides that assessment in such cases may be based on either a front foot basis or on an acreage basis.

The terms of a contract between the Town of Asheboro and the North Asheboro-Central Falls Sanitary District for the disposal of sewage are set forth in Chapter 727 (SB 359). The proposed contract calls for the Town of Asheboro to accept for treatment the sewage collected through the system operated by the Sanitary District. Outlays for both debt service and operating costs are to be divided between the District and the Town in proportion to the relative use of the facility by each. The Town of Asheboro is to bill the Sanitary District monthly for its share of the cost. In addition to the basic cost, an extra charge of 5% of the basic cost is to be made to the District to cover the Town's risk and cost of general administration. All rules and regulations regarding the pre-treatment of sewage or the discharge of waste into sewer systems which apply within the Town of Asheboro shall apply also to the collection system of the Sanitary District.

## Public Health

(*Cont'd from p. 37*)

for implementation of the requirements concerning the discharge of sewage and wastes into the Neuse River.

HB 847 which would have required that one of the members of the State Board of Agriculture be a practicing veterinarian.

HB 1028 which would have amended Chapter 104C of the General Statutes (which authorizes the State Board of Health to regulate the use of radiation, radiation machines and radioactive materials) to provide that the State Board of Health may require the licensing of all persons, firms, associations, etc., who use, store, transport or dispose of radiation machines or radioactive materials, and would have authorized the Board to exempt certain sources of ionizing radiation when the Board found that such sources are not a significant risk to public health and safety.

HB 1031 which would have authorized the Governor to enter into the "Southern Interstate Nuclear Compact." This

bill would have authorized the joining of a compact which would create the "Southern Interstate Nuclear Board" composed of one member from Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The purpose of the Board would be to encourage the use and development of nuclear energy in the South. The bill set out a formula under which the participating states would finance the Board's operations.

H. B. 1244 which would have instructed the North Carolina Recreation Commission to implement and develop plans, programs and facilities on a statewide basis for development of the performing arts and citizen fitness programs as presently provided for under the North Carolina Recreation Act. Funds would have come from the state Contingency and Emergency Fund and would supplement private subscriptions for this purpose.

## Courts, etc

(*Cont'd from p. 63*)

dent's power of revocation or appointment shall pass to the decedent's estate; in case of a decedent's power of appointment to particular persons or a class, the property shall pass to such, exclusive of the slayer. G.S. 31A-10.

Insurance or annuity proceeds payable to the slayer shall be paid as if the slayer had predeceased the decedent. If the decedent is the beneficiary of a policy on slayer's life, proceeds will go to decedent's estate unless the policy names an alternate beneficiary. The insurance or annuity company is protected if payment is made without notice of circumstances invoking provisions of this chapter. G.S. 31A-11.

Purchasers for adequate consideration of property or interests from the slayer prior to adjudication of the slayer's rights and without notice of circumstances invoking the provisions of this chapter are protected, but the slayer must hold the full consideration in trust for the persons entitled under this chapter to the interest transferred by the slayer. The slayer is liable for any deficiency between the consideration and the actual value of the interest. G.S. 31A-12.

*Miscellaneous:* The record of proceedings adjudicating a person to be a slayer is admissible in evidence in any civil action under this chapter. G.S. 31A-13. The Uniform Simultaneous Death Act is not applicable to cases governed by this chapter. G.S. 31A-14. This chapter is to be broadly construed to prevent anyone from profiting by his own wrong.

## Registers of Deeds

(*Cont'd from p. 65*)

action; (2) a description of the entire tract affected sufficient for its identification; (3) a statement of the interest or estate taken for public use; (4) the date of institution of the action, the county in which pending, and any other reference necessary for the identification of the action.

This section further directs the Highway Commission, on or before October 1, 1961, to file a memorandum of action with the appropriate register of deeds for each action instituted prior to July 1, 1961 pursuant to this Article. Failure of the Highway Commission to comply with this latter directive will not, however, invalidate the prior actions.

GS 136-111 relates to the filing of complaints by persons with compensable interests in land taken by the Highway Commission without a complaint and declaration of taking. Chapter 1084 has amended this section by the addition of a paragraph at the end which requires that upon the filing of his complaint the person with the compensable interest in the condemned land shall also file with the appropriate register of deeds (i.e., of the county in which the affected

land is located) a memorandum. This memorandum shall contain information (to the best knowledge of the person filing) of a similar nature as that required of the Highway Commission in GS 136-104, as amended, except that in (4), the person shall also include the date of the alleged taking of the land.

#### Records Management and Preservation Program

Chapter 1041 (SB 210) adds two new sections to Chapter 132 of the General Statutes: GS 132-8.1 and 8.2. The first of these sections provides for the creation of a records management program, administered by the State Department of Archives and History, the aim of such program being to apply efficient and economical management methods to the handling of official records at the state, county, and municipal levels. The Department is directed to establish procedures and make surveys and recommendations for the improvement of current management practices in the utilization of space, equipment, supplies, etc. GS 132-8.2 provides for a program "for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights of persons . . .", also to be administered by the Department of Archives and History. It is this section which authorizes the continuation of the micro-filming of county records which was started last year. The Act provides for an appropriation totaling \$40,000 for the biennium to finance the programs.

#### Validation Acts

Chapter 79 (SB 24) amends GS 47-50 (relating to the failure of the clerk of the superior court to order registration of certain instruments) by changing the limiting date of validation from March 3, 1949 to December 31, 1960.

Chapter 237 (HB 270) amends GS 47-43.2 (relating to the form of the attesting officer's certificate to be used when an instrument is proved by a subscribing witness) by additionally providing that when proof of execution is based upon the certificate of a judicial officer, such proof is sufficient for all instruments filed before March 15, 1961, provided that the certificate shows that execution was proved by: (1) oath and examination of the subscribing witness; (2) the date of such examination; and (3) the signature of the judicial officer taking such proof. The amendment also provides that it does not affect pending litigation.

## Game, Fish, etc.

(Cont'd from p. 59)

sioner of Commercial Fisheries to compromise by agreement with the owner and return the boat or appliance and reinstate the license.

*GS 113-207.* The act amends the section to provide that the officers authorized to stop oyster vessels may inspect the oysters.

*GS 113-211.* The punishment under this section is increased to a misdemeanor punishable in the discretion of the court, and unloading oysters from a vessel to a vehicle at night or on Sunday is made equally as unlawful as unloading to a factory or processing house at those times.

*GS 113-213.* The act amends this section to provide that any dealer or buy-boat owner or operator guilty of violating the prohibition of the section relating to sale or transportation of uncultured oysters shall have his license revoked under GS 113-352.

*GS 113-214.* The act deletes the provision excusing from responsibility any person, firm, or corporation furnishing a captain of any run or buy boat with funds to purchase oysters when the captain purchases oysters not properly cul-

led. Such a captain purchasing oysters not properly culled shall have his commercial fisheries license revoked under GS 113-352.

*GS 113-352.* This newly-added section provides that any dealer, buy-boat owner or operator, shucker, house operator, or other person engaged in the business of buying or transporting seafood products may have his commercial fisheries license revoked upon convictions of violations of regulations of the Department of Conservation and Development pertaining to commercial fisheries operations or of certain listed offenses under GS Chapter 113. For a first offense, the revocation that may be imposed shall be for a period of not less than thirty days. For a second offense, any license shall be suspended for a period of not less than six months.

The act states in a closing section that any provisions in SL 1959, Chapters 444 and 767, (relating to the taking of fish, shrimp, clams, and oysters for personal or family use in Brunswick, New Hanover, and Pender Counties) conflicting with this 1961 act shall remain in full force and effect.

## Local Property Tax

(Cont'd from p. 30)

appraised loan value of said property." (Note that this dealt with the appraisal value of the property, not the tax value.)

The bill did not win legislative approval.

In a similar vein HB 995 was designed to set by legislative action the tax assessment on a single industrial property in a given county until that county should conduct its next scheduled revaluation. The legislature rejected this proposal.

#### Membership of State Board of Assessment

For many years the State Board of Assessment has been composed of five members (GS 105-273). Since 1947 it has consisted of the Commissioner of Revenue (chairman), the Attorney General, the Director of the Department of Tax Research, the Chairman of the Utilities Commission, and the State Treasurer (as Director of Local Government). Chapter 547 (SB 21) reduces the membership of the board from five to four by removing the Attorney General from the list of members. This change was only one of several similar ones designed to relieve the state's law officer from serving as a member of boards and agencies he is required to advise. Reduced to four members, the State Board of Assessment faces the theoretical problem of how to arrive at a decision in the event its members are evenly divided.

#### Information to Accompany Tax Receipts

GS 105-324 prescribes what information must be shown on official receipts for payment of property taxes. Among other things it requires that they show the rate of tax levied for each unit-wide purpose, the total rate for all unit-wide purposes, and the rate levied for any special district or subdivision of the unit.

Receipts are commonly printed early enough and in sufficient copies to be used as tax notices as well as official receipts when taxes are paid. To get needed notice forms from printers it is often necessary to place orders at an early date, frequently before the tax rate has been set. Delays in setting tax rates have caused delays in getting out tax notices. Chapter 380 (SB 175) is designed to relieve the situation. It provides that in lieu of showing the tax rate breakdown on receipts as required by subsection (5), counties and municipalities may furnish the same information on a separate sheet of paper (properly identified) at the time the official tax receipt is delivered.



# KEY LEGISLATIVE LINKS

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Long after the gavels have sounded the end of the North Carolina General Assembly, two of the key people in the legislative process are still hard at work with bills, journals, and calendars. Ray Byerly and Mrs. Annie Cooper and their staffs carry on after the House and Senate members have concluded their work and gone home.

The important work of the principal clerks of the North Carolina House and Senate carries on for weeks after the end of each legislative session: checking and double-checking the paths and final destinations of bills and resolutions, charting legislative action, preparing journals of proceedings for publication, and in general tying up all the loose ends that are left hanging when legislators pack their bags for the trip back home.

But this monumental task of housekeeping — including the chore of keeping track of the whereabouts of some 1,800 bills and resolutions is only a partial reason why Tar Heel legislators have learned to rely on their two veteran chief clerks and with reason. S. Ray Byerly has been principal clerk of the Senate since 1937; and Mrs. Annie E. Cooper, his counterpart in the House since 1943. (*See Cover*). And their yeoman services in keeping daily sessions moving smoothly and properly has helped to bring effective order and continuity to the General Assembly for more than two decades.

Actually, both have seen more service with the Legislature than their tenures as principal clerks reveal.

Mrs. Cooper, know to everyone in the State Capitol as "Miss Annie," has served the Legislature continuously since the 1921 session, and allows as how she also watched the 1919 session in action. Originally hired as a journal clerk, she was promoted to assistant clerk prior to appointment to her present position.

Byerly also served an apprenticeship as journal clerk, working under Chief Clerk Leroy Martin during the 1933 and 1935 sessions. In the legislative off-season, he maintains his private law practice in Sanford.

It could be said with considerable accuracy, that "Ray" and "Miss Annie" have been major links in legislative continuity and efficiency through the years. During sessions, both chief clerks, in addition to their manifold duties, are called on for frequent aid on matters of order and procedure. Each has been indispensable to speakers and members in session after session.

"Miss Annie" spends her time between sessions as a "housewife and grandmother," as she puts it. She is the wife of G. B. Cooper, Raleigh petroleum distributor and president of a petroleum transport company.

Both clerks, along with their staffs of assistants and typists, work at least six months at their clerkship posts during each legislative session. Usually they come in about three weeks early to unravel the kinks and get their staffs into high gear for the workload ahead. Several weeks are required at the close of each session to clear up the legislative accumulation and set their offices in order.

This year, Byerly and "Miss Annie" closed shop in mid-July after clearing up a healthy backlog of work which piled up in the final weeks during lengthy daily and evening sessions of the General Assembly.

But all the work was not over even then. "Seldom does a week go by that I don't have to come up to the office two or three times," the affable House clerk noted, "to check up on a delinquent bill, look up someone's voting record, or get together some information for the public." Often, legislators have her check their voting records for use as campaign fodder.

While the last few weeks of each session are the most hectic for legislators and clerical personnel alike — often with everyone working 16 to 18 hours a day — "Miss Annie" regards the 1961 House as having had "the most orderly adjournment" she ever witnessed. She noted that for the first time in years the House was not forced into a three-session per-day schedule to wind up its work. Ray nodded in general agreement, but pointed out that the Senate did experience some three-session days near the end.

Both principal clerks have seen changes in legislative operation and anticipate more with the coming of the 1963 session: legislators expect to be quartered in the ultra-modern State House now under construction, with such innovations as an electronic device for tabulating tedious roll-call votes. Byerly reports that such a system is being "roughed in," but isn't sure whether it will be used in 1963.

Electronic tabulator or no, the clerks will still have to be there to record, say Mrs. Cooper and Byerly, who, by their own admission "work by instinct" after so many years spent side by side with Legislatures, and as "Miss Annie" put it aptly: "We can almost smell a mistake in a bill."

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## Education

(*Cont'd. from p. 34*)

of education, and, as usual, the relief was least where the discontent was greatest. Local election bills were introduced for nine counties: Avery, Clay, Jackson, Macon, Madison, Montgomery, Randolph, Stanly, and Watauga. Of these, only three, the bills for Jackson, Montgomery and Randolph passed. Montgomery and Jackson voted Democratic and, while Randolph had a Republican representative, the bill

which passed was introduced by the Senator from the district including Randolph, a Democrat.

A bill authorizing a legislative study commission to study school consolidation (HR 350) failed to pass; one authorizing a study of selection of local boards of education (Res. 21 - HR 50) was enacted.

Chapter 205 (HB 42), applicable to Alamance, Caswell, Columbus, Duplin, Hoke, Madison, Onslow, Rutherford and Sampson Counties, authorizes the county board of education to appoint between three and nine (general law: between three and five) members to each school district committee.



BLAST OFF THAT PAYS OFF: Roy Woodie, Convair Flight Engineer, supervises an Air Force Atlas Satellite Launch that will take information from outer space to increase knowledge of the earth and aid weather forecasting and communications. This brilliant young space engineer smokes Camels. He says they're the only cigarettes that give him real satisfaction every time he lights up.



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